VOL. 62 – NO. 19 MAY 8, 2015

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council passes Law 20-248, Urban Farming and Food Security Amendment Act of 2014
- D.C. Council schedules a public oversight roundtable on the District Department of Transportation's proposed rulemaking on the adoption of a new Title 13 (Sign Regulations) of the District of Columbia Municipal Regulations
- Executive Office of the Mayor extends the comment period on the proposed rulemaking for Title 13 (Sign Regulations)
- District Department of the Environment passes regulations on the transport of emissions of nitrogen oxides (NO_x)
- Office of the State Superintendent of Education announces funding availability for the Fiscal Year 2016 Farm Field Trip Grant
- Public Service Commission establishes procedures for a community net metering program for the District’s retail customers
- Office of Tax and Revenue proposes the minimum tax threshold amount for the July 2015 tax sale

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 et *seq*. (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative· Issuances (1 DCMR 300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at dcregs.dc.gov. Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §2-50l et *seq.* (2012 Repl.).

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

Deadlines for Submission of Documents for Publication

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The deadline for filing documents for publication for District of Columbia Agencies, Boards, Commissions, and Public Charter schools is THUSDAY, NOON of the previous week before publication. The deadline for filing documents for publication for the Council of the District of Columbia is WEDNESDAY, NOON of the week of publication. If an official District of Columbia government holiday falls on Thursday, the deadline for filing documents is Wednesday. Email the Office of Documents and Administrative Issuances at dcdocuments@dc.gov to request the *District of Columbia Register* publication schedule.

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

RM 520 – 441 4th ST, ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-244

"St. Elizabeths East Redevelopment Support Act of 2014"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-294 on first and second readings December 2, 2014, and December 17, 2014, respectively. Following the signature of the Mayor on January 25, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-594 and was published in the February 6, 2015 edition of the D.C. Register (Vol. 62, page 1490). Act 20-594 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-594 is now D.C. Law 20-244, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-245

"Renewable Energy Portfolio Standard Amendment Act of 2014"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-418 on first and second readings December 2, 2014, and December 17, 2014, respectively. Following the signature of the Mayor on January 26, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-595 and was published in the February 6, 2015 edition of the D.C. Register (Vol. 62, page 1492). Act 20-595 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-595 is now D.C. Law 20-245, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

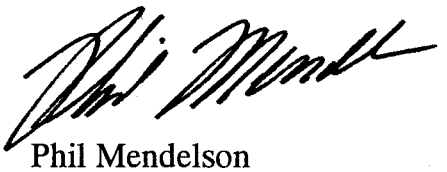
NOTICE

D.C. LAW 20-246

"Sonia Gutierrez Campus Way Designation Act of 2014"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-603 on first and second readings December 2, 2014, and December 17, 2014, respectively. Following the signature of the Mayor on January 25, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-597 and was published in the February 6, 2015 edition of the D.C. Register (Vol. 62, page 1500). Act 20-597 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-597 is now D.C. Law 20-246, effective April 30, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-247

"Closing of a Public Alley in Square 1412, S.O. 13-10159, Act of 2014"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-645 on first and second readings December 2, 2014, and December 17, 2014, respectively. Following the signature of the Mayor on January 25, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-598 and was published in the February 6, 2015 edition of the D.C. Register (Vol. 62, page 1502). Act 20-598 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-598 is now D.C. Law 20-247, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

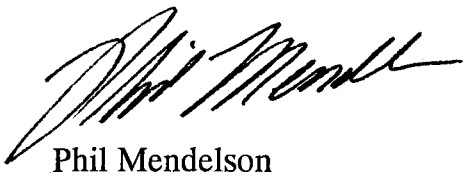
NOTICE

D.C. LAW 20-248

"Urban Farming and Food Security Amendment Act of 2014"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-677 on first and second readings November 18, 2014, and December 17, 2014, respectively. Following the signature of the Mayor on January 26, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-599 and was published in the February 6, 2015 edition of the D.C. Register (Vol. 62, page 1504). Act 20-599 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-599 is now D.C. Law 20-248, effective April 30, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-249

"Notice Requirements for Historic Properties Amendment Act of 2014"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-720 on first and second readings December 2, 2014, and December 17, 2014, respectively. Following the signature of the Mayor on January 25, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-600 and was published in the February 6, 2015 edition of the D.C. Register (Vol. 62, page 1512). Act 20-600 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-600 is now D.C. Law 20-249, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-250

"Prohibition of Pre-Employment Marijuana Testing Temporary Act of 2014"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1016 on first and second readings December 2, 2014, and December 17, 2014, respectively. Following the signature of the Mayor on January 25, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-610 and was published in the February 13, 2015 edition of the D.C. Register (Vol. 62, page 1874). Act 20-610 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-610 is now D.C. Law 20-250, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-251

"Parkside Parcel E and J Mixed-Income Apartments Tax Abatement Temporary Amendment Act of 2014"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1018 on first and second readings December 2, 2014, and December 17, 2014, respectively. Following the signature of the Mayor on January 25, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-611 and was published in the February 13, 2015 edition of the D.C. Register (Vol. 62, page 1876). Act 20-611 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-611 is now D.C. Law 20-251, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-252

"Nuisance Abatement Notice Temporary Amendment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1007 on first and second readings December 17, 2014, and January 6, 2015, respectively. Following the signature of the Mayor on February 5, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-622 and was published in the February 13, 2015 edition of the D.C. Register (Vol. 62, page 1958). Act 20-622 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-622 is now D.C. Law 20-252, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-253

"Not-For-Profit Hospital Corporation Certificate of Need Exemption Temporary Amendment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1022 on first and second readings December 17, 2014, and January 6, 2015, respectively. Following the signature of the Mayor on February 5, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-623 and was published in the February 13, 2015 edition of the D.C. Register (Vol. 62, page 1960). Act 20-623 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-623 is now D.C. Law 20-253, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-254

"UDC Fundraising Extension Temporary Amendment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1032 on first and second readings December 17, 2014, and January 6, 2015, respectively. Following the signature of the Mayor on February 5, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-624 and was published in the February 20, 2015 edition of the D.C. Register (Vol. 62, page 2255). Act 20-624 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-624 is now D.C. Law 20-254, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

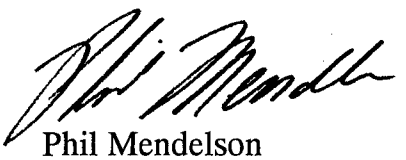
NOTICE

D.C. LAW 20-255

"Classroom Animal for Educational Purposes Clarification Second Temporary Amendment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1034 on first and second readings December 17, 2014, and January 6, 2015, respectively. Following the signature of the Mayor on February 5, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-625 and was published in the February 20, 2015 edition of the D.C. Register (Vol. 62, page 2257). Act 20-625 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-625 is now D.C. Law 20-255, effective April 30, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-256

"Apprenticeship Modernization Temporary Amendment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1038 on first and second readings December 17, 2014, and January 6, 2015, respectively. Following the signature of the Mayor on February 5, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-626 and was published in the February 20, 2015 edition of the D.C. Register (Vol. 62, page 2259). Act 20-626 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-626 is now D.C. Law 20-256, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-257

"Fiscal Year 2015 Revised Budget Request Temporary Adjustment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1044 on first and second readings December 17, 2014, and January 6, 2015, respectively. Following the signature of the Mayor on February 5, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-627 and was published in the February 20, 2015 edition of the D.C. Register (Vol. 62, page 2265). Act 20-627 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-627 is now D.C. Law 20-257, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-258

"Lots 36, 41, and 802 in Square 3942 and Parcels 0143/107 and 0143/110 Eminent Domain Authorization Temporary Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1054 on first and second readings December 17, 2014, and January 6, 2015, respectively. Following the signature of the Mayor on February 5, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-628 and was published in the February 20, 2015 edition of the D.C. Register (Vol. 62, page 2267). Act 20-628 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-628 is now D.C. Law 20-258, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-259

"Market-based Sourcing Inter Alia Clarification Temporary Amendment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1056 on first and second readings December 17, 2014, and January 6, 2015, respectively. Following the signature of the Mayor on February 5, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-629 and was published in the February 20, 2015 edition of the D.C. Register (Vol. 62, page 2270). Act 20-629 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-629 is now D.C. Law 20-259, effective April 30, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

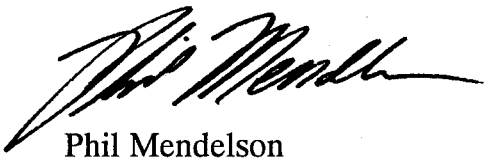
NOTICE

D.C. LAW 20-260

"Ticket Sale Regulation Temporary Amendment Act of 2015"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-1058 on first and second readings December 17, 2014, and January 6, 2015, respectively. Following the signature of the Mayor on February 5, 2015, as required by Section 404(e) of the Charter, the bill became Act 20-630 and was published in the February 20, 2015 edition of the D.C. Register (Vol. 62, page 2274). Act 20-630 was transmitted to Congress on March 4, 2015 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-630 is now D.C. Law 20-260, effective April 30, 2015.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

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April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

RESOLUTIONS

PR21-146 United Negro College Fund Revenue Refunding Bonds Project Approval Resolution of 2015

Intro. 5-1-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

PR21-147 Children's Hospital Revenue Bonds Project Approval Resolution of 2015

Intro. 5-1-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 21-9, Ruby Whitfield Way Designation Act of 2015

Bill 21-174, Margaret Peters and Roumania Peters Walker Tennis Courts Designation Act of 2015

on

Wednesday, June 3, 2015
12:00 p.m. (or immediately following the preceding hearing)
Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on Bill 21-9, the "Ruby Whitfield Way Designation Act of 2015" and Bill 21-174, the "Margaret Peters and Roumania Peters Walker Tennis Courts Designation Act of 2015." The hearing will be held at 12:00 p.m. on Wednesday, June 3, 2015 in Hearing Room 412 of the John A. Wilson Building. (If the previous hearing runs late, this hearing will begin immediately following the previous hearing.)

The stated purpose of Bill 21-9 is to symbolically designate the 1100 block of Florida Avenue, N.E., as Ruby Whitfield Way. Ruby Whitfield was a member of the New Samaritan Baptist Church and was tragically killed when she was struck by an automobile on Florida Avenue while walking across the street from her church. The stated purpose of Bill 21-174, the Margaret Peters and Roumania Peters Walker Tennis Courts Designation Act of 2015 is to designate the tennis courts at Rose Park, located at 2600 O Street, N.W. (Georgetown), as the Margaret Peters and Roumania Peters Walker Tennis Courts. The Peters sisters were born in the Georgetown neighborhood and grew up blocks from the Rose Park Playground where they played tennis at one of the few courts open at the time to African-Americans in Washington.

Those who wish to testify are asked to telephone the Committee of the Whole at (202) 724-8196, or email Greg Matlesky, Legislative Aide, at gmatlesky@dccouncil.us, and to provide your name, address, telephone number, and organizational affiliation and title (if any) by close of business Monday, June 1, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on June 1, 2015 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. A copy of Bill 21-9 and Bill 21-174 can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, June 17, 2015.

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

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119
Washington, DC 20004

Councilmember Vincent B. Orange, Sr., Chair
Committee on Business, Consumer, and Regulatory Affairs

Announces a Public Hearing

on

- **B21-017, the "Unemployment Profile Act of 2015"**
- **B21-030, the "Injured Worker Fair Pay Amendment Act of 2015"**

Thursday, June 18, 2015, 10:00 A.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 hearing by the Committee on Business, Consumer, and Regulatory Affairs, on B21-017, the "Unemployment Profile Act of 2015" and B21-030, the "Injured Worker Fair Pay Amendment Act of 2015" . The public hearing is scheduled for Thursday, June 18, 2015 at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

B21-017, the "Unemployment Profile Act of 2015", would require the Department of Employment Services to create and submit a report to the Mayor and Council, by December 2015, which profiles unemployed and under-employed residents, employers, and the occupational needs in the District. The report is required to include the following information: (1) Unemployed and under-employed resident profiles for residents age 18 and over; (2) Existing and future public and private workforce needs for economic development projects; and (3) Recommendations on how to improve job training programs in the District.

B21-030, the "Injured Worker Fair Pay Amendment Act of 2015", would require that Public Workers' Compensation Program participants receive raises anytime District workers receive raises. Public Workers' Compensation Program participants are District employees who are receiving worker's compensation due to an injury sustained while on duty.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Monday, June 15, 2015. 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 public 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 Thursday, July 2, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

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

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119 Washington, DC 20004

Councilmember Vincent B. Orange, Sr., Chair
Committee on Business, Consumer, and Regulatory Affairs

Announces a Public Hearing

on

- **B21-0132, the "Safe Working Conditions for Healthcare Workers Amendment Act of 2015"**

Thursday, June 11, 2015, 9:00 A.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 hearing by the Committee on Business, Consumer, and Regulatory Affairs, on B21-0132, the "Safe Working Conditions for Healthcare Workers Amendment Act of 2015". The public hearing is scheduled for Thursday, June 11, 2015 at 9:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

B21-0132, the "Safe Working Conditions for Healthcare Workers Amendment Act of 2015", would require that acute care hospitals, special hospitals, or psychiatric hospitals submit a staffing plan to the Department of Health within one year of the effective date as well establish and implement an acuity system to determine the level of nurse staffing necessary. Acuity staffing models determine a shift's staffing needs based on the complexity of the patients' level of care. The legislation requires that the Department of Health set minimum levels of nurse staffing and registered nurse staff ratios for schools. Among other things, this bill also provides an enforcement mechanism; whistleblower and patient protection rights and private causes of action; for efforts by UDC-CC to increase the number of nursing graduates and seek funding to develop nurse training opportunities.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of

business Monday, June 8, 2015. 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 public 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 Thursday, June 25, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
NOTICE OF PUBLIC HEARINGS
1350 Pennsylvania Avenue, NW, Washington, DC 20004

REVISED/RESCHEDULED

COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

ANNOUNCES A PUBLIC HEARING OF THE COMMITTEE ON

B21-147, the "TOPA Bona Fide Offer of Sale Clarification Amendment Act of 2015"

and

B21-146, the "Rent Control Hardship Petition Limitation Amendment Act of 2015"

on

Tuesday, May 26, 2015, at 10:00 AM
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Anita Bonds, Chairperson of the Committee on Housing and Community Development, will hold public hearings on B21-147, the "TOPA Bona Fide Offer of Sale Clarification Amendment Act of 2015" and B21-146, the "Rent Control Hardship Petition Limitation Amendment Act of 2015". **This notice reschedules the public hearings from Thursday, May 21, 2015, at 10:00 AM to Tuesday, May 26, 2015 at 10:00 A.M. in Room 500 of the John A. Wilson Building.**

The purpose of B21-147, the "TOPA Bona Fide Offer of Sale Clarification Amendment Act of 2015", is to clarify that offers of sale for a housing accommodations where there is no third-party contract, must be based on current, applicable, matter-of-right laws and regulations, or by an existing right to convert to another use. The bill further clarifies that the offer may take into consideration, but cannot exceed the highest and best use of the property. The bill is limited to situations where a property has 5 or more units, and will be repossessed by the owner, be demolished, or where it will no longer be used for housing tenants. Finally, the bill establishes the right of tenants to a determination of the appraised value of a housing accommodation by a professional appraiser.

The purpose of B21-146, the "Rent Control Hardship Petition Limitation Amendment Act of 2015", is to limit the amount of a hardship petition conditional rent increase to 5% of the rent charged, and to require that a rent adjustment be repaid by a housing provider to a tenant within 21 days of a conditional increase being amended.

Those who wish to testify are requested to telephone the Committee on Housing and Community Development, at (202) 724-8171, or email bweise@dccouncil.us, and provide their name,

address, telephone number, organizational affiliation and title (if any), by close of business on May 19, 2015. Persons wishing to testify are encouraged to submit 15 copies of written testimony. Oral testimony should be limited to three minutes for individuals and five minutes for organizations.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Housing and Community Development, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 112, Washington, D.C. 20004. The record will close at 5:00 p.m. on Tuesday, June 9, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARINGS
FISCAL YEAR 2016 PROPOSED BUDGET AND FINANCIAL PLAN, FISCAL YEAR 2016 BUDGET SUPPORT ACT OF 2015, FISCAL YEAR 2016 BUDGET REQUEST ACT OF 2015, AND COMMITTEE MARK-UP SCHEDULE

5/4/2015

SUMMARY

April 2, 2015	Mayor Transmits the Fiscal Year 2016 Proposed Budget and Financial Plan
April 13, 2015	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2016 Proposed Budget and Financial Plan
April 15, 2015 to May 7, 2015	Committee Public Hearings on the "Fiscal Year 2016 Budget Request Act of 2015." (The Committees may also simultaneously receive testimony on the sections of the Fiscal Year 2016 Budget Support Acts that affect the agencies under each Committee's purview)
May 8, 2015	Committee of the Whole Public Hearing on the "Fiscal Year 2016 Budget Request Act of 2015" and the "Fiscal Year 2016 Budget Support Act of 2015"
May 12, 13, and May 14, 2015	Committee Mark-ups and Reporting on Agency Budgets for Fiscal Year 2016
May 27, 2015	Committee of the Whole and Council consideration of the "Fiscal Year 2016 Budget Request Act of 2015", and the "Fiscal Year 2016 Budget Support Act of 2015"
June 16, 2015	Council consideration of the "Fiscal Year 2016 Budget Support Act of 2015"

The Council of the District of Columbia hereby gives notice of its intention to hold public hearings on the FY 2016 Proposed Budget and Financial Plan, the "Fiscal Year 2016 Budget Request Act of 2015", and the "Fiscal Year 2016 Budget Support Act of 2015". The hearings will begin Monday, April 13, 2015 and conclude on Friday, May 8, 2015 and will take place in the Council Chamber (Room 500), Room 412, Room 120, or Room 123 of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

The Committee mark-ups will begin Tuesday, May 12, 2015 and conclude on Thursday, May 14, 2015 and will take place in the Council Chamber (Room 500) of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

Persons wishing to testify are encouraged, but not required, to submit written testimony in advance of each hearing to Nyasha Smith, Secretary to the Council of the District of Columbia; Suite 5; John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004. If a written statement cannot be provided prior to the day of the hearing, please have at least 15 copies of your written statement available on the day of the hearing for immediate distribution to the Council. The hearing record will close two business days following the conclusion of each respective hearing. Persons submitting written statements for the record should observe this deadline. For more information about the Council's budget oversight hearing and mark-up schedule please contact the Council's Office of the Budget Director at (202) 724-8544.

ADDENDUM OF CHANGES TO THE PUBLIC HEARING SCHEDULE

New Date	Original Date	Hearing
4/15/2015 (COW-new insert)		Office of Contracting & Procurement Contract Appeals Board Executive Office of the Mayor Office of the City Administrator Office of the Senior Advisor
4/15/2015	4/20/2015	Housing Finance Agency (Housing)
4/15/2015	4/23/2015	DC Housing Authority (Housing)
4/17/2015	4/30/2015	DC Board of Elections (Judiciary)
4/17/2015	4/30/2015	Office of Campaign Finance (Judiciary)
4/17/2015	4/20/2015	District of Columbia Auditor (COW)
4/21/2015	4/24/2015	District Department of Transportation
4/22/2015 - Room 412	4/22/2015	Committee on Health and Human Services
4/22/2015 - Room 120	4/22/2015	Committee on Education
4/23/2015	4/15/2015	Office of Aging (Housing)
4/23/2015	5/6/2015	Office of Women's Policy and Initiatives (Housing)
Cancelled	4/27/2015	Workforce Investment Council (BCRA)
4/29/2015 (F&R-new insert)		Washington Metropolitan Area Transit Authority (Finance)
4/30/2015 (BCRA-new insert)		Office of the Deputy Mayor of Greater Economic Opportunity
5/6/2015	4/23/2015	Office of Veteran Affairs (Housing)
Cancelled	4/29/2015	Access to Justice Initiative (Judiciary)
5/12/2015	5/14/2015	Committee on the Judiciary (Mark-up)

PUBLIC HEARING SCHEDULE

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

MONDAY, APRIL 13, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Subject**
10:00 a.m. - End	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2016 Proposed Budget and Financial Plan

COMMITTEE ON THE JUDICIARY **Chairperson Kenyan McDuffie**

WEDNESDAY, APRIL 15, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Office of Police Complaints
	Criminal Justice Coordinating Council
	Sentencing and Criminal Code Revision Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

WEDNESDAY, APRIL 15, 2015; Room 412	
Time	**Agency**
2:30 p.m. - 6:00 p.m.	Office of Contracting and Procurement
	Contract Appeals Board
	Executive Office of the Mayor
	Office of the City Administrator
	Office of the Senior Advisor

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Evan Cash, ecash@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT **Chairperson Anita Bonds**

WEDNESDAY, APRIL 15, 2015; Room 123	
Time	**Agency**
10:00 a.m. - End	Housing Finance Agency
	DC Housing Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Barry Weise, bweise@dccouncil.us or by calling 202-724-8171.

COMMITTEE ON HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

WEDNESDAY, APRIL 15, 2015; Room 120	
Time	**Agency**
10:00 a.m. - End	Department of Behavioral Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE ON HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

FRIDAY, APRIL 17, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Department of Healthcare Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

FRIDAY, APRIL 17, 2015; Room 412	
Time	**Agency**
12:00 p.m. - 6:00 p.m.	Council of the District of Columbia
	District of Columbia Auditor
	Metropolitan Washington Council of Governments
	Office of the Chief Technology Officer
	Department of Human Resources
	District of Columbia Retirement Board/Funds
	Retiree Health Contribution (Other Post-Employment Benefits)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Greg Matlesky, gmatlesky@dccouncil.us or Evan Cash, ecash@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

FRIDAY, APRIL 17, 2015; Room 123	
Time	**Agency**
11:00 a.m.- End	Department of Motor Vehicles
	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling or by calling 202-724-8062.

COMMITTEE ON THE JUDICIARY **Chairperson Kenyan McDuffie**

FRIDAY, APRIL 17, 2015; Room 120	
Time	**Agency**
10:00 a.m. - End	Commission on Fathers, Men, and Boys
	Department of Youth Rehabilitation Services
	DC Board of Elections
	Office of Campaign Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT **Chairperson Anita Bonds**

MONDAY, APRIL 20, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Department of Housing and Community Development
	Rental Housing Commission
	Housing Production Trust Fund

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Irene Kang, ikang@dccouncil.us or by calling 202-724-8198.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

MONDAY, APRIL 20, 2015; Room 412	
Time	**Agency**
2:00 p.m. - 6:00 p.m.	University of the District of Columbia
	Office of Labor Relations and Collective Bargaining
	Office of Employee Appeals
	Public Employee Relations Board

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Taneka Miller, tmiller@dccouncil.us or by calling 202-724-4865.

COMMITTEE ON EDUCATION **Chairperson David Grosso**

TUESDAY, APRIL 21, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
1:00 p.m. - End	Office of the Deputy Mayor for Education
	District of Columbia Public Library System

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Christina Henderson, chenderson@dccouncil.us or by calling 202-724-8061.

COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT **Chairperson Mary Cheh**

TUESDAY, APRIL 21, 2015; Room 412	
Time	**Agency**
1:00 p.m. - End	District Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON FINANCE & REVENUE **Chairperson Jack Evans**

WEDNESDAY, APRIL 22, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Washington Convention & Sports Authority (EventsDC)
	Destination DC
	Real Property Tax Appeals Commission
	DC Lottery
	Office of the Chief Financial Officer

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, sloy@dccouncil.us or by calling 202-724-8058.

COMMITTEE ON HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

WEDNESDAY, APRIL 22, 2015; Room 412	
Time	**Agency**
10:00 a.m. - End	Department on Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE ON EDUCATION **Chairperson David Grosso**

WEDNESDAY, APRIL 22, 2015; Room 120	
Time	**Agency**
10:00 a.m. - End	Public Charter School Board
	Bullying Prevention Taskforce
	Healthy Youth and Schools Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Christina Henderson, chenderson@dccouncil.us or by calling 202-724-8061.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

THURSDAY, APRIL 23, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
11:00 a.m. - 6:00 p.m.	Office of Budget and Planning
	Deputy Mayor for Planning & Economic Development
	Office of Zoning
	Office of Planning

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Cynthia LeFevre, clefevre@dccouncil.us or Evan Cash, ecash@dccouncil.us or by calling 202-724-8092.

COMMITTEE ON EDUCATION **Chairperson David Grosso**

THURSDAY, APRIL 23, 2015; Room 412	
Time	**Agency**
10:00 a.m. - End	District of Columbia Public Schools (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Christina Henderson, chenderson@dccouncil.us or by calling 724-8061.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT **Chairperson Anita Bonds**

THURSDAY, APRIL 23, 2015; Room 120	
Time	**Agency**
11:00 a.m. - End	Office of Religious Affairs/Interfaith Council
	Office of Aging
	Advisory Neighborhood Commission
	Office of Women's Policy and Initiatives

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Nishant Keerikatte, nkeerikatte@dccouncil.us or by calling 202-724-8025.

COMMITTEE ON HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

FRIDAY, APRIL 24, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Department of Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

FRIDAY, APRIL 24, 2015; Room 412	
Time	**Agency**
10:00 a.m. - End	DC Taxicab Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS **Chairperson Vincent Orange**

MONDAY, APRIL 27, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Alcoholic Beverage Regulation Administration
	Department of Consumer and Regulatory Affairs
	Department of Employment Services
	Department of Small and Local Business Development
	Office of Risk Management
	Office of Tenant Advocate

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Peter Johnson, pjohnson@dccouncil.us or by calling 202-727-6683.

COMMITTEE ON THE JUDICIARY **Chairperson Kenyan McDuffie**

MONDAY, APRIL 27, 2015; Room 412	
Time	**Agency**
10:00 a.m. - End	Fire and Emergency Medical Services
	Office of Unified Communications
	Office of Human Rights
	Department of Corrections
	Office of Returning Citizen Affairs
	Corrections Information Council

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

TUESDAY, APRIL 28, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Department of General Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON EDUCATION **Chairperson David Grosso**

TUESDAY, APRIL 28, 2015; Room 412	
Time	**Agency**
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Christina Henderson, chenderson@dccouncil.us or by calling 202-724-8061.

COMMITTEE ON HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

TUESDAY, APRIL 28, 2015; Room 120	
Time	**Agency**
10:00 a.m. - End	Health Benefit Exchange Authority
	Child and Family Services Administration

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE OF HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

WEDNESDAY, APRIL 29, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Department of Disability Services
	Office of Disability Rights

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE ON FINANCE & REVENUE **Chairperson Jack Evans**

WEDNESDAY, APRIL 29, 2015; Room 412	
Time	**Agency**
10:00 a.m. - End	Commission on the Arts and Humanities
	Office of Inspector General
	Office of Partnerships and Grant Services
	Washington Metropolitan Area Transit Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, sloy@dccouncil.us or by calling 202-724-8058.

COMMITTEE ON THE JUDICIARY **Chairperson Kenyan McDuffie**

WEDNESDAY, APRIL 29, 2015; Room 120	
Time	**Agency**
9:00 a.m. - End	Office of the Attorney General
	Mayor's Office of Legal Counsel
	Office of Administrative Hearings
	Judicial Nomination Commission
	Commission on Judicial Disabilities and Tenure

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON EDUCATION **Chairperson David Grosso**

THURSDAY, APRIL 30, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Office of State Superintendent of Education
	State Board of Education

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Christina Henderson, chenderson@dccouncil.us or by calling 202-724-8061.

COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS **Chairperson Vincent Orange**

THURSDAY, APRIL 30, 2015; Room 412	
Time	**Agency**
10:00 a.m. - End	Department of Insurance, Securities, and Banking
	Office of Cable Television
	Office of Motion Picture and Television Development
	Office of the Deputy Mayor for Greater Economic Opportunity
	Office of People's Counsel
	Public Access Corporation
	Public Service Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Peter Johnson, pjohnson@dccouncil.us or by calling 202-727-6683.

COMMITTEE ON THE JUDICIARY **Chairperson Kenyan McDuffie**

THURSDAY, APRIL 30, 2015; Room 120	
Time	**Agency**
10:00 a.m. - End	Board of Ethics and Government Accountability
	Office of Victim Services
	Justice Grants Administration

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

FRIDAY, MAY 1, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
11:00 a.m. - End	District Department of the Environment
	Department of Parks and Recreation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HEALTH & HUMAN SERVICES **Chairperson Yvette Alexander**

FRIDAY, MAY 1, 2015; Room 412	
Time	**Agency**
10:00 a.m. - End	Children and Youth Investment Trust Corporation
	United Medical Center
	Deputy Mayor of Health and Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE ON THE JUDICIARY **Chairperson Kenyan McDuffie**

MONDAY, MAY 4, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
11:00 a.m. - End	Department of Forensic Sciences
	Metropolitan Police Department
	Office of the Chief Medical Examiner
	Homeland Security and Emergency Management Agency
	District of Columbia National Guard

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, kmitchell@dccouncil.us or by calling 202-727-8275.

COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT **Chairperson Anita Bonds**

WEDNESDAY, MAY 6, 2015; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Advisory Commission on Caribbean Community Affairs
	Office of Gay, Lesbian, Bisexual, and Transgender Affairs
	Office on Asian and Pacific Islander Affairs
	Office of Veteran Affairs
	Office of African Affairs
	Office of African American Affairs
	Office of Latino Affairs
	DC Youth Advisory Council

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Joseph Trimboli, jtrimboli@dccouncil.us or by calling 202-724-8198.

COMMITTEE OF THE WHOLE

FRIDAY, MAY 8, 2015; COUNCIL CHAMBER (Room 500)	Chairman Phil Mendelson
Time	**Agency**
10:00 a.m.	Committee of the Whole Hearing on the "Fiscal Year 2016 Budget Request Act of 2015", and the "Fiscal Year 2016 Budget Support Act of 2015"

COMMITTEE MARK-UP SCHEDULE

TUESDAY, MAY 12, 2015; COUNCIL CHAMBER (Room 500)

Time	Committee
12:00 p.m. - 2:00 p.m.	Committee on the Judiciary
2:00 p.m. - 4:00 p.m.	Committee on Health and Human Services

WEDNESDAY, MAY 13, 2015; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Open
12:00 p.m. - 2:00 p.m.	Committee on Finance and Revenue
2:00 p.m. - 4:00 p.m.	Committee on Housing and Community Development
4:00 p.m. - 6:00 p.m.	Committee on Business, Consumer and Regulatory Affairs

THURSDAY, MAY 14, 2015; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Open
12:00 p.m. - 2:00 p.m.	Committee on Education
2:00 p.m. - 4:00 p.m.	Committee on Transportation and the Environment
4:00 p.m. - 6:00 p.m.	Committee of the Whole

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

PR 21-53, Abandonment Highway Plan for Portions of 13th, 14th, Butternut and Dahlia Streets, NW, S.O. 14-200028

on

Wednesday, June 3, 2015
11:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on Proposed Resolution 21-53, the "Abandonment Highway Plan for Portions of 13th, 14th, Butternut and Dahlia Streets, NW, S.O. 14-200028." The hearing will be held at 11:00 a.m. on Wednesday, June 3, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of PR 21-53 is to approve the removal of the Highway Plan for portions of 13th, 14th, Butternut, and Dahlia Streets, NW, within Parcels 319/2, 319/3, 319/4 and 319/4 from the Plan of Permanent System of Highways of the District of Columbia (S.O. 14-20028). These planned, but unbuilt streets, are located on what is the site of the former Walter Reed Army Medical Center between Georgia Avenue and 16th Street, N.W.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or email Cynthia LeFevre, Legislative Counsel, at clefevre@dccouncil.us, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Monday, June 1, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on June 1, 2015 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of PR 21-53 can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on June 17, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

PR 21-112, Board of Zoning Adjustment Fred Hill Confirmation Resolution of 2015

on

Tuesday, June 9, 2015
1:00 p.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on PR 21-112, the "Board of Zoning Adjustment Fred Hill Confirmation Resolution of 2015." The hearing will be held at 1:00 p.m. on Tuesday, June 9, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of PR 21-112 is to confirm the appointment of Mr. Fred Hill as a member of the Board of Zoning Adjustment (BZA). The purpose of the hearing is to receive testimony from public witnesses as to the fitness of the nominee. The BZA is empowered to grant relief from the strict application of the Zoning Regulations (variances), approve certain uses of land (special exceptions), and hear appeals of actions taken by the Zoning Administrator at the Department of Consumer and Regulatory Affairs.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or email Cynthia LeFevre, Legislative Counsel, at clefevre@dccouncil.us, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, June 5, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on June 5, 2015 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of PR 21-112 can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on June 23, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT
NOTICE OF JOINT PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE

COUNCILMEMBER MARY CHEH
COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT

ANNOUNCE A JOINT PUBLIC HEARING

on

PR 21-124, the "965 Florida Ave, N.W., Surplus Declaration and Approval Resolution of 2015"

PR 21-125, the "965 Florida Ave, N.W., Disposition Approval Resolution of 2015"

In Re "965 Florida Ave, N.W., Disposition Extension Approval Resolution of 2015"

on

Wednesday, June 3, 2015
10:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson and Councilmember Mary Cheh announce a joint public hearing before the Committee of the Whole and the Committee on Transportation and the Environment on PR 21-124, the "965 Florida Ave, N.W., Surplus Approval Resolution of 2015"; PR 21-125, the "965 Florida Ave, N.W., Disposition Approval Resolution of 2015"; and PR 21-126, the "965 Florida Ave, N.W., Disposition Extension Approval Resolution of 2015." The hearing will be held at 10:00 a.m. on Wednesday, June 3, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of **PR 21-124** is to declare and approve as surplus the District-owned real property at 965 Florida Ave. N.W., known for tax and assessment purposes as Parcel 1102 in Square 2873. The stated purpose of **PR 21-125** is to approve the disposition of District-owned real property located at 965 Florida Avenue, N.W., also known as lot 1102 in Square 2873. The stated purpose of **PR 21-126** is to approve and authorize the extension of the time limit for the disposition of certain District-owned real property, located at 965 Florida Avenue, N.W. The extension of time would be for two years, expiring four years from the passage date of PR 21-125. PR 21-126 will be deemed disapproved on May 27, 2015, prior to the hearing, on June 3, 2015. However, the Committee expects that the executive may retransmit the measure. The purpose of these measures is to facilitate development of property the District obtained through a land swap with Howard University in 2008. The development plan includes 352 units of housing, of which 106 units will be affordable, and a full-service grocery store on the ground floor. Additionally, there will be 309 below-grade parking spaces and a new, publicly-accessible street connecting Sherman Avenue to 9th Street NW. The developer will provide funds for a business incubator in partnership with Howard University Business School, as well as a $200,000 Community Grant to support job readiness for local residents and youth enrichment programming.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or email Cynthia LeFevre, Legislative Counsel, at clefevre@dccouncil.us, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Monday, June 1, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on June 1, 2015 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on June 17, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

PR 21-127, Southwest Neighborhood Plan Approval Resolution of 2015

on

Thursday, May 28, 2015
2:30 p.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on PR 21-127, the "Southwest Neighborhood Plan Approval Resolution of 2015." The hearing will be held at 2:30 p.m. on Thursday, May 28, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of PR 21-127 is to approve the Southwest Neighborhood Plan. Located in Ward 6, the Planning Area for the Plan is bounded on the north by I-395, to the west by Maine Avenue, SW, to the east by South Capitol Street, and to the south by P Street, SW. The Plan provides a community-based strategy for an urban design, land use, and neighborhood preservation framework to enhance parks, pedestrian and street connections, integrate community amenities, enhance transportation choices, and accommodate and guide the direction of future growth in the Southwest neighborhood. The Plan also provides land use guidance for multiple underutilized District controlled properties that currently house municipal facilities.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or email Cynthia LeFevre, Legislative Counsel, at clefevre@dccouncil.us, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, May 26, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on May 26, 2015 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of PR 21-127 can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Monday, June 1, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE ON

The District Department of Transportation's Proposed Rulemakings on the Proposal to Adopt a New Title 13 for Sign Regulations and for the Use of U.S. Reservations Transferred to the District

Wednesday, June 10, 2015
at 11:00 a.m.
in Room 412 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Wednesday, June 10, 2015, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public oversight roundtable on the results of DDOT's Comprehensive Assessment on Streetcar Propulsion Technology. The roundtable will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The purpose of the roundtable is to provide the public an additional opportunity to comment on two proposed rulemakings by the District Department of Transportation ("DDOT"). The first proposed rulemaking concerns proposed rules to regulate the display of outdoor signs and exterior advertising within the District. DDOT published a Notice of Proposed Rulemaking on the Proposal to Adopt a New Title 13 for Sign Regulations on August 17, 2012. A Notice of Second Proposed Rulemaking was published on February 13, 2015. This proposed rulemaking would update and consolidate the District's current sign regulations into a single title; create new Designated Entertainment Areas that would be open to the display of new signs; clarify existing regulations as they relate to signs on public space, private property, and specific areas of the District; establish a means of enforcement; and establish a permit application fee schedule.

The second proposed rulemaking addresses proposed rules to clarify the process to be followed when a community or individual applies to make improvements to U.S. Reservations under the control of DDOT—commonly referred to as triangle or pocket parks. DDOT published a Notice of Proposed Rulemaking on the Use of U.S. Reservations Transferred to the District on July 4, 2014. A Notice of Second Proposed Rulemaking was published on April 3, 2015. The proposed rulemaking would require a permit to make certain changes to the landscape and would require that public and open access be maintained for these reservations.

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on June 24, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 21-138, Sense of the Council in Support of a DC Big 6 Tournament Resolution of 2015

on

Thursday, May 28, 2015
2:45 p.m. (or immediately following the preceding hearing)
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public roundtable before the Committee of the Whole on PR 20-138, the "Sense of the Council in Support of a DC Big 6 Tournament Resolution of 2015." The roundtable will be held at 2:45 p.m. on Thursday, May 28, 2015 in Hearing Room 412 of the John A. Wilson Building. (If the preceding hearing runs late, the hearing will begin immediately following the previous hearing.)

The stated purpose of PR 21-138 is to express the Council's support for creating a local Big 6 college basketball tournament. While there are several top tier colleges in the D.C. region, there is currently no opportunity for these teams to play each other regularly. This resolution would support the creation of a tournament involving some of our biggest local universities including American, Georgetown, George Washington, Howard, Maryland and George Mason.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or email Greg Matlesky, Legislative Aide, at gmatlesky@dccouncil.us, and provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, May 26, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on May 26, 2015 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. A copy of PR 21-138 can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://lims.dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, June 11, 2015.

Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Roundtable
John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC ROUNDTABLE ON:

PR 21-146, the "United Negro College Fund Revenue Refunding Bonds Project Approval Resolution of 2015"
PR 21-147 the "Children's Hospital Revenue Bonds Project Approval Resolution of 2015"

Monday, May11, 2015
10:00 a.m.
Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Monday, May 11, 2015 at 10:00 a.m. in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 21-146, the "United Negro College Fund Revenue Refunding Bonds Project Approval Resolution of 2015" would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $33 million of District of Columbia revenue refunding bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist the United Negro College Fund, Inc. in the financing or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project would refund a 2010 issuance for their facility located at 1815 7th Street, NW.

PR 21-147 the "Children's Hospital Revenue Bonds Project Approval Resolution of 2015" would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $410 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist the Children's Hospital in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project includes refunding series 1992, 2005 and 2008 issuances.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Friday, May 8, 2015. Witnesses should bring 15 copies of their written testimony to the roundtable. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B21-184, Medical Marijuana Cultivation Center Exception Temporary Act of 2015 and **B21-186**, Youth Employment and Work Readiness Training Amendment Temporary Amendment Act of 2015 were adopted on first reading on May 5, 2015. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on June 2, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

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

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

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

Reprog. 21-44: Request to reprogram $3,144,312 of Fiscal Year 2015 Local funds budget authority within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on April 30, 2015. This reprogramming ensures that DCPS is able to support the salaries and benefits of staff working the Extended Day and Afterschool programs.

RECEIVED: 14 day review begins May 1, 2015

Reprog. 21-45: Request to reprogram $62,000 of Capital funds budget authority and allotment from the District of Columbia Public Schools (DCPS) to the Reverse Pay-as-you-go (Paygo) Capital Project and subsequently to Local funds budget of the Department of General Services (DGS) was filed in the Office of the Secretary on April 30, 2015. This reprogramming will support the cost of removing a chiller from Malcolm V Elementary School and reinstalling the Chiller at Green ES.

RECEIVED: 14 day review begins May 1, 2015

Reprog. 21-46: Request to reprogram $6,119,847 of Fiscal Year 2015 Local funds budget authority within the Fire and Emergency Medical Services Department (FEMS) was filed in the Office of the Secretary on April 30, 2015. This reprogramming ensures the longevity pay is aligned with the correct object classes.

RECEIVED: 14 day review begins May 1, 2015

Reprog.21-47: Request to reprogram $5,202,708 of Capital funds budget authority and allotment from the Department of Health Care Finance (DHCF) to the Reverse Pay-as-you-go (Paygo) Capital project and subsequently to the Local funds budget of DHCF was filed in the Office of the Secretary on May 4, 2015. This reprogramming is necessary to purchase equipment not eligible for capital budget for the United Medical Center (UMC).

RECEIVED: 14 day review begins May 5, 2015

Reprog. 21-48: Request to reprogram $125,000 of Fiscal Year 2015 Local funds budget authority from the Department of Parks and Recreation (DPR) to the Pay-As-You-Go (Paygo) Capital Fund was filed in the Office of the Secretary on May 4, 2015. This reprogramming ensures that the Paygo Capital Fund will be able to support the proposed extension of the tennis court at the SE Tennis and Learning Center from the original 114 feet to 120 feet, based on international standards.

RECEIVED: 14 day review begins May 5, 2015

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 8, 2015
Petition Date: June 22, 2015
Hearing Date: July 6, 2015
Protest Date: September 16, 2015

License No.: ABRA-098427
Licensee: Brick Lane DC, Inc.
Trade Name: Brick Lane Restaurant
License Class: Retailer's Class "C" Restaurant
Address: 1636 17th Street, N.W.
Contact: Elalami Ikhiar: (202) 247-0526

WARD 2 ANC 2B SMD 2B03

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for September 16, 2015 at 1:30 pm.

NATURE OF OPERATION
New restaurant with sidewalk café and a total occupancy load of 100.

HOURS OF OPERATION & ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SIDEWALK CAFE
Sunday through Thursday 10 am – 1:30 am, Friday & Saturday 10 am – 2: 30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

CORRECTION**

Posting Date: April 24, 2015
Petition Date: June 8, 2015
Hearing Date: June 22, 2015
Protest Hearing: August 12, 2015

License No.: ABRA-098740
Licensee: MomoCCDC, LLC
Trade Name: Momofuku/Milk Bar City Center DC
License Class: Retail Class "C" Restaurant
Address: 1090 I Street, N.W.
Contact: Stephen O'Brien 202 625-7700

WARD 2 ANC 2C SMD 2C01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on August 12, 2015 at 1:30 pm.

NATURE OF OPERATION
New Restaurant serving Asian-style cuisine. Total occupancy load is 300. Sidewalk Café with 70 seats.

HOURS OF OPERATON
Sunday through Saturday 6 am-2 am

****HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION**
Sunday through Saturday 8 am-2 am

****HOURS OF OPERATON AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ**
Sunday through Saturday 8 am –11 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 8, 2015
Petition Date:	June 22, 2015
Roll Call Hearing Date:	July 6, 2015
Protest Hearing Date:	September 16, 2015
License No.:	ABRA-098330
Licensee:	Texas de Brazil (DC) Corporation
Trade Name:	Texas de Brazil
License Class:	Retailer's Class "C" Restaurant
Address:	455 Massachusetts Avenue N.W., Suite #100
Contact:	Cindy Block: 213-417-2320

WARD 6 ANC 6E SMD 6E05

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for September 16, 2015 at 1:30 pm.

NATURE OF OPERATION

New restaurant with the style of service similar to a Brazilian Steak House. Total occupancy load is 360. Sidewalk Café with seating for 82.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES AND SIDEWALK CAFE

Sunday through Saturday 11am-11pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Posting Date: May 1, 2015
Petition Date: June 15, 2015
Hearing Date: June 29, 2015

License No.: ABRA-093645
Licensee: LEI AG Embassy Row, LLC
Trade Name: The Embassy Row Hotel
License Class: Retailer's Class "C" Hotel
Address: 2015 Massachusetts Ave., N.W.
**Contact: Michael Fonseca: 202-625-7700

WARD 2 ANC 2B SMD 2B02

Notice is hereby given that this licensee 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. Petition and/or request to appear before the Board must be filed on or before the petition date.

****NATURE OF SUBSTANTIAL CHANGE**
Applicant requests a Summer Garden on rooftop with a total occupancy load of 214 and Summer Garden on lobby terrace with a total occupancy load of 23.

****HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN (ROOFTOP TERRACE)**
Sunday through Saturday 11 am – 11 pm

****HOURS OF OPERATION FOR SUMMER GARDEN (LOBBY TERRACE)**
Sunday through Thursday 8 am – 11 pm, Friday & Saturday 8 am – 12 am

****HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN (LOBBY TERRACE)**
Sunday through Thursday 11 am – 11 pm, Friday & Saturday 11 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date: May 1, 2015
Petition Date: June 15, 2015
Hearing Date: June 29, 2015

License No.: ABRA-093645
Licensee: LEI AG Embassy Row, LLC
Trade Name: The Embassy Row Hotel
License Class: Retailer's Class "C" Hotel
Address: 2015 Massachusetts Ave., N.W.
**Contact: John Yoon: 202-265-1600

WARD 2 ANC 2B SMD 2B02

Notice is hereby given that this licensee 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. Petition and/or request to appear before the Board must be filed on or before the petition date.

****NATURE OF SUBSTANTIAL CHANGE**
Applicant requests a Summer Garden.

****HOURS OF OPERATION FOR SUMMER GARDEN**
Sunday through Thursday 8 am – 11 pm, Friday & Saturday 8 am – 12 am

****HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN**
Sunday through Thursday 11 am – 11 pm, Friday & Saturday 11 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 8, 2015
Petition Date:	June 22, 2015
Roll Call Hearing Date:	July 6, 2015
Protest Hearing Date:	September 16, 2015
License No.:	ABRA-098528
Licensee:	Basque Bar, LLC
Trade Name:	To Be Determined
License Class:	Retailer's Class "C" Tavern
Address:	300 Florida Avenue, N.W.
Contact:	Andrew Kline: 202-686-7600

WARD 5 ANC 5E SMD 5E06

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for September 16, 2015 at 4:30 pm.

NATURE OF OPERATION
New restaurant serving Basque cuisine with a Wine Pub. Total seating load is 199. Sidewalk Café with seating for 60.

HOURS OF OPERATION FOR INSIDE PREMISES AND SIDEWALK CAFE
Sunday through Thursday 7am-2am, Friday and Saturday 7am-3am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES AND SIDEWALK CAFE
Sunday through Thursday 8am-2am, Friday and Saturday 8am-3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

CORRECTION**

Posting Date:	April 24, 2015
Petition Date:	June 8, 2015
Roll Call Hearing Date:	June 22, 2015
Protest Hearing Date:	August 12, 2015
License No.:	ABRA-098700
Licensee:	Elaine's One, LLC
Trade Name:	To Be Determined
License Class:	Retailer's Class "C" Restaurant
Address:	715 8th Street, S.E.
Contact:	Kevin Lively: 202-589-1834

WARD 6 ANC 6B SMD 6B03

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for August 12, 2015 at 1:30pm.

NATURE OF OPERATION**
New restaurant serving light breakfast, lunch and coffee during the day and full-service fine-dining in the evening. Seating capacity is 65. Total occupancy load is 90. Sidewalk Café with seating for 14.

HOURS OF OPERATION**
Sunday through Thursday 7am-2am, Friday & Saturday 7am-3am

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

HOURS OF OPERATION FOR SIDEWALK CAFÉ
Sunday through Thursday 7am-12am, Friday & Saturday 7am-1am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ
Sunday through Thursday 8am-12am, Friday & Saturday 8am-1am

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, JUNE 30, 2015
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD ONE

19025 ANC-1C **Application of Perseus 1827 Adams Mill Investments LLC**, pursuant to 11 DCMR § 3104.1, for a special exception from the prepared food shop requirements under §§ 712 and 721.3(t), to allow a prepared food shop with greater than 18 seats in the C-2-A District at premises 1827 Adams Mill Road, N.W. (a/k/a 1794 Lanier Place, N.W.) (Square 2580, Lot 521).

WARD TWO

19027 ANC-2B **Appeal of Rima Calderon and William Sawicki**, pursuant to 11 DCMR §§ 3100 and 3101, from a March 19, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1504436, to renovate a hotel in the DC/R-5-D District at premises 1731 New Hampshire Avenue N.W. (Square 154, Lot 829).

WARD ONE

19029 ANC-1B **Application of Eric Piersma**, pursuant to 11 DCMR § 3103.2, for a variance from the minimum lot dimensions requirements under § 401.11, to allow the renovation of a flat into a four-unit apartment house in the R-4 District at premises 1338 Fairmont Street N.W. (Square 2861, Lot 35).

WARD ONE

19034 ANC-1B **Application of Industrial Bank of Washington**, pursuant to 11 DCMR § 3103.2, for a variance from the use requirements under § 330.5, to allow a parking lot providing nine spaces in the R-4 District at premises 1931 11th Street N.W. (Square 333, Lot 36).

WARD TWO

THIS APPLICATION WAS POSTPONED FROM THE PUBLIC HEARINGS OF JANUARY 27, 2015, MARCH 3, 2015, AND APRIL 28, 2015 AT THE APPLICANT'S REQUEST:

18906 **Application of Endeka Enterprises and 1320 Penelope LLC**, pursuant to 11
ANC-2B DCMR §§ 3103.2 and 3104.1, for a variance from the parking requirements under § 2101.1, and a special exception from the roof structure setback requirements under §§ 400.7(b), 411.11, and 777.1, to allow construction of a residential addition to an existing office building in the DC/SP-1 and C-3-C Districts at premises 1337 Connecticut Avenue, N.W. (Square 137, Lot 55).

THIS APPLICATION WAS POSTPONED FROM THE PUBLIC HEARING OF APRIL 28, 2015 AT THE APPLICANT'S REQUEST:

WARD ONE

18985 **Application of David Benson**, pursuant to 11 DCMR § 3103.2, for variances
ANC-1B from the minimum lot area requirements under § 401.3, the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404.1, to convert a flat into a three-unit apartment house in the R-4 District at premises 2701 11th Street N.W. (Square 2858, Lot 16).

PLEASE NOTE:

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

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

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

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, June 25, 2015, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, NW, Suite 220
Washington, DC 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 15-11 (SQ700 Trust, LLC – Capitol Gateway Overlay District Review @ Square 700, Lots 43 and 866)

THIS CASE IS OF INTEREST TO ANC 6D

On April 28, 2015, the Office of Zoning received an application from SQ700 Trust, LLC (the "Applicant") requesting special exception review and approval of a new office building with ground floor retail/preferred uses, pursuant to the requirements of the Capitol Gateway (CG) Overlay District set forth in 11 DCMR § 1610. In addition, pursuant to 11 DCMR § 1610.7, the Applicant is seeking (i) a variance from the street wall setback requirements of 11 DCMR § 1604.3, and (ii) special exception approval relating to penthouse setbacks pursuant to 11 DCMR § 630.4(b).

The property includes Lots 43 and 866 in Square 700 and consists of approximately 35,558 square feet of land area. Square 700 is bounded by M Street to the north, South Capitol Street to the west, Van Street to the east, and N Street to the south, in Southeast, Washington, D.C. The site is located in the northern portion of Square 700, with frontage along M Street, South Capitol Street, and Van Street. The property is included within the CR Zone District and is located in the CG Overlay.

The Applicant proposes to develop the northern portion of the property with a new 10-story office building with ground floor retail/preferred uses. Three levels of below-grade parking will be provided with access from Van Street, S.E. Overall building height will not exceed 130 feet and total gross floor area for the building will total approximately 128,726 square feet. A multi-level residential building is contemplated to be constructed on the remainder of the property, to be addressed in a subsequent application.

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

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application, a copy of which may be**

downloaded from the Office of Zoning's website at: http://dcoz.dc.gov/services/app.shtm. This form may also be obtained from the Office of Zoning at the address stated below.

Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusions in the record.

If an affected Advisory Neighborhood Commission (ANC), pursuant to 11 DCMR § 3012.5, intends to participate at the hearing, the ANC shall also submit the information cited in § 3012.5 (a) through (i). The written report of the ANC shall be filed no later than seven (7) days before the date of the hearing.

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

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

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

Information should be forwarded to the Director, Office of Zoning, Suite 200-S, 441 4th Street, NW, Washington, DC 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Interstate Transport of Nitrogen Oxides (NO_x) Emissions

The Director of the District Department of the Environment (DDOE), pursuant to the authority set forth in Sections 107(4) and 110 of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.07(4) and 8-151.10 (2013 Repl.)), and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to adopt the following amendments to Chapters 1 (General Rules) and 10 (Nitrogen Oxides Emissions Budget Program) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking action regulates the interstate transport of emissions of nitrogen oxides (NO_x) from non-electric generating unit (EGU) sources, by repealing 20 DCMR Chapter 10 in its entirety and replacing the chapter with a source-specific NO_x emissions cap. Also, one definition and one abbreviation in Chapter 1 are amended.

The proposed regulation was first published in the *D.C. Register* on July 22, 2011 at 58 DCR 6029. The comment period officially closed on August 22, 2011. Comments were received from the U.S. General Services Administration (GSA). Numerous alternatives were explored after the rulemaking was initially proposed. A second proposed rulemaking was published in the *D.C. Register* on November 21, 2014 at 61 DCR 012045. No comments were received. The District has decided to proceed with an emissions cap during ozone season to meet federal air quality requirements. These rules were adopted as final on April 20, 2015, and shall become effective on the date of publication of this notice in the *District of Columbia Register*.

Background

NO_x is a precursor to ground-level ozone, a serious threat to human health in the District. The District remains in nonattainment of federal ozone standards. Short-term (1- to 3-hour) and prolonged (6- to 8-hour) exposures to ambient ozone have been linked to a number of adverse health effects, such as irritation of the respiratory system, temporary reduced lung function, aggravated asthma symptoms, and inflammation and damage to lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. 70 Fed. Reg. 25162, 25169 (May 12, 2005).

The District initially addressed the interstate transport of NO_x emissions by adopting the Ozone Transport Commission (OTC) NO_x Budget Program. The OTC is comprised of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia, and the District of Columbia ("the OTC States"). In September of 1994, the OTC states (except for Virginia) agreed to a memorandum of understanding (MOU) to achieve regional emissions reductions of NO_x. By signing the MOU, states committed to developing and adopting regulations that would reduce region-wide NO_x emissions in 1999 and further reduce emissions in 2003.

The United States Environmental Protection Agency (EPA) promulgated a rule on October 27, 1998, known as the "NO_x SIP Call," requiring twenty-two (22) states and the District to submit state implementation plans (SIPs) that address the regional transport of ground-level ozone. 63 Fed. Reg. 57356 (October 27, 1998). The OTC states finalized a model rule to comply with EPA's regulation in collaboration with EPA, industry, utilities, and environmental groups. The model rule imposed seasonal limits on NO_x emissions and implemented a NO_x emissions cap and trade program. Title 20 DCMR §§ 1000 to 1013 incorporated requirements of the OTC's NO_x Budget Program model rule through 2003.

In 2003, EPA began to administer the NO_x Budget Trading Program under the NO_x SIP Call. The requirements of EPA's NO_x SIP Call[1], intended to replace the OTC NO_x Budget Program model rule, were incorporated by reference in 20 DCMR § 1014. The rule was in effect through 2008.

On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), which included a finding that twenty-eight (28) States and the District of Columbia contributed significantly to the nonattainment of National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ and/or the eight (8)-hour ozone standard. 70 Fed. Reg. 25162, 25165 (May 12, 2005). CAIR requires these states to implement controls of sulfur dioxide (SO_2) and/or NO_x, and includes a NO_x ozone season trading program intended to phase out the NO_x SIP Call cap and trade program. *Id*. After 2008, EPA stopped administering the NO_x SIP Call trading program and required NO_x SIP Call states to sunset their NO_x SIP Call trading program provisions.

The District did not adopt its own CAIR regulation, so instead operated under a CAIR Federal Implementation Plan (FIP) to meet its NO_x SIP Call obligations for electric generating units (EGUs). The District's SIP takes credit for CAIR reductions from two EGUs at the Pepco-Benning Road facility[2]. The facility's EGU units were shut down in 2012.

On August 11, 2011, EPA published a final rulemaking to replace CAIR for EGUs called the Cross-State Air Pollution Rule (CSAPR). 76 Fed. Reg. 48208 (August 8, 2011). The District is not subject to CSAPR because EPA's analysis found that it does not significantly contribute to nonattainment in any other jurisdiction. Currently, CSAPR is in effect.[3]

States with non-EGU units that participated in the NO_x SIP Call are required to take regulatory action to continue to meet NO_x SIP Call non-EGU emissions reduction obligations adopted in their SIPs. 40 C.F.R. § 51.905. According to EPA, this can be done by adopting control

[1] NO_x SIP Call allocations initially were based on 1995 emissions extrapolated to 2007.

[2] *Plan to Improve Air Quality in the Washington, DC-MD-VA Region: State Implementation Plan (SIP) for 8-Hour Ozone Standard, "Moderate Area SIP"*, (May 23, 2007), section 6, page 6-9.

[3] On August 21, 2012, the U.S. Court of Appeals for the District of Columbia Circuit vacated CSAPR. *EME Homer City Generation, L.P. v. EPA*, 696 F. 3d 7 (D.C. Cir. 2012). On April 29. 2014, the U.S. Supreme Court reversed and remanded this decision. *EPA v. EME Homer City Generation L.P.* 134 S. Ct. 1584 (2014). EPA filed a motion to lift the stay of CSAPR on June 26, and on October 23, 2014, the U.S. Court of Appeals for the D.C. Circuit ordered that EPA's motion be granted. EPA issued a ministerial rule on November 21, 2014, that extends the dates in CSAPR so that CSAPR Phase I emissions budgets apply in 2015 and 2016, and Phase 2 budgets and provision apply in 2017 and beyond.

measures that either: "(A) impose a NO_x mass emissions cap on each source; (B) impose a NO_x emissions rate limit on each source and assume maximum operating capacity for every source for the purpose of estimating mass NO_x emissions; or (C) impose any other regulatory requirement which the State has demonstrated to EPA provides equivalent or greater assurance than [options A or B] that will comply with the State's NO_x budget in the 2007 ozone season." 40 C.F.R. § 51.121(f)(2).

Summary of Rulemaking

The District currently has one (1) source that was regulated under the NO_x SIP Call but was not included in CAIR or CSAPR because it is not an EGU: the U.S. General Services Administration Central Heating and Refrigeration Plant (GSA CHRP). The NO_x SIP Call emissions limit for this NO_x source was included in the District's SIP at approximately twenty-five (25) tons per control period[4].

This rulemaking places an overall cap on GSA's applicable units. Although the trading provisions of the NO_x SIP Call have expired, the remaining provisions are still applicable. The proposed rule also includes emissions monitoring, record-keeping, and reporting requirements, along with enforceable mechanisms from the NO_x SIP Call to ensure that the sources, including new or modified units, will not exceed the total NO_x budget. Finally, the definitions in 20 DCMR § 1099 are being replaced. The definition of "fossil-fuel-fired" in 20 DCMR § 199 is being amended to indicate that there is a different meaning of the term in Chapter 10.

The District also is repealing the outdated NO_x Budget Program provisions that pre-dated the NO_x SIP Call (20 DCMR §§ 1000 through 1013), because the program ended in 2003. Additionally, the NO_x SIP Call provisions of 20 DCMR § 1014 are being repealed, as the trading portions do not apply to any control period after 2008 and the remaining provisions are being retained in this rulemaking.

The extension of a deadline for the cap to the ozone season of 2015[5] is intended to provide GSA with adequate time to comply with the cap. This final rulemaking will be submitted to EPA as a SIP revision to satisfy the same portion of the District's NO_x emission reduction requirements that the NO_x SIP Call once satisfied.

Revisions since the First Proposal

GSA submitted comments on the first proposed rulemaking on August 19, 2011.

In their comments, GSA asked that the District retain emissions trading as a form of compliance. As explained above, emissions trading under the NO_x SIP Call was administered by the EPA, and EPA discontinued the NO_x SIP Call trading program after 2008. EPA is in the process of implementing a new emissions trading program, the Cross-State Air Pollution Control Rule

[4] *Plan to Improve Air Quality in the Washington, DC-MD-VA Region: State Implementation Plan (SIP) for 8-Hour Ozone Standard, "Moderate Area SIP"*, (May 23, 2007), section 6, page 6-9.

[5] Phase I of CSAPR is set to replace CAIR in 2015. 79 Fed. Reg. 71663 (December 3, 2014). The date is considered a sufficient extension of time for compliance.

(CSAPR). However the District is not subject to this rule, which is only applicable to electric generating units (EGUs). Facilities in the District are unable to participate in the trading program.

In another comment, GSA asked that DDOE exclude emissions for startup, shutdown, and malfunction (SSM) events from the NO_x cap. The District cannot provide for exceptions from the overall NO_x emission cap. EPA recently proposed a Startup, Shutdown, and Malfunction (SSM) SIP Call that prohibits the District from allowing exceptions for SSM events. 74 Fed. Reg. 55920 (September 17, 2014). Once the EPA rule is finalized, a corrective SIP revision may be required to ensure that (1) all periods of excess emissions, regardless of cause, will be treated as violations subject to EPA enforcement action, and (2) no periods of excess emissions can be automatically exempted from emissions limits.

In response to several additional comments: the rulemaking does apply generally to any boiler, combustion turbine, or combined cycle system that has a maximum design heat input of greater than two hundred and fifty million British thermal units per hour (250 mmBtu/hr). Subsection 1001.3 now clarifies that if any new source becomes subject to the chapter, the District will amend the limits in the regulation accordingly.

The rulemaking has been revised to alleviate confusion about testing methods as well as record-keeping and reporting requirements.

With regard to concerns about the proposed rulemaking's penalty provisions, the language in the revised § 1004.1 is derived from EPA's NO_x SIP Call regulation at 40 C.F.R. § 96.54(d)(3)(i). The section does not create a presumption of liability, but rather it defines a violation. A violation of the cap constitutes a violation during the entire control period. See 76 Fed. Reg. 48208, 48297 (August 11, 2011). To pursue penalties for a lesser number of days, the source can provide information for DDOE to consider in exercising enforcement discretion. Note that a Continuous Emission Monitoring System (CEMS) is required to demonstrate compliance; exceptions are permitted according to procedures in 40 C.F.R. Part 75, Subpart H.

GSA commented on previously proposed new unit set-asides, which were initially included in the proposed rulemaking to retain existing limits. Under the NO_x SIP Call, the additional one ton per control period was established as a new unit set-aside because, according to 40 C.F.R. § 96.42(d)(1), "the permitting authority will establish one allocation set-aside for each control period…equal to five percent in 2003, 2004, and 2005, or two percent thereafter, of the tons of NO_x emissions in the State trading program budget, rounded to the nearest whole NO_x allowance as appropriate." The set-aside has since been removed because allocations of the NOx budget are no longer relevant[6].

GSA requested that DDOE extend the compliance date of the proposed rule, which was initially set to begin in May of 2012. The second proposed rulemaking moved the compliance date to May 1, 2015.

[6] U.S. Environmental Protection Agency. "CAIR Frequent Questions – SIP Call Transition," found at: http://www.epa.gov/airmarkets/programs/cair/faq-10.html.

Finally, GSA asked for clarification on the rulemaking's applicability to unit five (5), the cogeneration system that consists of a boiler and two turbines, specifically, whether the turbines would be subject to the cap when they are operating independently of the boiler. The combined cycle "cogeneration" system is considered to be a unit when operating together or when parts of the unit are operating independently in a simple cycle mode, so yes – the operation of any part of the unit is subject to the ozone season cap.

Title 20 DCMR, ENVIRONMENT, Chapter 1, GENERAL RULES, is amended to read as follows:

199 DEFINITIONS AND ABBREVIATIONS

By amending the definition of "Fossil-fuel-fired" in Subsection 199.1 to read as follows:

Fossil fuel-fired – Except as used in Chapter 10, the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year, expressed in Million British Thermal Units (MMBtu).

By amending the abbreviation of "NO[x]" in Subsection 199.2 to read as follows:

NO_x nitrogen oxides or oxides of nitrogen

Title 20 DCMR, ENVIRONMENT, Chapter 10, NITROGEN OXIDES EMISSIONS BUDGET PROGRAM, is repealed and replaced with the following:

CHAPTER 10 – AIR QUALITY – NON-EGU LIMITS ON NITROGEN OXIDES EMISSIONS

1000 APPLICABILITY

1000.1 Beginning on May 1, 2015, this chapter applies to any new or existing nitrogen oxides (NO_x) unit.

1001 NO_x EMISSIONS BUDGET AND NO_x LIMIT PER SOURCE

1001.1 The total amount of NO_x mass emissions from all NO_x budget sources during a control period shall not exceed the maximum allowable NO_x budget of twenty five (25) tons per control period, which shall be allocated as follows:

General Service Administration, Central Heating and Refrigeration Plant (GSA CHRP)	Unit #3, Unit #4, and Unit #5 (DB, CT-1, and CT-2)	25 tons per control period

1001.2 If the emissions limit specified in § 1001.1 is different from the limit specified in any permit or regulation unrelated to this chapter, the more stringent limit shall apply.

1001.3 When an entity seeks to construct and operate a new NO_x unit in the District, and the Director concludes that this unit shall be authorized to emit NO_x, the NO_x emissions budget for the existing NO_x budget source identified in § 1001.1, shall be revised by rulemaking, based on a determination by the Director that:

(a) Justifies that the cap for each NO_x budget source does not exceed what is reasonable, based on historical emissions during ozone season, operational needs, and other considerations, as relevant; and

(b) Ensures that the total sum of emissions from all NO_x budget sources shall not exceed the total NO_x budget in § 1001.1.

1002 EMISSIONS MONITORING

1002.1 The owner or operator of each NO_x budget source shall comply with the continuous emissions monitoring system (CEMS) provisions of 40 C.F.R. Part 75, subpart H. The emissions monitoring system shall:

(a) Be installed, certified, operated, maintained, and quality assured in a manner approved by the Department and acceptable to the United States Environmental Protection Agency (EPA); and

(b) Demonstrate whether the NO_x emissions exceed the maximum allowable NO_x budget or source-specific NO_x emission limits specified in this chapter.

1003 RECORD-KEEPING AND REPORTING

1003.1 In addition to meeting the general reporting requirements in 20 DCMR §§ 500 and 501, the owner or operator of each NO_x budget source shall retain, for a period of at least five (5) years:

(a) Information on the amount of NO_x emissions from the source, such as records of all measurements, data, reports, and other information required by this chapter and the provisions of 40 C.F.R. Part 75, subpart H; and

(b) Other information that:

(1) The Director concludes will enable him or her to determine whether sources are in compliance with these regulations; and

(2) Is described in one or both of the operation permits issued pursuant to 20 DCMR §§ 200.2 or 300.1 to the NO_x budget source.

1003.2 The owner or operator of each NO_x budget source shall begin recording data the first hour that the NO_x budget source is operating for reporting purposes.

1003.3 The information in § 1003.1 shall be submitted to the Department within thirty (30) days of the end of a control period.

1003.4 Any excess emissions shall be reported to the Department in writing within two (2) Department working days.

1004 EXCESS EMISSIONS

1004.1 For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

1004.1 Each ton of excess emissions shall be a separate violation.

1099 DEFINITIONS

1099.1 When used in this chapter, the following terms shall have the meanings ascribed:

Continuous emissions monitoring system or CEMS – the equipment used to sample, analyze and measure air pollutants and provide a permanent record of emissions expressed in pounds per Million British Thermal Units (lb/MMBtu) and tons per day. The following component parts shall be included in a continuous monitoring system:

(a) NO_x pollutant concentration monitor;

(b) Diluent gas (oxygen or carbon dioxide) monitor;

(c) Data acquisition and handling system; and

(d) Flow monitor (where appropriate).

Control period – the period beginning May 1st of each year and ending on September 30th of the same year, inclusive.

Excess emissions – the NO_x emissions, in tons, that a NO_x source reports during a control period that is greater than the maximum allowable NO_x emissions limit in § 1001.1 of this chapter.

Fossil fuel-fired – the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel:

(a) Actually combusted comprises more than fifty percent (50%) of the annual heat input on a British Thermal Unit (Btu) basis during any year; or

(b) Is projected to comprise more than fifty percent (50%) of the annual heat input on a Btu basis during any year, provided that the

source shall be "fossil fuel-fired" as of the date, during such year, on which the source begins combusting fossil fuel.

Heat input – the product (expressed in MMBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in fuel mass/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

NO_x budget source – a source that includes one or more NO_x budget units.

NOx budget unit – a NO_x unit that is subject to the NO_x budget emissions limitation under § 1001.1.

NO_x unit – fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system that has a maximum design heat input of greater than two hundred fifty Million British Thermal Units (250 MMBtu) per hour.

Ton – any "short" ton (two thousand pounds (2,000 lb)). For the purpose of determining compliance with the NO_x budget under § 1001, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with this chapter, with any remaining fraction of a ton equal to or greater than five-tenths (0.5) ton being deemed to equal one (1) ton.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

RM9-2015-01, IN MATTER OF 15 DCMR CHAPTER 9-NET ENERGY METERING-COMMUNITY RENEWABLE ENERGY AMENDMENT ACT OF 2013

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Sections 2-505(a) and 34-1518 of the District of Columbia Official Code,[1] of its intent to adopt the following amendments to Chapter 9 (Net Energy Metering) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"), in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

2. On September 12, 2014, the Commission published a Notice of Proposed Rulemaking ("NOPR") to amend the Chapter 9: Net Energy Metering ("NEM") of Title 15: Public Utilities and Cable Television Rules, in accordance with the "Community Renewable Energy Amendment Act of 2013" ("CREA"). [2] The CREA establishes a community net metering ("CNM") program for the District's retail customers.[3] In the September 12, 2014 NOPR, the Commission sought comments on the proposed amendments to Chapter 9 to ensure its provisions comport with the CREA.

3. In response to the September 12, 2014 NOPR, the Commission received comments from the following entities: 1) the Potomac Electric Power Company ("Pepco"); 2) the Office of People's Counsel ("OPC"); 3) the Interstate Renewable Energy Council ("IREC"); 4) the Vote Solar Initiative ("Vote Solar"), DC Solar United Neighborhoods ("DC SUN"), and the D.C. Chapter of the Sierra Club (collectively the "VSGroup"); 5) Nixon Peabody LLP ("NPLaw"); and 6) U.S. Photovoltaics, Inc. ("USPV").[4] The Commission received reply

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[1] D.C. Official Code §§ 2-505(a) and 34-1518 (2012 Repl. & 2014 Supp.).

[2] The Community Renewable Energy Amendment Act of 2013 ("CREA") was enacted October 17, 2013. *See D.C. Act 20-0186.* The CREA became effective December 13, 2013. *See D.C. Law 20-0047*.

[3] *See* Sec. 2 of the CREA amending D.C. Official Code § 34-1501, Sec. 101 of the Retail Electric Competition and Consumer Protection Act of 1999.

[4] *RM9-2014-01,* Comments of U.S. Photovoltaics, Inc. to the September 14, 2014 NOPR ("USPV's Comments"), filed October 9, 2014; Comments of the Potomac Electric Power Company to the Notice of the Proposed Rulemaking ("Pepco's Comments"), filed October 14, 2014; Comments of the Office of People's Counsel on the Proposed Rulemaking on the Community Renewable Energy Act of 2013 ("OPC's Comments"), filed October 14, 2014; Comments on the Proposed Rules for the Interstate Renewable Energy Council, Inc. ("IREC's Comments"), which represent the positions of the Maryland DC Virginia Solar Energy Industries Association ("MDV-SEIA"), DC SUN, Skyline Innovations (d/b/a Nextility Inc.), Clean Energy Collective ("CEC"), Vote Solar, the DC Sierra Club, filed October 14, 2014; Comments of the Vote Solar Initiative, DC Solar United Neighborhoods ("DC SUN"), and the D.C. Chapter of the Sierra Club to the Notice of Proposed Rulemaking, amending Chapter 9 of Title 15 of the District of Columbia Municipal Regulations ("VSGroup's Comments"), filed October 14, 2014;

comments from the following entities: Pepco, IREC, and CleanGrid Advisors ("CleanGrid").[5]

4. Based on the comments and reply comments from the interested entities, the Commission proposed to further amend the proposed rules for Chapter 9. On January 30, 2015, a Second NOPR was published in the *D.C. Register* proposing to revise the following sections of Chapter 9 of Title 15 of the DCMR: 906, 907, 908 and 999. These proposed amendments resulted in a renumbering of subsections within Sections 906, 907 and 908.[6] The Second NOPR replaced and superseded the NOPR, which was published in the *D.C. Register* on September 12, 2014.[7]

5. On February 4, 2015, the Commission issued Order No. 17794 (a companion order to the NOPR) explaining the reasoning underlying the proposed revisions. In response to the Second NOPR, the Commission received comments from the following entities: 1) the Pepco; 2) OPC; 3) VSGroup; and 4) Standard Solar.[8] The Commission received reply comments from 10 members of the Council for District of Columbia ("Council"), Pepco, Anya Schoolman and OPC.[9] After review and consideration of the parties' comments, the Commission has made minor non-substantive changes to: 1) Subsection 906.4 by replacing "Pepco Zone" with "Pepco District of Columbia sub-Zone;" and Subsection 907.10 by adding "more than" to the first

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Comments of Nixon Peabody in Response to the Notice of Proposed Rulemaking ("NPLaw's Comments"), filed October 14, 2014; See also IREC's Errata Comments filed October 15, 2014.

[5] *RM9-2014-01*, Reply Comments of the Potomac Electric Power Company regarding the Notice of the Proposed Rulemaking ("Pepco's Reply Comments"), filed October 27, 2014; Reply Comments on the Proposed Rules for the Interstate Renewable Energy Council, Inc. ("IREC's Reply Comments"), filed October 27, 2014; Reply Comments of CleanGrid Advisors ("Clean Grid Advisors' Reply Comments"), filed October 28, 2014.

[6] *62 D.C. Reg*. 1395-1406 (2015).

[7] *61 D.C. Reg*. 9370-9380 (September 12, 2014).

[8] *RM9-2015-01*, Comments of the Potomac Electric Power Company Regarding Notice of Proposed Rulemaking ("Pepco's Comments"), filed March 2, 2015; Comments of the Office of People's Counsel on the Second Proposed Rulemaking on the Community Renewable Energy Act of 2013 ("OPC's Comments"), filed March 2, 2015; Joint Comments in Response to Notice of Proposed Rulemaking of Vote Solar Initiative, DC Solar United Neighborhoods ("DC SUN"), Maryland DC Virginia Solar Energy Industries Association ("MDV-SEIA"), the Grid 2.0 Working Group, the Washington, D.C. Chapter of the Sierra Club to the Notice of Proposed Rulemaking, and National Housing Trust amending Chapter 9 of Title 15 of the District of Columbia Municipal Regulations ("VSGroup's Joint Comments"), filed March 2, 2015; Standard Solar Comments Regarding the Commission's Conclusions about Community Renewable Energy Facilities ("Standard Solar Comments"), filed March 2, 2015.

[9] *RM9-2015-01*, Reply Comments of the Potomac Electric Power Company in Response to Notice of the Proposed Rulemaking ("Pepco's Reply Comments"), filed March 16, 2015; Reply Comments of the Office of People's Counsel on the Second Proposed Rulemaking on the Community Renewable Energy Act of 2013 ("OPC's Reply Comments"), filed March 16, 2015 Comments of Anya Schoolman Regarding the January 30, 2015 NOPR ("Anya Schoolman's Comments"), filed March 16, 2015; Comments from the Council for District of Columbia ("Council's Comments"), filed March 17, 2015. Because of the timing of Ms. Schoolman's and the Council's comments, we will treat them as reply comments in this Order.

sentence of the provision. The final rules will become effective upon publication of this Notice of Final Rulemaking in the *D.C. Register*.

Chapter 9, NET ENERGY METERING, of Title 15, PUBLIC UTILITIES AND CABLE TELEVISION, of the DCMR is amended as follows:

900 GENERAL PROVISIONS

Subsection 900.1 is amended to read as follows:

900.1 The purpose of this chapter is to set forth the policies and procedures for implementation of the net energy metering and community net metering provisions of the "Retail Electric Competition and Consumer Protection Act of 1999,"[10] as amended, the "Clean and Affordable Energy Act of 2008"[11] ("CAEA"), and the "Community Renewable Energy Amendment Act of 2013" ("CREA").

Subsection 900.2 is amended to read as follows:

900.2 This chapter establishes the Public Service Commission of the District of Columbia's Rules and Regulations governing Net Energy Metering and Community Net Metering, including eligibility for participating in Net Energy Metering and Community Net Metering, a bill crediting mechanism, Net Energy Metering and Community Net Metering billing requirements for participants, net metering-related equipment requirements, requirements for reporting and contractual arrangements, and safety and performance standards. This chapter shall be cited as the "District of Columbia Net Energy Metering and Community Net Metering Rules."

Subsection 900.3 is amended to read as follows:

900.3 The provisions of this chapter are promulgated pursuant to the authority set forth in Section 34-1518 of the D.C. Official Code and the CREA.

Section 906, WAIVER, is renamed and amended to read as follows:

906 COMMUNITY RENEWABLE ENERGY FACILITIES

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[10] The Retail Electric Competition and Consumer Protection Act of 1999 was enacted January 18, 2000. *See D.C. Act 13-0256.* Retail Electric Competition and Consumer Protection Act of 1999 became effective May 9, 2000. *See D.C. Law 13-107.*

[11] The Clean and Affordable Energy Emergency Act of 2008 ("CAEA") was enacted September 25, 2008. *See D.C Act 17-508.* The permanent version of the CAEA became law on October 22, 2008. *See D.C Law 17-250.*

906.1 A CREF: (a) shall be directly interconnected with the Electric Company's distribution system and shall execute an Interconnection Agreement and CREF Rider with the Electric Company; (b) may be built, owned or operated by a third party under contract with a Subscriber Organization; (c) may add capacity and Subscribers to its facility if the added capacity and Subscribers do not reduce the electrical production benefit to existing Subscribers or cause the CREF to exceed five (5) megawatts in capacity; and (d) may update its Subscribers no more frequently than once per quarter, by providing the following information about its Subscribers to the Electric Company: (i) name, address and account number of each Subscriber; and (ii) the percentage interest of each Subscriber in the capacity of the CREF. Under no circumstances shall a CREF sell Subscriptions totaling more than one hundred percent (100%) of its energy generation.

906.2 The owners of any Subscriber Organization controlling a CREF: (a) shall not be considered public utilities or electricity suppliers solely as a result of their interest or participation in the CREF; (b) shall own any Renewable Energy Credits ("RECs") associated with the electricity generated by the CREF, unless the RECs were explicitly contracted for through a separate transaction independent of any interconnection agreement or contract; (c) shall follow all procedures and all standards for performance and safety for interconnection set forth in Chapter 40 of Title 15 of the District of Columbia Municipal Regulations; and (d) shall be subject to the distribution level generation requirements set forth in Chapter 41 of Title 15 of the District of Columbia Municipal Regulations, Section 4109.

906.3 Prices paid for Subscriptions and contractual matters between the CREF owner, Subscriber Organization, and Subscribers shall not be subject to the jurisdiction of the Commission.

906.4 All electricity exported to the grid by a CREF shall become the property of the SOS Administrator, pursuant to Section 118a(h) of the amended Retail Electric Competition and Consumer Protection Act of 1999, but shall not be counted toward the SOS Administrator's total retail sales pursuant to the Renewable Energy Portfolio Act of 2004, effective April 12, 2005 (D.C. Law 15-340; D.C. Official Code §§ 34-1431 *et seq.*). If the electrical production of a CREF is not fully subscribed, the SOS Administrator shall purchase the unsubscribed energy produced by the CREF at the PJM Locational Marginal Price for energy in the Pepco District of Columbia sub-zone. If applicable, the price shall be adjusted to include ancillary service charges for distribution services. The SOS Administrator shall use unsubscribed energy to offset purchases from wholesale suppliers for Standard Offer Service, and shall recover the cost for the purchase of the unsubscribed energy from SOS customers, in accordance with Chapter 41 of Title 15 of the District of Columbia Municipal Regulations, Subsection 4103.1.

906.5 A CREF shall have no less than two (2) Subscribers. In the event that a CREF falls below two (2) Subscribers, the CREF shall notify the Electric Company within seventy-two (72) hours. A CREF with fewer than two (2) Subscribers for

more than thirty (30) days shall not provide energy for CREF credit pursuant to Subsection 907.6 or sell any energy supply to the SOS Administrator pursuant to Subsections 906.4 and 907.7 and is subject to disconnection by the Electric Company. The Electric Company shall provide notice of any CREFs which fall below two (2) Subscribers to the Commission, upon request.

906.6 The Electric Company shall be responsible for ensuring that public safety and system reliability is maintained, including during the interconnection and disconnection of a CREF.

906.7 A CREF applicant shall apply for an Interconnection Agreement as a generating facility that is authorized to export power pursuant to Chapter 40 of Title 15 of the District of Columbia Municipal Regulations.

906.8 Within thirty (30) days of this rulemaking, the Electric Company shall create and submit to the Commission for approval a separate CREF Tariff with terms and conditions related to CREFs including but not limited to establishing and monitoring the annual level of a Subscriber's CNM credits, and applying CNM credits to the billing accounts of Subscribers. The Electric Company shall also create and submit to the Commission a CREF Rider to the existing Interconnection Agreement that sets out the additional terms and conditions related to the interconnection of a CREF Subscriber Organization and the Electric Company, including but not limited to the procedures for the installation and inspection of the interval production meter and the suspension or disconnection of operations when a Subscriber Organization has less than two Subscribers.

Add a new Section 907, BILLING AND CREDITING FOR COMMUNITY NET METERING CUSTOMERS, to read as follows:

907 BILLING AND CREDITING FOR COMMUNITY NET METERING CUSTOMERS

907.1 Each Subscription is intended to offset part or all of the Subscriber's own historical electrical requirements. In no event may a Subscriber offset more than one hundred and twenty percent (120%) of the Subscriber's billing meter electricity consumption over the previous twelve (12) months. To determine the Subscriber's previous twelve (12) months of electricity consumption, the Electric Company shall use the Subscriber's electricity consumption for the twelve (12) months immediately prior to the first billing cycle upon which a Subscriber is eligible to receive a credit for CREF generation. If the Subscriber does not have a twelve (12) month billing history as of that first billing cycle, the Electric Company shall allow the Subscriber to choose to use as a proxy for the Subscriber's previous twelve (12) months consumption either: (1) the twelve (12) month billing history associated with the Subscriber's premises, including the billing history of the Subscriber and/or the billing history of previous customers in the premises; or (2) the then current average annual consumption of a customer in

the Subscriber's distribution service rate class, The Electric Company shall update the Subscriber's previous twelve (12) months of consumption once each year upon reaching the anniversary date of the first billing cycle that the Subscriber was eligible to receive a Community Net Metering Credit.

907.2 All individual billing meters for CREF Subscriptions shall be within the District of Columbia.

907.3 If a Subscriber designates a set of individual meters that are combined for billing purposes for its Community Net Metering Credit, the CNM Credit shall be applied to the single billing account and shall not be more than one hundred and twenty percent (120%) of the combined total of electricity consumption of all of the individual billing meters over the previous twelve (12) months.

907.4 The amount of electricity generated by a CREF each month and available for purchase as subscribed or unsubscribed energy shall be determined by a revenue quality interval meter (production meter) installed and paid for by the Subscriber Organization. The interval meter shall be capable of recording energy production based on intervals of at least five minutes. After installation of the interval meter, it shall be the Electric Company's responsibility to determine that the revenue quality interval meter has been properly installed, in accordance with industry standards. It shall also be the responsibility of the Electric Company to read the revenue quality interval meter. In no event shall the electricity generated by a CREF be eligible for net energy billing.

907.5 The determination of the monetary value of credits allocated to each Subscriber of a particular CREF shall be based on each Subscriber's percentage interest of the total production of the CREF.

907.6 Each billing period, the Electric Company shall calculate the value of the CNM Credit for subscribed energy allocated to each Subscriber by multiplying the quantity of kilowatt hours allocated to each Subscriber by the CREF Credit Rate. If the value of the CNM Credit generated by the CREF and allocated to the Subscriber for subscribed energy exceeds the amount owed by the Subscriber for electric supply as shown on Subscriber's bill at the end of the applicable billing period, the remaining value of the CNM Credit shall carry over from month to month until the value of any remaining CNM Credit is used. If the value of the CNM Credit generated by the CREF and allocated to the Subscriber for subscribed energy is less than the amount owed by the Subscriber for electric supply as shown on Subscriber's bill at the end of the applicable billing period, the Subscriber shall be billed for the difference between the amount shown on the bill and the value of the available CNM Credit.

907.7 If the Subscriber is served by a Competitive Electricity Supplier, the Subscriber shall be billed by the Competitive Electricity Supplier for the full kilowatt-hours (kWh) consumed by the Subscriber during the applicable billing period at the

CES billing rate. If the Subscriber is served by SOS, the Subscriber shall be billed by the Electric Company for the full kilowatt-hours (kWh) consumed by the Subscriber during the applicable billing period at the SOS billing rate. Each billing period, the SOS Administrator shall transfer SOS funds equal to the value of the Subscriber's applicable CNM Credit to the Electric Company for purposes of settling against the total charges for electric supply that appear on the Subscriber's bill.

907.8 The CNM credit, as well as the kWh and price upon which it is based, shall be line items on a Subscriber's Electric Company bill.

907.9 Any unsubscribed energy purchased by the SOS Administrator pursuant to Subsection 906.4 will be paid to the CREF Subscriber Organization on a monthly basis.

907.10 If the Electric Company determines that a Subscriber's share of CREF production has offset more than one hundred and twenty percent (120%) of the Subscriber's electricity consumption over the previous twelve (12) months, the Subscriber shall not be eligible for any additional CNM Credit for any billing periods between (i) the date the Subscriber reached the maximum allowable consumption offset and (ii) the next anniversary date of the first billing cycle that the Subscriber was eligible to receive a CNM Credit for CREF production, Beginning with the Subscriber's next anniversary date, the Subscriber shall once again be eligible to receive a CNM Credit. Any CREF production allocable to a Subscriber in excess of the Subscriber's maximum allowable consumption offset shall be deemed unsubscribed energy and be made available for purchase by the SOS Administrator.

907.11 The Electric Company may require that a CREF and its Subscribers have their meters read on the same billing cycle. Subscribers shall be eligible to receive CNM Credits so long as the CREF continues to generate and provide electric supply to the Electric Company's distribution grid, regardless of the bankruptcy or contractual default of any Subscriber or of the Subscriber Organization, unless otherwise directed by a judicial order.

Add a new Section 908, REPORTING AND CONTRACTUAL REQUIREMENTS FOR COMMUNITY RENEWABLE ENERGY FACILITIES, to read as follows:

908 REPORTING AND CONTRACTUAL REQUIREMENTS FOR COMMUNITY RENEWABLE ENERGY FACILITIES

908.1 Each CREF shall register with the Electric Company. The Electric Company shall develop a Registration Form within thirty (30) days of these rules becoming final. The Registration Form shall include:

(1) Name of Subscriber Organization;

(2) Address of CREF;

(3) City Ward where the CREF is located;

(4) Generating technology used by the CREF;

(5) Name Plate AC generating capacity of the CREF;

(6) Copy of Interconnection Agreement between the CREF and the Electric Company, when obtained and executed;

(7) Type of Organization that owns the CREF (if a for-profit making entity, a copy of the current DC Business License); and

(8) List of CREF Subscribers, if available, including:

(a) Name and address of Subscriber,

(b) Address of the individual billing meter in the District of Columbia to which the CNM credit will be applied,

(c) Electric Company Account number, and

(d) Percentage ownership in the CREF.

908.2 If an Interconnection Agreement has not been obtained and executed at the time that the CREF Registration Form is initially submitted, the CREF owner or operator shall submit it to the Electric Company once it is obtained and executed. No CREF shall begin operation until a list of at least two (2) Subscribers has been submitted to the Electric Company.

908.3 The CREF owner or operator may change the list of Subscribers or change the Subscribers' billing meters in its CREF on a quarterly basis or more frequently when the number of Subscribers falls below two (2). When there are changes to the list, the CREF owner or operator shall provide an updated list of its CREF Subscribers and their billing meters to the Electric Company quarterly by a date certain established by the Electric Company or more frequently when the number of Subscribers falls below two (2).

908.4 Within forty-five (45) days of this rulemaking, the Electric Company shall submit to the Commission, for the Commission's approval, a procedural manual, including related sample documents where appropriate, for the implementation of CREA that shall include, but not be limited to:

(1) The arrangement between the Electric Company, the SOS Administrator and the CREF related to the SOS Administrator taking title to CREF output at the point of common connection between the CREF and the Electric Company's distribution grid;

(2) The arrangement between the Electric Company, the SOS Administrator and the CREF relating to the SOS Administrator's purchase of, and payment for, unsubscribed energy from the CREF at the price specified in these rules;

(3) The arrangement between Electric Company, the SOS Administrator and the CREF for the Electric Company to create the CNM Credit based on CREF output and the price specified in the rules;

(4) Arrangement between the Electric Company, and the CREF to credit individual CREF Subscribers with the CNM Credit based on each Subscriber's ownership share in the CREF and the CREF's monthly output and to modify the list of Subscribers and the amount of each Subscriber's Subscription; and

(5) Arrangement between the Electric Company and Competitive Electricity Suppliers to reflect the payments of the energy supply charges for CES customers who are also CREF subscribers.

908.5 Within one hundred twenty (120) days of the issuance of the final rulemaking, the Electric Company shall add a CREA page to its website with links to the procedural manual and the forms referenced therein.

908.6 Within thirty (30) days of this rulemaking, the Electric Company shall submit to the Commission for its approval the form of the line item on the Electric Company's bill for a Subscriber's CNM Credit.

908.7 Within ten (10) days of the end of the second and fourth quarter of each year the Electric Company shall submit to the Commission a report that provides:

(1) An overview of the CREFs operating in the District including summary statistics as to the number of CREFs, the number of Subscribers, and the amount of electric supply being generated;

(2) A listing of each CREF including:

(a) Name and location (including zip code and Ward) of CREF,

(b) Name of Subscriber Organization,

(c) Type of Subscriber Organization,

(d) Type of generating technology used by the CREF,

(e) Name Plate AC generating capacity of the CREF,

(f) Monthly CREF output as measure by production meter,

(g) Number of CREF Subscribers,

(h) Any problems created by CREFs to the distribution system that are of concern to the Electric Company, with as much specificity as possible and quantified to the extent possible, including the nature, extent, and location of the problem(s), and

(i) To the extent possible, the benefits to the distribution system from CREFs including use of CREFs to supply ancillary services including, but not limited to, voltage support, volt-ampere reactive (VAR) support, and frequency regulation.

(3) The identification of any feeder which approaches a net energy export within a ten percent (10%) margin (*i.e.*, a feeder where the total production from CREF and other net metering facilities is ninety percent (90%) or more of the total energy consumption for the feeder).

908.8 Any net costs for the implementation of Community Net Metering incurred by the Electric Company that are approved by the Commission shall be recovered solely through a rate assessment on Subscribers in a base rate case, pursuant to Section 122 of the amended Retail Electric Competition and Consumer Protection Act of 1999.

Add a new Section 909, DISPUTE RESOLUTION, to read as follows:

909 DISPUTE RESOLUTION

909.1 Any dispute related to the CREF Subscriber's bill regarding the accuracy or calculation of the bill is subject to the Commission's Complaint Procedures under Chapter 3 of Title 15 of the DCMR (rules for residential customer complaints), or Chapter 18 of Title 15 of the DCMR (rules for non-residential customer complaints).

909.2 The owner of a CREF may file a complaint with the Commission to object to or appeal the cessation of payments to the CREF for unsubscribed energy supply or for the CREF's disconnection from the grid. As a Non-Residential entity, the CREF is subject to Chapter 18 of Title 15 of the DCMR (rules for non-residential customer complaints).

909.3 Any dispute regarding the contract between the CREF and its Subscribers is not within the jurisdiction of the Commission.

Add a new Section 910, WAIVER, to read as follows:

910 WAIVER

910.1 Upon request of any person subject to this chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this chapter that is not required by statute or inconsistent with the purposes of this chapter.

Section 999, DEFINITIONS, is amended by amending and adding the following terms and definitions:

When used in this chapter; the following terms and phrases shall have the following meaning:

"Community Net Metering" or "CNM" means a billing arrangement under which the monetary value of electric energy generated by a Community Renewable Energy Facility and delivered to the Electric Company's local distribution facilities is used to create a billing credit for CREF Subscribers.

"**Community Net Metering Credit" or "CNM Credit"** means the credit realized by the Subscriber, based on its ownership share in the CREF. The credit will be reflected on the Subscriber's bills from the Electric Company.

"Community Renewable Energy Facility" or **"CREF"** means an energy facility with a capacity no greater than five (5) megawatts that: (a) uses renewable resources defined as a Tier One Renewable Source in accordance with Section 3(15) of the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005, (D.C. Law 15-340; D.C. Official Code § 34-1431(15) as amended); (b) is located within the District of Columbia; (c) has at least two (2) Subscribers; and (d) has executed an Interconnection Agreement and a CREF Rider with the Electric Company.

"Competitive Electricity Supplier" or "CES" means a person, other than the SOS Administrator, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or markets electricity for sale to customers, and shall have the same meaning as the term "Electricity Supplier" set forth Section 101 of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1501).

"CREF Credit Rate" means a credit rate applied to Subscribers of Community Renewable Energy Facilities which shall be equal to the Standard Offer Service rate for the General Service Low Voltage Non-Demand Customer class or its successor, as determined by the Commission, based upon Section 118 of the Retail Competition and Consumer Protection Act of 1999, as amended by the Community Renewable Energy Amendment Act of 2013 effective December 13, 2013 (D.C. Law 20-0047; D.C. Official Code § 34-1501 (12A)).

"Electric Company" means every corporation, company, association, joint-stock company or association, partnership, or person and doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers. The term excludes any building owner, lessee, or manager who, respectively owns, leases or manages the internal distribution system serving the building and who supplies electricity and other related electricity services solely to occupants of the building for use by the occupants. The term also excludes a person or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.

"Individual Billing Meter" means an individual meter within the District of Columbia or a set of individual meters within the District of Columbia when meters are combined for billing purposes.

"Renewable Energy Credit" or "REC" shall have the same meaning as that provided in Section 3(10) of the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15-340; D.C. Official Code § 34-1431(10)).

"SOS Administrator" means the provider of Standard Offer Service mandated by Section 109 of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1509).

"Standard Offer Service" means that electric service mandated by Section 109 of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1509).

"Subscriber" means a retail customer of a Competitive Electricity Supplier or a SOS customer of the Electric Company in the District of Columbia who owns a Subscription in a CREF and who has identified an individual billing meter within the District of Columbia to which the Subscription shall be attributed.

"Subscriber Organization" means any individual or for-profit or nonprofit entity permitted by District of Columbia law that owns or operates one or more CREFs for the benefit of the Subscribers.

"Subscription" means a percentage interest in a CREF's electrical production.

"Tier One Renewable Source" shall have the same meaning as that provided in Section 3(15) of the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15-340; D.C. Official Code § 34-1431(15)), as amended.

6. Comments and reply comments on the subject matter of this proposed rulemaking action must be received within thirty (30) and forty-five (45) days, respectively, of the date of publication of this Notice in the *D.C. Register*. All comments and reply comments must be made in writing to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005. Once the comment period has expired, the Commission will take final rulemaking action on the proposed amendments to Chapter 9 of Title 15 of the District of Columbia Municipal Regulations.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

RM41-2015-1, IN MATTER OF 15 DCMR CHAPTER 41-DISTRICT OF COLUMBIA STANDARD OFFER SERVICE-COMMUNITY RENEWABLE ENERGY AMENDMENT ACT OF 2013

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to its authority under D.C. Official Code §§ 34-802, 34-1504, and 34-1509 (2012 Repl.) and in accordance with D.C. Official Code § 2-505, of its intent to amend to Chapter 41, "District of Columbia Standard Offer Service ['SOS'] Rules," of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR") effective upon publication of this Notice of Final Rulemaking ("NOFR") in the *D.C. Register*.

2. On September 12, 2014, the Commission published a Notice of Proposed Rulemaking ("NOPR") to amend Chapter 41, in accordance with the "Community Renewable Energy Amendment Act of 2013" ("CREA") as well as make clarifying non-substantive changes to these rules.[1] Specifically, the September 12, 2014 NOPR proposed to amend the following sections and subsections of Chapter 41 of Title 15 of the DCMR to incorporate CREA related changes: §§ 4100.3, 4101.2, 4102.1, 4102.4, 4103.1, 4103.4, 4104.3, 4107.1, 4108.2, 4108.3, and 4199.1 and to add new §§ 4107.14, and 4109, while non-substantive changes are made in the following subsections: §§ 4100.5, 4102.3, 4103.2, 4103.3, 4105.1, 4105.5, 4105.6, 4105.7, 4105.9, 4107.5, 4107.11. The addition of a new Section 4109 resulted in the renumbering of Sections 4110 to 4111.[2]

3. In response to the September 12, 2014 NOPR, the Commission received comments from the Potomac Electric Power Company ("Pepco"); the Office of the People's Counsel; the Vote Solar Initiative, DC Solar United Neighborhoods, and the Washington, D.C. Chapter of the Sierra Club (collectively "the VSGroup"); and U.S. Photovoltaics, Inc.[3] The Commission received reply comments from the Pepco and the VSGroup.[4]

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[1] The Community Renewable Energy Amendment Act of 2013 ("CREA") was enacted October 17, 2013. *See* D.C. Act 20-186. The CREA became effective December 13, 2013. *See* D.C. Law 20-47.

[2] 61 *D.C. Reg.* 9381-9394 (Sept. 12, 2014).

[3] *RM41-2014-1, In the Matter of 15 DCMR Chapter 41-District of Columbia Standard Offer Service-Community Renewable Energy Amendment Act of 2013* ("*RM41-2014-1*"), Comments of the Potomac Electric Power Company ("Pepco") Regarding the Notice of the Proposed Rulemaking, filed Oct. 14, 2014; Comments of the Office of the People's Counsel on the Proposed Rulemaking, filed Oct. 14, 2014; Comments in Response to Notice of Proposed Rulemaking of the Vote Solar Initiative, DC Solar United Neighborhoods, and the Washington, D.C. Chapter of the Sierra Club (collectively "the VSGroup"), filed Oct. 14, 2014; and Comments of U.S. Photovoltaics, Inc., filed Oct. 14, 2014.

[4] *RM41-2014-1*, Reply Comments of the Pepco regarding the Notice of the Proposed Rulemaking, filed October 27, 2014; and Reply Comments of the VSGroup, filed Oct. 27, 2014.

4. Based on the comments and reply comments from the interested persons, the Commission proposed to further amend the proposed rules for Chapter 41. Accordingly, a second, revised NOPR was published on January 30, 2015 in which the Commission proposed amendments to the following sections and subsections of Chapter 41 of Title 15 of the DCMR: §§ 4101.2, 4103.3, 4105.7, 4107.14, 4109.3, and 4199. In addition, the Commission proposed non-substantive changes to the following sections: 4100.4, 4100.5, 4101.1, 4101.3, 4101.4, 4101.5, 4102.1, 4102.2, 4102.3, 4102.4, 4102.5, 4102.6, 4103.1, 4103.2, 4103.3, 4103.4, 4103.5, 4103.6, 4103.7, 4103.8, 4104.1, 4104.2, 4104.3, 4104.6, 4104.7, 4105.1, 4105.2, 4105.3, 4105.4, 4105.5, 4105.6, 4105.7, 4105.8, 4105.9, 4106.1, 4106.2, 4106.3, 4106.4, 4106.5, 4106.6, 4106.7, 4107.1, 4107.2, 4107.3, 4107.4, 4107.5, 4107.6, 4107.7, 4107.8, 4107.9, 4107.10, 4107.11, 4107.13, 4107.14, 4108.1, 4108.2, 4108.3, 4109.1, 4109.2, 4109.3, 4109.4, 4109.5, 4110.1, 4111.1, 4111.2, 4111.3, 4111.4, and 4199.[5] The revised NOPR replaced the NOPR which was published in the *D.C. Register* on September 12, 2014.

5. Pepco filed comments in response to the January 30, 2015 revised NOPR.[6] After fully considering Pepco comments, by Order issued April 24, 2015, the Commission decided, *inter alia*, to replace "Pepco Zone" with "Pepco District of Columbia sub-Zone" in Subsections 4103.1(c) and 4109.3 and to correct a typographical error in Subsection 4110.1(d) in the final rules.[7] The final rules will become effective upon publication of this NOFR in the *D.C. Register*.

Chapter 41, DISTRICT OF COLUMBIA STANDARD OFFER SERVICE ['SOS'] RULES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

4100 GENERAL PROVISIONS; SCOPE, APPLICABILITY AND AVAILABILITY OF STANDARD OFFER SERVICE; ELIGIBILITY FOR STANDARD OFFER SERVICE

Subsection 4100.3 is amended to read as follows:

4100.3 This chapter shall be applicable to the SOS Administrator to retail customers in the Electric Company's distribution service territory. This chapter also establishes the rules by which the SOS Administrator shall obtain electric supply for SOS pursuant to a competitive wholesale procurement process and will apply to wholesale bidders who compete for the provision of wholesale full requirements services to the SOS Administrator. This chapter also establishes the rules by which the SOS Administrator shall obtain electric supply from

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5 62 *D.C. Reg.* 1407-1431 (Jan. 30, 2015).

6 *RM41-2015-1, In the Matter of 15 DCMR Chapter 41-District of Columbia Standard Offer Service-Community Renewable Energy Amendment Act of 2013* ("*RM41-2015-1*"), Pepco's Comments, filed March 2, 2015.

7 *Formal Case No. 1017, In The Matter of the Development and Designation of Standard Offer Service in the District of Columbia*, and *RM41-2015-1*, Order No. 17863, rel. April 24, 2015.

Community Renewable Energy Facilities ("CREFs") as defined in Subsection 4199.1 and as described in Subsections 4109.1 through 4109.3 pursuant to the Community Renewable Energy Amendment Act of 2013. The provisions of this chapter are promulgated pursuant to authority set forth in Sections 34-1509(c), 34-1518.01(b), 34-1518.01(c), and 34-1504(c)(7) of the D.C. Official Code.

Subsection 4100.4 is amended to read as follows:

4100.4 All Electric Company distribution customers are eligible for SOS from the SOS Administrator and are subject to the general terms and conditions of the Electric Company's tariffs and the Commission's regulations, as they may change from time to time subject to the Commission's approval or adoption of new regulations.

Subsection 4100.5 is amended to read as follows:

4100.5 SOS shall be available to: (1) customers who contract for electricity with a Competitive Electricity Supplier, but who fail to receive delivery of electricity under such contracts; (2) customers who cannot arrange to purchase electricity from a Competitive Electricity Supplier; and (3) customers who do not choose a Competitive Electricity Supplier.

4101 SELECTION OF WHOLESALE SOS PROVIDERS

Subsection 4101.1 is amended to read as follows:

4101.1 The Electric Company shall continue as the SOS Administrator for retail customers in the Electric Company's distribution service territory until such time as the Commission directs otherwise.

Subsection 4101.2 is amended to read as follows:

4101.2 The SOS Administrator shall obtain electric supply for SOS pursuant to a competitive wholesale procurement process and pursuant to the CREA. The procurement process shall solicit all of the electric supply for SOS customers except for the electric supply that is provided by CREFs.

Subsection 4101.3 is amended to read as follows:

4101.3 The specific procurement format, form of request, process, timeline, and evaluation process, evaluation criteria and process and model contract for electricity supply shall be submitted for Commission approval by the SOS Administrator by August 1 of the previous year**.** The SOS Administrator shall coordinate with other jurisdictions to ensure that bidding days do not coincide for multiple jurisdictions in the Mid-Atlantic area.

Subsection 4101.4 is amended to read as follows:

4101.4 Subject to the review and approval of the Commission, the SOS Administrator shall solicit for wholesale full requirements service pursuant to a Wholesale Full Requirements Service Agreement ("WFRSA") with the Wholesale SOS Providers, which shall include the provision of electric energy, energy losses, generation capacity, ancillary services and any other PJM- or FERC-approved services associated with the SOS Administrator's load obligation, except for network integration transmission service, which will be obtained by the SOS Administrator. The Wholesale SOS Provider shall be responsible for all congestion costs up to the delivery point at which the SOS Administrator takes the power to serve its SOS load.

Subsection 4101.5 is amended to read as follows:

4101.5 The SOS Administrator shall solicit seasonally differentiated summer and winter prices.

4102 COMPETITIVE WHOLESALE BID STRUCTURE

Subsection 4102.1 is amended to read as follows:

4102.1 The SOS Administrator shall procure full requirements service to meet its SOS obligations using a competitive wholesale procurement process described in this chapter, as amended from time to time and as adjusted for offsetting electric supply procured from CREFs, for each SOS Customer Group (as those SOS Customer Groups are defined in Subsection 4102.3), until the Commission orders, following the major policy review outlined in Subsection 4102.2 below, that an alternative SOS procurement process shall be implemented.

Subsection 4102.2 is amended to read as follows:

4102.2 The Commission will conduct a review of the SOS Administrator's SOS program every other year, beginning in 2010, to make any appropriate adjustments to SOS as competitive developments in the District of Columbia change. All adjustments shall be prospective and all contracts entered into prior to these changes shall remain in full force and effect pursuant to the contract terms.

Subsection 4102.3 is amended to read as follows:

4102.3 The SOS Administrator shall establish three (3) groups of customers ("SOS Customer Groups"):

(a) Residential Customers shall include customers served under Electric Company Rate Schedules: R, AE, R-TM, R-TM-EX, RAD, and Master

Metered Apartment customers, subject to any revisions made to those tariff sheets made by the Commission;

(b) Small Commercial Customers shall include the customers served under Electric Company Rate Schedules: GS-LV non-demand, GS-3A non-demand, T, SL, TS, TN and SL-TN, subject to any revisions made to those tariff sheets made by the Commission; and

(c) Large Commercial Customers shall include all commercial customers except those defined as Small Commercial Customers.

Subsection 4102.4 is amended to read as follows:

4102.4 The SOS Administrator shall issue Requests For Proposals ("RFPs") to competitive wholesale bidders for contracts for the supply of SOS in order to maintain the following contract term balances for the various customer portfolios:

(a) Residential Customers: The SOS Administrator shall solicit fixed-price offers for terms of one year, two years, or three or more years. The SOS Administrator's portfolio shall contain contracts such that three or more year offers comprise at least forty percent (40%) of each year's portfolio, unless the Commission has directed the SOS Administrator to solicit fixed-price offers based on a different mix of terms. The SOS Administrator and other parties may propose alternative portfolios of supply options for consideration by the Commission. The SOS Administrator shall compile a portfolio of conforming offers consistent with the mix of terms determined by the Commission. The SOS Administrator shall select conforming offers to meet the Commission's percentage target(s) in accordance with the evaluation provision included in the RFP. Unless the Commission has directed otherwise, the final contract mix should include contracts of at least three years for no less than forty percent (40%) of the total load.

(b) Small Commercial Customers**:** The SOS Administrator shall solicit fixed price offers for Wholesale Full Requirements Service for some combination of one, two, and three or more year terms. The SOS Administrator shall compile a portfolio of one, two, and three or more year terms conforming offers such that at least forty percent (40%) of the load will be served under contracts of three or more year terms. The SOS Administrator shall select one, two, and three or more year conforming offers to meet this percentage target in accordance with the evaluation provision included in the RFP. The SOS Administrator and other parties may propose an alternative portfolio of supply options for consideration by the Commission; and

(c) Large Commercial Customers: The SOS Administrator shall solicit fixed price offers for Wholesale Full Requirements Service for one and/or two year terms.

The RFP shall alert the competitive wholesale bidders to the fact that final service requirements may be adjusted to accommodate offsetting electric supply obtained by the SOS Administrator from CREFs.

Subsection 4102.5 is amended to read as follows:

4102.5 The SOS Administrator shall continue to solicit offers for Wholesale Full Requirements Service for each SOS Customer Group until the Commission orders otherwise, subsequent to Commission review of the SOS procurement process.

Subsection 4102.6 is amended to read as follows:

4102.6 The SOS Administrator shall solicit wholesale bids for SOS supply using the existing rate structures of its existing rate classes. Nothing herein, however, precludes the SOS Administrator from filing for a different rate structure for any rate schedule or SOS Customer Group, subject to Commission review and approval, and provided that any such changes, adjustments, alterations, or modifications do not change or impact existing WFRSAs.

4103 STANDARD OFFER SERVICE RETAIL RATES

Subsection 4103.1 is amended to read as follows:

4103.1 The retail rates to SOS customers will consist of the sum of the following components:

(a) The seasonally-differentiated and, if applicable, time-of-use differentiated load weighted average price of all awarded contracts for Wholesale Full Requirements Service for each SOS Customer Group;

(b) Retail charges designed to recover, on an aggregate basis, FERC-approved Network Integrated Transmission Service charges ("NITS") and related charges and any other PJM charges and costs incurred by the SOS Administrator directly related to the SOS Administrator's SOS load obligation for each SOS Customer Group;

(c) PJM Locational Marginal Price for energy in the Pepco District of Columbia sub-Zone, adjusted for ancillary service charges as specified in Subsection 906.4, for all unsubscribed electric supply purchased from CREFs;

(d) An administrative charge; and

(e) Applicable taxes.

Subsection 4103.2 is amended to read as follows:

4103.2 When the winning wholesale bidder(s) are selected, the SOS Administrator shall submit to the Commission: (1) the names of the winning bidders, which shall remain confidential subject to Subsection 4111.5 of this chapter, and (2) the retail rates for all the customer classes according to the Commission pre-approved time schedule. Such rates shall consist of all the components included in Subsection 4103.1. The filing required herein shall also include: (1) a detailed calculation and explanation of an administrative charge and (2) administrative charge true-up provisions.

Subsection 4103.3 is amended to read as follows:

4103.3 Parties to the proceedings can file comments within seven (7) calendar days and reply comments within twelve (12) calendar days of the SOS Administrator's submission of the retail rates and administrative charge pursuant to Subsection 4103.2. The Commission shall thereafter issue an Order approving or rejecting the retail rates and/or administrative charge. The SOS Administrator shall file a revised tariff setting forth the new retail rates and/or administrative charges within seven (7) calendar days of the Commission's Order approving those rates and charge.

Subsection 4103.4 is amended to read as follows:

4103.4 The Administrative Charge will be designed to recover the SOS Administrator's incremental costs for procuring and providing the service. Actual incremental costs shall include, but not be limited to, a proportionate share of SOS customer uncollectibles for each SOS Customer Group, Commission Consultant expenses (as described in Subsection 4110.1), wholesale SOS bidding expenses, working capital expenses related to SOS for each SOS Customer Group, wholesale supply transaction costs related to Wholesale SOS Provider administration and transmission service administration, wholesale payment and invoice processing, incremental billing process expenses, customer education costs, incremental system costs, costs related to the purchases of electric supply from CREFs and legal and regulatory filing expenses related to SOS requirements.

Subsection 4103.5 is amended to read as follows:

4103.5 Prior to the submission of bids, the SOS Administrator shall file a request with the Commission (with notice to all the Parties) for determination of the appropriate amount of its Administrative Charge to be included in the retail rates to SOS customers. In calculating the Administrative Charge, any return component on the Administrative Charge, if the inclusion of a return component is approved by

the Commission, shall not be reflected for ratemaking purposes in the establishment of the Electric Company's distribution rates, including the determination of the Electric Company's return for providing distribution service.

Subsection 4103.6 is amended to read as follows:

4103.6 All customers eligible for SOS will be informed of the applicable SOS retail rates, to the extent practical, for the service at least two (2) months prior to the beginning of each service year. If it is not practicable to provide such notice, the SOS Administrator shall file with the Commission and serve upon the Parties notice of that fact, the reasons for the delay, and the expected date for the provision of such information.

Subsection 4103.7 is amended to read as follows:

4103.7 Retail prices to customers shall be adjusted at least twice a year to reflect seasonal pricing and other appropriate price changes. Prior to each year of SOS, the SOS Administrator shall file with the Commission, estimates of actual incremental costs for the upcoming year. Such costs will be collected from customers, on a load weighted average, subject to an annual adjustment to reflect actual costs.

Subsection 4103.8 is amended to read as follows:

4103.8 All investment, revenue and expenses associated with the provision of SOS by the Electric Company when serving as the SOS Administrator shall be separate from investment, revenues and expenses associated with the Electric Company's distribution service so that there will be no subsidization of the Electric Company's distribution rates.

4104 COMPETITIVE WHOLESALE BIDDING AND CONTRACTING PROCESS

Subsection 4104.1 is amended to read as follows:

4104.1 The SOS Administrator shall solicit offers for Wholesale Full Requirements Service via the RFP approved by the Commission. The SOS Administrator shall remain the NITS provider and shall be the designated PJM Load Serving Entity ("LSE") for all SOS. The SOS Administrator, as the PJM LSE, shall provide the rights to nomination and make available to the Wholesale SOS Providers all Firm Transmission Rights/Auction Revenue Rights ("FTR/ARRs") to which it has rights pursuant to the PJM procedures applicable to FTR and ARRs.

Subsection 4104.2 is amended to read as follows:

4104.2 The SOS Administrator shall solicit seasonally differentiated and, if applicable, time-of-use differentiated prices. In the case of multi-year-term contracts, prices shall, in addition, be annually specified. The solicitation shall be conducted through as many as four bidding rounds, as specified in the RFP.

Subsection 4104.3 is amended to read as follows:

4104.3 The total load associated with each SOS Customer Group shall be divided into bid blocks of approximately 50 MW to promote diversity of supply and reliable supply contract performance. Each bid block shall represent a percentage of the total SOS load that each Wholesale SOS Provider will be obligated to supply for the term of the contract regardless of changes in the magnitude of the total load for that SOS Customer Group. The size of the total load may vary from the 50 MW guideline for a particular group if the total load associated with a specific SOS Customer Group indicates that such variation is warranted. One reason for a variation may be to accommodate electric supply acquired from CREFs as described in Subsection 4109.1. The SOS Administrator may alter the target size of the bid blocks by requesting permission to do so at the same time as it informs the Commission of its procurement plan, but only if it has reason to believe that the change would lead to more competitive offers.

Subsection 4104.5 is amended to read as follows:

4104.5 Potential Wholesale SOS Providers must demonstrate their qualifications to provide Wholesale Full Requirements Service by providing proof that they are qualified to participate in the PJM Markets and have all the necessary FERC authorizations to enter into wholesale energy contracts. Furthermore, the RFP and WFRSA shall specify the financial credit requirements that potential or actual Wholesale SOS Suppliers must demonstrate.

Subsection 4104.6 is amended to read as follows:

4104.6 The SOS Administrator's RFP will include specific forms of bid request, evaluation plan, and the WFRSA. The evaluation plan contained in the RFP will specify that all bids to serve the load associated with a specific SOS Customer Group and for a specific contract length will be compared on a discounted price basis to select the lowest cost winning bids.

Subsection 4104.7 is amended to read as follows:

4104.7 Upon completion of the bid evaluation process, the SOS Administrator will notify the winning bidders and execute a WFRSA with each winning bidder. Such contract execution will be contingent, however, on Commission approval of the bid awards, contracts and credit support provisions therein. The contract(s) will

be deemed approved by the Commission unless the Commission orders otherwise within two (2) business days following their submission. Winning bidders will receive the actual prices in their offers for each year of the term of their supply contract. Winning bidders will not be permitted to revise prices or any other terms and conditions of the WFRSA, except as provided for in the WFRSA.

4105 ESTABLISHMENT AND RE-ESTABLISHMENT OF STANDARD OFFER SERVICE; CUSTOMER SWITCHING RESTRICTIONS

Subsection 4105.1 is amended to read as follows:

4105.1 SOS shall be provided to any customer who purchases a new service within the District of Columbia and who does not obtain electric generation service from a Competitive Electricity Supplier at that time. There shall be no fee for a customer to establish SOS in this manner.

Subsection 4105.2 is amended to read as follows:

4105.2 Any customer taking service from a Competitive Electricity Supplier may terminate service with the Competitive Electricity Supplier and elect SOS upon notice to the Electric Company and the SOS Administrator as required by Subsection 4105.9.

Subsection 4105.3 is amended to read as follows:

4105.3 Any customer taking service from a Competitive Electricity Supplier who defaults may terminate service with the defaulting Competitive Electricity Supplier upon notice to the Electric Company and the SOS Administrator as required by Subsection 4105.9.

Subsection 4105.4 is amended to read as follows:

4105.4 Any customer who is slammed or switched to a Competitive Electricity Supplier by mistake can terminate service with the Competitive Electricity Supplier upon notice to the Electric Company and the SOS Administrator as required by Subsection 4105.9, and such customer shall be returned to the service that the customer was receiving prior to being slammed or the mistake occurring as if the slamming or the mistake had not occurred.

Subsection 4105.5 is amended to read as follows:

4105.5 All residential customers shall be eligible to switch from SOS to Competitive Electricity Suppliers and return to SOS without restrictions.

Subsection 4105.6 is amended to read as follows:

4105.6 If a non-residential customer who has elected to purchase generation services from a Competitive Electricity Supplier subsequently returns to SOS, such non-residential customer shall be obligated to remain on SOS for a minimum term of twelve (12) months, provided, that in the case of a non-residential customer who returns to SOS as a result of a default by that non-residential customer's Competitive Electricity Supplier, such non-residential customer may within a grace period of three full billing cycles thereafter elect to purchase or contract for generation services from another Competitive Electricity Supplier or elect to receive service from the SOS Administrator at Market Price Service rates in which event the minimum term of twelve (12) months does not apply. A Competitive Electricity Supplier default occurs when the PJM Interconnection L.L.C. notifies the PJM members that the Competitive Electricity Supplier is in default.

Subsection 4105.7 is amended to read as follows:

4105.7 A non-residential customer who ceases to receive generation services from a Competitive Electricity Supplier may elect to receive service from the SOS Administrator at Market Price Service rates rather than Standard Offer Service rates. The minimum stay provisions stated in Subsection 4105.6 shall not apply to customers receiving service under Market Price Service rates. The Market Price Service rates shall be set in accordance with a tariff previously filed and approved by the Commission. The tariff shall contain a formula that reflects only the following components, or their functional equivalents in the future: the PJM locational marginal price for energy for the Electric Company zone, the PJM posted and verifiable market capacity price, transmission, ancillary services, line losses, appropriate taxes and a fixed retail adder of x mills per kWh. (The amount of the retail adder will be determined in the administrative cost proceeding.) The Market Price Service rates may vary by customer class and reflect actual costs.

Subsection 4105.8 is amended to read as follows:

4105.8 The contract provisions and exit fees of the Competitive Electricity Supplier remain valid and shall be enforced before a customer will be permitted to switch to SOS or another Competitive Electricity Supplier.

Subsection 4105.9 is amended to read as follows:

4105.9 Notice of Transfers; Transfer of Service; Bill Calculation:

(a) Notice of Transfer into SOS: A customer who intends to transfer into SOS shall do so by notifying the Electric Company and the SOS Administrator or by canceling service with its Competitive Electricity Supplier.

(b) Transfer into SOS: If the customer notifies the Electric Company and the SOS Administrator no less than seventeen (17) days before the customer's next normally scheduled meter read date, the Electric Company and the SOS Administrator shall transfer the customer on the customer's next meter read date. Otherwise, transfer will occur on the following meter read date. The Electric Company and the SOS Administrator shall accommodate the request to the greatest extent practicable.

(c) Notice of Transfer out of SOS: Notice that a SOS customer will terminate SOS and obtain service from a Competitive Electricity Supplier shall be provided to the Electric Company and the SOS Administrator by the customer's Competitive Electricity Supplier pursuant to Chapter 3 of Title 15 of the District of Columbia Municipal Regulations; and

(d) Transfer out of SOS: If the Competitive Electricity Supplier notifies the Electric Company and the SOS Administrator no less than seventeen (17) days before the customer's next meter read date, the Electric Company and the SOS Administrator shall transfer the customer on the customer's next meter read date. Otherwise, transfer will occur on the subsequent meter read date.

4106 FINANCIAL CAPABILITY REQUIREMENTS

Subsection 4106.1 is amended as follows:

4106.1 Financial capability requirements shall be imposed on Wholesale SOS Providers and shall be consistent with provisions established herein.

Subsection 4106.2 is amended as follows:

4106.2 Each Wholesale SOS Provider shall obtain and file with the Commission a bond, a letter of credit, or a corporate guarantee that will provide assurances of financial integrity and funding for replacement service in the event that the Wholesale SOS Provider fails to provide for uninterrupted service. If a corporate guarantee is obtained, it must conform to the Commission-approved form.

Subsection 4106.3 is amended as follows:

4106.3 The amount of the financial capability requirement for the Wholesale SOS Provider in the Electric Company's service territory shall be equal to fifteen (15) percent of the Wholesale SOS Provider's bid obligation for the SOS class(es) the provider is awarded, and expected to serve, in the Electric Company's service territory.

Subsection 4106.4 is amended as follows:

4106.4 The amount of the financial capability requirement shall be commensurate with the remaining outstanding bid obligation of the Wholesale SOS Provider throughout the term of the Wholesale SOS Provider's awarded contract period, and reduced annually from the initial amount determined at the beginning of the term of the Wholesale SOS Provider's service.

Subsection 4106.5 is amended to read as follows:

4106.5 The proceeds of the bond, or letter of credit, or corporate guarantee, as necessary, shall be payable to the SOS Administrator to whom the wholesale bidder is obligated to provide service. The proceeds of the bond, letter of credit, or corporate guarantee shall be used only to defray the additional costs of replacement SOS in the event of interrupted service. For purposes of this provision, additional costs are all costs that are incurred or will be incurred to acquire replacement SOS, including supply and administrative costs, through the remaining SOS term that exceed the amounts paid or to be paid by SOS customers at the SOS rates in effect at the time of the Commission's declaration of a Wholesale SOS Provider's default.

Subsection 4106.6 is amended to read as follows:

4106.6 A corporate guarantee permitted by Subsections 4106.2, 4106.3, and 4106.4, may be issued by an affiliate of the Wholesale SOS Provider or a third party that meets the financial credit requirements set forth in Subsections 4106.2, 4106.3, and 4106.4.

(a) The corporate guarantee must meet all of the requirements of Subsections 4106.2, 4106.3, and 4106.4, and shall be unconditional and irrevocable and provide for payment within five (5) business days for the period of the standard offer term.

(b) A corporate guarantee may be used to satisfy the requirement of Subsections 4106.2, 4106.3, and 4106.4, if the corporate guarantor meets the following financial qualifications and capabilities:

(1) The senior unsecured debt obligations of the guarantor are publicly rated, at a minimum, "BBB-" from S&P or Fitch, or "Baa3" from Moody's;

(2) The total assets of the guarantor are at least 5.0 times the amount of the corporate guarantee amount required by Subsections 4106.2, 4106.3, and 4106.4; and

(3) The total common equity of the guarantor is at least 2.5 times the amount of the corporate guarantee amount required by Subsections

4106.2, 4106.3, and 4106.4.

(c) If a corporate guarantor's senior unsecured debt obligations are rated by: (i) two of the agencies listed in Subsection 4106.6(b)(1), the guarantor's rating will be determined by the lower assigned rating; or (ii) all three of the agencies listed in Subsection 4106.6(b)(1), two of those agencies must have assigned ratings equal to or higher than the required ratings described above.

(d) If, at any time, the senior unsecured debt obligations of the corporate guarantor fail to meet the requirements of Subsection 4106.6(b), the corporate guarantor or the Wholesale SOS Provider shall immediately notify the Commission in writing.

(e) If the corporate guarantor fails to meet any of the financial capability requirements, the Commission may, at its option, require the Wholesale SOS Provider to post a bond or file a letter of credit as described in Subsections 4106.2, 4106.3, and 4106.4.

Subsection 4106.7 is amended to read as follows:

4106.7 If at any time during the term of the supplier agreement between the Wholesale SOS Provider and the SOS Administrator, the SOS Administrator's credit rating is downgraded below investment grade, as defined in Section 4199, the Wholesale SOS Provider has the right to require the SOS Administrator to make payments to the Wholesale SOS Provider on an accelerated basis during the downgrade period. Payments made under the acceleration clause may be made on a weekly basis.

4107 REPORTING REQUIREMENTS AND TRUE UP PROVISIONS

Subsection 4107.1 is amended to read as follows:

4107.1 Within ninety (90) days of the conclusion of each year of SOS bidding, the SOS Administrator shall submit a report to the Commission on its wholesale electric supply procurement process and results, SOS retail prices produced, on the aggregated SOS enrollment activity for each service class (including the number of customers, megawatt peak load, megawatt hour energy and switching to and from the service), a report on the amount of electric supply acquired from CREFs during the previous year, and a report of all true-ups conducted for that year. This requirement is not intended to replace or supersede any other reporting requirements imposed by the Commission on the SOS Administrator.

Subsection 4107.2 is amended to read as follows:

4107.2 If the SOS Administrator conducts wholesale bidding for a type of service on the basis of aggregated rate classes, the SOS Administrator shall make any needed true-ups on an aggregated basis.

Subsection 4107.3 is amended to read as follows:

4107.3 In addition to the other true-ups described herein, the SOS Administrator shall true-up its total costs for providing each type of service (Residential, Small Commercial, and Large Commercial) with its total billed revenues for that service. If the service type is still being provided when the true-up is completed, rates will be adjusted to reflect any over- or under-recoveries established in the true-up. In the event that there is any net over- or under-collection at the end of any type of service (Residential, Small Commercial, Large Commercial), the balance will be paid or collected through a mechanism to be determined in accordance with the procedures set forth in Subsection 4107.13. All retail price changes resulting from the true-up filings shall be reviewed annually by the Commission.

Subsection 4107.4 is amended to read as follows:

4107.4 The SOS Administrator will conduct the true-ups described herein to reflect the start of summer rates and concurrent with the start of non-summer rates. The SOS Administrator may conduct more frequent true-ups if it so chooses. Any revisions to retail electric rates resulting from the application of the true-up provisions shall be reflected in the prices posted on the Electric Company's web page. The true-ups are subject to audit by the Commission.

Subsection 4107.5 is amended to read as follows:

4107.5 The SOS Administrator shall true-up its billings to retail customers for services provided pursuant to Subsection 4103.1 against its payments to Wholesale SOS Providers and CREFs. The SOS Administrator shall also true-up its billings to retail customers to reflect any net damages recovered by the SOS Administrator from a defaulting Wholesale SOS Provider in accordance with Subsection 4111.3. The Commission will audit true-ups annually. In the event that there is any net over- or under-collection at the end of any type of service (Residential, Small Commercial, Large Commercial), the balance will be paid or collected through a mechanism to be determined in accordance with the procedures set forth in Subsection 4107.13.

Subsection 4107.6 is amended to read as follows:

4107.6 For the purpose of determining such true-up, the SOS Administrator's payments to its Wholesale SOS Providers shall exclude payments made with respect to the upward adjustment in a Wholesale SOS Provider's load arising from the activation of the Electric Company's load response programs and shall exclude

any downward adjustment to a Wholesale SOS Provider's load arising from the SOS Administrator's acquisition of energy from a CREF.

Subsection 4107.7 is amended to read as follows:

4107.7 The retail price to Residential, Small Commercial, and Large Commercial customers posted pursuant to Subsection 4103.7 shall not change until after the first billing cycle following the start of service. Any difference between the SOS Administrator's incremental cost for serving SOS load and the SOS Administrator's revenue from serving SOS load based on the awarded bid prices shall be included as part of the retail rate true-up.

Subsection 4107.8 is amended to read as follows:

4107.8 Price Elements - Subsection 4103.1 shall include the additional costs (if any) that a Wholesale SOS Provider incurs in meeting any future statutory renewables requirements with respect to Residential, Small Commercial, and Large Commercial SOS. In the event that legislation is enacted that provides for a renewable energy resource requirement during the term of any WFRSA that has already been executed, Wholesale SOS Providers under the WFRSA may pass through their commercially reasonable additional costs, if any, associated with complying with the new requirement.

Subsection 4107.9 is amended to read as follows:

4107.9 If at any time any additional price elements resulting from a change in law and directly related to the SOS are identified by the SOS Administrator or a Wholesale SOS Provider, the SOS Administrator and/or the Wholesale SOS Provider may file a request with the Commission (with notice to all the Parties) for approval of recovery of those costs and, to the extent the costs are found to be incurred because of a change in law in connection with the provision of SOS and are prudently incurred as determined by the Commission, the costs will thereafter be included in the service price.

Subsection 4107.10 is amended to read as follows:

4107.10 The net costs included in retail prices pursuant to Subsection 4103.1(b) shall be recovered on a cents/kWh basis (energy basis) for non-demand tariff schedules and/or on a $/kW basis (demand basis) for demand tariff schedules. However, the SOS Administrator may request Commission approval to use alternate rate designs to recover NITS-related costs. The SOS Administrator may true-up its billings to retail customers for transmission services provided pursuant to Subsection 4103.1(b) against its payments for these services to PJM. The Commission may audit these true-ups annually. In the event that there is any net over- or under-collection at the end of any type of service (Residential, Small Commercial, Large Commercial), the balance will be paid or collected through a

mechanism to be determined in accordance with the procedures set forth in Subsection 4107.13.

Subsection 4107.11 is amended to read as follows:

4107.11 To the extent not already recovered through the PJM Network Integration Transmission Service charges, any future surcharges assessed to network transmission customers for PJM-required transmission enhancements pursuant to the PJM Regional Transmission Expansion Plan, or for transition costs related to elimination of through-and-out transmission charges will be included in the charges under Subsection 4103.1(b). Pursuant to the WFRSA, the Wholesale SOS Providers bear the risk of any other changes in PJM products and pricing during the term of their WFRSAs. However, if there are any other new FERC-approved PJM transmission charges or other new PJM charges and costs charged to network transmission customers, the SOS Administrator may recover them through retail rates:

(a) The SOS Administrator will file with the Commission, and provide notice to all parties to the proceeding, a request for approval to recover such new charges through the SOS Administrator's retail rates under Subsection 4103.1(b); and

(b) The Wholesale SOS Provider will charge the SOS Administrator only for those new costs that the Commission determines may be recovered in rates by the SOS Administrator. In no event will the SOS Administrator bear the risk of any changes in regulation or PJM rules related to such costs or charges. Also, in no event shall any PJM charges to other than network transmission customers be recovered through the SOS Administrator's retail transmission rates for SOS service, except to the extent (if any) provided in Subsection 4103.1.

Subsection 4107.13 is amended to read as follows:

4107.13 At the end of any SOS period for a Customer Group, and after actual costs incurred by the SOS Administrator pursuant to Subsection 4103.1 have been determined, the parties to the proceeding will agree upon a mechanism with respect to actual costs, to return any over-collection to, and to collect any under-collection from, all active customers who would have been eligible for the service type at the conclusion of any service type period. If the parties to the proceeding fail to agree within a reasonable period, the matter will be submitted to the Commission for decision.

A new Subsection 4107.14 is added to read as follows:

4107.14 Within ninety (90) days of the conclusion of each year's SOS bidding, the SOS Administrator shall submit a report to the Commission that details the value of the payments made to each Subscriber Organization for unsubscribed energy showing the price and the amount of unsubscribed energy underlying the payments for unsubscribed energy on a monthly basis.

4108 BID DOCUMENTS AND INFORMATION PROVIDED BY THE SOS ADMINISTRATOR TO POTENTIAL BIDDERS

Subsection 4108.1 is amended to read as follows:

4108.1 The Request For Proposal ("RFP") is the document pursuant to which the SOS Administrator shall solicit Wholesale Full Requirements Service to meet its SOS obligations. The RFP shall include the bid request process, the bid evaluation methodology, the timeline for the RFP process, and the following five appendices:

(a) Expression of Interest Form;

(b) Confidentiality Agreement;

(c) Credit Application;

(d) Bid Form Spreadsheets; and

(e) Binding Bid Agreement.

Subsection 4108.2 is amended to read as follows:

4108.2 The SOS Administrator shall provide to potential wholesale SOS bidders the following actual and historical information for the thirty-six (36) months preceding the month in which the data is to be submitted to the Commission. The SOS Administrator shall provide such data on its RFP website on a date to be specified by the Commission.

(a) Monthly and hourly demand, energy consumption and load profile data, as defined by the Commission, aggregated for each SOS customer class. For Large Commercial customers, if an individual customer's load data will be disclosed, customer written consent is required;

(b) Number of customers in each SOS customer class and the number of customers taking SOS within each customer class;

(c) Representative load shapes for each of the SOS Administrator's profile

group and sub-groups by month, provided that if an individual customer's load shape will be disclosed, written customer consent is required;

(d) Hourly delivery data;

(e) Billing determinants on electronic spreadsheets;

(f) System losses;

(g) The amount of electric supply acquired from CREFs and the total capacity of all authorized CREFs; and

(h) Other information as determined by the Commission to be necessary or useful to wholesale SOS bidders.

Subsection 4108.3 is amended to read as follows:

4108.3 The general requirements and conditions for information submitted by the SOS Administrator to potential wholesale SOS bidders are as follows:

(a) Aggregate data: All information required to be provided by Subsection 4108.2 shall be provided on an aggregate class basis. Individual customer information shall not be provided without the customer's written consent.

(b) Historic Data Period: All information provided will reflect usage during the most recent thirty-six (36) month period, where available. Information describing factors that would cause the information to be unrepresentative of electricity usage during the SOS period shall also be provided.

(c) Due Care; Corrections: The SOS Administrator shall use due care in compiling the required information with the understanding that bidders will be relying on the data to formulate SOS bids. The SOS Administrator shall have the duty to correct any inaccuracies promptly upon discovery.

(d) Affiliated Interests: The SOS Administrator shall not provide any information to an affiliated wholesale SOS bidder that is not provided to all potential wholesale SOS bidders. The SOS Administrator must comply with the code(s) of conduct adopted by the Commission.

(e) Electronic Form; Standard Software: The SOS Administrator shall provide all information in electronic form usable by standard personal computer software packages; and

(f) Scope and Format: The Commission will determine the scope and detail of the information required by Subsections 4108.2, 4108.3(a), 4108.3(b), and 4108.3(e).

Add a new Section 4109, DISTRIBUTION LEVEL GENERATION, to read as follows:

4109 DISTRIBUTION LEVEL GENERATION

4109.1 Community Renewable Energy Facilities ("CREFs") may provide electric supply to the SOS Administrator that shall be used to offset SOS purchases from Wholesale SOS Providers. All electric supply provided by CREFs shall become the property of the SOS Administrator, but shall not be counted toward the SOS Administrator's total retail sales for purposes of the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15-340; D.C. Official Code §§ 34-1431 *et seq.*).

4109.2 If the electric production of a CREF is fully subscribed, the SOS Administrator shall pay the CREF through a CREF Community Net Metering ("CNM") credit on the accounts of all of the CREF's Subscribers. The SOS Administrator shall make no additional payment to the CREF.

4109.3 If the electrical production of a CREF is not fully subscribed, the SOS Administrator shall pay the CREF for the subscribed energy through a CNM credit on the accounts of all of the CREF's Subscribers and shall purchase the unsubscribed energy produced by the CREF at the PJM Locational Marginal Price for energy in the PEPCO District of Columbia sub-Zone, adjusted for ancillary service charges as specified in Subsection 906.4. The SOS Administrator shall pay the Subscriber Organization for the purchased energy on a monthly basis consistent with Subsections 906.4 and 907.9.

4109.4 Transactions identified in Subsections 4109.1 through 4109.3 are outside of the WFRSA and not part of the Wholesale Full Requirement Service.

4109.5 The SOS Administrator shall file with the Commission for approval a draft of a contract to be used by the SOS Administrator to acquire energy generated by a CREF from a Subscriber Organization within forty-five days of the date this revised rule becomes effective as set out in the Notice of Final Rulemaking published in the *D.C. Register*.

The previous Section 4109 is renumbered 4110, MARKET MONITOR CONSULTANT and is amended to read as follows:

4110 MARKET MONITOR CONSULTANT

4110.1 The Consultant RFP is the document to be issued to hire the Commission's Market Monitoring Consultant ("Consultant"). The SOS Administrator shall procure and pay for an independent consultant hired pursuant to the Consultant RFP. The Consultant shall be responsible for monitoring all aspects of the procurement of the SOS services. Specifically:

(a) The Consultant shall be selected by, shall take its direction from, and shall provide its consultation and work products to the Commission.

(b) The costs incurred by the SOS Administrator in hiring the Consultant may be included in the SOS Administrator's incremental costs and may be recovered through the Administrative Charge, subject to Commission review and approval.

(c) The Consultant shall provide the Commission and the Office of the People's Counsel with a final report as to each supply procurement and award.

(d) The Commission shall determine the qualifications of and evaluate all bidders. The Commission shall further direct the SOS Administrator, in writing, as to which bidder to award a contract for consulting service and the terms and conditions of that contract with the exception of the terms and conditions specifically described in this Section. The SOS Administrator shall execute the contract with the Consultant no later than four (4) weeks prior to the date of the initial pre-bid conference. The SOS Administrator shall be required to pay only for work that the Consultant does in reviewing the SOS Administrator's compliance with Section 4104 and any other work that the Commission asks the Consultant to perform.

(e) The contract term for the contract between the SOS Administrator and the Consultant shall be for one-year, with an option to extend the contract for two (2) additional one-year terms. The option(s) shall be exercised by the Commission in its sole discretion; and

(f) Prior to the expiration of the initial contract awarded under this section, the second and subsequent consultant services contracts shall be awarded and administered consistent with Subsections 4110.1(a)-(e) herein.

The previous Section 4110 is renumbered 4111, MISCELLANEOUS PROVISIONS and is amended to read as follows:

4111 MISCELLANEOUS PROVISIONS

4111.1 The SOS Administrator may at any time request Commission approval to make changes in the Electric Company's tariffs. However, to the extent that those tariff changes would require conforming changes to either the RFP, the WFRSA generally, or any WFRSA that may be in effect from time to time:

(a) No such tariff changes may alter the rights and obligations of any Wholesale SOS Provider with respect to any WFRSA for which an RFP has already been issued, unless the Wholesale SOS Provider consents to have its rights or obligations changed;

(b) The SOS Administrator shall serve notice of the requested tariff change and copies of the proposed conforming changes to the RFP and/or WFRSA on all parties; and

(c) Any such tariff changes must be consistent with the regulations, orders or other obligations to which the SOS Administrator is subject.

4111.2 If, after conducting the bid procedures in accordance with the RFP, the SOS Administrator still has SOS load that has not been awarded to a Wholesale SOS Provider and cannot be supplied by CREFs, then:

(a) The SOS Administrator shall initially supply the unserved load by purchasing energy and all other necessary services through the PJM-administered markets, including but not limited to the PJM energy, capacity, and ancillary services markets, and any other service required by PJM to serve such unserved load, and shall include all the costs of such purchases in the retail rates charged for the service for which the purchases are made.

(b) Within five (5) business days of it being determined by the SOS Administrator that the load is unserved, the SOS Administrator shall convene a meeting of all parties to the proceeding and Commission staff to discuss alternative ways to fill the unserved load, including but not limited to a rebid or a bilateral contract. The meeting process will conclude within ten (10) business days of the load being determined to be unserved, and within twenty (20) calendar days of it being determined that the load is unserved, the SOS Administrator shall file with the Commission, and serve upon the all parties to the proceeding, any proposal it has for serving the load in lieu of the procedure set forth in Subsection 4111.2(a); and

(c) The Commission will resolve the SOS Administrator's filing on an expedited basis. Any alternative means that the Commission approves will expressly provide that the SOS Administrator's costs for filling the load will be recovered in retail rates in the same manner as all other charges pursuant to Subsection 4103.1. Until the Commission approves an alternate means of filling the load, Subsection 4111.2(a) will apply.

4111.3 If any load is left unserved after a Wholesale SOS Provider defaults:

(a) The SOS Administrator shall initially supply the defaulted load by purchasing energy and all other necessary services through the PJM-administered markets, including but not limited to the PJM energy, capacity, and ancillary services markets, and any other service required by PJM to serve such defaulted load, and shall include all the costs of such purchases, net of any offsetting recovery from the defaulting Wholesale SOS Provider, in the retail rates charged for the service for which the purchases are made; and

(b) As soon as practicable after it is determined by the SOS Administrator that the load is unserved, the SOS Administrator shall file with the Commission a plan to fill the remaining term of the defaulted WFRSA. Such a plan shall be submitted to the Commission within ten (10) business days after a Wholesale SOS Provider default. Until the Commission approves a plan to fill the remaining term of the defaulted WFRSA, Subsection 4111.3(a) will apply.

4111.4 Access to confidential information relating to the SOS Administrator's procurement of SOS power supply will be governed by the OPC Confidentiality Agreement, the Consultant's Confidentiality Agreement contained in the Bidder RFP, and the Confidentiality Agreement contained in the RFP and the confidentiality provisions of the WFRSA (collectively the "Confidentiality Agreements").

4111.5 Ninety (90) days following the Commission's approval of the selection of winning bidders for the final tranche, the Commission will disclose upon request (a) the total number of bidders, and (b) the names of the winning bidders.

4199 DEFINITIONS

Subsection 4199.1 DEFINITIONS is amended by adding or modifying the following terms and definitions to read as follows:

"Availability of Standard Offer Service" means the Standard Offer Service available on and after the initial implementation date to: (1) customers who contract for electricity with a Competitive Electricity Supplier , but who fail to receive delivery of electricity under such contracts; (2)

customers who cannot arrange to purchase electricity from a Competitive Electricity Supplier ; and (3) customers who do not choose a Competitive Electricity Supplier.

"Competitive Electricity Supplier" or "CES" means a person, other than the SOS Administrator, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers, and shall have the same meaning as the term "Electricity Supplier" set forth Section 101 of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1501).

"Community Renewable Energy Facility" or "CREF" means an energy facility with a capacity no greater than five (5) megawatts that: (a) uses renewable resources defined as tier one renewable sources in accordance with Section 3(15) of the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15-340; D.C. Official Code § 34-1431(15), as amended); (b) is located within the District of Columbia; (c) has at least two (2) Subscribers; and (d) has executed an Interconnection Agreement and CREF Rider with the Electric Company.

"Electric Company" includes every corporation, company, association, joint-stock company or association, partnership, or person and doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, physically transmitting or distributing electricity in the District of Columbia to retail electric customers. The term excludes any building owner, lessee, or manager who, respectively, owns, leases, or manages, the internal distribution system serving the building and who supplies electricity and other related electricity services solely to occupants of the building for use by the occupants. The term also excludes a person or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles.

"**Investment Grade"** means a BBB- or Baa3 credit rating with S&P or Moody's respectively; provided, that if the SOS Administrator's credit ratings by S&P and Moody's are not equivalent, the lower of the credit ratings shall govern for purposes of these rules.

"Retail Access" means the right of Competitive Electricity Suppliers and consumers to use and interconnect with the electric distribution system on a nondiscriminatory basis in order to distribute electricity from any Competitive Electricity Supplier to any customer. Under this right, consumers shall have the opportunity to purchase electricity supply from their choice of licensed Competitive Electricity Suppliers.

"Slamming" means the unauthorized switching of a customer's electricity service to a Competitive Electricity Supplier.

"Standard Offer Service" or "SOS" means electricity supply made available to: (1) customers who contract for electricity with a Competitive Electricity Supplier, but who fail to receive delivery of electricity under such contracts; (2) customers who cannot arrange to purchase electricity from a Competitive Electricity Supplier; and (3) customers who do not choose a Competitive Electricity Supplier.

"SOS Administrator" means the provider of Standard Offer Service mandated by Section 109 of the Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1509).

"Subscriber" means a retail customer of a Competitive Electricity Supplier or a SOS customer of the Electric Distribution Company in the District of Columbia who owns a subscription in a CREF and who has identified an individual billing meter within the District of Columbia to which the subscription shall be attributed.

"Subscriber Organization" means any individual or for-profit or nonprofit entity permitted by District of Columbia law that owns or operates one or more CREFs for the benefit of Subscribers.

"Subscription" means a percentage interest in a CREF's electrical production.

"Wholesale Full Requirements Service Agreement" is the document that will specify the terms and conditions that govern the contractual relationship between the SOS Administrator and each of the Wholesale SOS Providers that is awarded a contract pursuant to the bidding procedures specified in the RFP.

"Wholesale Standard Offer Service Provider(s)" or "Wholesale SOS Provider(s)" means the entity(ies) selected pursuant to this chapter to provide all or a specified portion of electric generation service to consumers receiving Standard Offer Service.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF SECOND 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.)), and Mayor's Order 2001-96, dated June 28, 2001, as revised by Mayor's Order 2001-102, dated July 23, 2001, hereby gives notice of proposed rulemaking action to publish a second proposed rulemaking that makes amendments to Chapters 1 (Provisions of General Applicability), 2 (License and Permit Categories), 4 (General Licensing Requirements), 5 (License Applications), 6 (License Changes), 7 (General Operating Requirements), 8 (Enforcement, Infractions, and Penalties), 10 (Endorsements), 12 (Records and Reports), 17 (Procedural Requirements for Board Hearings), and 18 (Petition Procedures) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules amend the definition of back-up drinks and add a definition for bottle service in Chapter 1. The proposed amendments to Chapter 2 establish a licensure renewal period for alcohol certification provider permits and updates other license renewal periods. In Chapter 4, the rules clarify those circumstances under which the Board may rescind its previously issued license approval. Additionally, the rulemaking no longer permits a license located in a moratorium zone to be kept in safekeeping for the length of the moratorium. Chapter 6 is amended to add a new section regarding limited liability companies.

The proposed rules make several amendments to Chapter 7. Licensees who remove their licenses from safekeeping after two years must provide the Board with detailed plans of its return to operations, including its anticipated re-opening date. The rules clarify that licensees are required to register with the Board to sell and serve alcoholic beverages until 4 a.m. on January 1st and other District and federal holidays. The rules create a pub crawl license and set forth related requirements. The rulemaking clarifies that the holder of a manufacturer's license can file and be approved by the Board for a one-day substantial change application. The rules also establish requirements for on-premises retailers to provide bottle service and buckets of beer to seated patrons.

The proposed rulemaking for Chapters 8, 10, and 12 expands upon the existing definition of "egregious" for sale to minor violations. The proposed rules clarify several sections regarding those circumstances where the Board will issue a cease and desist order as a result of the licensee's non-compliance with other District requirements. The rules further clarify that a licensee may provide entertainment only during the hours permitted under its entertainment endorsement. The rules also clarify that licensed restaurants and hotels are responsible for maintaining three years of sufficient documentation to allow the Board to verify the correctness of information contained on the licensee's submitted quarterly reports.

Lastly, the proposed rules make several amendments to Chapter 17. Service of papers may now be filed electronically. The computation of time has been clarified regarding the calculation of

hours and days. Additionally, the rules include new language regarding the Chairperson's authority to schedule and conduct hearings. The proposed rules also create new requirements for the submission of documentary evidence, post-hearing pleadings, and the protest information form.

By way of background, the proposed rules were initially adopted by the Board on October 15, 2014 by a six (6) to zero (0) vote, and were published in the *D.C. Register* on December 26, 2014 at 61 DCR 13149 for a thirty (30) day comment period.

On November 13, 2014, the Board held a hearing pursuant to D.C. Official Code § 25-354 (2012 Repl.) to receive public comment on the proposed rules. At the public hearing, the Board received valuable comments and testimony from the public and throughout the comment period. Commenters included members of the industry, ANC Commissioners, D.C. residents and citizens and civic associations.

Following is a summary of the testimony presented at the public hearing, as well as testimony submitted by written comment.

Restaurant Association Metropolitan Washington (RAMW)

Andrew Kline testified on behalf of RAMW. RAMW represents over 800 restaurants and restaurant service providers in the greater D.C. Metropolitan area, to include 500 restaurants in the District of Columbia. RAMW thanked the Board for bringing the rulemaking forward for public comment and is generally supportive of the proposed amendments to current rules.

One of the more troubling concerns for RAMW in the proposed rules is the circumstances where the Board may issue a Cease and Desist Order. One circumstance in particular is where an ABC Licensee may not have current documents or licenses issued by other District agencies. RAMW's concern here is that mistakes are made by District agencies and their employees that have detrimental consequences which may lead to a temporary, but unwarranted closure of the ABC licensed establishment. Additionally, it is not always easy to get matters resolved with other agencies so additional time may be needed to rectify the problem.

RAMW recently experienced a similar concern with the D.C. Department of Health (DOH). RAMW convinced DOH that unless there is an imminent danger to the public, noncompliance with regulatory and administrative requirements should not lead to a cease and desist order. RAMW also argued that if another District agency issues its own cease and desist order, there is no point for the Board to issue a second order when the licensed establishment is already closed.

RAMW agrees that the electronic service of documents in contested proceedings is appropriate and most efficient. However, there is also a concern that safeguards and precautions be put in place. RAMW suggests that when parties first appear before the Board or the Board's Agent, that the party be required to fill out an Entry of Appearance form to include indicating that they consent to electronic service.

RAMW also suggests that ABRA establish a dedicated electronic mailbox, such as

ABRAadjudications@dc.gov, to which all pleadings would be submitted and from where all communications from the Legal and Adjudications Division would come. There would be less confusion by parties who may be corresponding with different Adjudications Division staff personnel if all communications to parties came from one singular email address. RAMW also suggests that initial formal pleadings such as notices to show cause continue to be served by personal service or certified mail.

RAMW is also concerned about the proposed language deeming an application abandoned or withdrawn if documentation is not submitted within 45 days of a request from ABRA. RAMW argues that if strict deadlines are going to be imposed on applicants, then similar deadlines should also be imposed on ABRA. Often an applicant may not hear back from the agency well into 30 days after filing an application. It is imperative that ABRA's Licensing Division communicate more regularly and timely with applicants. Additionally, applicants would appreciate knowing from ABRA when they can expect placards for posting to their establishments and when they can expect publication in the *D.C. Register*. At a minimum, ABRA should provide notice to an applicant that an application has been deemed to be abandoned or withdrawn.

Rod Woodson, Holland and Knight

Mr. Woodson testified regarding the Board's practice of handling protest hearings on license renewal applications and the handling of evidentiary submissions related to those hearings. He addressed the need to harmonize Sections 311, 313 and 315 of the D.C. Official Code.

Mr. Woodson praised the Board for the improvements in the quality of the investigative reports relied upon by the Board and parties for protest hearings. These reports have allowed parties to understand in advance of a given hearing what the disputed issues are. Identifying the disputed issues in advance of the hearing has allowed the Board to reduce the length of the hearings from the days of old when hearings would take eleven (11) or twelve (12) hours to conclude. The Board should not have to concern itself with issues that are not raised in the investigative report. Nor should the Board concern itself with issues that are raised, but are not substantiated. For example, if the parties are concerned with noise issues, there is no need to spend time at the hearing discussing parking issues.

Notwithstanding the improved reports, Mr. Woodson testified that greater efficiencies in the protest hearings might be derived if parties were to receive the investigative report in advance of the hearings and prior to the submission of the Protest Information Form. The reports have little value if they are not issued timely because neither party knows what the other party deems to be an issue in dispute.

Greater efficiencies might also be derived by a re-ordering of the proceedings. Specifically, with regard to hearings on renewal applications, the Board may want to consider requiring the protestants to proceed first, followed by rebuttal by the Applicant. The ultimate burden of proof would remain with the applicant, but the evidentiary record would be developed on the narrow issues raised by the protestants in their case-in-chief. Narrowing the issues saves the parties and the Board time and resources.

Mr. Woodson does not believe the Board should have a hard and fast rule regarding the order in which parties proceed to put on their case, but he does think that applicants should be permitted to argue their case in rebuttal for proceedings that concern the renewal of an already approved and issued license. The standard for substantial evidence is taken from the record as a whole, so it should not matter who presents the evidence or when.

Paul Pascal and Risa Hirao, District of Columbia Association of Beverage Alcohol Wholesalers

Mr. Pascal commented that the wholesalers are dedicated to a safe environment for the sale and consumption of alcoholic beverages, and thus appreciate when the Board updates its regulatory scheme. He agreed with the testimony presented by Mr. Kline and Mr. Woodson and added a few concerns of his own.

Specifically, with regard to Subsection 213.1, the Wholesalers are concerned that if certain entities are exempted from licensure requirements, the Wholesalers will not know to whom they can sell their product, where the product would come from if the Wholesalers aren't providing it and how that product will be tracked. Ms. Hirao proposed that the Board require the unlicensed entity to sign an affidavit in order to protect the Wholesalers from an unintended violation of D.C. Official Code § 25-102(a) (2012 Repl.).

Similar to RAMW, Mr. Pascal expressed concern about the proposed ability of ABRA to dismiss an application if required documents aren't submitted within forty-five (45) days from the request for documents. Mr. Pascal believes that the short deadline is very unreasonable given the significant financial costs applicants invest into their businesses. Additionally, delays in complying with the submission deadline are often attributable to other agencies over whom the applicant has no control.

A third concern of the wholesalers is the proposed regulation regarding bottle service. If an ABC licensed establishment provides bottle service to a table of patrons and brings the bottle uncapped or uncorked, there is no guarantee that the product in the bottle is not unadulterated or undiluted. Mr. Pascal also believes that bottle service should be allowed for holders of licenses for caterers and common carriers. Ms. Hirao also raised a concern about the presence of a minor at the table who may inadvertently get served by the wait staff and whether that violation would extend to the licensed retailer.

Fourthly, Mr. Pascal also has concerns regarding the proposed circumstances under which a cease and desist order might issue. He argues that the Board is not realistic in its expectations about the length of time required to obtain documents and licenses from other District agencies. It took months for one of his clients to change its legal status from a corporation to a Limited Liability Company. Often times other District agencies such as DCRA (the Department of Consumer and Regulatory Affairs) do not notify their customers that DCRA licenses have expired. Mr. Pascal believes the Board should provide notice to the ABC licensee before the Cease and Desist is issued to allow time for correction of the underlying documents and other agency issued licenses.

Denis James, President of Kalorama Citizens Association (KCA)

Mr. James concurred with the other parties' testimony that protest hearings should be streamlined and that improvements in the investigative report have helped in that regard. He does have concerns that on occasion a report might not identify specific issues if those issues are not caught during the investigator's monitoring period.

Mr. James also raised concerns regarding the proposed rule that creates a pub crawl license. He likes the idea of a license for these events, but he believes that the application should be subject to protests similar to other license applications. Protests against pub crawl licenses will allow neighborhoods to protect themselves against bad behavior.

Additionally, he believes that the civil penalty section in the regulations should list violations for pub crawl licenses and should assign a tier and fine penalty. Mr. James also commented on the reduction from six (6) weeks to thirty (30) days as to when the pub crawl organizer must submit its application.

Abigail Nichols, DC Noise Coalition

Ms. Nichols is disappointed that the Board did not address noise regulations in its proposed rules. She also has a concern about the length of protest proceedings, but encouraged the Board to not necessarily ban repetitive testimony at hearings because everyone wants to be heard. She believes the Board would benefit from a forum held to discuss the conduct of hearings and how they can be improved. She also encouraged the Board to host a separate hearing to hear from the public on just noise issues.

Additional Written Comments

In addition to the testimony received by those in attendance at the public hearing, the Board also received written comments from several parties.

Skip Coburn on behalf of the D.C. Nightlife Association objected to the forty-five (45) day deadline to submit documents and other paperwork required by the terms of the application. Mr. Coburn also objected to the provisions listing what conditions could trigger a cease and desist order by the Board.

Likewise, Dante Ferrando owner of Circle 1 Productions, Inc. t/a Black Cat questioned the Board's authority to issue cease and desist orders for matters that are under the jurisdiction of other District agencies. Mr. Dante also sought assurances that the pub crawl definition did not extend to annual events, festivals or block parties.

The D.C. Nightlife Noise Coalition (Coalition) submitted comprehensive suggestions encouraging the Board to draft regulations that relate specifically to noise, and that improve enforcement and compliance with the D.C. Noise Control Act and D.C. Official Code § 25-725 (2012 Repl. & 2014 Supp.). Specifically, the Coalition has requested that the Board increase its fees for entertainment endorsements and increase its fees for penalties for noise violations. The

Coalition would also like to have the Board amend the application procedure for entertainment endorsements. Lastly, the Coalition suggests that the Board reform inspections and enforcement procedures, and create a "fast-track" process for residents experiencing noise problems.

The Dupont Circle Citizens Association also echoed the concerns raised by the Coalition regarding entertainment endorsements, fines and penalties, and noise disturbances. The Shaw Dupont Citizens Alliance believe that ABRA's safekeeping regulations need to be overhauled such that licenses should be cancelled when no longer operational, and then, when the licensee returns to operations, they can apply for a new license at that location.

Decision of the Board

The Board took the views of those who submitted written comment and provided oral testimony into consideration. The Board found the hearing to be productive even on those matters and rules that were not necessarily raised in the proposed rulemaking.

The Board is sympathetic to the concerns of the public and applicants regarding the length of protest proceedings, however it is not convinced that re-ordering the hearing process to have the protestant present its case-in-chief first is necessarily the solution to that problem given that both parties have 90 minutes to argue their case. While the Board does not find that such changes to the regulations are appropriate at this time, the Board does remain open minded to suggestions that may result in a more focused and streamlined hearing process.

The Board agrees with the parties who suggested that an effort needs to be made to narrow the issues for hearing. The Board believes this objective can be achieved in two ways: 1) make full use of mediation, and 2) utilize the Protest Information Form (PIF) as the tool it was created to be.

The purpose of mediation at ABRA is to identify issues, clarify misunderstandings, explore solutions and mediate a settlement agreement. If a dispute is not resolved through mediation, then the parties will proceed to a protest hearing.

ABRA's mediator may provide information about the protest process, raise issues and help explore options, but the primary role of the mediator is to facilitate a voluntary resolution by the parties. If that can't be accomplished, then the mediation will at a minimum, help to narrow and identify the issues.

With that understanding, it is incumbent upon the parties, with the mediator's help, to narrow the issues that remain in dispute, and only bring those disputed issues to the Board for resolution at the protest hearing. Issues not in dispute or those resolved at mediation should not be the subject of the hearing. This will allow the parties to focus the more narrow issues for the Board and it affords the parties more time to address those issues that need attention.

Secondly, the Board intends to create a revised PIF that more adequately and succinctly captures only those issues that remain in dispute. The Board looks to the parties to be complete in their recitation and to not include those matters that were never in dispute or that may have been

resolved at some point in the protest process.

Specifically, the PIF will now include a section that addresses stipulated facts and issues and it will also include a section that allows parties to list those disputed items that remain for the Board to resolve. Any issue not listed as a disputed issue will be barred from being raised at the protest hearing.

The Board also appreciated the comments from the public regarding the seven circumstances that may trigger a cease and desist order. The Board recognizes that ABC licensees are subject to the regulation of other D.C. agencies and thus may be at those agencies' mercy regarding the issuance of other licenses. The operative word in the Board's proposed rules is "may". The Board intends to be judicious and will exercise great caution when considering the issuance of a cease and desist order. It is not the Board's intention to be whimsical regarding these types of orders but rather to bring the ABC licensee into compliance with regard to regulatory requirements, even if they are deemed by the licensee to be merely administrative.

The Board also expanded bottle service to include the service of buckets of beer, and that bottle service is permitted for all on-premises licensees. The Board also amended the proposed rules to ensure that the licensee's server shall not deliver bottle service or a bucket of beer to minors or to patrons who appear intoxicated.

The Board rejected the Kalorama Citizens Association's request to allow the public to protest pub crawl license applications, but it did adopt additional rules that strengthen the application process requirements and placed safeguards for the community in the event the licensee fails to control the environment. Additionally, the rules make very clear that the issuance of a pub crawl license remains within the discretion of the Board.

The Board appreciates the many and varied comments submitted on the initial round of proposed rules. Because the Board adopted substantive amendments to the initially proposed rulemaking, the Board intends to submit the amended proposed rules for public comment, and it will also hold a second hearing following publication in the *D.C. Register*. Directions for submitting comments on this second proposed rulemaking may be found at the end of this Notice.

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

Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Repl.), these 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.

Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 199, DEFINITIONS, of Chapter 1, PROVISIONS OF GENERAL APPLICABILITY, is amended by amending the definition of back-up drinks and adding the definition of bottle service to read as follows:

199 DEFINTIONS

Back-up drinks - - shall include second drinks served as part of a "two-for-one" promotion, second drinks served just prior to last call and second drinks provided complimentary by the licensee or purchased by other patrons. Except as provided in the preceding sentence, back-up drinks shall not include two different drinks served together such as a beer or a shot or any other industry drink that can be considered a shot and a mixer. The prohibition against back-up drinks shall also not apply to the service of wine with a meal where the patron has not finished a previously served cocktail, nor shall it apply to containers of alcoholic beverages served in accordance with 23 DCMR § 721.

Bottle service - - shall include the service of alcoholic beverages in any container holding multiple servings of alcoholic beverages.

Section 207, LICENSURE PERIODS, of Chapter 2, LICENSE AND PERMIT CATEGORIES, is amended by replacing Subsection 207.2 to read as follows:

207 LICENSURE PERIODS

207.2 The three year renewal period for each license listed below shall occur sequentially every three years starting with the following dates:

License Class	Licensure Period	Ending Year
Manufacturer A	Apr. 1 to Mar. 31	2015
Wholesaler A	Apr. 1 to Mar. 31	2015
Retailer A	Apr. 1 to Mar. 31	2015
Manufacturer B	Apr. 1 to Mar 31	2017
Wholesaler B	Oct. 1 to Sept. 30	2017
Retailer B	Oct. 1 to Sept. 30	2017
Retailer CR	Apr. 1 to Mar. 31	2016
Retailer CT	Oct. 1 to Sept. 30	2016
Retailer CN	Oct. 1 to Sept. 30	2016
Retailer CH	Apr. 1 to Mar. 31	2016
Multipurpose facility CX	Apr. 1 to Mar. 31	2016
Common Carrier CX	Apr. 1 to Mar 31	2016
Retailer Arena CX	Apr. 1 to Mar 31	2016
Retailer DR	Apr. 1 to Mar. 31	2016
Retailer DT	Oct. 1 to Sept. 30	2016
Retailer DN	Oct. 1 to Sept. 30	2016
Retailer DH	Apr. 1 to Mar. 31	2016
Multipurpose facility DX	Apr. 1 to Mar. 31	2016
Common carrier DX	Apr. 1 to Mar 31	2016

License Class	Licensure Period	Ending Year
Caterer	Apr. 1 to Mar 31	2016
Solicitor	July 1 to June 30	2017
Club CX	Apr. 1 to Mar 31	2016
Club DX	Apr. 1 to Mar 31	2016
Farm winery retail	Oct. 1 to Sept. 30	2015
Alcohol certification provider permit	July 1 to June 30	2017

Section 213, EXEMPTION FROM LICENSING REQUIREMENT, of Chapter 2, ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION, is amended to read as follows:

213 EXEMPTION FROM LICENSING REQUIREMENT

213.1 A license shall not be required for any event where alcoholic beverages are provided gratuitously for on-premises consumption on the host's own premises. A license shall not be required if the operator of the premises does not provide service for the consumption of alcoholic beverages which are provided gratuitously to guests on the premises. Notwithstanding the foregoing, if the operator of the premises rents out the facility or provides entertainment, food or nonalcoholic beverages for compensation, a license shall be required.

213.2 An applicant for a new license shall not permit the consumption of alcoholic beverages on the premises unless the applicant has obtained a stipulated or temporary license. The applicant for a new license may also permit a licensed caterer to host an event on the premises so long as the caterer retains the responsibility for the event, including control over the modes of ingress and egress into the establishment, bar and security staff, and the service of alcoholic beverages.

Section 405, LICENSE APPROVAL BEFORE ISSUANCE OF CERTIFICATE OF OCCUPANCY, of Chapter 4, GENERAL LICENSING REQUIREMENTS, is amended by adding a new Subsection 405.5 to read as follows:

405 LICENSE APPROVAL BEFORE ISSUANCE OF CERTIFICATE OF OCCUPANCY

405.5 Notwithstanding § 405.4, the Board may, after holding a hearing, rescind its previously issued approval to an applicant under this section when: (1) the license is still pending issuance after two or more years, and (2) the applicant no longer has legal authority to operate at the approved location.

Section 500, APPLICATION FORMAT AND CONTENTS, of Chapter 5, LICENSE APPLICATIONS, is amended by adding new Subsections 500.2 and 500.3 to read as follows:

500 APPLICATION FORMAT AND CONTENTS

500.2 The Board may deem an application abandoned or withdrawn if an applicant fails to provide all of the documents required to process the application within 45 days of the submission of the application.

500.3 The Board may require an applicant to submit additional documents and information needed to properly process an application. The Board may deem an application abandoned or withdrawn if an applicant fails to provide any additional documents within fifteen (15) days of the request.

A new Section 602, LIMITED LIABILITY COMPANY CHANGES, of Chapter 6, LICENSE CHANGES, is added to read as follows:

602 LIMITED LIABILITY COMPANY CHANGES

602.1 The Board shall only approve as a member or managing member of a limited liability company an owner owning more than zero percent (0%) for purposes of recognizing applicants or licensees.

602.2 Nothing in this subsection shall prevent an individual with an ownership of zero percent (0%) in a limited liability company from serving as a manager or an officer of the limited liability company.

602.3 A manager or an officer of a limited liability company with an ownership interest of zero percent (0%) shall not be considered by the Board as an owner of the license, applicant or licensee.

Section 704, SURRENDER OF LICENSE, of Chapter 7, GENERAL OPERATING REQUIREMENTS, is amended by deleting Subsection 704.3 in its entirety and renumbering existing Subsection 704.3 to read as follows:

704 SURRENDER OF LICENSE

704.3 Whenever a license has been in safekeeping with the Board for longer than two years, the licensee shall upon requesting the removal of the license from safekeeping, submit for Board approval detailed plans of its operations upon reopening and shall notify the Board of the anticipated reopening date.

Section 705, HOURS OF SALES AND DELIVERY FOR OFF-PREMISES RETAIL LICENSEES, of Chapter 7, GENERAL OPERATING REQUIREMENTS, is amended by replacing Subsection 705.11 to read as follows:

705 HOURS OF SALES AND DELIVERY FOR OFF-PREMISES RETAIL LICENSEES

705.11 A licensee under an on-premises retailer's license that provides written notification and a public safety plan to the Board at least thirty (30) days in advance may sell and serve alcoholic beverages until 4:00 a.m. and operate twenty-four (24) hours during the dates set forth in D.C. Official Code § 25-723(c)(1) unless the licensee has a settlement agreement that restricts the establishment's closing hours.

Section 712, PUB CRAWLS, of Chapter 7, GENERAL OPERATING REQUIREMENTS, is amended by replacing Subsection 712.1 to read as follows:

712 PUB CRAWLS

712.1 A promoter/organizer of a "pub crawl" shall be required to obtain a pub crawl license. The promoter/organizer shall submit an application for a pub crawl license at least thirty (30) days prior to the applicant's first scheduled event. For purposes of this section a "pub crawl" shall be defined as an organized group of establishments within walking distance which participate in the promotion of the event featuring the sale or service of alcoholic beverages during a specified time period. The application fee for a pub crawl license shall be two-hundred and fifty dollars ($250). A pub crawl license shall expire at the end of the calendar year in which it is issued.

712.2 Within fifteen (15) days of the licensee's second or subsequent event, the licensee shall notify the Board in writing of (1) the list of licensed establishments participating in the scheduled event and (2) proof that the Metropolitan Police Department was notified of the scheduled event. The list of submitted participating licensed establishments shall be subject to approval by the Board based upon the eligibility of each participating licensed establishment.

712.3 The issuance of a pub crawl license shall be solely in the discretion of the Board.

712.4 If the applicant has failed to control the environment of a pub crawl, or has sustained community complaints or police action, or has otherwise violated the provisions of this title, the Board may place restrictions upon the number, nature or size of events held under a pub crawl license. The Board may also fine, suspend, or revoke the pub crawl license pursuant to Chapter 8 of Title 25 of the D.C. Official Code (2012 Repl. & 2014 Supp).

712.5 When determining the qualifications of an applicant for a new pub crawl license or the renewal of a pub crawl license, the Board may consider the conduct and management of previous pub crawls for which the applicant has been responsible.

Section 716, ONE DAY SUBSTANTIAL CHANGES, of Chapter 7, GENERAL OPERATING REQUIREMENTS, is amended by replacing Subsection 716.1 to read as follows:

716 ONE DAY SUBSTANTIAL CHANGES

716.1 The holder of an on-premises retailer's license or a manufacturer's license may file a one-day substantial change request with the Board to sell or serve alcoholic beverages, have entertainment, extended hours of operation, a cover charge, dancing, or operate at a location not permitted by the applicant's license as part of a specific event. The one-day substantial change request may be granted, in the Board's discretion, unless the activities sought by the applicant are otherwise prohibited by the applicant's ABC license.

A new Section 721, BOTTLE SERVICE, of Chapter 7, GENERAL OPERATING REQUIREMENTS, is added to read as follows:

721 BOTTLE SERVICE

721.1 The holder of an on-premises retailer's license shall be permitted to provide bottle service of alcoholic beverage to one or more seated patrons.

721.2 A licensee may serve a bucket filled with containers of beer to one or more seated patrons.

721.3 The licensee's server shall not deliver an alcoholic beverage to any patron in accordance with this section until the licensee has taken reasonable steps to ensure that no alcoholic beverage is delivered to a patron below the legal age or that otherwise appears intoxicated. The server shall open all closed containers before they are served to the seated patrons.

721.4 The licensee shall not permit or allow any patrons to remove the bottle or pitcher from the table, bar or other seating area where served. This provision shall not apply to a single container of beer delivered in a bucket.

800 ABRA CIVIL PENALTY SCHEDULE

Section	Description	Violation	Warning
23 DCMR 712	Violating the Terms of a Pub crawl License	Primary	N
23 DCMR 1207.10	Failure to provide sufficient documentation	Primary	Y

Section 807, SALE TO MINOR VIOLATIONS, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, is amended to read as follows:

807 SALE TO MINOR VIOLATIONS

807.1 The Board shall give warnings for first-time sale to minor offenses, excluding "egregious" sale to minor violations.

807.2 "Egregious" shall be defined as a "sale to minor violation" where the licensee:

(a) Sold or served an alcoholic beverage to a minor who was unable to produce a valid identification after a request from the licensee to do so; or

(b) Sold or served an alcoholic beverage to a minor under the age of 17 years; or

(c) Sold or served an alcoholic beverage to three or more minors under the age of 21 years during an ABRA or MPD enforcement action or operation;

(d) Sold or served an alcoholic beverage to two or more minors without checking identification during an ABRA or MPD enforcement action or operation;

(e) Intentionally sold an alcoholic beverage to a minor; or

(f) Can be established to have had a pattern of prior alcoholic beverage sales or service to minors.

A new Section 808, CEASE AND DESIST ORDERS, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, is added to read as follows:

808 CEASE AND DESIST ORDERS

808.1 The Board, in its discretion, may issue a cease and desist order immediately suspending a licensee's liquor license when one of the following has occurred:

(1) The licensee has been issued a notice of summary suspension by the Department of Health;

(2) The licensee's basic business license has expired;

(3) The licensee's certificate of occupancy has been revoked or expired;

(4) The licensee's sales tax certificate has been suspended or revoked by the Office of Tax and Revenue;

(5) The corporation, limited liability company, or partnership owning the liquor license is no longer in good standing to operate in the District;

(6) The licensee has failed to pay a Board ordered fine or a citation by the

payment deadline; or

(7) Where payment was made to ABRA with a check returned unpaid.

Section 1001, ENTERTAINMENT ENDORSEMENT APPLICATION, of Chapter 10, ENDORSEMENTS, is amended by adding a new Subsection 1001.8 to read as follows:

1001 ENTERTAINMENT ENDORSEMENT APPLICATION

1001.8 A licensee shall provide entertainment only during the hours permitted under its Board approved entertainment endorsement. It shall be a violation of this subsection for an applicant to provide entertainment during hours not permitted by its entertainment endorsement.

Section 1207, QUARTERLY STATEMENTS AND ANNUAL REPORTS OF RESTAURANTS AND HOTELS, of Chapter 12, RECORDS AND REPORTS, is amended by adding a new Subsection 1207.10 to read as follows:

1207 QUARTERLY STATEMENTS AND ANNUAL REPORTS OF RESTAURANTS AND HOTELS

1207.10 A Retailer's license Class CR, CH, DR, or DH shall be responsible for ensuring that it maintains for three (3) years' sufficient documentation to allow the Board to verify the correctness of the information contained on the licensee's submitted quarterly reports. Failure of the licensee to maintain sufficient documentation to allow the Board to verify the correctness of the information contained on the licensee's submitted quarterly reports shall be a violation of this subsection.

Section 1702, COMPUTATION OF TIME FOR FILINGS, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is replaced in its entirety to read as follows:

1702. COMPUATION OF TIME FOR FILINGS

1702.1 Whenever a party to a proceeding under this chapter has the right or is required to perform some act within a specified time period after the service of notice upon the party, and the notice is served upon that party by mail, three (3) days shall be added to the prescribed period.

1702.2 Except as otherwise provided by law, any time period prescribed by this chapter may, for good cause shown, be extended by the Board with notice to all parties.

1702.3 For purposes of computing time that is stated in days or a longer unit of time, exclude the day of the event that triggers the computation of time.

1702.4 For purposes of computing time that is stated in days or a longer unit of time,

every day, including intermediate Saturdays, Sundays and legal holidays is counted. Count the last day of the period, but if the last day is a Saturday, Sunday or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

1702.5 For purposes of computing time that is stated in hours, begin counting every hour immediately at the conclusion of the event that triggers the period, including hours during intermediate Saturdays, Sundays and legal holidays. If the time period would end on a Saturday, Sunday, or legal holiday, the time period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

1702.6 Unless a different time is set by a statute, regulation or Board Order, the last day of a specified time period is at midnight for electronic filing, and at the close of business on the last day for filing by any other means.

Section 1703, SERVICE OF PAPERS, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended by replacing Subsection 1703.2 to read as follows:

1703. SERVICE OF PAPERS

1703.2 When a party has appeared through a representative, who has filed a written notice of appearance pursuant to § 1707.1, service shall be made upon the representative of record.

Section 1703, SERVICE OF PAPERS, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended by replacing Subsection 1703.4 to read as follows:

1703. SERVICE OF PAPERS

1703.4 Service upon a party may be made in the following manner:

(a) By personal delivery;

(b) By use of a process server;

(c) By registered or certified mail;

(d) By electronic mail; or

(e) As otherwise authorized by law.

Section 1710, SCHEDULING AND CONDUCT OF HEARINGS: GENERAL PROVISIONS, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended by deleting existing subsection 1710.4 and adding new subsections to read as follows:

1710 SCHEDULING AND CONDUCT OF HEARINGS

1710.4 The Chairperson of the Board shall preside over all proceedings conducted by the Board under the authority of Title 25 of the D.C. Official Code.

1710.5 The Chairperson of the Board shall conduct all proceedings in accordance with the provisions of this chapter, Title 25 of the D.C. Official Code, and the District of Columbia Administrative Procedures Act.

1710.6 The Chairperson of the Board shall have the authority to:

(a) Open and close a meeting or hearing;

(b) Administer oaths and affirmations;

(c) Regulate the course of the hearing and the conduct of the parties and their counsel;

(d) Receive relevant evidence of the hearing and the conduct of the parties and their counsel or representative; and

(e) Take any other action in accordance with the above provisions in furtherance of a fair and orderly hearing.

1710.7 In the event the Chairperson is unable or unavailable to preside over a hearing or meeting, the Chairperson shall designate a member of the Board to act as the presiding officer in the Chairperson's absence.

Section 1711, EVIDENCE: GENERAL RULES, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended by adding new subsections to read as follows:

1711 EVIDENCE: GENERAL RULES

1711.5 In all protest hearings before the Board, the applicant shall have the burden of proof to show by substantial evidence in the record that the licensing action meets the appropriate standards in accordance with D.C. Official Code § 25-313.

1711.6 In all show cause proceedings before the Board, the District of Columbia shall have the burden of proof to show by substantial evidence in the record that the respondent has committed a violation of Title 25 or these regulations.

1711.7 In all protest hearings before the Board, the applicant shall open and close the case insofar as presentation of evidence and argument are concerned.

1711.8 In all show cause proceedings before the Board, the District of Columbia shall open and close the case insofar as presentation of evidence and argument are concerned.

Section 1713, DOCUMENTARY EVIDENCE, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended by adding new subsections to read as follows:

1713 DOCUMENTARY EVIDENCE

1713.5 All exhibits that a party intends to introduce at hearing must be identified on an exhibit form accompanying the Protest Information Form and copies of the exhibits must be attached to the Form.

1713.6 Exhibits reasonably anticipated to be used for impeachment need not be included on the exhibit form or attached.

1713.7 If a document is readily available to the general public, a party need only provide a complete citation to the source of the document and how the document may be accessed.

1713.8 The Board may exclude at the hearing any exhibits not disclosed on the exhibit form if the Board finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.

1713.9 The Board shall have the discretion to receive documentary evidence from the parties not already listed or attached to the exhibit form upon a finding of good cause.

1713.10 The investigative report and attachments shall be part of the Board's record and it shall not be necessary for the parties to formally move the admission of the investigative report or portions of it into the evidentiary record.

1713.11 The Exhibit Form and any attachments shall be served on all parties and the Board's Office of General Counsel seven (7) days prior to the hearing.

1713.12 If a power point presentation or similar presentation is used by the parties, a paper copy of the exhibit shall be filed with the Board.

Section 1716, MOTIONS, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended by deleting Subsection 1716.5 in its entirety.

Section 1717, POST-HEARING SUBMISSIONS, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended by replacing Subsection 1717.1 and Subsection 1717.2 to read as follows:

1717 POST-HEARING SUBMISSIONS

1717.1 No document or other information shall be accepted for the record after the close of a hearing except as follow:

(a) Unless accompanied by a Motion to re-open the record demonstrating good cause and the lack of prejudice to any party;

(b) Until all parties are afforded due notice and an opportunity to rebut the information; or

(c) Upon official notice of a material fact not appearing in the evidence in the record, in accordance with D.C. Official Code § 2-509(b).

Section 1718, DECISIONS OF THE BOARD, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended by deleting Subsection 1718.4 in its entirety.

Section 1721, TRANSCRIPTS OF HEARINGS, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended by deleting Subsection 1721.2 in its entirety.

A new Section 1722, PROTEST INFORMATION FORMS, of Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is added to read as follows:

1722 PROTEST INFORMATION FORMS

1722.1 All parties who have been granted standing to a protest proceeding shall file a protest information form.

1722.2 The protest information form shall identify the following specific items:

(a) Agreements made by the parties as to any protest issues which limit the issues for hearing to those issues not disposed of or resolved by mediation;

(b) Unresolved issues that remain the subject of the protest hearing;

(c) Witnesses who are expected to testify;

(d) Exhibits the party intends to offer into evidence, with attached exhibit form;

(e) List of material facts, or the contents or authenticity of any document to which the parties have agreed to stipulate; and

(f) The relief sought.

1722.3 The protest information form must be signed by the party's representative or by the party if the party is proceeding *pro se*.

1722.4 The protest information form must contain a copy of the resume for any witness for whom a party intends to seek expert status.

1722.5 The Board may exclude at the hearing any witnesses or exhibits not disclosed on the protest information form if the Board finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.

1722.6 The Board shall have the discretion to receive documentary evidence from the parties not already listed or attached to the protest information form upon a finding of good cause.

1722.7 The protest information form and any attachments shall be served on all parties and the Board's Office of General Counsel seven (7) days prior to the hearing.

Section 1801, PROTEST PETITIONS, of Chapter 18, PETITION PROCEDURES, is amended by deleting Subsection 1801.3 in its entirety.

Copies of the 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.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2012 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to take proposed rulemaking action by adopting the following amendments to Chapter 77 (Marriage and Family Therapy) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from date of publication of this notice in the *D.C. Register*.

The purpose of this rulemaking is to extend licensure qualification to accredited online degree programs.

Chapter 77, MARRIAGE AND FAMILY THERAPY, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 7702, EDUCATIONAL REQUIREMENTS, is amended as follows:

Subsection 7702.2 is amended to read as follows:

7202.2 For the purposes of Subsection 7702.1, qualifying degrees shall consist of at least sixty (60) semester hours or ninety (90) quarter credits in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE).

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be sent to the Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, or by email to Angli.Black@dc.gov. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9:00 AM to 5:00 PM, Monday through Friday, excluding holidays.

D.C. DEPARTMENT OF HUMAN RESOURCES

NOTICE OF PROPOSED RULEMAKING

The Director of the D.C. Department of Human Resources (DCHR), with the concurrence of the City Administrator, pursuant to the authority under Mayor's Order 2008-92, dated June 26, 2008; in accordance with the Jobs for D.C. Residents Amendment Act of 2007, effective February 6, 2008 (D.C. Law 17-108; D.C. Official Code § 1-515.01 (2014 Repl.)); and, in accordance with the provisions of Section 801(e), 859, 957, and 1059 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-608.01(e), 1-608.59, 1-609.57, and 1-610.59 (2014 Repl.)), hereby gives notice of the intent to adopt, in not less than thirty (30) days from publication of this notice in the *D.C. Register*, the following amendments to Chapter 3 (Residency), of Subtitle B, Title 6, (Government Personnel), of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to amend Chapter 3 to: (1) amend Section 301 to incorporate language relating to the implementation of DCHR's Applicant Tracking System (ATS) that will require that the ten (10) points for the residency preference be awarded at the rating and ranking stage; (2) delete the provisions on the residency preference in employment for attorneys in the Excepted Service currently in Section 302; (3) amend Section 309 to clarify the submission of employee information to the Office of Tax and Revenue; (4) and amend Section 307 to delete the requirement to hold a prehearing conference prior to an evidentiary residency hearing, and to update the rules to allow for a more consistent and transparent process. Finally, non-substantive changes are being made in Sections 301, 304, 305, 306, 307 309, and 399.

Upon adoption, these rules will amend Chapter 3as published at 37 DCR 851 (January 26, 1990) and amended at 37 DCR 4117 (June 22, 1990), 40 DCR 2485 (April 16, 1993), 47 DCR 2416 (April 7, 2000), 50 DCR 6993 (August 22, 2003), 51 DCR 9309 (October 1, 2004), 52 DCR 2069 (March 4, 2005), and 55 DCR 6159 (May 30, 2008), and 56 DCR 003667 (May 8, 2009).

Chapter 3, RESIDENCY, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended to read as follows:

300 APPLICABILITY

300.1 The requirements set forth in this chapter shall apply to any applicant for or any person occupying a position in the Career Service, Legal Service, including the Senior Executive Attorney Service, Excepted Service, Management Supervisory Service, or Executive Service.

301 RESIDENCY PREFERENCE FOR EMPLOYMENT IN THE CAREER, EDUCATIONAL, LEGAL, AND MANAGEMENT SUPERVISORY SERVICES

301.1 A person who applies for competitive employment in the Career Service, Educational Service, Legal Service other than the Senior Executive Attorney Service,

or Management Supervisory Service, and who is a bona fide resident of the District of Columbia, shall be awarded a residency preference of ten (10) points at the rating and ranking stage, unless the person declines the preference points.

301.2 An employee who applies for a competitive promotion in the services listed in Subsection 301.1, who is a bona fide resident of the District of Columbia, shall be awarded a residency preference of ten (10) points at the rating and ranking stage, unless the employee declines the preference points.

301.3 When a person is selected for a position and awarded the residency preference points pursuant to this section, the person shall submit proof of bona fide residency.

301.4 Except as provided in Subsection 301.13, an applicant or employee awarded the ten (10) point residency preference and selected for a position in the services listed in Subsection 301.1 shall agree in writing at the time of appointment to maintain bona fide District residency for a period of seven (7) consecutive years from the effective date of appointment.

301. 5 The requirement to maintain bona fide District residency as provided in Subsection 301.4 shall be applicable to any applicant or employee who claims a residency preference and is selected for the position on or after February 6, 2008.

301.6 Failure to maintain bona fide District residency as provided in Subsections 301.4 or 301.5 shall result in forfeiture of employment.

301.7 For all competitive employment appointments, the personnel authority shall rank applicants on a one hundred (100) point scale. Applicants entitled to a residency preference shall have their total score increased by an additional ten (10) points at the rating and ranking stage. For example, a residency preference applicant who is scored a one hundred (100) on the one hundred (100) point scale will have a total score of one hundred and ten (110) points.

301.8 To fill a position in any of the services listed in Subsection 301.1 when two (2) or more applicants have the same numerical rating, the applicant awarded the ten (10) point preference shall be listed and selected ahead of the non-preference candidate.

301.9 Each applicant for a position in any of the services listed in Subsection 301.1 shall be informed in writing by the personnel authority of the provisions of Subsections 301.1 through 301.8.

301.10 Each person who is awarded a ten (10) point residency preference and who is competitively selected for a position in any of the services listed in Subsection 301.1 shall be informed, in writing, by the personnel authority, no later than the effective date of the appointment, of the requirement to maintain bona fide District residency for a period of seven (7) consecutive years from the effective date of appointment, and that failure to do so shall result in forfeiture of employment.

301.11 In order to be a bona fide resident of the District of Columbia, a person must maintain a place of abode in the District of Columbia as his or her actual, regular,

and principal place of residence, and must have the intent to remain in the District for a minimum of seven (7) consecutive years from the date of appointment.

301.12 Any person who meets either of the following criteria shall be granted a residency preference at the rating and ranking stage for a competitive promotion in any of the services listed in Subsection 301.1:

(a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or

(b) Pursuant to the provisions of Section 7 of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (Pub. L. No. 98-621, 98 Stat. 3376; 24 U.S.C. § 225e (b)), any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.

301.13 Each applicant for appointment or promotion shall be required to indicate at the time of application his or her claim to residency preference in a manner prescribed by the Mayor.

302 [RESERVED]

303 RESIDENCY PREFERENCE IN REDUCTION IN FORCE

303.1 Preference shall be given in a reduction in force conducted pursuant to Chapter 24 of these regulations by adding three (3) years of service credit to the service computation date of all of the following:

(a) Each competing employee who is a bona fide resident of the District of Columbia;

(b) Each competing employee who is not a resident of the District of Columbia, but who was hired prior to January 1, 1980 and has continued employment without a break in service of one (1) workday or more since that date; and

(c) Each competing employee who is not a resident of the District of Columbia, but who was a former employee of the U.S. Department of Health & Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has continued employment without a break in service of one (1) workday or more since that date.

303.2 When the provisions of this section conflict with the provisions of an effective collective bargaining agreement, the provisions of the collective bargaining agreement shall govern to the extent that there is a conflict.

304 SENIOR EXECUTIVE ATTORNEY SERVICE RESIDENCY REQUIREMENT

304.1 Any attorney appointed to the Senior Executive Attorney Service (SEAS) under the authority of D.C. Official Code §§ 1-608.51 *et seq*. (2012 Repl.) shall:

(a) Be a bona fide resident of the District of Columbia at the time of appointment and remain a District resident for the duration of employment; or

(b) Become a bona fide resident of the District of Columbia within one-hundred eighty (180) days of his or her appointment and remain a District resident for the duration of employment.

304.2 Each person appointed to the SEAS shall be informed in writing by the personnel authority of the residency provisions of Subsections 304.1 and 304.4 before the effective date of appointment.

304.3 On the date of appointment, each person appointed to the SEAS shall be informed in writing by the personnel authority of the residency provisions of Subsections 304.1 and 304.4.

304.4 Failure to meet the residency requirement set forth in Subsection 304.1 shall result in forfeiture of employment.

304.5 The residency requirement set forth in this section shall not apply to any person appointed to the SEAS who meets either of the following criteria:

(a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or

(b) Pursuant to the provisions of Section 7 of Pub. L. 98-621, any former employee of the U.S. Department of Health and Human services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.

304.6 Upon request, the Director of the D.C. Department of Human Resources (Director of DCHR), may waive the residency requirement for a new hire appointed to a hard to fill position in the SEAS, as follows:

(a) The Attorney General, in the case of the OAG, and any independent personnel authority subject to D.C. Official Code §§ 1-608.51 *et seq*. (2012 Repl.), may request a waiver of the residency requirement to the Director of DCHR, for a new hire appointed to a hard to fill position in the SEAS.

(b) For the purposes of this section, the term "hard to fill position" shall have the meaning ascribed in Section 399 of this chapter, except that a SEAS position shall be designated as hard to fill only by the Director of DCHR.

(c) Any request for a waiver shall be in writing, made and granted before the effective date of appointment of the candidate for the waiver.

(d) Any request for a waiver shall include appropriate documentation and information to demonstrate that the position is hard to fill and justify consideration of the request. Appropriate documentation and information demonstrating that the position is hard to fill shall include but not be limited to:

(1) A statement containing the qualification requirements for the position, and explaining the uniqueness of the duties and responsibilities of the position and the unusual combination of highly specialized qualification requirements which make it hard to fill;

(2) A copy of the position description or statement of duties for the position;

(3) A copy of the recruitment plan for the position or a statement explaining the recruitment plan;

(4) Copies of any vacancy announcements or other types of advertisement issued and published for the position;

(5) A statement detailing any special outreach and recruitment efforts undertaken in trying to fill the position and the date on which recruitment efforts to fill the position began;

(6) The employment application or résumé of the person for which the waiver is being requested; and

(7) A statement explaining the reasons why the waiver should be granted.

304.7 Upon receipt of a request for a waiver pursuant to this section, the Director of DCHR, shall promptly determine whether to grant the waiver and notify the requestor of the decision, in writing.

304.8 Any employee occupying a position in the SEAS for which a waiver of the residency requirement has been granted pursuant to Subsection 304.6 shall be exempt from the residency requirement for as long as he or she continues to occupy that position.

305 EXCEPTED SERVICE AND EXECUTIVE SERVICE DOMICILE REQUIREMENT

305.1 Except as provided in Subsections 305.8 and 305.9, any person who is appointed to a position in the Excepted Service, or the Executive Service on or after October 1, 2002 shall meet one (1) of the following criteria:

(a) Be a domiciliary of the District of Columbia at the time of appointment and maintain such domicile for the duration of his or her employment; or

(b) Become a domiciliary of the District of Columbia within one-hundred eighty (180) days of the date of his or her appointment and maintain such domicile for the duration of his or her employment.

305.2 Failure to meet the domicile requirement set forth in Subsection 305.1 shall result in forfeiture of employment.

305.3 Notwithstanding the provisions of Subsections 305.1 and 305.2, a person nominated to serve in an acting or interim capacity in an Executive Service position or appointed to an Excepted Service position requiring confirmation by the Council of the District of Columbia (Council) shall not become subject to the domicile requirement until after confirmation by the Council and promulgation of a Mayor's Order or a personnel action appointing him or her to the position. Specifically, such person shall become a domiciliary of the District of Columbia within one-hundred eighty (180) days from the date specified in the Mayor's Order as the date of appointment, or from the effective date of the personnel action processed after Council confirmation to appoint him or her to the position, whichever occurs first. The personnel authority shall inform each employee to whom this subsection applies, in writing, of the exact date by which he or she shall meet the domicile requirement.

305.4 Except as provided in Subsections 305.7 and 305.8, any employee in the Excepted or Executive Service who was hired prior to October 1, 2002, and who was required to be or become a bona fide resident of the District of Columbia within one-hundred eighty (180) days of appointment and maintain that residency or forfeit employment, shall continue to be bound by the residency requirement that was in effect before October 1, 2002.

305.5 Each appointee to a position in the Excepted or Executive Service shall be informed in writing by the personnel authority of the provisions of Subsections 305.1 and 305.2 before the effective date of appointment.

305.6 District of Columbia domicile shall be proven by affirmative acts by an Excepted and Executive Service employee who is not a District domiciliary at the time of appointment. Proof of District of Columbia domicile shall be established and certified by meeting the requirements in Subsections 306.4 and 306.6.

305.7 The domicile requirement shall not apply to any person who meets either of the following criteria:

(a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia

government without having had a break in service of one (1) workday or more since that date; or

(b) Pursuant to the provisions of Section 7 of Pub. L. 98-621, any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.

305.8 The personnel authority may grant a waiver of the domicile requirement to a person appointed to a position in the Excepted Service on or after October 1, 2002 under the authority of Section 903(a)(1) and (2) of the Comprehensive Merit Personnel Act (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.03 (a)(1) and (2) (2012 Repl.)), who is appointed to a hard-to-fill position or presents exceptional circumstances. The Mayor (or designee) may grant a waiver of the domicile requirement to a person appointed to a position in the Executive Service on or after October 1, 2002 under the authority of Title X-A of the CMPA (D.C. Official Code §§ 1-610.51 *et seq*. (2012 Repl.)), who is appointed to a hard-to-fill position or presents exceptional circumstances. The provisions for the granting of waivers of the domicile requirement are as follows:

(a) In the case of a hard-to-fill position in the Excepted Service, an agency head may request a waiver of the domicile requirement for the appointee to the position by submitting written justification to the personnel authority that the position is hard-to-fill. The request shall include appropriate documentation and information to demonstrate that the position is hard-to-fill and justify consideration of the request for the waiver. Appropriate documentation and information shall include:

(1) A statement containing the qualification requirements for the position and explaining the uniqueness of the duties and responsibilities of the position and the unusual combination of highly specialized qualification requirements which make it hard-to-fill;

(2) A copy of the position description or statement of duties for the position;

(3) A copy of the recruitment plan for the position or a statement explaining the recruitment plan;

(4) Copies of any vacancy announcements or other types of advertisement issued and published for the position;

(5) A statement detailing any special outreach and recruitment efforts undertaken in trying to fill the position and the date on which recruitment efforts to fill the position began;

(6) The employment application or résumé of the person for which the waiver is being requested; and

(7) A statement setting forth the reasons that the waiver should be granted.

(b) Financial hardship associated with becoming a domiciliary of the District of Columbia shall not be considered as a basis for designating a position as hard-to-fill for the purpose of granting a waiver of the domicile requirement.

(c) Upon receiving a request for a waiver of the domicile requirement for an appointee to a position in the Excepted Service deemed as hard-to-fill by the agency making the request, the personnel authority shall promptly consider the factors enumerated in Subsections 305.9(a)(1) through (7) and 305.9(b) , and any other applicable factors; determine if the position shall be designated as hard-to-fill and the waiver granted to the person appointed to the position; and notify the agency of the decision.

(d) In designating an Executive Service position as hard-to-fill and granting a waiver of the domicile requirement to the appointee to the position in question, the Mayor (or his or her designee) shall consider the factors enumerated in Subsections 305.9(a)(1) through (7), 305.9(b), and any other factors he or she deems applicable.

(e) Any waiver of the domicile requirement granted based on the designation of a position as hard-to-fill for that purpose shall remain in effect only for as long as the employee occupies the position for which the waiver was granted.

(f) A determination to grant a waiver of the domicile requirement due to exceptional circumstances shall be based on personal circumstances of the appointee to the position, or a member of his or her immediate family, of such a nature that would cause extreme hardship to the person if he or she were required to become a domiciliary of the District of Columbia. Financial hardship associated with becoming a domiciliary of the District of Columbia shall not be considered as a personal circumstance for which a waiver should be granted. The determining factor for consideration by the personnel authority authorized to grant a waiver due to exceptional circumstances should be that the particular circumstances of the appointee, combined with his or her qualifications for the position and the benefit to the District government, outweigh the need to require that the person become a domiciliary of the District of Columbia.

(g) When considering the appointment of a non-District domiciliary who is deemed as presenting exceptional circumstances to a position in the Excepted Service, the agency head (or designee) shall submit a request for a waiver of the domicile requirement for the appointee to the personnel authority, in writing, before the effective date of the appointment. The request shall include appropriate documentation and information to substantiate the claim

that the appointee to the position presents exceptional circumstances that may warrant the granting of a waiver of the domicile requirement.

(h) Upon receiving a request for a waiver of the domicile requirement for an appointee to a position in the Excepted Service due to exceptional circumstances, the personnel authority shall promptly consider the documentation and information submitted by the agency; determine if the waiver should be granted; and notify the agency of the decision.

(i) A waiver of the domicile requirement due to exceptional circumstances granted by the Mayor (or his or her designee) to an appointee to an Executive Service position shall be based on the criteria specified in Subsection 305.9(f).

(j) Any waiver of the domicile requirement granted due to exceptional circumstances shall remain in effect only for as long as the employee occupies the position for which the waiver was granted.

305.9 Under no circumstance shall a waiver of the domicile requirement pursuant to Subsection 305.8, regardless of the basis for the request, be granted after the effective date of appointment of the person for whom the waiver is sought. In the case of an appointee to the Executive Service, the term "effective date of appointment" means the date the person is appointed in an acting capacity.

305.10 A waiver of the residency requirement granted to an Excepted Service employee before October 1, 2002 shall remain in effect for as long as the employee occupies the position for which the waiver of the residency requirement was granted.

306 PROOFS, CERTIFICATION, AND DOCUMENTATION OF DISTRICT RESIDENCY

306.1 The provisions of this section apply to any person required to submit proof of bona fide District residency or, in the case of persons appointed to the Excepted and Executive Services on or after October 1, 2002, proof of District of Columbia domicile.

306.2 Documentation, certification, and affidavits required shall be in a form prescribed by the personnel authority.

306.3 No single document is conclusive in order to determine bona fide residency; however, the following may be considered:

(a) Voter registration, if any;

(b) Motor vehicle registration, if any;

(c) Motor vehicle driver permit, if any;

(d) Withholding and payment of individual income taxes including:

(1) Copies of District of Columbia tax returns certified by the D.C. Office of Tax and Revenue; and

(2) Copies of certified federal tax returns filed with the U.S. Internal Revenue Service;

(e) Certified deed or lease or rental agreement for real property;

(f) Cancelled checks or receipts for mortgage or rental payments;

(g) Utility bills and payment receipts;

(h) A copy of a bank account statement in the District of Columbia in the name of the employee;

(i) Copies of credit card or brokerage account statements mailed to the employee's principal place of residence in the District of Columbia; and

(j) Copies of automobile insurance statements for the employee based upon the employee's principal place of residence in the District of Columbia.

306.4 When a person is required to submit documents to support a claim of bona fide District residency, no less than eight (8) of the documents set forth in Subsection 306.3 shall be submitted to the personnel authority.

306.5 For each Excepted or Executive Service appointee subject to the domicile requirement pursuant to Section 305 of this chapter, proof of District domicile or of the intent of the appointee to change his or her domicile to the District of Columbia and acquire a principal place of residence in the District of Columbia shall include the following documents in addition to a minimum of four (4) of the documents set forth in Subsection 306.3:

(a) A copy of a change of address form filed with the United States Postal Service containing the address of the employee's principal place of residence in the District of Columbia;

(b) A copy of an executed contract of sale for the real property that was the employee's principal place of residence at the time of accepting the employment, if the employee owns a principal place of residence outside of the District of Columbia; or a copy of a change in the public records of the state where the employee was domiciled to show that the residence outside of the District of Columbia is no longer the employee's principal place of residence;

(c) Copies of utility bills, including electric, gas, telephone, cable, water or other residency bills associated with occupying real property in the District of Columbia, where the billing and mailing address are the same as the principal

place of residence;

(d) A copy of a bank account statement in the District of Columbia in the name of the employee;

(e) A copy of District of Columbia and federal income tax returns that use the District of Columbia address which is the employee's principal place of residence;

(f) Copies of professional dues statements mailed to the employee's principal place of residence in the District of Columbia;

(g) A sworn affidavit from the employee that the administration of the employee's estate is subject to District of Columbia probate and estate taxes;

(h) Copies of credit card or brokerage account statements mailed to the employee's principal place of residence in the District of Columbia;

(i) Copies of automobile, health, and life insurance contracts for the employee based upon the employee's principal place of residence in the District of Columbia;

(j) Copies of mortgage statements for the employee's principal place of residence in the District of Columbia, or an executed lease for the employee's principal place of residence in the District of Columbia; and

(k) A sworn affidavit from the employee that the employee's income, from any source, is subject to District of Columbia withholding tax and taxation.

306.6 An Excepted or Executive Service employee subject to the domicile requirement shall fulfill the requirements of Subsection 306.5 by filing a sworn affidavit with the personnel authority that affirms that the employee has undertaken affirmative acts to comply with each requirement, and when the requirement is not applicable, the reasons why the requirement does not apply.

306.7 A person who claims a residency preference as provided in Subsections 301.1 or 301.2 and who is selected for the position shall, on or before the effective date of appointment or promotion, sign a statement that certifies the following:

(a) That the person has received written notification of the residency preference requirement;

(b) That the person has read the notice, has been given an opportunity to ask questions about the residency preference requirement, and understands the residency preference requirement;

(c) That the person understands that failure to maintain bona fide residency in the District of Columbia for a period of seven (7) consecutive years from the effective date of appointment will result in forfeiture of the position; and

(d) That the place of residence stated in the certification is the person's actual, regular, and principal place of residence.

306.8 A person who is appointed to a position in the Excepted or Executive Services on or after October 1, 2002 and who claims that he or she is a District domiciliary shall sign a statement on or before the effective date of appointment to the position, whether it is an initial appointment or other appointment, which certifies the following:

(a) That the person has received written notification of the domicile requirement;

(b) That the person has read the notice, has been given an opportunity to ask questions about the domicile requirement, and understands the domicile requirement;

(c) That the person understands that failure to remain a District domiciliary for the duration of employment shall result in forfeiture of the position; and

(d) That the place of residence stated in the certification is the person's domicile.

306.9 Unless exempted pursuant to Subsections 305.7 and 305.8 , each Excepted or Executive Service appointee or employee who is not a domiciliary of the District of Columbia on the date of appointment to a position, whether it is an initial appointment or other appointment, shall sign a statement when appointed, which certifies the following:

(a) That the person has received written notification of the domicile requirement;

(b) That the person has read the notice, has been given an opportunity to ask questions about the domicile requirement, and understands the domicile requirement;

(c) That the person intends to become a domiciliary of the District of Columbia within one-hundred eighty (180) days of the date of appointment;

(d) That the person understands that failure to become a domiciliary of the District of Columbia within one-hundred eighty (180) days from the date of appointment shall result in forfeiture of the position; and

(e) That the person understands that failure to remain a District domiciliary for the duration of employment shall result in forfeiture of the position.

306.10 Each Excepted or Executive Service appointee subject to the requirements of Subsection 305.1 who is not a domiciliary of the District of Columbia on the date of appointment shall provide to the personnel authority, within one-hundred eighty (180) days of the date of appointment, sufficient documentation, as provided in Subsections 306.3, 306.5 and 306.6, which demonstrates that he or she has become a domiciliary of the District of Columbia.

306.11 Each agency head or independent personnel authority shall designate an agency representative to fulfill the requirements specified in Subsections 306.12, 306.13, Sections 307, and 309.

306.12 Between November 1 and November 30 of each year after the first year of employment, up to the end of the required period of bona fide District residency or District domicile, each employee required to be a bona fide resident or District domiciliary shall submit to the agency representative an affidavit which certifies at least the following:

(a) That he or she is currently, and has been continuously for the preceding twelve (12) month period, in compliance with the provisions of the residency or domicile requirements, as applicable;

(b) The home address(es) for the preceding twelve (12) month period;

(c) The address used on the individual income tax return filed with the District of Columbia during the preceding twelve (12) month period; and

(d) The address used on the individual income tax return filed with the United States Internal Revenue Service during the preceding twelve (12) month period.

306.13 The agency representative, at a time he or she shall determine, but within one (1) year following the date on which the employee became subject to the residency or domicile requirements, shall request, and the employee shall provide, sufficient documentation to demonstrate that the employee is in compliance.

307 RESIDENCY DETERMINATION HEARINGS

307.1 (a) Whenever the personnel authority has reasonable cause to believe that an employee of an agency subject to its personnel authority is not in compliance with the residency or domicile requirements, the personnel authority shall issue to the employee a written notice to show cause why his or her employment should not be forfeited.

(b) Whenever an agency head has reasonable cause to believe that an employee of the agency is not in compliance with the residency or domicile requirements, the agency head shall notify the personnel authority, and request that the personnel authority issue to the employee a written notice to show cause why his or her employment should not be forfeited.

307.2 The personnel authority shall issue the notice to show cause why employment should not be forfeited only during the period of time that the employee is required to maintain bona fide District residency or be a District domiciliary.

307.3 The personnel authority shall designate a hearing officer or officers to conduct residency determination hearings.

307.4 The standard of proof in a residency or domicile determination case shall be by a preponderance of the evidence.

307.5 The agency representative bears the burden of proof and persuasion concerning the employee's alleged non-compliance with the residency or domicile requirement.

307.6 If the hearing officer determines, after a record review, that the agency representative has established by a preponderance of the evidence that the employee is not in compliance with the residency or domicile requirements, the burden of proof shall shift to the respondent employee.

307.7 The respondent employee shall have an opportunity to rebut the evidence presented by the agency representative, cross-examine any witness called by the agency, and by present evidence that demonstrates compliance with the residency or domicile requirements.

307.8 The respondent employee may be represented at any evidentiary hearing by counsel if he or she so chooses.

307.9 The agency representative shall have an opportunity to cross-examine any witness called by the respondent employee, and any witness who testifies on behalf of the respondent employee, including the respondent employee.

307.11 After any evidentiary hearing, the hearing officer shall issue a proposed written determination on the residency status of the respondent employee within a reasonable period of time and shall serve a copy of the proposed determination on the agency representative and on the respondent employee.

307.12 The employee shall have a period of ten (10) days from the receipt of the proposed determination to file written exceptions with the hearing officer and serve a true copy to the agency in response to a proposed determination of noncompliance with the residency or domicile requirements.

307.13 Upon review of the record, including any timely filed pleadings, the hearing officer shall order an evidentiary hearing or issue a proposed final decision on compliance with the residency or domicile requirements.

307.14 The personnel authority shall issue a written final decision on the issue of compliance with the residency or domicile requirement to the employee, the agency representative, and the agency head.

307.15 A final decision by the personnel authority of noncompliance with the residency domicile requirements shall result in forfeiture of employment by the employee.

307.16 The Director of DCHR, shall notify a subordinate agency head, and the Mayor, when there is reasonable cause to believe that a subordinate agency head is not in compliance with the residency or domicile requirements, as applicable. Upon notification, the Mayor shall determine the appropriate course of action to be taken.

308 [RESERVED]

309 REPORTING REQUIREMENTS

309.1 By November 1 of each year, each personnel authority shall submit to DCHR a listing of employees which shall include the name, social security number, and employing agency of each employee subject to the residency or domicile requirements who was appointed prior to January 1 of the current year.

309.2 Each personnel authority shall obtain permission from employees identified in Subsection 309.1 for the personnel authority to request tax returns from the Office of Tax and Revenue.

309.3 The DCHR, on a date specified by the Director of DCHR, shall request from the Office of Tax and Revenue the filing status and mailing address used on the individual income tax return filed in that calendar year for each employee identified pursuant to Subsection 309.1.

309.4 Agencies of the District of Columbia government having regulatory or administrative authority relating to any factor that may be used in making a determination of bona fide residency or District of Columbia domicile shall provide the agency representative with information that may be requested. Information requested and released under this section shall be in accord with applicable statutory privacy restrictions.

309.5 The Mayor shall integrate into each subordinate agency's annual performance objectives the rate of success in hiring District of Columbia residents. Audit reports of the residency preference shall be submitted annually to the Council. Audit reports shall be submitted annually to the Council.

399 DEFINITIONS

399.1 When used in this chapter, the following meanings apply:

Agency – the meaning set forth in D.C. Official Code § 1-603.01(1) (2012 Repl.), but including boards and commissions as described in D.C. Official Code § 1-603.01(2) (2012 Repl.), and excluding the courts.

Agency head – the highest ranking executive official of an agency.

Agency representative – any person(s) designated by the agency head to receive and review factors and documents, conduct investigations, and represent the agency at residency preference or District of Columbia domicile determination hearings.

Assembled examining procedure – a computerized or multiple-choice written examination or test which may include a typing or data-entry skills test.

Bona fide resident – any person who maintains a place of abode in the District of Columbia as his or her actual, regular, and principal place of residence.

Claim – completion of *Form DC-2000RP, Residency Preference for Employment*, by a bona fide District resident at the time of application for competitive employment or competitive promotion who agrees in writing that, if selected, he or she will maintain bona fide District residency for seven (7) consecutive years from the date of appointment or promotion.

Competitive promotion – the change of an employee to a position at a higher grade or class level within the same job classification system and pay schedule, or to a position with a higher representative rate in a different job classification system and pay schedule, as a result of open competitive procedures.

Counsel – an attorney at law who may be chosen by an employee to represent the employee in a residency or District of Columbia domicile determination adjudication.

Days – calendar days, unless otherwise stated. In computing a period of time prescribed by these regulations, the day of the action or event triggering the count is not included in the computation. The last day of the period shall not be a Saturday, Sunday, or legal holiday, but shall be the end of the next day which is not a Saturday, Sunday, or legal holiday.

District domicile – physical presence in the District of Columbia; and an intent to abandon any and all former domiciles and remain in the District of Columbia for the duration of an Excepted or Executive Services appointment.

Exceptional circumstances – conditions or facts that are uncommon, deviate from or do not conform to the norm, or are beyond willful control, which are presented to the personnel authority by an agency head or the Mayor, when hiring an individual to fill a position in the Excepted or Executive Services, and which shall be considered by the personnel authority in determining the reasonableness of granting a waiver of the domicile requirement to that individual.

Forfeiture – the loss of employment as a result of the failure of the employee to comply with the provisions of the residency preference or domicile requirements.

Hard to fill position – a position so designated by the personnel authority on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.

Immediate family – a person who is related to the appointee to a position in the Excepted Service pursuant to Section 903(a)(1) and (2) of the Comprehensive Merit Personnel Act (CMPA), effective March 3, 1979

(D.C. Law 2-139; D.C. Official Code § 1-609.03 (a)(1) and (2) (2012 Repl.)) or the Executive Service as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

Mayor – the Mayor of the District of Columbia or his or her designee.

Personnel authority—an individual or entity authorized by D.C. Official Code § 1-604.06 (2012 Repl.) to implement personnel rules and regulations for employees of an agency or group of agencies of the District of Columbia; or persons delegated that authority by that individual or entity.

Preponderance of evidence – that which is more convincing to the mind—more likely than not. That amount (weight) of evidence which convinces as to its truthfulness.

Reasonable cause – that composite of facts from which a reasonably prudent person might determine that an employee is not in compliance with the residency preference or domicile requirements.

Subordinate agency – any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in Section 301(q) of the CMPA (D.C. Official Code § 1-603.01(17) (2012 Repl.)).

Unassembled examining procedure – an examination that does not require a written test.

Comments on these proposed regulations should be submitted, in writing, within thirty (30) days of the date of the publication of this notice to Mr. Justin Zimmerman, Associate Director, Policy and Compliance Administration, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 330S, Washington, D.C. 20001, or via email at justin.zimmerman@dc.gov. Additional copies of these proposed regulations are available at the above address.

OFFICE OF THE MAYOR

NOTICE OF SECOND PROPOSED RULEMAKING – ADDENDUM TO THE PREAMBLE

The Mayor of the District of Columbia, pursuant to Section 1 of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, effective April 27, 2013 (D.C. Law 19-289; D.C. Official Code § 1-303.21 (2014 Repl.)), and Mayor's Order 2011-181, dated October 31, 2011, hereby gives notice of the intent to adopt a new Title 13 (Sign Regulations) of the District of Columbia Municipal Regulations (DCMR).

The proposed new title would update and consolidate the District's current sign regulations into a single title, removing the bulk of these provisions from the Building Code and scattered sections of the DCMR. It would clarify provisions relating to approval of Special Signs and billboards; amend the current rules to respond to issues raised by the Federal Highway Administration; create new Designated Entertainment Areas that would be open to the display of new signs; clarify the existing regulations as they relate to signs on public space, private property, and specific areas of the District; establish a means for enforcement; and establish a permit application fee schedule.

The Notice of Second Proposed Rulemaking, published February 13, 2015 at 62 DCR 2015, supersedes the Notice of Proposed Rulemaking published on August 17, 2012 at 59 DCR 33, and reflects changes made in response to comments received from the public.

In addition, the Mayor is extending the public comment period on the proposed rulemaking to adopt a new Title 13 DCMR, governing signs. The original ninety (90) day public comment period, scheduled to end on May 14, 2015**,** is being extended until July 13, 2015.

Section 1 of the Act requires the Mayor to submit the proposed rules to the Council for a forty-five (45) day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The proposed rules shall not become effective until the rulemaking is approved by the Council.

Significant changes to the first Notice of Proposed Rulemaking, proposing a new Title 13 DCMR, SIGN REGULATIONS, include:

Chapter 1: Provisions for the treatment of existing signs have been added.

Chapter 2: Provides that the permit for a sign be kept for inspection on the premises where the sign is displayed (§ 202.2). Requires exempted signs to be displayed safely (§ 202.4). Requires the applicant to obtain all other approvals necessary for the display of the sign before applying for the sign permit. Evidence of these approvals must be submitted with the application (§ 204.2). Requires the applicant to request a written explanation for the denial of a permit, and allows the permitting official three (3) business days to provide the explanation (§ 205.2). States that signs shall be maintained pursuant to the Property Maintenance Code (§ 206.1). Includes

new implementation provisions providing that existing permitted signs remain subject to the requirements existing at the time of the permit, unpermitted signs must come into compliance with the new requirements and be permitted within 90 days, and signs under construction may continue under the conditions of an existing permit (§§ 207.1 – 207.5). Provides for a preliminary review of a permit application where multiple approvals are required (§ 208.1).

Chapter 3: Provides that all signs in areas subject to review by the Commission on Fine Arts require a permit, except those smaller than one square foot (1 sq. ft.) (§ 302.1). Requires the permitting official to refer the application to the Commission and the Commission to respond in accordance with its rules and timeframes (§ 303). States new prohibitions for types of signs in these areas, but allows full motion video on college campuses where not visible to the general public (§ 304). Contains changes to the characteristics of permitted signs, including methods of illumination.

Chapter 4: States that signs in areas subject to review by the Historic Preservation Review Board or Historic Preservation Office require a permit unless specifically exempted by Chapter 4 (§ 402.1). Includes minor changes to the application procedure (§ 403). Prohibits variable message signs and full motion video under new definitions, except on college campuses where not visible to the general public (§ 404). Removes a restriction relating to signs on canopies. (§ 407.2).

Chapter 5: Provides that signs larger than one square foot (1 sq. ft.) in the Chinatown District require a permit (§ 502.1). Simplifies the requirements for a sign permit application in this District (§ 503.1). Requires the applicant to obtain Office of Planning and Historic Preservation clearance before applying for a sign permit (§§ 503.2 – 503.6).

Chapter 6: Specifies that signs on property that extend more than forty-two inches (42 in.) into public space are subject to this chapter (§ 600.2). States a broad prohibition on commercial signs on public space, public buildings, public structures, and public fixtures, with a limited exception (§ 601.1). Requires a permit for all signs on public space larger than one square foot (1 sq. ft.), except for certain non-commercial temporary signs (§ 603.1). States that illuminated signs require a separate electrical permit (§ 603.2). States the duration of permits for banners and permanent signs on public space (§ 603.3). Requires the applicant for a permanent sign to obtain the approval of the Public Space Committee, and other required approvals, and to submit proof of these approvals with the application for a sign permit (§ 604.5). Moves general requirements and restrictions closer to the beginning of the chapter and expands these provisions (§ 606). Clarifies that non-commercial temporary signs on public space require a permit if they are subject to review by the Commission, the Office of Planning, the Historic Preservation Review Board or the Historic Preservation Office, or the Chinatown Steering Committee (§ 607.8). States that temporary construction signs require a permit and adds requirements for these signs (§§ 607.9 – 607.11). Provides requirements associated with temporary directional signs related to an event (§ 607.12). Revises the requirements for sidewalk signs, banners, and permanent signs (§§ 608 - 610). Expands the provisions relating to signs on vehicles to include restrictions relating to signs on vehicles parked on public space and to signs on vessels (§§ 611.2 and 611.8).

Chapter 7: Excludes certain types of signs covered by other chapters from the requirements of Chapter 7 (§ 700.2). Provides that zoning orders take precedence over the chapter (§ 700.3). States that permits for signs on private property are subject to the administrative and enforcement provisions of the Building Code (§ 700.4). Includes several categories of prohibited signs (§ 702.2). Requires illuminated signs to have an electrical permit and comply with luminance standards (§ 703.2). Revises the requirements of the permit application (§ 704.1). Clarifies that a sign permit to display a sign is in addition to a building permit to construct the sign (§§ 704.2 – 704.5). Allows work to continue under certain circumstances with respect to permits issued prior to the effective date of the title (§§ 704.6 - 704.7). Requires the applicant to obtain all relevant approvals and include them in the application for a sign permit. States a revised process for the evaluation of applications (§ 705). Requires the applicant to have the work inspected and obtain a certificate of inspection approving the sign from the permitting official. Requires bi-annual renewal of the certificate of inspection for specified categories of signs (§ 705). Revises the general requirements and restrictions for signs on private property and adds requirements for inspection, maintenance, and removal (§ 707). Adds a new section that allows non-commercial signs without a permit under specified circumstances (§ 708). Allows temporary commercial signs on private property without a permit if the sign displayed for less than one hundred-eighty (180) days, does not use electricity or require other approvals, and is six square feet (6 sq. ft.) or less. Allows for temporary directional signs for events (§ 709). Provides specific requirements for banners (§ 710). Prohibits variable message signs on roofs (§ 712.5). Specifies requirements for freestanding signs (§ 713). Eliminates sections relating to wall signs and ground and pole signs. Allows full motion video on signs in Designated Entertainment Areas ("DEAs") (§ 714.2). Requires variable message signs to comply with luminance standards (§ 714.9). Adds a section allowing transit information signs without a permit (§ 715). Moves rules relating to real estate signs to a new Chapter 8. Revises requirements for the sizes of different types of signs and adds luminance standards.

Chapter 8: Adds a new chapter related to real estate signs. Requires a permit for real estate signs greater than ten square feet (10 sq. ft.) (§ 802.1). States requirements for temporary directional signs for an open house (§ 802). States revised requirements for real estate signs and those for construction projects (§§ 805 - 806).

Chapter 9: Elaborates on process for designating DEAs (§ 900.2(e)). States permit and inspection certificate requirements for DEA signs (§ 902). Reduces permit application requirements and incorporates requirements for private property signs (§ 904). Amends the timeframes for permit issuance to be in accord with Commission and ANC review periods (§ 905). Requires DEA signs to comply with luminance standards (§ 906.6). Contains additional detail about where certain DEA signs may be located (§ 906.8). Requires ANC notification of any DEA sign that includes moving images (§ 906.10) and for changes in Verizon Center graphics (§ 907.7). Prohibits full motion video for off-premises advertising (§ 907.2). Adds luminance standards and maintenance and removal provisions (§§ 908 - 909).

Chapter 10: Requires initial and bi-annual inspections of special signs (§ 1002.1). Requires an applicant for a transfer in location or change in artwork to be the owner of a permitted special sign and to have a valid certificate of inspection (§ 1004). Simplifies the permit application process. Revises time frames for action by different agencies on applications for relocation (§

1005). Places location restrictions relating to Special Purpose Districts (§§ 1006, 1010). Requires that the display area of a relocated special sign be equal to or lesser than the sign being relocated (§ 1007.3). Allows applicant to combine applications for transfer and change in artwork (§ 1009.4). Reduces the timeframes for reviewing applications (§ 1009.6). Requires a sign owner to obtain a demolition permit if needed for the removal of a special sign (§ 1011.1).

Chapter 11: Prohibits issuance of a permit to replace an existing permitted billboard with a sign that is internally illuminated (§ 1102.2). Requires owners of existing permitted billboards to apply for a sign permit (§ 1103.1). Provides owners of existing billboards that are not on the authorized list six (6) months to establish that they were approved by the District (§ 1106.1).

Chapter 12: No significant changes.

Chapter 13: Removes list of specific infractions. Lists applicable enforcement mechanisms.

Chapter 14: Provides cross references for applicable fee schedules.

Chapter 99: Includes definitions of "animated," "building restriction area," "building restriction line," "business day," "Civil Infractions Act," "commercial advertising," various D.C. Codes, "digital sign," various zoning districts, "first story," "freestanding sign," "full motion video," "illumination," "lot line," "luminance," "nit," "neon sign," "non-commercial advertising," "off-premise advertising," "on-premise advertising," "public space," "Residential Group R," "sidewalk sign," "sidewalk sign," and "transit information sign." Definitions of "variable message sign," "display," and "designated entertainment area" were amended.

All persons interested in commenting on the subject matter of the proposed rulemaking may file comments in writing, not later than sixty (60) days after the publication of this addendum to the Notice of Second Proposed Rulemaking in the *D.C. Register*, with Alice Kelly, Manager, Policy Branch, Planning and Sustainability Administration, District Department of Transportation, 55 M Street, S.E., 5th Floor, Washington, D.C. 20003. All comments received by Monday, July 13, 2015 will be considered. Comments may also be sent electronically to policy.ddot@dc.gov. Copies of the 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 Transportations' website at www.ddot@dc.gov.

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 § 47-1335 (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 (2014 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 3 (Real Property Taxes) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendment to Section 317 (Tax Sale Threshold) adds a new Subsection 317.6, which sets forth the minimum threshold amounts of taxes for which real properties may be sold at tax sales, beginning with the July 2015 tax sale and for tax sales thereafter.

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 3, REAL PROPERTY TAXES, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:

Subsection 317.6 of Section 317, TAX SALE THRESHOLD, is added to read as follows:

317.6 For annual tax sales in July 2015 and prospectively, only those real properties advertised to be sold at the tax sale held under Section 47-1346 of the D.C. Official Code and: (1) with improvement shall be presented for auction for a liability (before tax sale costs) of at least two thousand five hundred dollars ($2,500); or, (2) unimproved shall be presented for auction for a liability (before tax sale costs) of at least two hundred dollars ($200). The meanings of the words "improvement" and "unimproved" are as defined in 9 DCMR § 9903.1.

Comments on this proposed rulemaking should be submitted to Robert McKeon, Deputy Chief Counsel, Office of Tax and Revenue, no later than thirty (30) days after publication of this notice in the *D.C. Register*. Robert McKeon may be contacted by: mail at DC Office of Tax and Revenue, 1101 4th Street, SW, Suite 750, Washington, DC 20024; telephone at (202) 442-6513; or email at robert.mckeon@dc.gov. Copies of this rule and related information may be obtained by contacting Robert McKeon as stated herein.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

The District Department of Transportation (DDOT) is extending the public comment period on the second proposed rulemaking concerning private improvements to certain United States Reservations under the jurisdiction of DDOT. The original thirty (30) day public comment period, which ended on May 2, 2015, is being extended until June 7, 2015.

The second proposed rulemaking was published in the *D.C. Register* on April 3, 2015 at 62 DCR 3968. All comments received by Tuesday, June 2, 2015 will be considered.

A copy of the proposed rulemaking is available at the following link: http://dcregs.dc.gov/Gateway/NoticeHome.aspx?noticeid=5396127

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 electronically on the District Department of Transportation's website at www.ddot.dc.gov.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of Section 1927, entitled "Personal Emergency Response System Services" of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Development Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of personal emergency response system services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Emergency Amendment Act of 2014, signed July 14, 2014 (D.C. Act 20-377; 61 DCR 007598 (Aug. 1, 2014)). The amendment must also be approved by CMS, which will affect the effective date for the emergency rulemaking.

Personal Emergency Response System (PERS) is an electronic device that enables persons who are at high risk of institutionalization to secure help in an emergency. The person may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal a response center once the "help" button is activated. Trained professionals staff the response center. PERS services are available to those individuals who live alone, who are alone for significant parts of the day, or who would otherwise require extensive routine supervision. The Notice of Final Rulemaking for 29 DCMR § 1927 (Personal Emergency Response System Services) was published in the *D.C. Register* on March 21, 2014, at 61 DCR 002470. These rules amend the previously published final rules by (1) clarifying the requirements that the criteria set forth in Section 1906 of Title 29 DCMR, Chapter 19 only apply to responders who are employed by a provider agency; (2) correcting the identification of the agency for incident reporting; (3) allowing PERS to be delivered concurrently with Supported Living Periodic services and Supported Living with Transportation Periodic services; (4) eliminating the prohibition from PERS being provided for a person receiving Host Home services; and (5) changing the rate for monthly rental, maintenance, and service fee.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of ID/DD Waiver services. The ID/DD Waiver serves some of the District's most vulnerable residents. As discussed above, these amendments

clarify certain requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on April 24, 2015, but these rules shall become effective for services rendered on or after June 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of June 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment. The emergency rules shall remain in effect for one hundred and twenty (120) days or until August 22, 2015 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date of these emergency rules with the Notice of Final Rulemaking. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication on this notice in the *D.C. Register*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsections 1927.11, 1927.14, 1927.18 and 1927.20 of Section 1927, PERSONAL EMERGENCY RESPONSE SYSTEM SERVICES, are amended to read as follows:

1927 PERSONAL EMERGENCY RESPONSE SYSTEM (PERS) SERVICES

1927.11 If the responder who will be in direct contact with the person is an employee of a Medicaid Waiver provider agency, he or she shall meet all of the requirements set forth in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1927.14 Each provider of Medicaid reimbursable PERS services shall follow the DDS Developmental Disabilities Administration (DDA) incident reporting process within twenty four (24) hours of an emergency response. Emergency responses shall not include test signals or activations made by a person.

1927.18 Medicaid reimbursable PERS services shall only be provided in a person's personal residence. PERS shall not be provided to persons receiving Residential Habilitation services, Supported Living or Supported Living with Transportation services, with the exception of Supported Living Periodic and Supported Living with Transportation Periodic services.

1927.20 Medicaid reimbursement for PERS services shall be as follows:

(a) Fifty dollars ($50.00) for the initial installation, training, and testing; and

(b) Thirty dollars and thirty-nine cents ($30.39) for the monthly rental, maintenance, and service fee.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-122
April 29, 2015

SUBJECT: Appointment – Executive Director, Office on Latino Affairs

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) (2014 Repl.), and in accordance with section 302 of the District of Columbia Latino Community Development Act, effective September 29, 1976, D.C. Law 1-86, D.C. Official Code § 2-1312 (2012 Repl.), and pursuant to the Director of the Office of Latino Affairs Jackie Reyes-Yanes Confirmation Resolution of 2015, effective April 14, 2015, Res. 21-0079, it is hereby **ORDERED** that:

1. **JACKIE REYES-YANES** is appointed Executive Director, Office of Latino Affairs, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-089, dated March 16, 2015.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to April 14, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-123
April 29, 2015

SUBJECT: Appointment – Director, Department of Small and Local Business Development

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) (2014 Repl.), and pursuant to section 2312 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005, D.C. Law 16-33, D.C. Official Code § 2-218.12 (2012 Repl.), and pursuant to the Director of the Department of Small and Local Business Development Ana Harvey Confirmation Resolution of 2015, effective April 14, 2015, Res. 21-0066, it is hereby **ORDERED** that:

1. **ANA HARVEY** is appointed Director, Department of Small and Local Business Development and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-012, dated January 2, 2015.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to April 14, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-124
April 29, 2015

SUBJECT: Appointment – Executive Director, Office on African Affairs

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) (2014 Repl.), and section 3 of the Office and Commission on African Affairs Act of 2006, effective June 8, 2006, D.C. Law 16-111, D.C. Official Code § 2-1392, and pursuant to Director of the Office of African Affairs Mamadou Samba Confirmation Resolution of 2015, effective April 14, 2015, Res. 21-0081, it is hereby **ORDERED** that:

1. **MAMADOU SAMBA** is appointed Executive Director, Office on African Affairs, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-092, dated March 16, 2015.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to April 14, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-125
April 29, 2015

SUBJECT: Appointment – Executive Director, Office on Asian and Pacific Islander Affairs

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) (2014 Repl.), and pursuant to section 304 of the Office on Asian and Pacific Island Affairs Establishment Act of 2001, effective October 3, 2001, D.C. Law 14-28, D.C. Official Code § 2-1373 (2012 Repl.), and pursuant to the Director of the Office on Asian and Pacific Islander Affairs David Do Confirmation Resolution of 2015, effective April 14, 2015, Res. 21-0078, it is hereby **ORDERED** that:

1. **DAVID DO** is appointed Executive Director, Office on Asian and Pacific Islander Affairs, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-088, dated March 16, 2015.

3. **EFFECTIVE DATE**: This Order shall be effective *nunc pro tunc* to April 14, 2015.

MURIEL E. BOWSER
MAYOR

ATTEST:
LAUREN C. VAUGHAN
ACTING SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MAY 13, 2015
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

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

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00016; T & L Investment Group, LLC, t/a Panda Gourmet
2700 New York Ave NE, License #86961, Retailer CR, ANC 5C
Substantial Change (Entertainment Endorsement)

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CC-00186; 1010 V, LLC, Josephine, 1010 Vermont Ave NW
License #76906, Retailer CT, ANC 2F
Sale to Minor Violation

Show Cause Hearing (Status) **9:30 AM**
Case # 14-AUD-00119; Jha Corporation, t/a Recessions II, 1823 L Street NW
License #60567, Retailer CT, ANC 2B
Failed to Maintain Books and Records

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CMP-00590; Coddi Wes 1, t/a Rebellion, 1836 18th Street NW
License #94825, Retailer CR, ANC 2B
Operating After Hours

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CMP-00555; Cham Restaurant Group, t/a New Town Kitchen and
Lounge, 1336 U Street NW, License #93095, Retailer CT, ANC 1B
Noise Violation, Violation of Settlement Agreement, Failed to Post License Conspicuously in the Establishment

Board's Calendar
May 13, 2015

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CMP-00538; Cham Restaurant Group, t/a New Town Kitchen and Lounge, 1336 U Street NW, License #93095, Retailer CT, ANC 1B
Noise Violation, Violation of Settlement Agreement

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CMP-00712; Legal Sea Foods, LLC, t/a Legal Sea Foods, 704 7th Street NW, License #60194, Retailer CR, ANC 2C
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 14-AUD-00069; Thirteenth Step, LLC, t/a Kitty O' Sheas DC, 4624 Wisconsin Ave NW, License #90464, Retailer CR, ANC 3E
Failed to File Quarterly Statements (1st Quarter 2014)

Show Cause Hearing (Status) **9:30 AM**
Case # 14-AUD-00099; Thirteenth Step, LLC, t/a Kitty O' Sheas DC, 4624 Wisconsin Ave NW, License #90464, Retailer CR, ANC 3E
Failed to File Quarterly Statements (2nd Quarter 2014)

Show Cause Hearing (Status) **9:30 AM**
Case # 14-251-00308; Superclub Ibiza, LLC, t/a Ibiza, 1222 First Street NE License #74456, Retailer CN, ANC 6C
Failed to Follow Security Plan, Interfered with an Investigation

Fact Finding Hearing* **9:30 AM**
Johnny Rockets Group, Inc., t/a Johnny Rockets; 3131 M Street NW, License #81606, Retailer CR, ANC 2E
Request to Extend Safekeeping

Show Cause Hearing* **10:00 AM**
Case # 13-CMP-00289; Taj Mahal Enterprises, Ltd., t/a The Manor (formerly-Fiesta Restaurant & Lounge), 1327 Connecticut Ave NW, License #882, Retailer CR, ANC 2B
No ABC Manager on Duty

Show Cause Hearing* **11:00 AM**
Case # 14-AUD-00032; Taj Mahal Enterprises, Ltd., t/a Fiesta Restaurant and Lounge, 1327 Connecticut Ave NW, License #882, Retailer CR, ANC 2B
Failed to Allow an ABRA Investigator to Enter or Inspect Without Delay or Otherwise Interfered with an Investigation, Failed to Qualify as a Restaurant, Failed to Maintain Books and Records

Board's Calendar
May 13, 2015

Fact Finding Hearing* **1:30 PM**
District Winery, LLC, t/a District Winery; 385 Water Street SE, License #98684
Retailer CX, ANC 6D
Application for a New License

Show Cause Hearing* **2:00 PM**
Case # 13-CMP-00373; Decatur Liquors, Inc., t/a Uptown Wine & Spirits
4704 14th Street NW, License #24362, Retailer A, ANC 4C
Sold Fewer Than Six Miniature Bottles of Spirits

Fact Finding Hearing* **3:00 PM**
The Andrew Keegan Theatre, Co., t/a The Andrew Keegan Theatre Company
1742 Church Street NW, License #98780, Retailer DX, ANC 2B
Application for a New License

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, MAY 13, 2015
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On May 13, 2015 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#15-251-00082 Eclipse Restaurant & Nightclub, 2820 BLADENSBURG RD NE Retailer C Nightclub, License#:ABRA-075424

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2. Case#15-251-00043 Madam's Organ, 2461 18TH ST NW Retailer C Tavern, License#: ABRA-025273

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3. Case#15-251-00077 The Fireplace, 2161 P ST NW Retailer C Tavern, License#: ABRA-014419

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4. Case#15-CMP-00219 Mesobe Restaurant and Deli Market, 1853 7TH ST NW Retailer C Restaurant, License#:ABRA-081030

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5. Case#15-251-00083 Mad Hatter, 1321 CONNECTICUT AVE NW Retailer C Tavern, License#: ABRA-082646

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6. Case#15-251-00079 Little Miss Whiskey's Golden Dollar, 1104 H ST NE Retailer C Tavern, License#: ABRA-079090

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7. Case#15-CMP-00218 B Cafe/Brookland Cafe, 3740 12TH ST NE Retailer C Restaurant, License#: ABRA-083121

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8. Case#15-CMP-00210 Anacostia Market, 1303 GOOD HOPE RD SE Retailer B Retail - Class B, License#: ABRA-086470

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9. Case#14-251-00341 Mova, 2204 14TH ST NW Retailer C Tavern, License#: ABRA-087030

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10. Case#15-251-00078 Da Luft Restaurant & Lounge, 1242 H ST NE Retailer C Restaurant, License#: ABRA-087780

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11. Case#15-CMP-00134 Shaws Tavern, 520 FLORIDA AVE NW Retailer C Tavern, License#: ABRA-088569

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12. Case#15-CC-00004(a) West End Market, 2424 PENNSYLVANIA AVE NW Retailer A Retail - Liquor Store, License#: ABRA-090448

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13. Case#15-CMP-00057 Juanita's Restaurant, 3521 14TH ST NW Retailer C Tavern, License#: ABRA-091432

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, MAY 13, 2015 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request to Remove License from Safekeeping Status. ANC 3D. SMD 3D08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Shemali's,*** 3301 New Mexico Avenue NW #117, Retailer B, License No. 070233.

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2. Review Request for Extension of Safekeeping of Licensing through March 31, 2016. Extensions have been requested twice a year since the Original Safekeeping Date of 03/01/2010. ANC 2A. SMD 2A01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***The George Washington University Club***, 1918 F Street NW, Retailer CX, License No. 026668.

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3. Review Request for Extension of Safekeeping of Licensing through March 31, 2016. Extensions have been requested twice a year since the Original Safekeeping Date of 03/01/2010. ANC 2A. SMD 2A08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Alumni House***, 1925 F Street NW, Retailer CX, License No. 060219.

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4. Review Motion for Reconsideration to Reinstate Cancelled License upon payment of renewal fees. Licensee requests late payment fees be waived. ANC 1D. SMD 1D02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Sangria Café***, 3636 16th Street NW A, Retailer CR, License No. 090781.

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5. Review Application for Entertainment Endorsement. Entertainment to include live entertainment at weekend brunches, holidays, and occasional private functions not open to the general public. ANC 2C. SMD 2C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***DBGB Kitchen and Bar,*** 931 H Street NW, Retailer CR, License No. 094697.

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6. Review Request for Off-Site Storage to store Experience Umbria Wines at 1701 Florida Avenue, NW. ANC 2E. SMD 2E03. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Via Umbria***, 1525 Wisconsin Avenue NW, Retailer A Liquor Store, License No. 097178

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7. Review Application for Manager's License. ***William P. Carter***-ABRA 098800.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

CARLOS ROSARIO PUBLIC CHARTER SCHOOL

REQUEST FOR QUOTES

Textbooks

Carlos Rosario PCS seeks quotes to supply approx. 2,300 books for students. The book titles are to be selected by the School from a variety of publishers. The supplier must have strong existing relationships with publishers of adult education books in the fields of English as a Second Language, GED, Citizenship, Culinary Arts, Nurse Aide training, Computer Literacy, and Computer Support Specialist training. The supplier must have the ability to supply the required titles at short notice and in a timely manner, and at reasonable cost. A proven track record working with an educational organization is critical. For more details, please respond to Carole Fuller at cfuller@carlosrosario.org or call 202-797-4700. Responses are due by 5:00pm, Friday May 15th, 2015.

D.C. PREPARATORY ACADEMY

REQUESTS FOR PROPOSALS

D.C. Preparatory Academy, in accordance with section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby solicits proposals to provide:

- Accounting services
- Advertising and marketing services
- Assessment and instructional data support and services
- Banking/Procurement card services
- Business insurance
- Classroom furniture, fixtures, and equipment
- Computer hardware and software
- Construction/General Contractor services
- Curriculum materials
- Custodial services
- Employee medical benefits
- Financial audit services
- Food & School lunch services
- HR consulting services
- HR information systems
- Instructional support services
- IT management services
- Janitorial supplies
- Legal services
- Office furniture, fixtures, and equipment
- Office supplies
- Payroll services
- Printing and duplication services
- Professional development and consulting services
- Project management consulting services
- Security services
- Special education services
- Student data management systems
- Student transportation services
- Talent recruitment and development services
- Temporary staffing services
- Waste management services

Please email **bids@dcprep.org** for more details about requirements.

Bids are DUE BY JUNE 5, 2015.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY

Fiscal Year 2016 Farm Field Trip Grant

Announcement Date: **May 8th, 2015**

Request for Application Release Date: **May 22nd, 2015**

Pre-Application Question Period Ends: **June 17th, 2015**

Application Submission Deadline: **July 1st, 2015**

The Office of the State Superintendent of Education (OSSE), Wellness and Nutrition Services is soliciting grant applications for the District of Columbia Farm Field Trip grant. **The purpose of this grant is to increase the capacity of D.C. schools to participate in farm field trips as part of an integrated farm to school program.**

Eligibility: OSSE will accept applications from Washington D.C. public schools and public charter schools participating in the Healthy Schools Act (2010) and community-based organizations applying on behalf of a teacher or school.

Length of Award: The grant award period is one year.

Available Funding for Award: The total funding available for this award period is $40,000. Eligible schools and organizations may apply for an award amount up to $1,500 per school.

Anticipated Number of Awards: OSSE has funding available for at least twenty-five (25) awards.

For additional information regarding this grant competition, please contact:

Erica Walther
Farm to School Specialist
Wellness and Nutrition Services
Office of the State Superintendent of Education
Government of the District of Columbia
810 1st Street NE, 4th Floor
Washington, DC 20002
Phone: 202.442.8940
Email: erica.walther@dc.gov

The RFA and applications will be available through the Enterprise Grants Management System (grants.osse.dc.gov) and a copy of the RFA will be posted here: http://osse.dc.gov/service/farm-school-program

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Certification of Filling Vacancies
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancies have been filled in the following single-member districts by the individuals listed below:

Mitchel Herckis
Single-Member District **1B04**

Elisa Irwin
Single-Member District **4C03**

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FILING OF A
VOLUNTARY CLEANUP ACTION PLAN

Cleanup Action Plan for 1711 Florida Avenue, NW

Pursuant to § 601(b) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 *et seq.*, as amended April 8, 2011, D.C. Law 18-369 (Act)), the Voluntary Cleanup Program in the District Department of the Environment (DDOE), Land Remediation and Development Branch (LRDB), informs the public that it has received a Cleanup Action Plan requesting to perform a remediation action for certain real property located at1711 Florida Avenue, NW, Washington, DC 20009. The applicant for the referenced address, Case No. VCP2014-030, is KJ Florida Avenue Property, LLC, 1751 Pinnacle Drive, Suite 700 McLean, Virginia, 22102. The applicant has identified the presence of metals in soil and petroleum compounds (TPH-DRO and TPH-GRO) and Volatile Organic Compounds in groundwater. The applicant intends to re-develop the property into a 5-story residential building.

Written comments on the proposed Cleanup Action Plan must be received by the VCP program at the address listed below within twenty one (21) days from the date of this publication. DDOE is required to consider all public comments it receives before acting on the application, the Cleanup Action Plan, or a Certificate of Completion for any voluntary cleanup project.

The Cleanup Action Plan and supporting documents are available for public review at the following location:

Voluntary Cleanup Program
District Department of the Environment (DDOE)
1200 First St., NE, Fifth Floor
Washington, DC 20002

Interested parties may also request a copy of the Cleanup Action Plan for a small charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or by calling (202) 535-1771.

Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-1C) for the area in which the property is located.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PUBLICATION FOR PUBLIC COMMENT

Municipal Separate Storm Sewer System (MS4) Permit
Revised Monitoring Plan

The District Department of the Environment (the Department) is soliciting comments on a draft Municipal Separate Storm Sewer System (MS4) Permit Revised Monitoring Plan. Section 5.1 of the National Pollutant Discharge Elimination System permit for the District's Municipal Separate Storm Sewer System (NPDES Permit No. DC 0000221) directs the District to develop a plan for a Revised Monitoring Program and to make this schedule available for public review and comment. In accordance with this requirement, the Department has developed a draft Revised Monitoring Plan, which is available on the Department's website at http://ddoe.dc.gov/revisedmonitoringplan, or upon request by contacting the Department's Stormwater Management Division at (202) 741-2136.

The Department is committed to considering the public's comments while finalizing this Plan. Interested persons may submit written comments on the draft Plan, which must include the person's name, telephone number, affiliation, if any, mailing address, a statement outlining their concerns, and any facts underscoring those concerns. All comments must be submitted within ninety (90) days after the date of publication of this notice in the *D.C. Register*. Comments should be clearly marked "Municipal Separate Storm Sewer System (MS4) Permit Revised Monitoring Plan" and either (1) mailed or hand-delivered to DDOE, Stormwater Management Division, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, Attention: Revised Monitoring Plan, or (2) e-mailed to jonathan.champion@dc.gov.

The Department will consider all timely received comments before finalizing the plan. All comments will be treated as public documents and will be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. If a comment is sent by e-mail, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Department's website. If the Department cannot read a comment due to technical difficulties, and the email address contains an error, the Department may not be able to contact the commenter for clarification and may not be able to consider the comment. Including the commenter's name and contact information in the comment will avoid this difficulty.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, 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 (#6378) to the U.S. Department of the Treasury, Bureau of Engraving and Printing to operate an existing chrome plating line at the Bureau of Engraving and Printing facility located at 14th and C Streets SW, Washington DC. The contact person for the facility is David Kaczka, Environmental Compliance Manager, Office of Environment, Health & Safety at (202) 874-2107. The applicant's mailing address is 14th and C Streets SW, Washington, DC 20228.

The proposed emission limits are as follows:

a. Because the facility is considered an existing small, hard chromium electroplating facility under the conditions of this permit, during tank operation, the Permittee shall control chromium emissions discharged to the atmosphere from the open surface hard chromium electroplating tanks by not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.015 mg/dscm ($6.6x10^{-6}$ gr/dscf). [40 CFR 63.342(c)(1)(ii)]

b. The maximum chromium emissions from the operation of the chrome plating line shall not exceed 0.00020 lb/hr and 0.00087 ton/yr. [40 CFR 63.344(e)(3)] *Note that this is the site specific "allowable mass emission rate of the system" (AMR_{sys}) determined by the method specified in 40 CFR 63.344(e)(3) expressed in English (also known as American Engineering System) units.*

c. The maximum sulfuric acid emissions from the operation of the chrome/plating line shall not exceed 0.0019 lb/hr and 0.0083 ton/yr. [20 DCMR 201]

d. Visible emissions shall not exceed zero percent opacity from the chrome plating line for the manufacture of intaglio printing plates. [20 DCMR 201 and 20 DCMR 606]

e. 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]

The estimated emissions from the chrome plating line are as follows:

Pollutant	**Maximum Annual Emissions (tons/yr)**
Chrome	0.00087
Sulfuric Acid (H_2SO_4)	0.0083

This is a change in the original estimated potential emissions of the equipment as documented in the original July 31, 2006 permit (#5839). This earlier permit limited annual emissions of chromium to 0.001 tons per year and sulfuric acid to 0.002 tons per year.

The application to operate the chrome plating printing line 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 June 8, 2015 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR § 210, 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 an air quality permit (#6954) to Events DC to operate a 177 kW/237 hp diesel fired emergency fire pump engine, identified as Fire Pump Engine North, at the Walter E. Washington Convention Center, located at 801 Mount Vernon Place NW, Washington, DC 20001. The contact person for facility is John Collins, Vice President, Facility Operations, at 202 249-3305. The applicant's mailing address is 801 Mount Vernon Place NW, Washington, DC 20001.

Emissions:

Maximum emissions from the 177 kWe emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.029
Oxides of Sulfur (SO_x)	0.102
Nitrogen Oxides (NO_x)	0.683
Volatile Organic Compounds (VOC)	0.026
Carbon Monoxide (CO)	0.106

The proposed overall emission limits for the equipment are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from this 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]

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]

The permit application and supporting documentation, along with the draft permit 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.

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Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

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DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

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Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after June 8, 2015 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR § 210, 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 an air quality permit (#6956) to Events DC to operate a 100 kWe emergency generator set with a 168 hp diesel fired engine at the Carnegie Library, located at 801 K Street NW, Washington, DC 20001. The contact person for facility is John Collins, Vice President, Facility Operations, at 202 249-3305. The applicant's mailing address is 801 Mount Vernon Place NW, Washington, DC 20001.

Emissions:

Maximum emissions from the 100 kWe emergency generator, operating five hundred (500) hours per year, is expected to be as follows:

	Maximum Annual Emissions
Pollutant	**(tons/yr)**
Total Particulate Matter (PM Total)	0.093
Oxides of Sulfur (SO_x)	0.085
Nitrogen Oxides (NO_x)	1.30
Volatile Organic Compounds (VOC)	0.106
Carbon Monoxide (CO)	0.279

The proposed overall emission limits for the equipment are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from this 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]

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]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after June 8, 2015 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

EXCEL ACADEMY PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS

Classroom Furniture and Equipment

Scope of Work:
Excel Academy Public Charter School ("Excel") seeks a classroom/school furniture and equipment provider ("Vendor") for the 2015-2016 academic school year. The Vendor must be capable of meeting all Excel needs as presented herein. The Vendor will be required to provide Excel with classroom furniture and equipment as follows:

- Complete layout (including but not limited to desks, chairs, tables, storage, etc.) of two (2) new Seventh grade classrooms for approximately twenty-eight (28) scholars each.
- Complete layout (including but not limited to desks, chairs, tables, storage, etc.) of one (1) new Science laboratory for approximately twenty-eight (28) middle school scholars.
- Complete layout (including but not limited to desks, chairs, tables, storage, etc.) of one (1) new Technology / Computer lab for approximately twenty-eight (28) middle school scholars.
- Lockers for approximately three hundred fifty (350) students.

Excel requires delivery and set up of the requested classroom furniture and equipment prior to the start of the 2015-2016 School Year. The vendor must commit to delivery, setup and installation of Excel's classroom furniture and equipment at least two (2) weeks prior to the start of the school year.

Vendor must be legally permitted to conduct business within the District of Columbia. Vendor must render services according to all applicable local and federal regulations.

Submission of Proposals
All proposals must be received no later than **5:00 p.m. on Friday, May 22nd, 2015**. Any proposal or modification received after this time shall not be considered. No phone calls regarding this RFP will be accepted. No proposals submitted by facsimile will be accepted. **All** questions should be in writing by email to **pmitchell@excelpcs.org.** Please use "Classroom Furniture and Equipment" in the subject area of the heading.

Prospective Providers may submit proposals to the school's offices:

Attn: Philip Mitchell
Excel Academy Public Charter School
2501 Martin Luther King, Jr. Avenue, SE
Washington, DC 20020

Electronic submissions are encouraged and may be sent to **pmitchell@excelpcs.org**.
Please visit our website at www.excelpcs.org for more details regarding this proposal.

FRIENDSHIP PUBLIC CHARTER SCHOOL

NOTICE OF REQUEST FOR PROPOSALS

Friendship Public Charter School is seeking bids from prospective vendors to provide;

Commercial Kitchen Equipment; Friendship Public Charter School seeks a **qualified vendor to provide Commercial Kitchen Equipment**. The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. The deadline has been extended and proposals are due no later than 4:00 P.M., EST, May 19th 2015. Questions can be addressed to: ProcurementInquiry@friendshipschools.org

Uniform, Appeals and Branded Merchandise; Friendship Public Charter School seeks a **qualified vendor to provide Uniform, Appeals and Branded Merchandise**. The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. The deadline has been extended and proposals are due no later than 4:00 P.M., EST, May 22nd 2015. Questions can be addressed to: ProcurementInquiry@friendshipschools.org

NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACTS

Relay Graduate School of Education

Friendship Public Charter School hereby submits this notice of intent to award a sole source contract to Relay Graduate School of Education based on its role as the exclusive provider of the National Principals Academy training program. Contract amount: $135,000.

DEPARTMENT OF HEALTH CARE FINANCE
NOTICE OF PUBLIC MEETING

Department of Health Care Finance Pharmacy and Therapeutics Committee

The Department of Health Care Finance (DHCF) Pharmacy and Therapeutics Committee (P&T Committee), pursuant to the requirements of Mayor's Order 2007-46, dated January 23, 2007, hereby announces a public meeting of the P&T Committee to obtain input on the review and maintenance of a Preferred Drug List (PDL) for the District of Columbia. The meeting will be held **Thursday, June 4, 2015**, at **2:30pm** in the **11th Floor Main Conference Room 1107 at 441 Fourth Street NW, Washington, DC 20001**. Please note that government issued ID is needed to access the building. Use the North Lobby elevators to access the 11th floor.

The Committee will receive public comments from interested individuals on issues relating to the topics or class reviews to be discussed at this meeting. The clinical drug class review for this meeting will include:

Acne Agents, Topical
Analgesics, Narcotics Long Acting
Antibiotics, Vaginal
Antihistamines, Minimally Sedating
Antimigraine Agents
Bronchodilators, Beta Agonists
COPD Agents
Epinephrine, Self-Injected
Glucocorticoids, Inhaled
Intranasal Rhinitis Agents
Leukotriene Modifiers
NSAIDs
Ophthalmic Antibiotics
Ophthalmic Antibiotic-Steroid Combinations
Ophthalmics for Allergic Conjunctivitis
Ophthalmics, Anti-Inflammatories
Ophthalmics, Glaucoma Agents
Opiate Dependence Treatments
Otic Antibiotics
PAH Agents, Oral And Inhaled
Skeletal Muscle Relaxants
Steroids, Topical High
Steroids, Topical Low
Steroids, Topical Medium
Steroids, Topical Very High
Vaginal Estrogen Preparations

Any person or organizations who wish to make a presentation to the DHCF P&T Committee should furnish his or her name, address, telephone number, and name of organization represented by calling (202) 442-9076 **no later than 4:45pm on Thursday, May 28, 2015**. The person or organization may also submit the aforementioned information via e-mail to Charlene Fairfax (charlene.fairfax@dc.gov).

An individual wishing to make an oral presentation to the P&T Committee will be limited to three (3) minutes. A person wishing to provide written information should supply twenty (20) copies of the written information to the P&T Committee **no later than 4:45pm on May 28, 2015. Handouts are limited to no more than two standard 8-1/2 by 11 inch pages of "bulleted" points (or one page front and back).** The ready-to-disseminate, written information can also be mailed to the following address **to arrive no later than May 28, 2015.**

Department of Health Care Finance
Attention: Charlene Fairfax, RPh, CDE
441 4th Street NW, Suite 900 South
Washington, DC 20001

IDEA PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Multiple Services

The IDEA Public Charter School solicits proposals for the following:

- Bread Distributor – distribute bread to school for breakfast and lunch purposes.
- Milk Distributor – distribute to school for breakfast and lunch purposes.
- Building Painting – provide painting services for selected school areas
- Student Transportation – To provide student transportation for field trips and sporting events
- Legal services – attorney services for legal services focusing on all non-children/students issues as well as all legal matters relating to school property.

Please go to www.ideapcs.org/requests-for-proposals to view a full RFP offering.
Please direct any questions to bids@ideapcs.org.

Proposals shall be received no later than 5:00 P.M., Friday, May 22, 2015.

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

IT Asset Inventory Management System

KIPP DC is soliciting proposals from qualified vendors for an IT asset inventory management system. The RFP can be found on KIPP DC's website at http://www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on May 22, 2015. Questions can be addressed to chelsea.rock@kippdc.org.

Gym Equipment

KIPP DC is soliciting proposals from qualified vendors for gym equipment. The RFP can be found on KIPP DC's website at http://www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on May 15, 2015. Questions can be addressed to theodore.brannum@kippdc.org.

OFFICE OF POLICE COMPLAINTS

NOTICE OF PUBLIC MEETING

POLICE COMPLAINTS BOARD MEETING
May 21, 2015
6:00 p.m.
1400 I St, Suite 700, Washington, DC, 20008

For additional information, contact Christian J. Klossner at 202-727-3838

AGENDA OF MEETING

I. Call to Order

II. Public Comment Period

III. Approval of PCB Minutes
  a. March 19, 2015

IV. Caseload Statistics

V. Agency Report

VI. Executive Session (if necessary)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION

NOTICE OF GENERAL COMMISSION MEETING

The District of Columbia Taxicab Commission will hold its regularly scheduled General Commission Meeting on Wednesday, May 13, 2015 at 10:00 am. The meeting will be held at our new office location: 2235 Shannon Place, SE, Washington, DC 20020, inside the Hearing Room, Suite 2023. Visitors to the building must show identification and pass through the metal detector. Allow ample time to find street parking or to use the pay-to-park lot adjacent to the building.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Commission on any issue of concern; the Commission generally does not answer questions. Statements are limited to five (5) minutes for registered speakers and two (2) minutes for non-registered speakers. To register, please call 202-645-6002 no later than 3:30 pm on May 12, 2015. Registered speakers will be called first, in the order of registration. A fifteen (15) minute period will then be provided for **all** non-registered speakers. **Registered speakers must provide ten (10) printed copies of their typewritten statements to the Secretary to the Commission no later than the time they are called to the podium.**

DRAFT AGENDA

I. Call to Order

II. Commission Communication

III. Commission Action Items

IV. Government Communications and Presentations

V. General Counsel's Report

VI. Staff Reports

VII. Public Comment Period

VIII. Adjournment

THE NEXT STEP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

HR SERVICES, for the 2015-2016 school year (July 1, 2015 – June 30, 2016), with a possible extension of (4) one year renewals (July 1, 2016 - June 30, 2020). The Request for Proposals (RFP) specifications such as scope and responsibilities can be obtained on Friday, May 8, 2015 from Jennifer Edwards via email listed below. **Bids must be received by Friday, May 15, 2015 by 5 pm at the email address listed below. Any bids not addressing all areas as outlined in the IFB (RFP) will not be considered. BIDS MUST BE SUBMITTED** electronically to: **rfp@nextsteppcs.org**

WASHINGTON GLOBAL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Washington Global Public Charter School solicits proposals for the following:

- Security Personnel
- Finance & Accounting
- Human resources
- Data Management
- IT Desk Support
- Project Management

Please direct questions and proposals to **rfp@buildinghope.org.**

Proposals shall be received no later than 5:00 P.M., Friday, May 22, 2015.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Sewerage Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Sewerage Services Committee will be holding a meeting on Thursday, May 21, 2015 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	**Call to Order**	Committee Chairperson
2.	**AWTP Status Updates** 1. BPAWTP Performance	Assistant General Manager, Plant Operations
3.	**Status Updates**	Chief Engineer
4.	**Project Status Updates**	Director, Engineering & Technical Services
5.	**Action Items** - Joint Use - Non-Joint Use	Chief Engineer
6.	**Emerging Items/Other Business**	
7.	**Executive Session**	
8.	**Adjournment**	Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Governance Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will be holding a meeting on Wednesday, May 13, 2015 at 9:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Chairperson
2.	Government Affairs: Update	Government Relations Manager
3.	Update on the Compliance Monitoring Program	TBD
4.	Update on the Workforce Development Program	Contract Compliance Officer
5.	Emerging Issues	Chairperson
6.	Agenda for Upcoming Committee Meeting (TBD)	Chairperson
7.	Executive Session	
8.	Adjournment	Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Wednesday, May 28, 2015 at 9:30 am. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	Other Business	
3.	Executive Session	Committee Chairperson
4.	Adjournment	Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Water Quality and Water Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Water Quality and Water Services Committee will be holding a meeting on Thursday, May 21, 2015 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	**Call to Order**	Committee Chairperson
2.	**Water Quality Monitoring**	Assistant General Manager, Consumer Ser.
3.	**Action Items**	Assistant General Manager, Consumer Ser.
4.	**Emerging Issues/Other Business**	Assistant General Manager, Consumer Ser
5.	**Executive Session**	
6.	**Adjournment**	Committee Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18881 of Nando's of Woodley Park, LLC, pursuant to 11 DCMR §§ 3104.1, 3103.2, and 1304.1 for special exceptions from the 25 percent street frontage limitation under § 1302.5(a) and the fast food establishment prohibition under § 1307.5, and a variance from the enclosure wall requirements of § 721.3(j) to establish a fast food establishment in the WP/C-2-B District at premises 2631 Connecticut Avenue, N.W. (Square 2204, Lot 161).

HEARING DATE: December 16, 2014
DECISION DATE: February 10, 2015

DECISION AND ORDER

SELF-CERTIFIED

Nando's of Woodley Park, LLC ("Nando's" or the "Applicant") submitted this self-certified application on September 15, 2014, for the property located at 2631 Connecticut Avenue, N.W. (Square 2204, Lot 161) (the "Site"). The Applicant requested special exception relief from the 25 percent street frontage limitation of § 1302.5(a) and the fast food establishment prohibition of § 1307.5, and a variance from the enclosure wall requirements of § 721.3(j), to establish a fast food establishment in the WP/C-2-B District at the Site. Following a public hearing and public meeting, the Board of Zoning Adjustment ("Board" or "BZA") voted on February 10, 2015, to approve the application subject to conditions.

Preliminary Matters

Notice of Application and Notice of Hearing. By memoranda dated September 19, 2014, the Office of Zoning sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 3C, the ANC within which the Site is located, Single Member District 3C01, and the Councilmember for Ward 3. A public hearing was scheduled for December 16, 2014. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing on the application in the *D.C. Register*, and on September 25, 2014, sent such notice to the Applicant, ANC 3C, and all owners of property within 200 feet of the Site.

Request for Party Status. In addition to the Applicant, ANC 3C was automatically a party in this proceeding. Woodley Park Community Association ("WPCA"), a citizens association organized as a District of Columbia not-for-profit membership corporation, and Mr. Salim Zaytoun, owner of Café Paradiso, requested party status in opposition to the application. The Board granted the requests and consolidated them into a single opposition party.

Applicant's Case. Carolyn Brown of Holland & Knight LLP represented the Applicant. The Applicant presented three witnesses in support of the application at the public hearing: Burton Heiss, Managing Director and Senior Vice President of Nando's Restaurant Group, Inc., CEO of

Nando's; Steve Combs of KLNB Real Estate, broker for the property; and Lindsley Williams of Holland & Knight LLP as an expert in land use and zoning.

Government Reports. The Office of Planning ("OP") filed a report with the Board on December 8, 2014, recommending approval of the application subject to several conditions. (Exhibit 49.) The OP report set forth each of the provisions of §§ 1304.1 and 3104.1 and opined that each is met. The report also opined that the application met the standards of §§ 721.3(j) and 3103.2 for an area variance from the brick enclosure wall and refuse container requirements. DDOT also filed a report with the Board on December 9, 2014, stating that it had no objection to the requested relief. (Exhibit 50.) The OP report was presented at the hearing by Karen Thomas who testified that the Overlay cap was not intended to freeze businesses in time. Ms. Thomas indicated that the special exception process associated with the Overlay was designed to allow community input regarding a waiver of the cap.

ANC Report. ANC 3C submitted a report to the Board dated November 17, 2014, recommending approval of the application, with conditions. (Exhibit 53.) The recommended conditions were as follows:

1. Nando's shall use the existing trash compactor at the site;

2. Trash service at the site will be increased from four times a week to five times a week;

3. Any future, new eating establishment proposed for this space shall be required to seek special exception relief in conformance with the applicable provisions of the Woodley Park Overlay and Zoning Regulations.

Party in Opposition. WPCA objected to the special exception from the 25 percent eating establishment limitation, but did not oppose any other relief sought by the Applicant (*see* Testimony of Peter Brusoe, Exhibit 64, p. 1, and Hearing Transcript of December 16, 2014, (Tr.), p. 114). WPCA asserted that Woodley Park does not need another restaurant, since it believes the Woodley Park neighborhood has more than a sufficient number of eating establishments, and is already saturated with restaurants, and that granting the special exception to raise the 25 percent cap would result in reducing the amount of space available for retail and service-related businesses in the Woodley Park neighborhood. Furthermore, WPCA stated that the Applicant failed to meet the special exception standards set forth in § 1304.1 of the Zoning Regulations because raising the 25 percent cap would undermine the purposes of the Neighborhood Commercial ("NC") and Woodley Park ("WP") Overlay Districts. WPCA also asserted that there was not an exceptional circumstance pertaining to the Site or the economic conditions of the immediate area to justify the waiver.

Persons and Organizations in Support. The Board received numerous letters in support of the application from individuals and businesses located in the Woodley Park neighborhood and

within the WP Overlay, and several individuals testified in support at the public hearing. The written and oral testimony commented favorably on the Applicant's project. The Board received a petition with 120 signatures from residents throughout Woodley Park, plus an additional 19 signatures from owners and/or authorized representatives of Woodley Park businesses who expressed support for Nando's coming into the community and helping to improve the vibrancy of the neighborhood.

Persons and Organizations in Opposition. The Board received letters in opposition to the application, and one person testified in opposition at the hearing. A number of individuals raised concerns that Woodley Park did not need new restaurants, and that making an exception to the 25 percent cap for Nando's would allow restaurants to replace small retail and service businesses that are necessary to serve the neighborhood. There were also concerns that another restaurant would add to the existing problem with rodents.

FINDINGS OF FACT

The Site and the Surrounding Neighborhood

1. The Site is located at 2631 Connecticut Ave., N.W., more specifically described as Lot 161 in Square 2204. Square 2204 is bounded by Woodley Road to the north, Woodley Place to the east, Calvert Street to the south, and Connecticut Avenue to the west. The Square is bisected by a 15-foot wide public alley that runs parallel to Connecticut Avenue and abuts the rear (east) of the Site. The Site is located on the east side of Connecticut Avenue, between Calvert Street and Woodley Road, and contains approximately 16,560 square feet of land area. The Site is located in the C-2-B District and is within the WP Neighborhood Commercial NC Overlay District. The Site is also within the Woodley Park Historic District.

2. The Site is one of five ground floor retail/service spaces in the two-story commercial building at 2631-43 Connecticut Avenue, N.W. The building was constructed as a matter-of-right under the Zoning Regulations in the early 1990s. The building is 136 feet wide and spans the full width of the Site. The Site is 120 feet deep but the building's depth is only 105 feet, with the remaining 15 feet used as the rear yard. No loading facilities were required or are provided at the building; instead, the rear yard is used for truck deliveries and pick-ups. A below-grade parking garage accessed off the alley provides 61 striped spaces and can accommodate approximately 20-30 more cars through attendant parking.

3. Other retail/service uses at the Site include Lebanese Taverna Restaurant, a dry cleaners, a Noodles & Company, and a Dunkin Donuts. The retail space that is subject of this application contains approximately 3,442 square feet of space and was occupied until the summer of 2014, under lease, by a Bank of America. The Site is owned by Grosvenor Urban Retail, LP.

4. The Site is located in Woodley Park, which contains a mix of commercial and residential uses. On both sides of Connecticut Avenue are several independent restaurants, which

include unenclosed sidewalk cafes that add to the vibrancy of the area. Many retail/service uses are also located in the commercial corridors of Connecticut Avenue, Calvert Street and 24th Street, such as a florist, a small food market, a CVS pharmacy, a hardware store, a pet supply shop, a clothing boutique, a liquor store, as well as several other uses.

5. At the north end of the WP Overlay along Connecticut Avenue are residential condominium buildings and buildings that house the campus of Stanford University in Washington. Additional apartment buildings are located in the blocks to the north. Across the rear alley to the east of the Site are row dwellings. West of Connecticut Avenue and 24th Street are the Shoreham and Marriott Wardman Park hotels and additional residential uses. The Site and the surrounding area are well-served by public transportation, including the Woodley Park-Zoo Metrorail Station and numerous Metrobus lines along Connecticut Avenue and Calvert Street.

The Applicant's Project

6. The Applicant proposes to renovate the existing retail space formerly occupied by the Bank of America at 2631 Connecticut Avenue, N.W., for use as an eating establishment known as Nando's, a South African casual dining restaurant. The proposed eating establishment at the Site would provide approximately 97 indoor seats and approximately 46 seats on an outdoor patio at the front of the building, if approved by DDOT's Public Space Committee. The main entrance would be located on Connecticut Avenue, with a rear entrance for trash collection and deliveries along the public alley. A new egress door and landing would be located at the rear of the Site.

7. A customer arriving at the Nando's will be presented with a menu and offered a table. When ready to order, the customer will go to a counter, place the order and pay for the food. The food will be brought to the table by wait staff served on ceramic, non-disposable dishware with metal utensils. Beverages will be served in glassware and non-disposable cups. Wait staff will clear and clean the tables after the guests finish their meals. Customers may order additional food and beverages at their table and pay after being served.

8. The Zoning Regulations define "fast food establishment" as "a place of business, other than a 'prepared food shop'; where food is prepared on the premises and sold to customers for consumption" and at least one of three conditions apply. (11 DCMR § 199.1 ("fast food establishment").) The second of those conditions is that "customers pay for the food before it is consumed."

9. Because Nando's customers pay for their food prior to consuming it, the Zoning Regulations classify Nando's as a fast food establishment. Apart from the fact that food is ordered at a counter, rather than through a waiter, Nando's is indistinguishable from a restaurant, which is permitted as a matter of right in the C-2-B District.

The Special Exception Relief

10. Pursuant to § 1307.5 of the Zoning Regulations, no fast food establishment is permitted in the WP Neighborhood Commercial Overlay District. Pursuant to § 1302.5(a), which governs all Neighborhood Commercial Overlay Districts, restaurants, fast food establishments, and prepared food shops within an NC Overlay District are limited to no more than 25 percent of the linear street frontage, as measured along the lots that face designated roadways. Presently, approximately 33 percent of the ground floor properties fronting on the designated portion of Connecticut Avenue, Calvert Street, and 24th Street are already comprised of restaurants, fast food establishments, or prepared food shops.

11. The Board may allow deviations from the requirements of the NC Overlay Districts as a special exception provided certain standards in § 1304.1 are met. The Applicant seeks a special exception from § 1307.5 to permit a fast food establishment in the WP Neighborhood Commercial Overlay District and a special exception from § 1302.5(a) to permit the fast food establishment to exceed the 25 percent cap. The Board finds that the Applicant meets the test for special exception relief.

Consistency with the Purposes of the NC and WP Overlays (1304.1(a))

12. Under § 1304.1(a) of the Zoning Regulations, an applicant must demonstrate that the excepted use at the site, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the specific overlay in which the site is located, which in this case is the WP Overlay District. The Applicant must also demonstrate that the proposed use will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity.

The NC Overlay

13. The NC Overlay is designed to encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement, consistent with the District of Columbia Comprehensive Plan. It is also designed to encourage the retention and establishment of a variety of retail, entertainment, and personal service establishments, predominantly in a continuous pattern at ground level, so as to meet the needs of the surrounding area's residents, workers, and visitors. (11 DCMR §§ 1300.3(a) and (b).) The proposed fast food establishment satisfies the applicable criteria of the NC Overlay as described below.

    a. The fast food establishment will occupy ground floor space in an existing mixed-use commercial building that has been vacant for over eight months. The building currently provides office space and a range of neighborhood-serving retail and service uses, including other restaurants, a dry cleaners, and a coffee shop on the ground floor, and yoga and fitness classes and other services

elsewhere in the building. The area is also served by a small market, a hardware store, a CVS pharmacy, art retail shops, and other uses.

b. The opening of Nando's will result in the introduction of a new casual dining experience for the Woodley Park community that is family-friendly. Nando's is virtually indistinguishable from a restaurant, with the exception of the timing of payment, and will be consistent with the attributes of the commercial segment of the Woodley Park neighborhood. The proposed Nando's has been designed to appeal to the needs of the surrounding area's residents, workers, and visitors by offering an attractive dining experience that is affordable to moderate income households. Nando's will serve employees within the building, workers in the immediate area, visitors to the neighborhood, including guests at the two nearby hotels, and residents of Woodley Park.

The WP Overlay

14. The purposes of the WP Overlay District are "to provide for safe and efficient pedestrian movement by reducing conflicts between pedestrian and vehicular traffic so as to improve access to retail services, the Metrorail station, and other uses in the area." (11 DCMR § 1307.2.) The proposed eating establishment satisfies the applicable criteria of the WP Overlay as described below.

a. Nando's will allow the existing safe and efficient pedestrian travel paths to continue unaltered, and will not create any conflicts between pedestrian and vehicular traffic. Access to retail, services, the Metrorail station, and other uses in the area will continue as contemplated by the regulations. The establishment has been designed as a neighborhood-serving food establishment with most patrons expected to arrive at the Site on-foot or by public transportation. The restaurant will create new employment opportunities for residents of the District. All employees will be encouraged to use public transportation.

b. The proposed use will not adversely affect neighboring property and will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the neighborhood. As a fast casual restaurant, Nando's is virtually indistinguishable from a restaurant use as defined under the Zoning Regulations, except that patrons pay for the meal before consuming it. Nando's will operate and function like a restaurant, except that customers will order and pay for their food at a counter, rather than ordering through and later paying a waiter. It will therefore produce no more noise, refuse or traffic than other restaurants operating in the same block. Consequently, it will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity.

Rather, it will benefit the community by contributing to the variety of eating establishments in the WP Overlay.

Exceptional Conditions Justifying the Exception (§ 1304.1(b))

15. An exceptional circumstance exists pertaining to the Site's economic and physical condition. The owner of the Site was unable to lease the Bank of America space to an appropriate matter-of-right use for over 18 months. In June 2013, the then-tenant, Bank of America, notified the property owner that it would not be renewing its lease. The owner, through its real estate broker, KLNB, immediately began marketing the space to uses that could quickly take occupancy with little need for tenant build-out so there would be little gap in rental income. The owner marketed to other banks but received no interest from financial institutions. Changing economic conditions have reduced the need for bank space.

16. The real estate broker also advertised the space to other uses that would not require any special zoning relief, and specifically declined to market the space to restaurants, which would require a special exception. Nevertheless, numerous eating establishments contacted the broker about the space. Almost a year after the bank gave notice of its intent to vacate the space, three viable tenants emerged: a discount mattress store, a convenience store, and Nando's. The owner entered into a letter of intent to lease the space to Nando's, the only restaurant providing a lease guarantee. Nando's restaurant emerged as the most viable alternative for the neighborhood.

Safe Pedestrian and Vehicular Access (§ 1304.1(c))

17. Subsection 1304.1(c) of the Zoning Regulations requires an applicant to demonstrate that vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions. In this case, Nando's will occupy space within an existing building, which is already located and designed so as to not create conflicts with principal pedestrian ways. Vehicular traffic to the building – both car and truck traffic – is located off the rear alley, which is accessed from Woodley Road, a secondary pedestrian way. The building's parking garage, which can accommodate up to 80 or 90 cars through attendant parking, is also accessed off the rear alley. Thus, there are no conflicts with Connecticut Avenue, which is the principal pedestrian thoroughfare. The Site is one of the few commercial buildings in the area that offers public parking, which helps address the severe on-street parking shortages in the Woodley Park neighborhood.

Special Conditions Related to Design (§ 1304.1(d))

18. Subsection 1304.1(d) provides that the Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the NC Overlay District and the

particular overlay district. The Nando's space has been attractively designed to be compatible with the existing streetscape and the surrounding Woodley Park Historic District. Further review by the Historic Preservation Review Board of any exterior changes to the existing space will also ensure that the neighboring properties are protected.

The Variance Relief

19. The Applicant seeks a variance from § 721.3(j) of the Zoning Regulations, regarding brick enclosure walls along the lot line and around refuse containers associated with fast food establishments. Under § 721.3(j)(2), in the C-2-B District, where fast food establishments will be located on a lot that abuts an alley containing a zone district boundary for a residence district, the establishment is required to construct and maintain a continuous brick wall at least six feet high and 12 inches thick on the lot along the length of the lot line. Fast food establishments in the C-2-B District are also required to house any refuse dumpsters in a three-sided brick enclosure equal to six feet in height or the height of the dumpster, whichever is greater. The entrance to the enclosed area cannot face a residential district. (11 DCMR § 721.3(j)(3).) In this case, the building in which Nando's proposes to locate abuts a 15-foot alley containing a zone boundary for the adjacent R-4 District.

Exceptional and Extraordinary Conditions

20. The Site is improved with an existing building that spans the full width of its lot. The building houses five ground floor commercial uses with other services and office space above. The proposed fast food establishment will only occupy a small portion of the building. The building was constructed as a matter-of-right for retail/service uses, including restaurants, and solely because of issues relating to business operations – the timing of payment – occupancy by a fast casual restaurant is jeopardized.

21. There is a grade change of approximately ten feet from the front to the back of the Site, necessitating stairs from the ground floor level at the rear of the building to the alley level. This constrains the effective placement of trash enclosures and accessibility to the rear service doors of the retail spaces. It provides the opportunity, however, to house most trash receptacles, dumpsters and cooking oil drums presently used by the matter-of-right restaurant, Lebanese Taverna, under the stairs that run parallel to the building.

22. As just one of several tenants in the building, Nando's does not have the ability or the authority to burden other retail/service uses with zoning constraints. In this case, the continuous brick wall six feet in height along the property line is intended solely for fast food establishments and would interfere with the other tenants' access to and use of the rear yard.

23. The Site is located along a narrow, 15-foot wide alley that limits maneuverability for both passenger vehicles of neighboring residents and service trucks associated with the commercial properties along Connecticut Avenue. The overwhelming majority of the residential properties abutting the alley have parking spaces located off the alley. Several of

these properties include six-foot high privacy fences with gates to the parking spaces. Other properties simply have concrete parking pads at their rear property line. These conditions greatly restrict the maneuverability of vehicles in and through the alley, and the ability to enter and exit from residential parking spaces. Trash trucks that service the commercial dumpsters are larger in size than residential trucks and must be able to "fork lift" the bins into the truck's container, which requires additional maneuverability room.

Practical Difficulties

24. Strict adherence to § 721.3(j) of the Zoning Regulations would obligate Nando's to require the landlord to construct an enclosure wall the full width of the Site, even though Nando's occupies less than one-third of the building's length. Doing so would unduly burden the matter-of-right uses that are not subject to these provisions and unnecessarily impede their access to the alley. It would also impose restrictions that are not even required for fast food establishments in the more restrictive C-2-A District.[1]

25. Construction of a six-foot tall brick wall along the alley would also create practical difficulties for delivery trucks and service vehicles. Presently, these vehicles can pull out of the alley and into the rear yard of the building for loading and unloading. If the brick wall were constructed, loading and unloading would occur in the alley, thereby blocking the alley and restricting access to commercial properties to the south of the Site, which also require deliveries. The six-foot wall would likewise negatively affect abutting residential properties. The alley is only 15 feet wide, which makes maneuverability extremely difficult under present conditions. The introduction of a wall along the entire length of the building would only exacerbate the tight conditions and make it difficult for residents to back their cars out into the alley. Presently, the building at 2631-41 Connecticut Ave., N.W., provides a 15-foot rear yard, which effectively widens the alley to 30 feet in places, thus enhancing circulation. This valuable circulation feature would be eliminated if the Applicant were required to construct a six-foot tall brick wall for the entire length of the Site fronting on the alley.

26. Construction of a six-foot tall brick enclosure wall for the refuse dumpsters would create similar practical difficulties in maneuverability and safe and effective collection of refuse, given the narrowness of the alley.

No Harm to Public Good or Zone Plan

27. The Applicant's business is virtually indistinguishable from a restaurant, except for the timing of payment, and does not produce the high volumes of refuse characteristic of typical fast food establishments that use disposable service containers and paper products, and large

[1] Under § 733.3 for C-2-A Districts, the requirement for a brick wall at the lot line is eliminated completely if the building spans the full width of the lot, as is the case here. That is, in the C-2-A District where fast food establishments are permitted by special exception only, no relief from this provision is required at all. With respect to the refuse container enclosure, the C-2-A District allows deviations as a special exception instead of a variance.

quantities of cooking oil and grease. In addition, not erecting the wall will enhance circulation and maneuverability in the alley, thus promoting the public good. Nando's will use the same trash compactor that was installed for the building's use when Noodle's leased the adjacent space in 2011 from the same landlord. In addition, trash pick-ups will increase by one visit per week.

28. Overall, the zone plan will not be compromised since the proposed project will serve as a restaurant that will enhance the vitality of the street and provide a variety of healthy food choices at reasonable prices for those who visit, work, and live in the neighborhood.

CONCLUSIONS OF LAW

Special Exception Relief

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property. Additionally, certain special exceptions must meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 1304.1 of the Zoning Regulations.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. District of Columbia Bd. of Zoning Adjustment,* 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment,* 305 A.2d 516, 518 (D.C. 1973).)

The Applicant is seeking special exceptions from §§ 1307.5 and 1302.5(a) to establish a fast food establishment in the WP Neighborhood Commercial Overlay. Subsection 1307.5 prohibits fast food establishments in the WP Overlay. Subsection 1302.5(a) provides that restaurants, fast food establishments, and prepared food shops shall occupy no more than 25 percent of the linear street frontage within a particular NC Overlay District, as measured along the lots that face designated roadways in the particular district. The Board may allow deviations from these requirements provided that the standards set forth in § 1304.1 are met.

As a preliminary matter, the Board agrees with the Office of Planning that the purpose of the cap was not to freeze the number of eating and drinking establishments at the 25 percent level. Rather, that number simply acts as a threshold after which an applicant for a new eating and/or drinking establishment use must meet certain criteria. As noted, a special exception applicant involves a "site-specific discretionary review of proposed uses that are generally deemed to be

presumptively compatible or desirable in a particular area or zoning district." Rathkopf's *The Law of Zoning and Planning*, RLZPN § 61: (2014). Based on the above findings of fact and having given great weight to OP and the ANC, the Board concludes that the Applicant meets the standards of § 1304.1 as follows:

Subsection 1304.1(a): The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity.

The Board concludes that Nando's will substantially advance the stated purposes of the NC Overlay and the WP Overlay, and will not adversely affect neighboring property nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity. The Board finds that Nando's will advance the purposes of the NC Overlay by occupying ground floor space in an existing mixed-use commercial building that has been vacant for over eight months. Nando's, an affordable and family-friendly dining experience for the Woodley Park community, will be indistinguishable from a restaurant with the exception of the timing of payment, consistent with the attributes of the commercial segment of Woodley Park, and appealing to the needs of the area's residents, workers, and visitors.

WPCA and persons in opposition to the special exception claimed that Woodley Park is already oversaturated with restaurants. However, a comparison of the 2004 and 2014 Inventory of Woodley Park Eating Establishments suggests otherwise. The 2004 Inventory submitted to the record as Exhibit 64 by WPCA shows that the percentage of eating establishments was 24.78 percent, or just below the 25 percent cap. By 2014, a new inventory of eating establishments showed that the number eating establishments had increased to 33 percent. (*See* Exhibit 66.) Yet, there is no evidence of any special exception applications to the BZA to exceed the cap since the overlay was enacted in 1989. While WPCA suggested this was due to the lack of adequate tools to monitor and enforce the cap, a comparison of the two inventories suggests another explanation. The amount of total street frontage in Woodley Park (the denominator) was corrected to delete property not within the overlay and other errors, but there was no change in the number of linear feet devoted eating establishments (the numerator). This resulted in an increase in the *percentage* of street frontage cap but no actual change in the *number* of eating establishments. This supports the contention that this application represents the first true increase in the cap since its adoption 26 years ago. (See Z.C. Case No. 86-26, Exhibit No. 196, at 22.) Thus, this requested relief is not excessive and will not have any significant impact on the community. In fact, given the substantial increase in the Woodley Park population, particularly in the number of children, and the lack of new eating establishments in recent years to address the changing demographics, the Board concludes that Nando's will be an appropriate addition to the neighborhood.

The Board also concludes that the proposed Nando's will substantially advance the purposes of the WP Overlay by allowing the existing safe and efficient pedestrian travel paths to continue

unaltered. Nando's will not create any conflicts between pedestrian and vehicular traffic; it will create new employment opportunities for residents; produce minimal noise, refuse, or traffic; and will generally benefit the community by contributing to the variety of eating establishments in the WP Overlay.

Subsection 1304.1(b): Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area that justify the exception or waiver.

The Board concludes that exceptional circumstances exist pertaining to the Site's economic and physical conditions. For over 18 months, the owner of the Site worked diligently to lease the space to an appropriate matter-of-right use. The Applicant's real estate broker actively marketed the Site to a variety of users, but was unable to find any appropriate matter-of-right tenants willing to rent the space. After almost a year of the Site remaining vacant, only three viable tenants emerged: Nando's, a convenience store (a 7-11), and a discount mattress store. Given the demographics of the community and the desire for quality retail, Nando's was the most attractive option for the neighborhood.

Despite the owner's trouble leasing the retail space at the Site, WPCA claimed that Woodley Park is a desirable neighborhood with a "healthy" real estate market, and that economic conditions should not justify the special exception. However, the Board concludes that based on the Applicant's good faith efforts to lease the retail space to a matter-of-right use, and its failure in finding a viable tenant due to the poor economic conditions, there are exceptional circumstances that justify the requested special exceptions.

Subsection 1304.1(c): Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.

The Board concludes that in this case, the Applicant will occupy a space within an existing building, which is already located and designed so as to not create conflicts with principal pedestrian ways. Vehicular traffic and the building's parking garage are located off of the rear alley and accessed from Woodley Road, a secondary pedestrian way. The Board finds that there are no conflicts with Connecticut Avenue, which is the principal pedestrian thoroughfare.

Variance Relief

Standard of Review

The Applicant seeks a variance from § 721.3(j), regarding brick enclosure walls along the lot line and around refuse containers associated with fast food establishments. Under § 8 of the Zoning Act (D.C. Official Code § 6-641.07(g)(3) (2012 Repl.), the Board is authorized to grant an area variance where it finds that three conditions exist: "(1) the property is unique because, *inter alia*, of its size, shape or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and (3) the variance would not cause substantial detriment to

the public good and would not substantially impair the intent, purpose and integrity of the zoning plan." *French v. District of Columbia Bd. of Zoning Adjustment,* 658 A.2d 1023, 1035 (D.C. 1995), *quoting Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). *See, also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Applicants for an area variance need to demonstrate that they will encounter "practical difficulties" in the development of the property if the variance is not granted. *See Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972)(noting that "area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden"). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome." *See Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

As discussed below, the Board concludes that the Applicant has met its burden of proof for an area variance from § 721.3(j) of the regulations.

Exceptional and Extraordinary Conditions

The Board concludes that the Site is affected by a confluence of several exceptional and extraordinary conditions. The Site is already improved with an existing building that was constructed for retail/service uses and presently has multiple retail, service, and restaurant tenants. As one of several tenants in the building, Nando's does not have the authority to burden other retail/service establishments by constructing a continuous six-foot tall brick wall along the property line, since doing so would interfere with the other tenants' access to and use of the rear yard. In addition, a 10-foot grade change from the front to the back of the Site necessitates stairs from the ground floor level at the rear of the building to the alley level. Finally, the Site is located along a narrow 15-foot wide alley that limits maneuverability for both passenger vehicles of neighboring residents and service trucks associated with the commercial properties along Connecticut Avenue. Based on the foregoing, the Board concludes that these "confluence of factors" create exceptional and extraordinary conditions affecting the Site.

Practical Difficulties

The Board further concludes that the exceptional and extraordinary conditions create practical difficulties for the Applicant in complying with § 721.3(j) of the Zoning Regulations. If the Applicant were forced to construct an enclosure wall for the full width of the Site, it would unduly burden the matter-of-right uses that are not subject to these provisions, unnecessarily impede their access to the alley, and create practical difficulties for delivery trucks and service vehicles that would have to load and unload in the alley, thereby blocking the alley and restricting access to commercial properties to the south of the Site. The wall would also exacerbate tight conditions for owners of abutting residential properties, since installing the wall would eliminate the Site's existing 15-foot rear yard that is presently used for circulation.

The Board finds that construction of a six-foot tall brick enclosure wall for the refuse dumpsters would also create similar practical difficulties in maneuverability and safe and effective collection of the refuse, given the narrowness of the alley.

No Substantial Detriment to Public Good or Substantial Impairment of the Zone Plan

The Board finds that requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Applicant's business is virtually indistinguishable from a restaurant and does not produce the high volumes of refuse characteristic of typical fast food establishments. Nando's will use the same trash compactor that was installed for the building's use when Noodle's leased the adjacent space in 2011 from the same landlord, and trash pick-ups will increase by one visit per week. Not erecting the walls will enhance circulation and maneuverability in the alley, thus promoting the public good. Furthermore, the Applicant will comply with the conditions set forth in the OP report (Exhibit 49) and in the ANC resolution (Exhibit 53), which will ensure that the Nando's does not result in any detriment to the public good. Overall, the Board concludes that the zone plan will not be compromised since the proposed project will, for all intents and purposes, serve as a restaurant that will enhance the vitality of the street and provide a variety of healthy food choices at reasonable prices for those who visit, work, and live in the neighborhood.

Imposition of a Term

Based upon the evidence of record, the Board believes that the requested relief may be granted without adverse impacts to the community. However, the Board is permitting a use that is prohibited in the overlay. Were it not for the ability of the Board to allow this use as a special exception pursuant to § 1304, this would have been an application for a use variance. (11 DCMR § 3103.6.) In addition, the Board heard a great deal of testimony expressing concern over the potential adverse impacts of adding another eating establishment particularly with regard to an existing problem with rodents. Finally, the Applicant's case and the community's support for this project were based upon positive attributes associated with the Nando's brand. But, as will be explained in the ANC great weight discussion that follows, the Board cannot limit its approval to that franchise. Therefore, although the Board firmly believes that based upon on the record, and with the conditions it has imposed, a fast food establishment will not tend to create adverse impacts; the accuracy of that prediction can only be tested once actual operations begin.

As the Board has stated before: "Without a foreknowledge of the future, a term limit allows the Board to 'hedge its bets' that its prediction of no adverse impacts, or that predictable adverse impacts can be mitigated, will prove correct." (*Application No. 18138-A A Motion for Reconsideration of Order No. 18138 of St. Paul's Episcopal Church* (2011).) As expressed by a New Jersey court, a term limit on a zoning exception provides an "escape hatch" if it is later determined that the use was not consistent with the public good. (*Application No. 18138-A,*

quoting, *Houdaille Construction Materials, Inc. v. Bd. of Adjustment of Tewksbury Township*, 223 A.2d 210 (N.J. Super. App.Div. 1966).)

For these reasons, the Board believes that such an "escape hatch" is needed here. Taking into account the amount of time that may be needed to build out the new eating establishment, five years is the maximum period that can be permitted to pass before the Board should have an opportunity to determine whether the impact of Nando's operations matched the Board's predictions.

Great Weight to ANC

Section 13(b)(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Code § 1-309.10(d)(A)), requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, ANC 3C recommended approval of the requested relief (Exhibit 53), with conditions. The Board accords the ANC recommendation the great weight to which it is entitled and concurs in its recommendation, with the exception of condition no. 3 in its resolution. That condition would require any future, new eating establishment proposed for the space to seek special exception relief in conformance with the applicable provisions of the Woodley Park Overlay and Zoning Regulations.

The Board is concerned that proposed condition no. 3 would impermissibly regulate the business conduct of the tenant, rather than the use of the property, which would be unlawful *per se. See Nat'l Black Child Dev. Inst., Inc. v. D.C. Bd. of Zoning Adjustment*, 483 A.2d 687, 691 (D.C. 1984). *Accord Dexter v. Town Bd. of Town of Gates*, 105, 324 N.E.2d 870, 871 (1975) (it is "a fundamental principle of zoning that a zoning board is charged with the regulation of land use and not with the person who owns or occupies"). In *Olevson v. Zoning Bd. of Review of Town of Narragansett*, 44 A.2d 720, 722 (1945), the court found a condition limiting the operation of a boarding and room house to the applicant to be "unusual and peculiar" because the condition:

> Rather than providing for a condition relating to that real estate in connection with the type of zoning to be applied thereto, is an attempt to grant [the applicant] himself a license to operate a boarding and rooming house … as long as he so desires, but that such license is to be entirely personal to him and is to terminate when he ceases to so occupy such property.

Id.

Because the ANC's proposed condition contains the same flaw, the Board does not find its advice to impose that condition to be persuasive.

Great Weight to OP

The Board 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 Board also concurs with OP's recommendation that the zoning relief should be granted and will impose its recommended conditions, other than the ANC's personal condition repeated in the OP Report.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 1304.1, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for an area variance from § 721.3(j), that there exists an exceptional or extraordinary situation or condition related to the Site that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the **APPROVED PLANS AT EXHIBIT 34B, AND THE CONDITIONS** below. References to "the Applicant" shall refer to Nando's of Woodley Park, LLC its successors or assigns or a future person or entity operating a fast food establishment on the premises under the authority of this order. The **CONDITIONS** are as follows:

1. The Board's approval shall be valid for a period of **FIVE (5) YEARS** beginning on the effective date of this order.

2. The Applicant shall use the existing trash compactor at the Site.

3. The Applicant shall use the same waste collection company as other eating establishments in the building in order to reduce the number of trash pick-ups and trucks using the alley.

4. Trash service at the Site shall occur at least five times per week.

5. All food and drinks consumed on the premises shall be served on/in non-disposable tableware with no exceptions.

6. The property owner and the Applicant shall communicate with ANC 3C and the Woodley Park Community Association on a quarterly basis and make a reasonable attempt to

resolve any issues regarding trash removal and rodent control, or assist in any way in the cleanliness of the alley.

VOTE: **4-0-1** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller to Approve; S. Kathryn Allen not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 24, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN

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WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

NOTICE OF PROPOSED RULEMAKING

FMBZA APPLICATION #18953

The Board of Zoning Adjustment of the District of Columbia, pursuant to the authority set forth in section 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Official Code § 6-1306), and the Zoning Regulations of the District of Columbia, hereby gives notice of its intention to not disapprove, or in the alternative, disapprove the Application of Royal Embassy of Saudi Arabia, pursuant to 11 DCMR §§ 1002, 206, and 350.6 of the Foreign Missions Act, to allow the installation of an accessory security screening structure and perimeter fence, partially located in public space, at an existing chancery in the SP-2 District at premises 601 New Hampshire Avenue, N.W. (Square 19, Lot 823).

Final action on this application will be taken in not less than thirty days from the date of publication of this notice.

Written comments may be submitted to the Board of Zoning Adjustment through the Office of Zoning, at 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Copies of this notice are available from the Office of Zoning. For further information, call (202) 727-6311.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18968 of Mohammed Khaishgi, as amended,[1] pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, the minimum side yard setback requirements under § 405.9, and the non-conforming structure requirements under § 2001.3, to construct an addition to the third story of an existing one-family dwelling in the R-5-B District at premises 1413 Q Street N.W. (Square 208, Lot 2).

HEARING DATE: April 14, 2015
DECISION DATE: April 14, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 9 and 35.)[2]

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 2F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. The ANC submitted a report in support of the application, dated March 17, 2015. The ANC's report indicated that at a duly noticed and scheduled public meeting on March 4, 2015, at which a quorum was in attendance, ANC 2F voted unanimously (7-0) in support of the application. (Exhibit 23.) The Office of Planning ("OP") also submitted a report in support of the application. (Exhibit 32.) The District Department of Transportation filed a report expressing no objection to the application. (Exhibit 31.) Two letters were filed by neighbors in support of the application. (Exhibits 29 and 30.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for variances from §§ 403.2, 405.9, and 2001.3. The only parties to the application were the Applicant and ANC 2F which was in support. Therefore, no parties appeared at the public hearing in

[1] The Applicant's prehearing statement (Exhibit 26) erroneously stated that the property is located in the R-4 District, and the self-certification form (Exhibit 9) provided the maximum lot occupancy for the R-4 District - 40%. The Application was amended to correctly state the zone as R-5-B (Exhibit 36) with a maximum lot occupancy of 60% (Exhibit 35).

[2] The self-certification form in the record at Exhibit 9, page 2, has been revised by Exhibit 35 to correct the zone district designation and the maximum lot occupancy indicated for the R-5-B District.

opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from §§ 403.2, 405.9, and 2001.3, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO APPROVED PLANS as shown on EXHIBITS 5A-5D, and 27.**

VOTE: **4-0-1** Lloyd J. Jordan, Robert E. Miller, Marnique Y. Heath, and Jeffrey L. Hinkle 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: April 29, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

BZA APPLICATION NO. 18968
PAGE NO. 3

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18977 of Weaver Prospect LLC, pursuant to 11 DCMR § 3103.2, for a variance from the off-street loading requirements under § 2201, to allow the construction of a two-story commercial retail center in the C-2-A District at premises 3220 Prospect Street, N.W. (Square 1207, Lots 104, 838, and 839).

HEARING DATE: April 14, 2015
DECISION DATE: April 21, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. The ANC submitted a report, dated April 3, 2015, indicating that at a duly noticed and scheduled public meeting on March 30, 2015, at which a quorum was in attendance, the ANC voted unanimously (8-0-0) in support of the application. The ANC's resolution stated that it endorsed the loading zone proposal #3 by the District Department of Transportation ("DDOT") and noted that proposal was also the choice of the Citizens Association of Georgetown ("CAG"). (Exhibit 31.)

The Office of Planning ("OP") submitted a timely report on April 7, 2015, recommending approval of the application (Exhibit 32) and testified in support of the application at the hearing. DDOT submitted a timely report indicating that it had no objection to the application with conditions. (Exhibit 34.)

Letters in support were submitted to the record from an adjacent property owner (Exhibit 33) and a nearby property owner. (Exhibit 37.)

There were two party status requests in opposition to the application. The first party status request was from EastBanc, Inc. (Exhibit 26), but during the Board's public meeting on April 14, 2015, the Board noted that this party status request had been withdrawn as an agreement had been reached with the Applicant for the management of trash in the proposed development. (Exhibit 39.) The other party status request in opposition was from Clive Cookson (Exhibit 28), but at the public hearing on April 14, 2015, the Board, as a preliminary matter, denied this party status request in opposition

because the motion was incomplete and authorization for the property owner's representative was not provided. Nonetheless, Mr. Cookson's representative provided testimony in opposition to the application at the hearing.

A letter was submitted by CAG, stating that CAG is generally supportive of the application, but voiced concerns about a lack of off-street loading. (Exhibit 29.) A representative from CAG testified at the public hearing, citing its general support and discussing its concerns regarding loading.

A letter in opposition from an adjacent property owner was submitted to the record. (Exhibit 35.)

During the hearing, the Board heard testimony in support from Robert Elliot, who is the owner of commercial properties across the street from the subject property to this application.

During the hearing, the Applicant proposed several modifications to DDOT's proposed conditions. The Applicant's proposed conditions were submitted to the record during the hearing. (Exhibit 40.) The Board discussed those proposed conditions and suggested several modifications. The Board then closed the hearing and the record, but asked the Applicant to submit a revised version of the proposed conditions[1] and to address the concerns of the adjacent neighbor as expressed in her letter at Exhibit 35 in the record. The Applicant submitted a post-hearing letter in response and addressed the Board's requests. (Exhibit 43.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for an area variance from 11 DCMR § 2201. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 2201, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

[1] The Board accepted conditions 1-7 but struck conditions 8 and 9 because the Board found that the bike parking issues those conditions addressed were not sufficiently related to the loading relief being requested.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 25D AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall designate and maintain a loading coordinator responsible for mitigating the Project's loading impact on the community.

2. In consultation with the Advisory Neighborhood Commission and the Citizens Association of Georgetown, the Applicant must design a loading zone and corresponding street configuration along Prospect Street. Prior to the issuance of a certificate of occupancy, the Applicant shall install the loading zone and street configuration, as approved by DDOT.

3. No restaurant, or any other use that has a more intensive loading use, as determined by DDOT, shall be permitted on the Property for a period of three years after the effective date of this Order. After the three year period, to establish a use with a more intensive loading use, the Applicant shall submit a report to DDOT that analyzes the impacts of the loading operations of the Intensive Use and proposed mitigation of such impacts. If DDOT concludes there is an increased loading impact, the Applicant in consultation with the Advisory Neighborhood Commission and the Citizens Association of Georgetown, shall provide DDOT with a mitigation plan. The Applicant shall implement a mitigation plan approved by DDOT prior to issuance of a certificate of occupancy.

4. The Applicant shall include a trash room on the ground floor of the Project, which will remain reserved for the storage of trash generated by tenants of the Project, and must not be converted to any other use or operation.

5. The Applicant shall designate an additional 300 square feet of enclosed space in the Project to be used for trash storage in the event that the ground floor trash room is not sufficient to store the trash generated by tenants of the Project. The additional trash storage space must remain available for the life of the Project.

6. In the event any portion of the Project is leased to or operated by any restaurant, bar, or any other type of eating or drinking establishment, the Applicant shall require any operator of such eating or drinking establishment to construct and operate a refrigerated trash system for the management of wet refuse generated by such eating or drinking establishment.

7. No trash shall be stored outdoors in the required rear yard of the project.

VOTE: **3-0-2** (Lloyd L. Jordan, Robert E. Miller, and Jeffrey L. Hinkle to APPROVE; Marnique Y. Heath, not present or participating; 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: April 27, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE

REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18981 of Frances Raskin, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, to allow the construction of a two-story rear addition to an existing one-family dwelling in the CAP/R-4 District at premises 333 F Street, N.E. (Square 779, Lot 161).

HEARING DATE: April 21, 2015
DECISION DATE: April 21, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on April 8, 2015, at which a quorum was in attendance, ANC 6C voted 6-0-0 to support the application. (Exhibit 30.)

The Office of Planning ("OP") submitted a timely report and testified at the hearing in support of the application. (Exhibit 27.) The District's Department of Transportation ("DDOT") submitted a timely report indicating it had no objection to the approval of the application. (Exhibit 28.) A timely report was submitted to the record from the Architect of the Capitol indicating that the plans were not inconsistent with the intent of the Capitol Interest Overlay (CAP). (Exhibit 23.) Two letters of support from adjacent neighbors were submitted in support of the application. (Exhibits 25 and 26.)

A resident who lives several blocks away testified to voice his concerns regarding what would occur should the Board grant special exception relief whenever there is limited lot coverage in the block because he believed that overbuilding the lot would set a precedent for others in the block. The Board chairman responded by explaining that each case before the Board is decided on its own merits and that the Zoning Regulations allow exceptions to those rules and regulations but only if certain criteria are met. He added that there is no precedent set from one case to another in the same area and that each case has to meet all the criteria under the law to be granted zoning relief.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223 and 403.2. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, and 403.2, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations an Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in the accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7.**

VOTE: **3-0-2** (Lloyd J. Jordan, Marcie I. Cohen, and Jeffrey L. Hinkle to APPROVE; Marnique Y. Heath, not participating, not voting; 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: April 23, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN

APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

NOTICE OF PROPOSED RULEMAKING

FMBZA APPLICATION #19013

The Board of Zoning Adjustment of the District of Columbia, pursuant to the authority set forth in section 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Official Code § 6-1306), and the Zoning Regulations of the District of Columbia, hereby gives notice of its intention to not disapprove, or in the alternative, disapprove the **Application of the Apostolic Nuncio of the Holy See**, pursuant to 11 DCMR §§ 1002 and 206 of the Foreign Missions Act, to allow the installation of a perimeter security fence, partially located in public space, at an existing embassy in the D/NO/TSP/R-1-A District at premises 3339 Massachusetts Avenue N.W. (Square 2122, Lots 6, 16, 17, 20, 21, 804, and 809).

Final action on this application will be taken in not less than thirty days from the date of publication of this notice.

Written comments may be submitted to the Board of Zoning Adjustment through the Office of Zoning, at 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Copies of this notice are available from the Office of Zoning. For further information, call (202) 727-6311.

D.C. Board of Zoning Adjustment

Chairman's Motion and Follow-up Announcement for Closed Meetings for Legal Advice and Deliberating but Not Voting

Month of MAY 2015 Roll Call Vote

"In accordance with Section 405(c) of the Open Meetings Act, D.C. Official Code Section 2-575(c), I move that the Board of Zoning Adjustment hold closed meetings on the Mondays of:

- **May 4th;**
- **May 11th; and**
- **May 18th.**

These meetings start at 4:00 p.m. and are held for the purpose of obtaining legal advice from our counsel and deliberating upon, but not voting on the cases scheduled to be publicly heard or decided by the Board on the day after each such closed meeting. Those cases are identified on the Board's public hearing agendas for:

- **May 5th;**
- **May 12th, and**
- **May 19th.**

A closed meeting for these purposes is permitted by Sections 405(b)(4) and (b)(13) of the Act.

Is there a second?

(Once Seconded): Will the Secretary please take a roll call vote on the motion?

(As it appears the Motion has passed): I request that the Office of Zoning provide notice of these closed meetings in accordance with the Act.

BOARD OF ZONING ADJUSTMENT
CHAIRPERSON'S MOTION AND FOLLOW-UP ANNOUNCEMENT FOR CLOSED MEETING FOR PURPOSE OF "TRAINING" / ROLL CALL VOTE SCHEDULED FOR JUNE 2, 2015

As Chairperson of The Board of Zoning Adjustment for the District of Columbia and in accordance with § 407 of the District of Columbia Administrative Procedure Act, I move that The Board of Zoning Adjustment hold a closed meeting on **Tuesday, June 2, 2015, from 9:00 a.m. to 12:30 p.m.** for the **purpose of conducting internal training**, pursuant to § 405(b) (12) of the Open Meetings Amendment Act of 2010.

Is there a second?

(ONCE SECONDED):

Will the Secretary please take a roll call vote on the motion before us now that it has been seconded?

(*AS IT APPEARS THAT THE MOTION HAS PASSED*):

I hereby request that the Office of Zoning provide the notice in accordance with the Act.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-12
Z.C. Case No. 14-12
EAJ 1309 5th Street, LLC
(First Stage and Consolidated PUD & Related Map Amendment
@ 1309-1329 5th Street N.E. (Lot 800, Square 3591))
March 30, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on January 5, 2015 and February 11, 2015, to consider applications from EAJ 1309 5th Street, LLC ("Applicant") for review and approval of a consolidated and a first-stage planned unit development ("PUD") for Lot 800[1] in Square 3591 ("Property"), and a related Zoning Map amendment to rezone the PUD site from C-M-1 to C-3-C. The application proposes a mixed-use development incorporating retail and either office or residential uses ("Project"). The Commission considered the application pursuant to Chapters 24 and 30 and § 102 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application with conditions.

FINDINGS OF FACT

Procedural History

1. On July 10, 2014, the Applicant submitted an application to the Commission for the review and approval of a consolidated and first-stage PUD and a related Zoning Map Amendment to rezone the site from the C-M-1 Zone District to the C-3-C Zone District. The application proposes a mixed-use development incorporating retail, including a theater use, and either office or residential uses.

2. At a public meeting on July 28, 2014, the Commission voted to set the case down for a public hearing and requested the Applicant to provide additional information and drawings to address Commission concerns regarding:

   (a) The building design, including roof plans and sections and floor area ratio ("FAR") calculations of the Project components;

   (b) The benefits and amenities package offered by the Project;

   (c) The Project's vehicular and bicycle parking and loading;

   (d) The LED screens proposed for the building;

   (e) Deafspace design principles;

   (f) The Project's event space;

[1] Lot 800 will be subdivided into a new record lot.

(g) The relationship of retaining the existing façade while still allowing for tenant design flexibility; and

(h) The demolition plan for the Project.

3. On July 18, 2014, the Office of Planning ("OP") filed its setdown report. (Exhibit ["Ex."] 10.)

4. On August 7, 2014 and August 29, 2014, the Applicant filed Pre-Hearing Statements responding to the Commission's and OP's requests. (Ex. 12-12C, 13-13H.)

5. The Applicant filed an additional Pre-Hearing Submission containing its Transportation Impact Study on December 11, 2014 and an additional Pre-Hearing Submission on December 16, 2014, in response to Commission, OP, and District Department of Transportation ("DDOT") requests. (Ex. 18, 18A, 19-19H.)

6. After proper notice was provided, the Commission held a hearing on the application on January 5, 2015. The Applicant presented its project at such time and OP, DDOT, and the District Department of the Environment ("DDOE") provided their reports to the Commission. The Commission continued the case to allow for further resolution of the agency and Commission issues. The Commission held a second hearing on the application on February 11, 2015. The Applicant presented the updates to the project and detailed the resolution of issues raised by the Commission and agencies. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 5D, the ANC within which the Property is located.

7. The witnesses appearing on behalf of the Applicant at the hearings were Jeff Kaufman and Geoff Sharpe; and the expert witnesses appearing on behalf of the Applicant at the hearing were: Robert Sponseller of Shalom Baranes Architects, the project architect; Dan Van Pelt of Gorove/Slade Associates, the project traffic consultant; Dan Duke of Bohler Engineering, Inc., the project civil engineer; and Mark Pelusi of Mahan Rykiel, the project landscape architect. The Applicant presented a sample materials board during the February 11, 2015 hearing, as requested by the Commission during the January 5, 2015 hearing.

8. At the conclusion of the hearing, the Commission requested that the Applicant file a post hearing submission containing information regarding the following: a list of events demonstrating the types of community events typically held at the Property, further studies of, and alternative location proposals for, the Union Market identifier ("Identifier") and justification as to the roof top location of such structure, the assumptions used to derive the valuation of the two affordable residential units reserved for residents earning 50% of the Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for household size) ("AMI"), the reflectivity of

the white façade of the project, and information regarding the project's sustainability (specifically, its LEED point generation).

9. On February 11, 2015, the Commission voted to take proposed action to approve the application.

10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") as required by the District of Columbia Home Rule Act on February 12, 2015. (Ex. 29.) NCPC, by delegated action dated March 10, 2015 found that the proposed PUD would not adversely affect the federal establishment or other identified federal interests in the National Capital and would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 54.)

11. On February 18, 2015, the Applicant submitted its list of final proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR § 2403.16 - 2403.18. (Ex. 50.)

12. On March 2, 2015, the Applicant submitted the post-hearing items requested by the Commission at the February 11, 2015 hearing. Among other items, this post-hearing submission included revised plans that removed the proposed Identifier from the South Building roof and proposed alternative locations for such marker, including the Applicant's recommended location atop the theater component along 5th Street, N.E. (Ex. 51B.)

13. On March 30, 2015, the Commission voted to take final action to approve the application subject to the conditions enumerated in this Order. The Commission indicated that the Identifier was to be located atop the theater component along 5th Street, N.E., as shown in Exhibit 51B and described as "Option 1" and that no additional Identifier signs were to be located within the project.

Description of Property and Surrounding Areas

14. The Property consists of approximately 85,820 square feet of land area and is currently improved with two structures – the artisanal market and event space known as The Market at Union Market ("The Market") in the existing south building and the warehouse and distribution facility in the existing north building. The Property is located within the boundaries of ANC Single Member District 5D01. The Property is presently zoned C-M-1.

15. The Property is located in the Northeast quadrant of the District of Columbia bounded by a surface lot to the south, a vacant lot used for maintenance storage to the north, 6th Street, N.E. to the east, and 5th Street, N.E. to the west. Situated within the eastern portion of the Union Market district, the Property is less than one-third mile from the entrance to the NoMA-Gallaudet University Metrorail station. It is in the Ivy City neighborhood, with Trinidad to the east and Eckington to the west. The burgeoning

"NoMA" neighborhood is located to the south, across Florida Avenue, N.E. The Gallaudet University campus is east of the Property.

16. The project is within the Florida Avenue Market, a warehouse district whose history has been to accommodate the city's food wholesalers. The Market has evolved significantly over the years and had many names over such time. The project marks an opportunity to capitalize upon the renovation and revitalization of the Florida Avenue Market. Today, The Market is a conglomeration of wholesalers and retailers of foodstuffs, dry goods, jewelry, tourist souvenir items, and general merchandise.

Underlying and Requested Zoning

17. The Property's underlying zoning is C-M-1 which permits "low bulk commercial and light manufacturing uses" with a maximum density of 3.0 FAR, maximum height of 40 feet, a maximum of three stories, and no lot occupancy limit. New residential uses are not permitted in such underlying zone district. (11 DCMR §§ 800.1, 800.4, 840.1, and 841.1.)

18. The entire Florida Avenue Market area is zoned C-M-1. Northwest of The Market, across New York Avenue, property from the railroad right of way north to Rhode Island Avenue and east to Brentwood Road is zoned in the M Zone District. Directly to the east of The Market, the Gallaudet campus and nearby residential properties are in the R-4 Zone District. South of The Market, properties south of Florida Avenue to H Street, from the railroad tracks on the west to about 3rd Street on the east, are zoned in a mixture of C-M-1, C-M-3, C-2-B, C-3-A, and C-3-B Zone Districts. From 3rd Street moving east, most properties are zoned in the R-4 and R-5 Zone Districts. The properties at 501 New York Avenue, N.E., and 340 Florida Avenue, N.E. were rezoned from the C-M-1 Zone District to the C-3-C Zone District by Z.C. Order No. 11-25 and Z.C. Order No. 06-40 (as modified), respectively.

19. The Applicant requests a PUD-related map amendment approval rezoning the Property to C-3-C. The C-3-C Zone District permits residential use in addition to retail uses. Pursuant to 11 DCMR §§ 2405.1, 2405.2, and 2405.6, the Applicant also requests application of the PUD standards for C-3-C which allow a maximum height of 130 feet, rather than the C-3-C matter-of-right maximum of 90 feet, and a maximum density of 8.0 FAR, rather than the C-3-C matter-of-right maximum density of 6.5 FAR.

The Proposed Project

20. The proposed Project will contain a two building, two phase, mixed-use retail, theater, office and/or residential complex. The Project will have a gross floor area of up to approximately 541,400 gross square feet, or a density of up to approximately 6.3 FAR. The lot coverage will be less than the 100% permitted by C-3-C zoning with 84% lot coverage on the total site, and the maximum height of each building will be 120 feet.

(Ex. 2-2H, 19-19H, 35-35H, and Applicant's presentation at the January 5, 2015 and February 11, 2015 hearings (collectively, "Applicant's Presentation").)

South Building

21. The Applicant is requesting consolidated PUD approval for the building located on the south portion of the property ("South Building"), which will be the first phase of the project. The South Building will be constructed above The Market, an existing two-story structure while still keeping the vibrant, approximately 55,600 gross square foot Market building operational throughout construction. The total retail area will be approximately 62,400 gross square feet. An approximately 42,000 gross square foot theater will be constructed over, and stretch across The Market structure. An approximately 112,000 gross square foot, four-story office or residential component will be constructed on top of the theater. The South Building will have a total square footage of approximately 216,400 gross square feet (or a density of approximately 2.52 FAR). The South Building will not provide parking. (Ex. 2-2H, 19-19H, 35-35H, and Applicant's Presentation.)

22. The three distinct programs of the South Building are emphasized by "sliding" the stacked volumes within which each is contained. Each component of the South Building, including the existing Market building, utilizes a different façade texture to differentiate its use. (Ex. 2-2H, 19-19H, 35-35H, and Applicant's Presentation.)

North Building

23. The Applicant is requesting first-stage PUD approval for the building located on the north portion of the Property ("North Building"), which will be the second phase of the Project. One level of approximately 35,000 gross square feet of retail will be constructed on the first floor of the North Building. A residential or office component of either nine or 10 stories and approximately 290,000 gross square feet will be constructed over the retail level of the North Building. Below grade parking consisting of approximately 300 to 475 spaces will be constructed below the ground-floor retail in the North Building. The North Building will have a total gross square footage of approximately 325,000 gross square feet (or density of approximately 3.78 FAR). (Ex. 2-2H, 19-19H, 35-35H, and Applicant's Presentation.)

Additional Design Considerations

24. In order to maximize the pedestrian experience and create a vibrant street level experience, loading and parking access is proposed to occur from 6th Street, which will minimize impacts on 5th Street sidewalks and lessen pedestrian-vehicular conflicts.

25. The parking for the South Building will be provided in the following manner:

(a) Upon the completion of construction of the South Building, the Applicant will utilize up to 225 parking spaces on the lot to the south of the Property at least through the Applicant's existing lease for such property (expiring no earlier than October 2016) with the intention to extend such use with the owner of such parking lot property;

(b) Upon the completion of construction of the South Building and until the beginning of construction of the North Building, if the lot described above is no longer available to the Applicant, the Applicant will utilize temporary parking at the north of the Property along with nearby street parking for the South Building;

(c) If the construction of the North Building begins and the parking lot to the south of the Property is no longer available to the Applicant, the Applicant will utilize alternative parking lots in the Union Market district, which may include the "Penn and 4th Street," 1270 4th Street, or Gateway Market parking lots identified on Page 31 of Exhibit 44 in the record along with nearby-street parking for the South Building; and

(d) Upon completion of the North Building, the Applicant will utilize parking in the North Building garage for the South Building.

26. The Project will provide one 30-foot loading berth and one 100-square-foot loading platform for the retail use, one 30-foot berth for office/residential and one 100-square-foot loading platform for the South Building. Such loading facilities will allow space for the types of trucks, delivery vans, and service vehicles anticipated to service the South Building from the interior plaza. Further loading facilities will be included in the North Building during its Phase 2 review before the Commission.

27. Bicycle parking will be provided as follows: approximately 54 "temporary" bicycle parking spaces will be provided outdoors adjacent to the South Building, approximately three "permanent" bicycle parking storage spaces will be provided on the lowest level of the office component (or lower) in the South Building or approximately 39-42 "permanent" bicycle parking storage spaces will be provided on the lowest level of the residential component (or lower) in the South Building, approximately 17-27 "temporary" bicycle parking spaces will be provided outdoors adjacent to the North Building (subject to the public space permitting process), and approximately 11-119 "permanent" bicycle parking storage spaces will be provided within the North Building for such building's uses.

28. The Project includes a substantial amount of enhanced open spaces available to the public space located on the Property. The Project will provide the approximately 12,500 square feet of land area of the "Union Market Plaza" at the central portion of the Property. The Project will provide the approximately 7,000 square feet of land area of the "Union Market Park" along the southern portion of the Property. Such spaces allow Union

Market residents, users and visitors to enjoy outdoor gathering areas and program such spaces for a wide variety of social and civic uses. Such open spaces are in alignment with the Florida Avenue Market Small Area Plan's goals to provide parks and open space.

29. The Union Market Plaza will be designed and improved in two stages. The first stage will be the interim condition for the time period between the completion of the South Building and the beginning of construction of the North Building. During this time, the Plaza will exist as an improved area but without the final finishes and furnishings. During the construction of the North Building, the Plaza will not be available for the public except to the extent that such space is necessary to enter into the adjacent retail and event spaces and to perform loading or similar operations for the South Building. The second and final stage of the Plaza will be improved during the construction of the North Building and become available upon the completion of the North Building. This will be the fully finished and improved public plaza.

30. The Union Market Park may be combined with a portion of the adjacent parcel to the south of the Property to create an even larger plaza/open space for the community as recommended by the Small Area Plan. The Applicant will provide a 10-foot-wide unobstructed clear path for the east/west dimension of the Union Market Park for the duration of the project. Such unobstructed area may be combined with property of the property owner to the south to comprise such 10-foot-wide clear path dimension.

31. The North and South Buildings will be constructed on theoretical lots drawn to be in accordance with § 2517 of the Zoning Regulations. As such, the North Building and the South Building will utilize their measuring points for height from the top of the sidewalks adjacent to each such component facing the plaza internal to the site. Such height measurement is in accordance with § 2517.4 which notes that the height of a building is to "be measured from the finished grade at the middle of the front of the building." The North and South Buildings will each comply with, and be less than, the density limitation of 8.0 FAR for each theoretical lot and each will utilize half of the width of 6th Street for their rear yards. (Ex. 2-2H, 19-19H, 35-35H, and Applicant's Presentation.)

32. The Transportation Impact Study ("Study"), included in Tab A of the Applicant's December 11, 2015 submission, concluded "that the PUD will not have a detrimental impact to the surrounding transportation network." It also confirmed that the project's access plan, with its primary use of 6th Street, N.E. for passenger vehicles and primary loading egress will be suitable. The Study made suggestions for minor public space and traffic pattern modifications to mitigate traffic impacts in the area. (Ex. 18A.)

33. The Applicant will design the South Building to achieve no less than 50 LEED (Leadership in Energy and Environmental Design) points, or the LEED Silver level under LEED v. 2009 and will obtain certification of such level for the building from the United States Green Building Council. **The North Building will be designed to achieve at**

least a LEED Silver, 2009 level. The Applicant provided justification regarding why the Project would not be able to achieve a LEED Gold level, including the existence of The Market structure and the construction of three use components in the same building, among other items. (Ex. 35-35H, 44A1-44A7, and 51-51B.)

34. The Commission finds that the project's design features are superior to what would be provided in a matter-of-right development at the PUD site. The Property is an important site for promoting further development within the Union Market district. Through the PUD process, the Project will create an exemplary mixed-use development on the site. This Project will implement the Small Area Plan. The PUD process will capture the benefits and amenities that will enhance the surrounding community inclusive of the remaining area of the Union Market district.

35. The Applicant requests a five year term of validity for the Stage 1 approval of the North Building from the effective date of this Order. Within such time period, the Applicant will be required to file an application with the Commission for a Stage 2 PUD approval for the North Building. (Ex 2.)

Development Incentives and Flexibility

36. The Applicant requests the approval of flexibility for the use of the floors above the South Building's theater component with either office or residential uses. Similarly, the Applicant requests the approval for the use of the floors above the North Building's retail component with either office or residential uses.

37. In addition to the rezoning of the Property from C-M-1 to C-3-C and the application of the PUD standards in Chapter 24 of the Zoning Regulations, the Applicant requests the flexibility from the strict application of the relevant provisions of the Zoning Regulations as follows:

(a) Loading – Flexibility is requested from the loading requirements of § 2201.1 to allow for the inclusion of less loading than would be required by the proposed use mix of the South Building.[2] Specifically, as shown on Page Z1 of the Plans, the following loading facilities would be required for the uses located in the South Building: one 55-foot loading berth, four 30-foot loading berths, three 20-foot loading spaces, one loading platform of 200-square-feet, and four loading platforms of 100-square-feet. The Applicant proposes the following loading for the South Building: two 30-foot loading berths and two loading platforms of 100-square-feet. Therefore, such loading facilities will be not include the following required loading facilities: one 55-foot loading berth, one 30-foot loading berth, three 20-foot loading spaces, one loading platform of 200-square-feet, and one

[2] Note: The Applicant will likely include a request for additional loading flexibility for its North Building as part of its Phase 2 PUD application.

loading platform of 100-square-feet. The proposed loading will provide sufficient operational support for the proposed uses of the South Building. The Applicant will implement the Loading Management Plan submitted as Exhibit 19D to optimize the use of such loading facilities;

(b) Roof structures – Flexibility is requested from the requirements of § 411.5 that roof structures shall be of uniform height. In order to reduce the height of portions of the roof structure on the South Building, the Applicant proposes to lower portions of the roof structure's height such that there are three heights of the South Building's roof structure – 10 feet, 14 feet, and 17 feet. The roof structure of the North Building is proposed to be constructed with heights of 14 feet and 18 feet, six inches;

(c) Courts – Flexibility is requested from the requirements of § 776[3] as detailed on page Z3 and Z4 of Exhibit 44A6-44A7 in the record;

(d) Parking – A temporary waiver is requested from the requirements of § 2101.1 for the South Building prior to completion of construction of the North Building. As shown on page Z1 of the Plans, the South Building's uses generate a parking requirement of approximately 139-208 parking spaces. The South Building will not contain parking spaces. All parking spaces for the Project will be located within the North Building's subgrade garage after the North Building's completion; and

(e) Bicycle parking – A temporary waiver is requested from the requirements of § 2119.3 to locate required bicycle parking spaces for the South Building's new retail and theater uses in the North Building upon the North Building's completion. In addition, a waiver is requested from the requirements of § 2119.3 to allow for the location of required bicycle parking spaces for the South Building's residential or office component above the first floor of the South Building.

Public Benefits and Project Amenities

38. In addition to the sustainability features discussed above, the following benefits and amenities will be created as a result of the PUD project:

(a) *Affordable Housing (§ 2403.9(f))* – The Applicant will set aside eight percent (approximately 8,860 gross square feet) of the residential units as affordable housing for the life of the Project, if the upper four floors of the South Building are constructed for residential use. Two of these units comprised of not less than 20% of the affordable gross floor area set aside (or the equivalent of

[3] The commercial or residential use options for the North and South Buildings affect the calculations for court widths only on their respective theoretical lots in compliance with § 2517, but not the other building's theoretical lot. The court requirements for each theoretical lot are analyzed and calculated separately.

approximately 1,772 gross square feet, comprised of any unit type) will be set aside for residents earning no more than 50% of AMI. The remainder of the Project's affordable units will be set aside for households earning no more than 80% of AMI. Because the map amendment rezones the property from the CM-1 Zone District where new housing is prohibited to the C-3-C Zone District where such housing is allowed any amount of affordable housing exceeds the amount of affordable residential space that would have been required under the existing mater-of-right condition. In addition, the level of affordability is deeper than required under Inclusionary Zoning. The Commission finds that the provision of affordable housing is a valuable community benefit of the PUD that should be recognized;

(b) *Urban design, architecture and landscaping (§ 2403.9(a))* - The project exhibits the characteristics of exemplary urban design, architecture, and landscaping. The Project provides a superior design that fully responds to the site location and history while efficiently integrating a unique assemblage of uses directly benefitting the community. The Project design utilizes the existing structure on the Property in order to infuse the industrial/commercial aesthetic into the building, particularly along the ground floor. Guided by the Small Area Plan's goal to incorporate existing buildings into redevelopments within Union Market, the Project utilizes and celebrates the building on the Property to give the first floor its authenticity and character at great cost to the Applicant. The Applicant believes that the retention of the structure significantly contributes to the place-making desired by the Small Area Plan and assists in Union Market becoming a destination. The use components are located one atop the other and create a sense of vertical movement delineating each such use. The open space between the buildings also allows for a variation to the massing along 5th Street and creates an interesting, framed vista from Union Market into the Gallaudet campus and from the campus into the district. Further, the components of the Project employ unique textures to further identify each unique use. The design is also responsive to the environment of the Florida Avenue Market, since it preserves the original building, uses the clean, unadorned architectural language of industrial design, and incorporates the appropriate size, shape, and appearance of masonry on certain components;

(c) *Open Spaces to be Accessed by the Public (§ 2403.9(i) and (j))* – The Project includes a substantial amount of enhanced open spaces available to the public located on the Property – both in the approximately 12,500 square feet of land area of the "Union Market Plaza" at the central portion of the Property and the approximately 7,000 square feet of land area of the "Union Market Park" along the southern portion of the Property. This public space is cultivated and reclaimed for use by pedestrians, whether for walking or other activated street life. The Applicant will maintain the Union Market Park and Union Market Plaza

areas for the life of the Project and may actively program them with events. Such spaces allow Union Market residents, users, and visitors to enjoy outdoor gathering areas and program such spaces for a wide variety of social and civic uses. Such open spaces are in alignment with the Florida Avenue Market Small Area Plan's goals to provide parks and open space;

(d) *Environmental benefits (§ 2403.9(h))* – The South Building will be designed to achieve the equivalent of a LEED Silver (v. 2009) rating and will be certified to such level. The North Building will be designed to achieve at least a LEED Silver, 2009 level. The Applicant will address the LEED Certification level of the North Building in its second-stage PUD application for that building. In addition, the Project incorporates extensive sustainable features including features to maximize water efficiency and measures both to mitigate the building's impact on the environment and to create a healthier interior environment;

(e) *Site planning, and efficient and economical land utilization (§ 2403.9(b))* – The Project design reflects creativity and engineering to synthesize the highly-beneficial retail, theater, and office and/or residential uses at the Property, with loading facilities and approximately 300 to 475 underground parking spaces in the North Building. The Project successfully provides loading facilities, underground parking, drive aisles, and ramps without compromising the essential and sizable retail spaces and open spaces at the Property. The Project introduces a significant amount of community-serving or community-anchoring retail space in an area that is currently underserved, along with retaining the now-essential Market structure. Importantly, the Project retains and enhances open space both in the central portion of the Property running from 5th Street to 6th Street and along the south portion of the Property. Such space allows for thriving uses to be located adjacent to civic spaces activated by the customers and community fostered by The Market. The Project also achieves the principles of transit-oriented development, as it strikes a careful balance between increasing density and sensitive placement of massing and use on the Property;

(f) *Neighborhood serving retail (§ 2403.9(i))* – The Applicant will provide approximately 62,423 gross square feet of engaging retail, including "The Market" at Union Market, along with the approximately 42,000 gross square foot theater, and another approximately 35,000 gross square feet of retail use in the North Building. This retail will help enliven the street and continue to attract people and investment to the neighborhood and create employment opportunities in Ward 5;

(g) *Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts (§ 2403.9(c))* – The Applicant shall implement measures

to promote the use of public transit and bicycle transportation, and discourage the use of motor vehicles, as set forth in the Applicant's Transportation Demand Management Plan described on pages 15-16 of Exhibit 35, page 47 of Exhibit 44A4, and pages 9-12 of Exhibit 50. The Project shall provide loading consistent with the Plans and shall abide by the Loading Management Plan submitted as Exhibit 19D, provided that the Applicant shall have flexibility to modify such plans if directed to do so by DDOT in response to the public space permitting process. In addition, the Applicant will introduce traffic infrastructure upgrades adjacent to the Property described in the Applicant's Transportation Demand Management Plan;

(h) *Retention of The Market structure and continuous operation of The Market throughout construction (§ 2403.9(i) and (j))* – The Applicant shall construct the South Building to span over the entire structure with separate foundation, structural, and building systems to allow for the retention of The Market structure to help maintain the neighborhood's authentic character. In addition, the Applicant shall maintain The Market in operation throughout construction through special construction accommodation allowing tenants and customers to access "The Market" building during such time;

(i) *Enhanced security commitment (§ 2403.9(i))* – The Applicant shall provide additional private security patrols on the public streets within the Union Market district as described on pages 6 and 7 of Exhibit 35 for the areas shown on pages 1 and 2 of Exhibit 35E up to an amount of $400,000/year for a period of five years after the issuance of the first Certificate of Occupancy for the new component(s) of the South Building;

(j) *Educational Programs (§ 2403.9(i))* – The Applicant shall provide employee time and company resources to arrange and maintain programming related to the use of the Market associated with local schools and students to create educational programs as described on page 40 of Exhibit 44A4 for the life of The Market. The three components of the educational programs are:

(1) Educational programs or tours with local school students – The Applicant will provide individuals and the expertise to develop a curriculum, provide materials, and implement and teach participating local school students approximately monthly. These programs and tours will comprise varying subject matter each month relating to the use of The Market (of the Applicant's or affiliated school's choosing), typically last approximately two to three hours, and consist of approximately ten to thirty students, depending on the interest levels in the relevant subjects;

(2) High school internship program – The Applicant will arrange for an internship for an area high school student to work a limited number of

hours at The Market during the school year and summer break to gain work experience, including experiencing first-hand the business operations and providing early job and entrepreneurship skills; and

(3) Individual educational sessions – The Applicant will provide no less than five educational sessions per year with students from local schools or other interested participants on an individual basis regarding subjects relating to The Market such as healthy eating and budgeting;

(k) *5th Street NE Interim Condition Parking and Loading Management (§ 2403.9(i))* – The Applicant shall design and installation of an interim parking management program for 5th Street, NE from Morse to Penn Street, N.E., including the design and installation of striping and signage, subject to DDOT approvals during the public space permitting process;

(l) *Donation of Event Space to Community (§ 2403.9(i))* – The Applicant shall provide discounted or free event space or related services in the project or, if available and applicable, adjacent outdoor space to the community, non-profits or similar institutions in the DC metropolitan area at a value of $30,000 per year. The benefited community, non-profits, or similar groups will include organizations that have utilized the event space in the past, as summarized on Exhibit 51A;

(m) *Community events (§ 2403.9(i))* – The Applicant shall host no less than 10 community events for five years in accordance with the description on pages 8-9 in Exhibit 35. The events will include, or be similar to, community events that have been held at the Property, as summarized on Exhibit 51A;

(n) *Neal Place and 5th Street Sidewalk Upgrades (§ 2403.9(i))* – The Applicant shall upgrade the southern Neal Place sidewalk between 4th and 5th Streets, N.E. and the western 5th Street sidewalk between Neal Place and Penn Street, N.E. to DDOT-compliant standards, as necessary, subject to DDOT approval and the issuance of public space permits and further subject to limited deviations from DDOT standards as required by the current location of infrastructure adjacent to such sidewalks. The final plan for the sidewalk on the south side of Neal Place between 4th and 5th Streets will include:

(1) A six foot wide clear path to meet ADA and DDOT standards with the exception of pinch points due to existing infrastructure that may remain;
(2) Replacement of curb ramps to meet ADA and DDOT standards;
(3) Moving light pole(s), if necessary; and
(4) Striping in parallel parking;

The final plan for the sidewalk on the west side of 5th Street between Neal Place and Penn Street will ensure that the required DDOT standard sidewalk clear-path is in place;

(o) *Streetscape Design Guidelines (§ 2403.9(i))* – The Applicant will commission and receive the streetscape design guidelines for the Union Market district, in accordance with pages 3-4 of Exhibit 35 and Exhibit 35D, subject to DDOT approval. The Applicant may design and construct the public space adjacent to the project in accordance with the recommendations of the streetscape design guidelines, subject to DDOT approvals during the public space permitting process;

(p) *Adopt-A-Block (§ 2403.9(i))* – The Applicant will participate in the District's Adopt-a-Block program or a similar program (or become part of a business improvement district which shall assume responsibility for similar duties). In so doing, the Applicant will regularly clean up trash and remove graffiti along 5th and 6th Streets, N.E. between Florida Avenue and Penn Street, N.E.;

(q) *Way-Finding Signage (§ 2403.9(i))* – The Applicant will install way-finding signage to access the Union Market district from New York Avenue, NE utilizing Brentwood Avenue, NE subject to DDOT (and, if necessary, Federal) approvals during the public space permitting process; and

(r) *First-Source Employment Agreement (§ 2403.9(e))* – The Applicant will enter into a First-Source Employment Agreement with the Department of Employment Services ("DOES") in the form submitted in to the record as Exhibit 35G to achieve the goal of utilizing District of Columbia residents for at least 51% of the new jobs created by the PUD project.

39. The Commission finds that the Applicant's public benefits and project amenities provide value to the District and the community surrounding the Property and are sufficient to justify the relief requested.

Compliance with the Comprehensive Plan

40. The Commission finds that the proposed modification to the approved PUD is not inconsistent with the Comprehensive Plan (10 DCMR) and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element.

41. The Project implements Land Use Element policies that designate the area around the New York Avenue-Florida Avenue-Gallaudet University Metrorail station for future growth and encourage infill development and development near Metrorail stations. The

PUD and map amendment bring growth and revitalization to the Union Market district. Further, it brings a theater to a location where such destination and entertainment use does not currently exist.

42. The Project implements Transportation Element policies that promote transit-oriented development and urban design improvements. The PUD brings new housing or office use and retail uses within walking distance of the Metrorail station and, through its Transportation Management Plan, provides effective incentives to discourage motor vehicle use.

43. The Project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, if the Project will construct its residential component(s). The South Building would bring approximately 100 to 115 new residential units to an underserved neighborhood, with eight percent of the total, or approximately 8,860 gross square feet, set aside as affordable units and approximately 20% of such affordable gross floor area, or the equivalent of 1,772 gross square feet of the South Building's potential of approximately 112,000 gross square feet of residential use, set aside for households earning 50% of AMI or less. In accordance with standard practice, the affordable units shall not be required on the top two floors of the residential component.

44. The Project implements Urban Design Element policies that call for enhancing the aesthetic appeal and visual character of areas around major thoroughfares. The PUD significantly improves the appearance a key site in the Florida Avenue and will catalyze additional investments in the neighborhood.

45. The Project implements Upper Northeast Area Element policies stating that the Capital City Market area should be a regional destination that could include housing and retail uses. In addition, the introduction of the theater creates a destination for the Union Market district and deepens its amenity base.

Government Reports

46. OP filed a report on December 29, 2014. (Ex. 20.) The report noted that OP was "excited by this proposal and continues to support" the project, but was not able to make a recommendation at the time of submission due to open items. At the first hearing, OP detailed its report and indicated open items relating to the Project. The OP report included a DDOE report dated October 27, 2014.

47. OP filed a supplemental report on February 9, 2015. (Ex. 39.) The report noted that OP "recommends approval" of the project, subject to the removal of the roof top sign from the rooftop and the expression of the two affordable housing units reserved for residents earning 50% of AMI as a square foot area. At the second hearing, OP detailed its report and indicated its recommendation of approval of the project, subject to these conditions.

48. DDOT submitted a report into the record on January 5, 2015. (Ex. 25.) The report noted that DDOT had been having regular meetings with the Applicant and that it had "no objection" to the approval of the project, subject to conditions relating to upgrading one side of the Neal Place sidewalks between 4th and 5th Streets, N.E. and one side of the 5th Street, N.E. sidewalks between Neal Place and Penn Street, N.E. to DDOT standards, enhancing the Transportation Demand Management measures of the project, creating the streetscape design guidelines scope of work in coordination with DDOT, installation of DDOT-approved signage and striping to allow for optimal routing of vehicles to the Union Market district, and providing a 10 foot unobstructed direct path of travel along the south side of the site. At the first hearing, DDOT detailed its report and indicated open items relating to the Project.

49. DDOT filed a supplemental report on February 6, 2015. (Ex. 36.) The report noted that DDOT and the Applicant had "coordinated closely" to address the issues in DDOT's January 5, 2015 report and made "substantial progress" at weekly meetings. The DDOT report indicated agreement on most open items, indicated additional discussion on the financial incentives of the Transportation Demand Management measures was necessary, and noted the ability to further discuss and approve items during the typical public space permitting process. At the second hearing, DDOT detailed its report and indicated its support of the project. DDOT stated that it was working with the Applicant to address its concerns and would continue to do so.

50. DDOE filed a report on December 29, 2014 (attached to the OP filing of the same date). (Ex. 20.) DDOE included discussion of topics relating to the Project's sustainable design, including green building, stormwater management, green area ratio, water quality and use, waste, and air quality.

51. DDOE filed a supplemental report on February 9, 2015. (Ex. 40.) This report recommended approval of the application with conditions. DDOE requested that the Project generate at least one percent of the building's energy use on site, be certified LEED Gold, and continue adherence to the District stormwater and tree pit design standards and regulations.

52. A letter in support from Councilmember Kenyan McDuffie was received into the record. (Ex. 42.) In this letter, Councilmember McDuffie expressed his support due to the project's achievement of the Small Area Plan's goals and benefits to the community. The letter also noted that the project institutes many of the Ward 5 Industrial Land Transformation Study's recommendations and enjoys broad community support.

Advisory Neighborhood Commission Reports

53. ANC 5D submitted a letter in support of the project noting that, "On December 9, 2014, at the duly-noticed, regularly-scheduled monthly meeting of Advisory Neighborhood Commission 5D, with a quorum of commissioners (6 out of 6) and the public present",

ANC 5D voted "unanimously to support this application." (Ex. 21.) At the hearing, the Commission noted that the ANC letter had been received and would be given great weight.

54. The Single Member District representative for ANC 5D01 – the Single Member District where the Property is located – submitted a letter in support of the application dated December 4, 2014, noting that the project will greatly benefit the community and District and achieves the goals of the Small Area Plan. (Ex. 26.)

55. The Single Member District representative for ANC 5D07 submitted a letter in support of the application dated December 25, 2014 noting that he "strongly recommended" the approval of the application and that the Applicant had engaged in extensive communication with the community regarding the Project. (Ex. 23.)

Parties in Support or Opposition

56. No parties appeared in support or opposition to the application.

Persons in Support or Opposition

57. A letter in support from Akosoa McFadgion was received into the record as Exhibit 32.

58. A letter in support from David Franco was received into the record as Exhibit 37.

59. A letter in support from Sang Oh Choi was received into the record as Exhibit 38.

60. A letter in support from Martin Kaufman, the owner of Harvey's Market at the Property, was received into the record as Exhibit 41.

61. A letter in support from Harmar Thompson was received into the record as Exhibit 43.

62. Several individuals appeared at the hearing in support of the application including: Tina Laskaris, Nathaniel Adams, Dan Steinhilber, Abed Almaala, Rokas Reipa, Yvonne Buggs, Troy Prestwood, and Wahid Osman.

CONCLUSIONS OF LAW

1. Pursuant to Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider these applications as a consolidated PUD. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts.

3. The Property meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

4. The PUD complies with the applicable height, bulk, and density standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The retail and theater uses and the residential and/or office uses for this project are appropriate for the Property. The impact of the Project on the surrounding area is acceptable given the quality of the public benefits of the Project, and the application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

5. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the Project's public benefits and amenities strike a reasonable balance with the requested development flexibility.

6. Approval of this PUD and related map amendment is appropriate because the proposed development is consistent with the desired future character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

7. The PUD-related rezoning of the PUD Site to C-3-C is consistent with the purposes and objectives of zoning as set forth in the Zoning Act of 1938, approved June 20, 1938.

8. 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 the recommendations of OP in all zoning cases. The Commission carefully considered the OP reports and found OP's reasoning persuasive in recommending approval of the application.

9. 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 the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered the ANC 5D position supporting approval of the application and concurred in its recommendation of approval.

10. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the ANC, OP, and to owners of property within 200 feet of the site in accordance with the Zoning Regulations and applicable case law.

11. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the reports and testimony of OP and DDOT provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under Chapter 24. The Commission finds that the Project fully satisfies the goals and objectives of the PUD Regulations of Chapter 24 to encourage the development of well-planned developments which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development. The Commission also approves the Applicant's requests for flexibility from specific areas of the Zoning Regulations including the loading requirements of § 2201.1, the roof structure requirements of § 411.5, the court requirements of § 776, the parking requirements of § 2101.1 (until the North Building is constructed, unless additional or modified flexibility is otherwise requested), and the bicycle parking requirements of § 2119.3. In addition, the Commission approves the flexibility for the use of the upper four floors of the South Building with either office or residential uses and the use of the upper eight or nine floors of the North Building with either office or residential uses.

12. The Commission finds that the Applicant's proposed TDM measures are adequate to mitigate any potential adverse effects on the surrounding area from the development that relate to traffic, and that these measures have been incorporated into the conditions of this Order.

13. The application for a PUD is 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 the application for the review and approval of a consolidated and first stage Planned Unit Development and a related Zoning Map amendment from C-M-1 to C-3-C for the Property subject to the following conditions:

A. PROJECT DEVELOPMENT

1. The PUD shall be developed in accordance with the architectural drawings prepared by Shalom Baranes Architects, Bohler Engineering, and Mahan Rykiel, submitted into the record on July 10, 2014 as Exhibit 2A1-2A6, as modified by the architectural drawings and pages submitted on August 29, 2014 as Exhibit 13-

13H in the record, as modified by the architectural drawings and pages submitted on December 16, 2014 as Exhibit 19-19H in the record, as modified by the architectural drawings and pages submitted on February 2, 2015 as Exhibit 35A-35A7B in the record, as modified by the architectural drawings and pages submitted on February 11, 2015, as Exhibit 44A1-44A7 in the record, and as modified by the architectural drawings and pages submitted on March 2, 2015 as Exhibit 51-51B in the record, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").

2. The Identifier shall be located only as shown as “Option 1” of Exhibit 51B and there shall be no more than one such Identifier.

3. The PUD shall include a mixed-use building at the south of the Property, which was approved by the Zoning Commission as a consolidated PUD, containing approximately 62,423 gross square feet of retail use, approximately 42,000 gross square feet of theater use, and approximately 112,000 gross square feet of residential or office use. The maximum density of the South Building shall be 2.52 FAR. The PUD shall include a mixed-use building at the north of the Property, which was approved by the Zoning Commission as a Phase 1 PUD, containing approximately 35,000 gross square feet of retail use and approximately 42,000 gross square feet of theater use, and approximately 290,000 gross square feet of residential or office use gross. The maximum density of the North Building shall be 3.78 FAR. The total maximum density of the project shall be 6.3 FAR.

4. The maximum height of the buildings shall be 120 feet as shown on the Plans.

5. The project shall provide no parking in the South Building. The project shall include a minimum of 300-475 vehicle parking spaces in the below-grade parking garage beneath the North Building. The project shall provide one 30-foot loading berth and one 100 square foot loading platform in the South Building, as shown on the Plans. Loading for the North Building will be approved as part of its Phase 2 approval.

6. The Applicant shall have flexibility with the design of the PUD in the following areas:

   (a) To provide a range in the number of residential units in the South Building of 10% from the number depicted on the plans;

   (b) To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

(c) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details, dimensions and locations, including curtainwall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;

(d) To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units and signage, to accommodate the needs of specific retail tenants;

(e) To remove the Identifier from the Project;

(f) To vary the selection of plantings in the landscape plan depending on seasonal availability within a range and quality as proposed in the plans;

(g) To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Plans do not change; and

(h) To revise the design of the public space surrounding the Property and the exterior design of the project to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities or as would otherwise be in accordance with the Streetscape Design Guidelines.

B. PUBLIC BENEFITS

1. **Prior to issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, if the uppermost component of the South Building is constructed for residential use, as required by Chapter 26 of the Zoning Regulations, the Applicant shall demonstrate that it has set aside at least eight percent of the gross floor area of the residential component of the South Building as inclusionary units. The Applicant shall set aside in the South Building two inclusionary zoning units, containing approximately 1,722 of gross square feet, for households with an annual income of no more than 50% of AMI. The remaining inclusionary units shall be for households with incomes not exceeding 80% of AMI in accordance with the Inclusionary Zoning requirements. The inclusionary units shall be maintained for the life of the project.

2. **Prior to issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant shall provide evidence that the building has been designed to achieve a LEED Silver, 2009 level and will obtain certification of such level for the building from the United States Green Building Council. **The Applicant shall address the LEED Certification level of the North Building in its second-stage PUD application for that building, and the North Building shall be designed to achieve at least a LEED Silver, 2009 level.**

3. The Applicant shall provide at its cost, the "Union Market Park" and "Union Market Plaza" areas shown in the Plans and as described in Exhibits 19H and 35B in the record. The Union Market Park shall be comprised of approximately 7,000 square feet of land area. The Union Market Plaza shall be comprised of approximately 12,500 square feet of land area. The Applicant will maintain the Union Market Park and Union Market Plaza areas for the life of the Project and may actively program them with events. The Applicant will provide a 10 foot wide unobstructed clear path for the east/west dimension of the Union Market Park for the duration of the project. Such unobstructed area may be combined with property of the property owner to the south to comprise such 10 foot wide clear path dimension.

4. **The Applicant shall provide the Union Market Park prior to the issuance of the Certificate of Occupancy for the new component(s) of the South Building**. The Union Market Plaza will be designed and improved in two stages. The first stage will be the interim condition for the time period between the completion of the South Building and the beginning of construction of the North Building. During this time, the Plaza will exist as an improved area but without the final finishes and furnishings. The interim improvements will be completed prior to the issuance of the Certificate of Occupancy for the new component(s) of the South Building. During the construction of the North Building, the Plaza will not be available for the public except to the extent that such space is necessary to enter into the adjacent retail and event spaces and to perform loading or similar operations for the South Building. The second and final stage of the Plaza will be improved during the construction of the North Building and become available upon the completion of the North Building. This will be the fully finished and improved public plaza. **The final improvements will be completed prior to the issuance of the Certificate of Occupancy for the North Building**.

5. The Applicant will preserve and retain the existing structure currently housing "The Market" as shown on the Plans.

6. The Applicant will maintain The Market as open and operational throughout construction of the remainder of the project adjacent to and above The Market structure.

7. **Upon issuance of the first Certificate of Occupancy for the new component(s) of the South Building and until five years after such date**, the Applicant shall provide security patrols as described on Pages 6 and 7 of Exhibit 35 for the areas shown on pages 1 and 2 of Exhibit 35E up to an amount of $400,000/year.

8. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant shall create educational programs as described on page 40 of Exhibit 44A4 for the life of The Market. The three components of the educational programs are:

   (a) Educational programs or tours with local school students – The Applicant will provide individuals and the expertise to develop a curriculum, provide materials, and implement and teach participating local school students approximately monthly. These programs and tours will comprise varying subject matter each month relating to the use of The Market (of the Applicant's or affiliated school's choosing), typically last approximately two to three hours, and consist of approximately 10 to 30 students, depending on the interest levels in the relevant subjects;

   (b) High school internship program – The Applicant will arrange for an internship for an area high school student to work a limited number of hours at The Market during the school year and summer break to gain work experience, including experiencing first-hand the business operations and providing early job and entrepreneurship skills; AND

   (c) Individual educational sessions – The Applicant will provide no less than five educational sessions per year with students from local schools or other interested participants on an individual basis regarding subjects relating to The Market such as healthy eating and budgeting

9. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant will design and install an interim parking management program for 5th Street, N.E., including the design and installation of striping and signage, subject to DDOT approvals during the public space permitting process. The Applicant shall have flexibility to revise the design of the public space surrounding the property as needed, based upon the continued coordination with DDOT.

10. **Beginning upon the recordation of the first PUD Covenant for the project and until five years after such date**, the Applicant shall provide discounted or

free event space or related services in the project or, if available and applicable, adjacent outdoor space to the community, non-profits or similar institutions in the DC metropolitan area at a value of $30,000 per year. The benefited community, non-profits, or similar groups will include organizations that have utilized the event space in the past, as summarized on Exhibit 51A or similar community groups or organizations.

11. **Beginning upon the recordation of the first PUD Covenant for the project and until five years after such date**, the Applicant shall host no less than 10 community events for five years in accordance with the description on pages 8-9 in Exhibit 35. The events will include, or be similar to, community events that have been held at the Property, as summarized on Exhibit 51.

12. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant will upgrade the southern Neal Place sidewalk between 4th and 5th Streets, N.E. and the western 5th Street sidewalk between Neal Place and Penn Street, N.E. to DDOT-compliant standards, as necessary, subject to DDOT approval and the issuance of public space permits and further subject to limited deviations from DDOT standards as required by the current location of infrastructure adjacent to such sidewalks.

    The final plan for the sidewalk on the south side of Neal Place between 4th and 5th Streets will include:

    (a) A six-foot-wide clear path to meet ADA and DDOT standards with the exception of pinch points due to existing infrastructure that may remain;

    (b) Replacement of curb ramps to meet ADA and DDOT standards;

    (c) Moving light pole(s), if necessary; and

    (d) Striping in parallel parking.

    The final plan for the sidewalk on the west side of 5th Street between Neal Place and Penn Street will ensure that a DDOT standard sidewalk is in place.

13. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant will commission and receive the streetscape design guidelines for the Union Market district, in accordance with page 3-4 of Exhibit 35 and Exhibit 35D, subject to DDOT approval. The Applicant may design and construct the public space adjacent to the project in accordance with the recommendations of the streetscape design guidelines, subject to DDOT approvals during the public space permitting process.

14. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building and for the life of the Project**, the Applicant will participate in the District's Adopt-a-Block program or a similar program (or become part of a business improvement district which shall assume responsibility for similar duties). In so doing, the Applicant will regularly clean up trash and remove graffiti along 5th and 6th Streets, N.E. between Florida Avenue and Penn Street, N.E.

15. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant will install way-finding signage to access the Union Market district from New York Avenue, N.E. utilizing Brentwood Avenue, N.E. subject to DDOT (and, if necessary, Federal) approvals during the public space permitting process.

16. **Prior to the issuance of the first Certificate of Occupancy for the new component(s) of the South Building**, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services in the form submitted into the record as Exhibit 35G to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the Project.

C. MITIGATION MEASURES

1. The Applicant shall implement measures to promote the use of public transit and bicycle transportation, and discourage the use of motor vehicles, as set forth in the Applicant's Transportation Demand Management ("TDM") Plan described on page 7 of Exhibit 18A, (the Applicant's Transportation Impact Study), pages 16-17 of Exhibit 35, and the supplemental and additional elements described by Applicant on page 47 of Exhibit 44A4. Such Plan elements are as follows:

   (a) The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;

   (b) All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a 0.25 mile radius from the site. All residential parking will be unbundled from the costs of leasing apartments or purchasing condos;

   (c) The Applicant shall reserve at least two parking spaces for a car-sharing service in the North Building's underground parking garage, provided that the space is desired by a car-sharing service (and if it is not, then it shall revert to the Applicant's general use);

(d) The Applicant shall provide two electronic message screens displaying real-time transportation information in the building – one on the first floor of the South Building and one on the lowest floor of the residential or office component;

(e) The Applicant shall provide following bicycle parking:

(1) Prior to the issuance of the Certificate of Occupancy for South Building:

(A) Permanent bicycle storage space containing bicycle facilities will be on the lowest residential or office floor (or lower) for the residential or office use in the South Building as required by DC Municipal Regulations for that use; and

(B) Temporary bicycle storage space for approximately 54 short term bicycle parking will be located outside and around the South Building;

(2) Prior to the issuance of the Certificate of Occupancy for the North Building:

(A) The number of permanent bicycle parking facilities for the theater and new retail uses in the South Building (eight spaces) will be located on the first floor or first subgrade level of the parking garage in the North Building; and

(B) Bicycle storage space containing permanent bicycle storage facilities for all retail and residential or office uses will be located in the North Building;

(3) Short term bicycle parking spaces will be located outside of the North Building.

(f) **Prior to the issuance of the Certificate of Occupancy for the North Building**, the Applicant shall provide the following financial incentives to its tenants or residents in the South Building, as applicable:

(1) Office: each office worker will be provided with access to a corporate bike share membership up to the maximum value of $15,000 cumulatively for the Project; and

(2) Residential: all new tenants will be provided with a car share or bike share membership up to the maximum value of $14,000 cumulative for the Project; and

(g) The Applicant shall provide information and website links to commuterconnections.com, goDCgo.com, and other transportation services on developer and property management websites.

2. The Project shall provide loading consistent with the Plans and shall abide by the Loading Management Plan submitted as Exhibit 19D, provided that the Applicant shall have flexibility to modify such plans to the extent necessary to comply with requirements imposed in the public space permitting process.

D. MISCELLANEOUS

1. No building permit shall be issued for this project until the Applicant has recorded a covenant among the land records of the District of Columbia between the owner and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.

2. The consolidated PUD approval for the South Building hereunder shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit for the South Building as specified in 11 DCMR § 2409.1. Construction shall begin within three years after the effective date of this Order. The first-stage PUD approval for the North Building hereunder shall be valid for a period of five years from the effective date of this Order. Within such time period, the Applicant must file an application with the Commission for a second-stage PUD approval for the North Building.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, et seq. ("Act") and this Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, 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.

For this reason stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the applications be **GRANTED.**

On February 11, 2015, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission took proposed action to **APPROVE** 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 March 30, 2015, upon the motion of Commissioner Miller as seconded by Vice Chairperson Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of § 3028.8 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on May 8, 2015.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF CLOSED MEETINGS

TIME AND PLACE: **Tuesday, June 2, 2015, @ 9:00 a.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

The Zoning Commission, in accordance with § 405(c) of the Open Meetings Act, hereby provides notice it will hold a closed meeting at the time and place noted above for the purpose of receiving training as permitted by D.C. Official Code § 2-575(b)(12). The subject of the training is the Anatomy of a Zoning Order; Compliance & Monitoring of First Source Agreements, LEED, Certified Small Business Enterprise, Inclusionary Zoning, and Transportation Demand Management; and DCRA Compliance with Conditions in Orders Prior to Issuance of Building Permits and/or Certificate of Occupancy.

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

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Sergeant Andrew J. Daniels),	)	
Complainant,	)	PERB Case No. 08-U-26
	)	Opinion No. 1510
v.	)	
District of Columbia Metropolitan Police Department,	)	
Respondent.	)	

DECISION AND ORDER

I. Statement of the Case

Before the Board is an unfair labor practice complaint ("Complaint") that was filed on March 10, 2008, by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") on behalf of Sergeant Andrew J. Daniels ("Daniels" or "Grievant") against the Metropolitan Police Department ("MPD"), alleging that MPD violated D.C. Official Code sections 1-617.04(a) (1) and (4) by retaliating against Daniels for protected activity. Specifically, the Complaint states that on January 7, 2008, MPD unilaterally implemented a new schedule for the staff of the Metropolitan Police Academy ("Academy" or "MPA"). On January 11, 2008, FOP filed on behalf of five of its members, including Daniels, an informal step 1 grievance with Inspector Victor Brito ("Brito") concerning the new schedule. Following Brito's denial of the informal step 1 grievance, FOP appealed the denial by filing a formal step 1 grievance and then a formal step 2 grievance. On January 22, 2008, four days after the filing of the formal step 1 grievance, Brito ordered Daniels to submit all leave requests with him, contrary to the departmental policy regarding leave requests. (Complaint ¶ 11.) On January 22, 2008, FOP filed a step 1 grievance "based on Inspector Brito's retaliatory conduct against Sergeant Daniels." (Complaint ¶ 12).

On January 31, 2008, Daniels investigated and reported on the illness and hospitalization of an Academy recruit. FOP alleges, "On February 1, 2008, despite handling the situation as prescribed by Department and MPA procedures, Sergeant Daniels was ordered by Captain Mark Carter and Inspector Brito to complete a PD119, explaining his response to the hospitalized recruit situation." (Complaint ¶ 15). PD119 is a "Complainant/Witness Statement." (Complaint Attachment 5). Also on February 1, 2008, FOP filed a formal step 1 grievance on Daniels's behalf regarding the change in leave policy. (Complaint ¶ 16 & Attachment 6). The Complaint further alleges, "On February 12, 2008, Sergeant Daniels learned that he was the subject of a Department investigation into his handling of the hospitalized MPA recruit. . . ." (Complaint ¶ 17). On February 13, 2008, FOP filed a step 2 grievance regarding the requirement that Daniels submit his leave requests to Brito. (Complaint ¶ 18 & Attachment 7.)

Following its allegation of the foregoing facts, the Complaint asserts under the heading "Analysis" that MPD committed an unfair labor practice "by disciplining and taking reprisals against Sergeant Daniels as a result of his asserting his union rights." (Complaint ¶ 19.) And in paragraph 23, the Complaint states, "Accordingly, the Department . . . engaged in unfair labor practices by disciplining Sergeant Daniels in retaliation for engaging in union activity. . . ."

In its answer, MPD denied the allegations and asserted that the Complaint should be dismissed as FOP had "failed to allege a *prima facie* case of retaliation by demonstrating that any action had been taken against Sergeant Daniels at the time the Complaint was filed." (Answer p. 5.) In a prior ruling, the Board disagreed, stating that the Complaint only had to allege, as opposed to demonstrate, a *prima facie* case and the Board could not say that the Complaint had failed to allege that any action had been taken against Daniels. The Board noted the alleged investigation of Daniels and other directives allegedly made to him. *FOP/Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't (on behalf of Daniels),* 60 D.C. Reg. 12080, Slip No. 1403 at p. 3, PERB Case No. 08-U-26 (2013). Finding issues of fact "concerning whether the actions of the Department constitute adverse employment actions and whether they were intended to restrain, or had the effect of restraining, the Grievant in the exercise of protected activities," the Board referred the case to a hearing examiner. *Id.* at 4.

After holding a hearing on July 31, 2014, the Hearing Examiner issued a Report and Recommendation in which he found that MPD took reprisal against Daniels for protected activities in violation of sections 1-617.01(a)(1) and (4) of the D.C. Official Code and recommended certain remedies.[1] The Hearing Examiner's Report and Recommendation, FOP's exceptions, MPD's exceptions, and FOP's opposition to MPD's exceptions are before the Board for disposition.

[1] In view of this recommendation, which we adopt, a motion to compel production of additional documents filed by FOP two months after the hearing is moot and accordingly is denied.

II. Hearing Examiner's Report and Recommendation

A. Facts

The Hearing Examiner found the following facts.

After Inspector Brito became director of the Academy in September 2007, he observed that a number of employees with a tour of duty from 5:30 a.m. to 2:00 p.m. would leave after lunch between 1:00 and 1:30 p.m. Some of them were leaving to work overtime assignments for Photo Radar from 2-10 p.m., either at the site across town where officers were trained to use radar or, after completion of training, in Photo Radar vehicles around the city. In a November 21, 2007 e-mail, Brito presented the issue to Assistant Chief Joshua Ederheimer and stated that as a result of his observation he had issued orders on leave and work hours. The e-mail concludes, "The main reason I'm writing this is informational because I know stones will be thrown and I wanted to make you aware. Additionally, I met with Shop Steward Mullians [*sic*] prior to informing MPA of these orders and he overwhelming supports and understands these issues." (Report & Recommendation 4.) Shop Steward Mullins testified that Brito's claim that he had Mullins's support was not accurate. (Report & Recommendation 4.)

Brito issued a work order prohibiting the staff from reporting to work earlier than 6:30 a.m. That starting time corresponded to the 6:30 a.m. to 3:00 p.m. hours of the recruits at the Academy. Daniels, an instructor at the Academy, asked his supervisors to allow him to continue to work a 5:30 a.m. to 2:00 p.m. tour of duty. They refused. On January 7, 2008, Daniels made the same request at a meeting with Brito and three other officers. Brito testified that Daniels explained that the tour of duty he was seeking would allow him to pick up his children after school. Brito further testified that he had a copy of Daniels's Time and Attendance Court Information System ("TACIS") report showing Daniels worked an average of two days a week at Photo Radar. Brito testified that he asked Daniels whether he had to pick up his children or work Photo Radar. Daniels replied that he needed to do both. Brito testified that he thought Daniels was being disingenuous. (Report & Recommendation 5-6.) The Hearing Examiner added, "The record establishes that the TACIS report is dated January 11, 2008, four days after Brito's meeting with Daniels." (Report & Recommendation 6.) Brito denied Daniels's request.

On January 18, 2008, the Union filed on behalf of Daniels and four others a step 1 grievance regarding the schedule change. Daniels continued to work at Photo Radar, taking an hour of leave and arriving one hour late. He submitted his leave requests to his supervisor until he was told to submit them to Brito. In his testimony, Brito denied that he had told anyone that Daniels would be required to submit leave requests directly to him. (Report & Recommendation 7.) On February 1, 2008, FOP filed on behalf of Daniels a step 1 grievance regarding the alleged change in leave policy. The day before that step 1 grievance was filed, FOP filed a step 2 grievance regarding the schedule change.

At the same time, a separate controversy arose out of the hospitalization of an Academy recruit. On January 30, 2008, a recruit referred to in the Report and Recommendation as H. was admitted to a hospital with complications of Crohn's disease. Daniels was informed of the hospitalization by a recruit class leader the following morning, Thursday, January 31, 2008. Daniels requested that the recruit class leader obtain information and report back. Daniels testified that after roll call that morning he informed his supervisor, Lt. Tommie Hayes, of H.'s hospitalization. Later that morning, Hayes ordered Daniels to teach a class as a substitute for an instructor who was on sick leave. Upon returning to his office after the class that afternoon, Daniels found a note on his desk from the recruit class leader reporting on H. and his improvement. (Tr. 37.) Daniels relayed the information he had on H. in an e-mail to Hayes with a copy to Brito. At 3:09 p.m., Brito e-mailed in response, "Sgt. Daniels when did we know about this? And was notification made thru your chain of command?" Since Daniels had left for the day, he did not respond to Brito until the next morning, February 1, 2008 at 6:14 a.m. Daniels replied then that he had made notification through his chain of command and that he had learned of the situation Thursday morning.

At a meeting with Daniels on February 1, 2008, Hayes decided that on Monday, February 4, 2008, H. should attend a class on driver training rather than go to the Police and Fire Clinic. At Hayes's instruction, Daniels notified H. that he was to attend the class. (Report & Recommendation 8.)

On February 1, 2008, Brito instructed Hayes to have Daniels complete a Complainant/Witness Statement, a departmental form called PD 119, and to conduct an investigation of Daniels's alleged failure to notify the chain of command of H.'s hospitalization. (Report & Recommendation 8-9.) As with most MPD internal affairs investigations, Hayes contacted the Internal Affairs Division, which generated an IS number. (Report & Recommendation 9.) On February 29, 2008, a "Commander's Resolution Conference" was held pursuant to General Order 120.21. Although General Order 120.21 and the parties' collective bargaining agreement require the commanding officer or director to attempt to resolve a disciplinary matter at a Commanders' Resolution Conference, no resolution or settlement discussions took place at the conference. (Report & Recommendation 10, 25.) Instead, Daniels was given a copy of Hayes's investigative report to which was attached an unsigned letter of prejudice dated February 29, 2008. The investigative report was "poorly prepared with errors in form and substance" largely because Daniels was not interviewed during the investigation. (Report & Recommendation 24.) The letter of prejudice states two charges. The first is Daniels's alleged failure to properly notify his supervisor and the director of the Academy of H.'s hospitalization. The second charge is that Daniels ordered H. to report to a class rather than the clinic. (Report & Recommendation 10-11.)

B. Hearing Examiner's Conclusions of Law

The Hearing Examiner considered as a "threshold" matter MPD's objection that the letter of prejudice should not be considered because it is not mentioned in the Complaint. Rule 520.3(d), MPD pointed out, requires a "clear and complete statement of the facts constituting the alleged unfair labor practice, including date, time and place of occurrence of each particular act alleged, and the manner in which D.C. Code Section 1-618.4 of the CMPA is alleged to have been violated." The Hearing Examiner asserted that the purpose of Rule 520.3(d) is to give the Respondent notice of the alleged claims to permit a response and eliminate unfair surprise at a hearing. (Report & Recommendation 17.) The Hearing Examiner found such notice in paragraph 23 of the Complaint, which alleges that MPD committed an unfair labor practice by disciplining Daniels. The Hearing Examiner concluded that MPD's objection was without merit and that "the PERB has jurisdiction to hear and decide FOP's allegation that the Letter of Prejudice constituted retaliation in violation of the CMPA." (Report & Recommendation 18.)

The Hearing Examiner observed that the Board analyzes unfair labor practice claims of retaliation for protected union activity using a test established by *Wright Line v. Lamoureux*, 251 N.L.R.B. 1083, 1089 (1980), *enforced*, 622 F.2d 899 (1st Cir. 1981). "In this case," the Hearing Examiner wrote, "the *Wright Line* test requires FOP to show that: Daniels engaged in protected union activities; MPD knew of his protected union activities; there was *animus* by the MPD; and MPD retaliated against Daniels." (Report & Recommendation 18.)

The Hearing Examiner found that Daniels engaged in protected activities by filing grievances, which MPD necessarily knew of. The Hearing Examiner found evidence establishing anti-union animus. In Brito's e-mail to his superior regarding the schedule change, Brito predicted that "stones will be thrown." His testimony at the hearing reflected an adversarial view of collective bargaining and management to the point of describing it as a "contact sport." The Hearing Examiner stated that Brito appeared to have fabricated his claim that Shop Steward Mullins overwhelmingly supported the schedule change as well as his testimony that he confronted Daniels with his TACIS report at their January 7, 2008 meeting. (The TACIS report was dated January 11, 2008.) The Hearing Examiner found Brito's demeanor throughout his testimony on the schedule change to be defensive as he recalled his contacts with the FOP organizationally. Finally, the Hearing Examiner found Brito's assignment of Hayes to investigate and prepare a disciplinary recommendation to be a violation of General Order 120.23's prohibition of investigations being conducted by a member with a conflict of interest. The Hearing Examiner concluded that "the totality of the record facts, circumstances and evidence establish that Brito's conduct toward and actions taken against Daniels were motivated by anti-union *animus*." (Report & Recommendation 20.)

The Hearing Examiner determined that MPD took adverse actions against Daniels shortly after Daniels filed the grievances. Those adverse actions were: a request that Daniels complete a PD 119, Hayes' investigation of Daniels, the letter of prejudice, and the Commander's Resolution Conference, at which no attempt at resolution was made. These actions were, the

Hearing Examiner wrote, "links in a chain of retaliation against Daniels proven by the totality of facts and circumstances meeting all four prongs of the *Wright Line* test." (Report & Recommendation 26.) Conversely, the Hearing Examiner was not persuaded that Brito imposed a special leave policy on Daniels.

As FOP had made a *prima facie* case, the burden of production shifted to MPD to demonstrate that it had a legitimate business reason for its actions and that it would have initiated them in the absence of protected union activity.[2] The Hearing Examiner found that MPD produced no material evidence or testimony to meet this burden. (Report & Recommendation 26.) Therefore, the Hearing Examiner concluded that "Brito took retaliatory disciplinary action against Daniels for filing two grievances thereby interfering with, restraining and coercing Daniels in the exercise of his rights under § 1-617.06(a)(2) . . . in violation of § 1-617.04(a)(1) and (4)." (Report & Recommendation 26.)

As to remedies for the violation, the Hearing Examiner recommended that the Board order MPD to cease and desist from further interference with and retaliation against protected activities and to post two notices of its violation. He also stated that FOP presented no evidence in support of its claim that costs and fees were warranted.

III. Exceptions

Both parties filed exceptions. FOP takes exception to the Hearing Examiner's rejection of one of the adverse actions that FOP alleged MPD had imposed on Daniels. Specifically, FOP excepts to the Hearing Examiner's finding against it regarding the allegation that the MPD, through Brito, created a special leave policy for Daniels. MPD did not file an opposition to FOP's exceptions.

MPD raises exceptions related to the Hearing Examiner's findings of animus and retaliatory adverse actions. Regarding animus, MPD contends that Shop Steward Mullins's testimony does not support the Hearing Examiner's conclusion that Brito fabricated his assertion of Mullins's overwhelming support of the schedule change. MPD also objects to the Report and Recommendation's failure to address MPD's evidence that there was no anti-union animus.

[2] *AFGE Local 2978 v. Office of the Chief Med. Examiner*, 60 D.C. Reg. 2516, Slip Op. No. 1348 at p. 4, PERB Case No. 09-U-62 (2013).

Regarding adverse actions, MPD notes that the Complaint contains no factual allegation or legal argument concerning the letter of prejudice issued to Daniels. MPD contends that there is no authority under the Board's rules to sustain a violation not alleged in a complaint. As the Complaint did not include any allegation regarding the letter of prejudice, MPD concludes that it cannot be a basis for an unfair labor practice finding.

FOP filed an opposition to MPD's exceptions. FOP asserted that MPD's arguments regarding animus were disagreements with the Hearing Examiner about either the credibility or the interpretation of testimony. FOP agreed with the Hearing Examiner that the letter of prejudice is encompassed within the Complaint's allegation that MPD committed an unfair labor practice by disciplining Daniels. FOP argues that it timely filed its Complaint after the first act of reprisal as required by *FOP/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, 61 D.C. Reg. 8019, Slip Op. No. 1397, PERB Case Nos. 09-U-41, 09-U-42, 09-U-43, 09-U-44, 10-U-01, and 10-U-14, *granting reconsideration of* 60 D.C. Reg. 2283, Slip Op. No. 1361 (2013). FOP added that even without consideration of the letter of prejudice, MPD clearly retaliated against Daniels by investigating him, obtaining IS numbers, and ordering him to complete a PD 119, as the Hearing Examiner found.

IV. Discussion

A. FOP's Exception

Regarding the alleged special leave policy, the Hearing Examiner made the following findings:

> The distilled essence of the evidence is that Daniels testified he was told by someone, likely Hayes, that Brito imposed a special leave policy for him alone and Brito testified he did not impose a special leave policy for Daniels. On this record, I am not persuaded Brito imposed a special leave policy for Daniels. Therefore, I find that FOP's allegation of a special leave policy is without merit.

(Report & Recommendation 22.) FOP disagrees with the way the Hearing Examiner resolved the conflict between the testimony of Brito and of Daniels, asserting, "Brito's testimony and representations 'appear[ed] fabricated and unreliable and not credible.' *See* Hearing Examiner's Report at p. 22. Without Brito's testimony, Daniels testimony regarding the special leave policy is uncontested." (FOP's Exceptions 6.)

FOP cannot simply eliminate Brito's entire testimony. The Hearing Examiner did not say that all of Brito's testimony and representations appeared fabricated, unreliable, and not credible. The Hearing Examiner's statement at page 22 of the Report, which FOP only partially quotes, makes clear that what seemed to the Hearing Examiner to be fabricated, unreliable, and not

credible was Brito's testimony on his meeting with Daniels.[3] The Hearing Examiner had an opportunity to observe these witnesses as they testified. The Board defers to a hearing examiner's resolution of conflicts between the testimonies of witnesses where, as here, the hearing examiner's findings are reasonable, supported by the record, and consistent with Board precedent. *FOP/D.C. Hous. Auth. Labor Comm. v. D.C. Hous. Auth.*, 60 D.C. Reg. 12127, Slip Op. No. 1410 at pp. 3-4, PERB Case No. 11-U-23 (2013). As in *D.C. Housing Authority*, the Hearing Examiner in the present case reasonably concluded that he could accept part of a witness's testimony even if he discredited other parts. *See id.* at 3. Therefore, FOP has presented no grounds for reversal of the Hearing Examiner's finding regarding the alleged special leave policy.

B. MPD's Exceptions

As the Hearing Examiner noted, FOP has the initial burden of establishing a *prima facie* case under the test the Board has adopted from *Wright Line v. Lamoureux*, 251 N.LR.B. 1083, 1089 (1980), *enforced*, 622 F.2d 899 (1st Cir. 1981). The test has four elements: (1) the employee engaged in protected union activity; (2) the employer knew about the employee's protected union activity; (3) the employer exhibited anti-union animus; and (4) as a result, the employer took an adverse employment action against the employee. *AFGE, Local 2978 v. D.C. Office of the Chief Med. Exam'r*, 60 D.C. Reg. 2516, Slip Op. No. 1348 at p. 4, PERB Case No. 09-U-62 (2013). The Hearing Examiner found all four elements present. MPD's exceptions put at issue two of the elements—anti-union animus and adverse action taken against the employee.

1. Anti-Union Animus

MPD raises a number of evidentiary objections to the Hearing Examiner's findings related to anti-union animus. Its first objection is to the Hearing Examiner's findings regarding a statement Brito made in an e-mail to his superior on the schedule change. Brito stated that Shop Steward Mullins "overwhelming [*sic*] supports and understand these issues." The Report states, "Mullins testified that Brito's statement of Mullins['s] overwhelming support of the changes to the . . . work hours was not 'accurate.'" (Report & Recommendation 4.) MPD responds that "[i]t is clear from the transcript that while Shop Steward Mullins did not agree with the word 'overwhelming,' he did not disavow the remaining portion that he 'supports and understands these issues.'" (Exceptions 14.)

Here MPD is merely proposing a paraphrase of the Report's interpretation of the testimony. Regarding Brito's assertion, Mullins testified, "It's not accurate—not the word overwhelmingly." (Tr. 172.) That being the case, the Hearing Examiner was correct in saying that Brito's assessment of Mullins's support was not accurate. The Hearing Examiner did not

[3] "Brito's testimony on this meeting, Daniels first direct effort to remain on the 5:30 a.m. to 2:00 p.m. tour of duty, appears fabricated and unreliable and not credible." (Report & Recommendation 19.)

assert that Brito's statement was false in every particular. He could have specified where the inaccuracy lay, but a request for that kind of editing is not a proper exception.[4]

MPD contends that the Hearing Examiner failed to consider evidence that union and management had a good relationship at the Academy. Challenging a hearing examiner's findings with competing evidence does not constitute a proper exception if the record contains evidence supporting the hearing examiner's conclusions. *FOP/Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 9212, Slip Op. No. 1391 at 20, PERB Case Nos. 09-U-52 and 09-U-53 (2013). In addition, MPD contends that the Report and Recommendation does not address its arguments regarding the credibility of Daniels. This exception is also without merit. The Hearing Examiner noted MPD's arguments concerning Daniels's credibility (Report & Recommendation 17) and credited Daniels's testimony. Credibility resolutions are reserved to the Hearing Examiner. *D.C. Nurses Ass'n v. D.C. Dep't of Youth Rehab. Servs.*, 61 D.C. Reg. 1566, Slip Op. No. 1451 at 4, PERB Case No. 10-U-35 (2013).

MPD's final exception regarding animus consists of unfounded objections to the Hearing Examiner's determination that Lt. Hayes had a conflict of interest that should have prevented him from being assigned to investigate Daniels. MPD asserts that "[t]he hearing examiner's finding that a conflict of interest existed based upon Sergeant Daniels' February 1, 2008 email response to Inspector Brito stating that 'notification was made thru my chain of command' is also not supported by the record." (MPD's Exceptions 17.) To the contrary, the record does support that finding as Daniels testified that he told Hayes of H.'s hospitalization after roll call the same morning that Daniels learned of the hospitalization. (Tr. 34-36.) The Hearing Examiner characterizes this testimony as unrebutted and unchallenged. (Report & Recommendation 20.) MPD objects that it rebutted this testimony by pointing out that Daniels did not include in his PD 119 the claim that he informed Hayes after roll call. Nonetheless, Daniels's testimony was unrebutted in that Hayes did not testify at all, and Hayes is the only one other than Daniels who would have had personal knowledge that Daniels did not inform him when Daniels claimed to have. A hearing examiner has the authority to determine the probative value of evidence and to draw reasonable inferences from that evidence. *AFSCME Dist. Council 20, Local 2921 v. D.C. Pub. Schs.*, 60 D.C. Reg. 2602, Slip Op. 1363 at p. 5, PERB Case No. 10-U-49 (2013). The Hearing Examiner was not required to draw an inference from the absence of an assertion in the PD 119.

[4] *See Rodriguez v. D.C. Metro. Police Dep't*, Slip Op. No. 906 at p. 7, PERB Case No. 06-U-38 (Jan. 30, 2008) ("The Complainant would have us adopt her interpretation of the witnesses' testimony and the Hearing Examiner's findings on the elements of knowledge and animus. However, the Board has held that 'issues of fact concerning the probative value of evidence and credibility resolution are attributed to the Hearing Examiner.'" (quoting *Hattan and FOP Dep't of Corr. Labor Comm.*, 47 D.C. Reg. 769, Slip Op. No. 451 at pp. 3-4, PERB Case No. 95-U-02 (1995))).

2. Adverse Action Taken against the Employee

MPD argues in its exceptions that one of the adverse actions found to be retaliatory by the Hearing Examiner, issuance of the letter of prejudice, was not pleaded in the Complaint and consequently may not be a basis for a finding of an unfair labor practice. Board Rule 520.3 requires that an unfair labor practice complaint contain a "clear and complete statement of the facts constituting the alleged unfair labor practice, including date, time and place of occurrence of each particular act alleged. . . ." The letter of prejudice was not alleged in that manner, or at all, MPD asserts. Rule 520.11 provides, "The party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." Citing *FOP/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*,[5] MPD argues that these rules make clear that a complainant is limited to proving what he alleged and that the Board may not sustain a violation not alleged in an unfair labor practice complaint. (MPD's Exceptions 10-11.)

As the Board stated in its earlier opinion in this case, a "complainant is not required to demonstrate or prove its complaint at the pleading stage as long as the complaint asserts allegations that, if proven, would demonstrate a violation of the CMPA." *FOP/Metro. Police Dep't Labor Comm. (on behalf of Daniels) v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 12080, Slip No. 1403 at p. 3, PERB Case No. 08-U-26 (2013). Thus, the Complaint did not have to *prove* that a letter of prejudice was issued in retaliation for protected activity, but it did have to make that allegation. MPD asserts that the Complaint failed to do so. MPD excepts to the Hearing Examiner's finding that FOP's allegation in paragraph 23 of the Complaint "that the MPD engaged in a an unfair labor practice by ***disciplining*** Daniels . . . makes a clear and complete statement of the facts constituting the unfair labor practice. This [is] the case because the record developed at hearing establishes that on February 29, 2008 Brito disciplined Daniels with a Letter of Prejudice based on Hayes' investigation." (Report & Recommendation 17.)

Paragraph 23 of the Complaint falls under the Complaint's heading of "Analysis," which follows the Complaint's previous heading, "Facts." Under the latter heading, FOP presents its allegations of fact, which do not include an allegation of a letter of prejudice. MPD quite reasonably states that where the Complaint refers to disciplining Daniels in paragraph 23 as well as paragraph 19, "the Complaint is asserting that the *investigation* that was undertaken of Sergeant Daniels as described in paragraph 17 constituted 'discipline.'" (MPD's Exceptions 9.)

It was not sufficient under Rule 520.3 to use the word "disciplining" as a placeholder for any act of discipline that FOP might later seek to prove at the hearing. Rule 520.3(d) requires a complainant to allege the "date, time, and place of occurrence of each particular act alleged." The Hearing Examiner stated that the purpose of this rule is to provide the respondent with

[5] 59 D.C. Reg. 6029, Slip Op. No. 1005, PERB Case No. 09-U-50 (2009), *reconsideration denied*, 61 D.C. Reg. 8003, Slip Op. No. 1316 (2012).

notice of the alleged claims so as to permit a response and eliminate unfair surprise at the hearing. MPD counters that PERB Rules and decisions have not applied "notice pleading." (MPD's Exceptions 9.) Setting aside whether the Hearing Examiner correctly stated the purpose of the rule, the question is, did FOP comply with the rule? With respect to the letter of prejudice, FOP did not. The letter of prejudice is not one of the "particular act[s] alleged." The Board has not allowed matters that were not alleged in a complaint to be litigated as if they were. In accordance with the Board's precedent, the letter of prejudice was "never placed before the Board in the Complaint" and as a result "should not have been identified as an issue to be addressed by the Hearing Examiner or by the Board." *FOP/Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 61 D.C. Reg. 8003, Slip Op. No. 1316 at pp. 6, 7, PERB Case No. 09-U-50 (2012) (citing Rule 520.11). *See also Allison v. FOP/Dep't of Corr. Labor Comm.*, 61 D.C. Reg. 9085, Slip Op. No. 1482 at p. 2, PERB Case No. 14-S-04 (2014) (noting that the complaint was not amended to include allegations regarding an election that occurred after the complaint was filed); *Soc. Sec. Admin. Office of Disability Adjudication & Review and Ass'n of Admin. Law Judges*, 66 F.L.R.A. 787, 790 (2012) (upholding judge's finding that consideration of agency's failure to send an authorized representative to negotiations was unnecessary because that issue was not raised in the complaint).

In *District of Columbia Nurses Association v. Mayor of the District of Columbia*,[6] the Board deferred to a hearing examiner's recommendation that a charge be considered notwithstanding the complaint's error in citing a statute where testimony and evidence on the statutory charge were presented without objection. The present case is very different. The Complaint's omission was substantive, and at the hearing MPD repeatedly raised objections to the consideration of the letter based on that omission, as FOP acknowledged in its post-hearing brief. (FOP Post-Hearing Brief 26; *see also* Tr. 55-58, 92-93.)

In its opposition to the exceptions, FOP contended that it could not delay filing its Complaint until Daniels was served with the letter of prejudice. FOP argues that the Board's strict application of the 120-day filing period in *FOP/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*[7] compelled FOP to file its Complaint promptly after the first act of reprisal. In that case, the Board held that a complaint regarding a disciplinary reprisal was untimely because the discipline stemmed from an internal affairs interview that the hearing examiner had found to be a violation of the CMPA.[8] The unfair labor practice complaint had been filed more than 120 days after the internal affairs interview and therefore was held to be untimely.[9] Notwithstanding, FOP acknowledges that the letter of prejudice is dated February 29, 2008, which is before the complaint was filed on March 10, 2008. (Opp'n to Exceptions 7.) FOP asserts that "MPD, however, failed to serve Sergeant Daniels with the letter of prejudice until April 1, 2008" and argues that "[t]he MPD should not be

[6] 45 D.C. Reg. 6736, Slip Op. No. 558 at 3, PERB Case No. 97-U-16 (1998).
[7] 61 D.C. Reg. 8019, Slip Op. No. 1397, PERB Case Nos. 09-U-41, 09-U-42, 09-U-43, 09-U-44, 10-U-01, and 10-U-14 (2013), *granting reconsideration of* 60 D.C. Reg. 2283, Slip Op. No. 1361 (2013).
[8] Slip Op. No. 1397 at 4; Slip Op. No. 1361 at 14.
[9] Slip Op. No. 1397 at 5.

able to attempt to circumvent a claim of retaliation by withholding evidence until after the period of filing a PERB Complaint has expired." (Opp'n to Exceptions 7.) FOP's contention regarding service is contrary to the Hearing Examiner's factual finding, which is that "the record establishes that while Daniels signed for the Letter of Prejudice on April 1, 2008, it was issued to Daniels by Brito on February 29, 2008." (Report & Recommendation 10.)

Even if Daniels had to be formally served with a signed copy of the letter for it to be actionable, the date of that formal service was only 60 days after the first alleged act of retaliation, and, in addition, nothing prevented FOP from amending its Complaint to allege that the investigation led to a retaliatory letter of prejudice. That was the procedure followed in *AFGE, Local 1403 v. D.C. Office of the Attorney General*, 59 D.C. Reg. 4557, Slip Op. No. 935, PERB Case No. 06-U-01 (2008), in which the union amended its original complaint alleging retaliation to include a letter of admonition issued after the union had filed its original complaint. *Id.* at 5 n.1.

Thus, MPD is correct that the letter of prejudice cannot be a basis for a determination that an unfair labor practice occurred. However, it does not follow from that conclusion that the Complaint should be dismissed, as MPD proposes. (MPD's Exceptions 8.) The letter of prejudice aside, there were other adverse actions that supported the Hearing Examiner's determination that an unfair labor practice occurred. FOP alleged and proved other adverse actions taken against Daniels that were "links in a chain of retaliation" (Report & Recommendation 26), namely, requiring Daniels to complete a witness statement and investigating Daniels. (Report & Recommendation 22-26.)

In addition, excluding the letter of prejudice from the list of retaliatory adverse actions does not call into question the Hearing Examiner's recommended remedy. In cases where a complainant has pleaded and proved that an adverse personnel action was retaliatory, the Board has ordered that the complainant's personnel records be purged of any documentation of the action. *Bagentose v. D.C. Pub. Schs.*, 38 D.C. Reg. 4154, Slip Op. No. 270 at p. 13, PERB Case Nos. 88-U-33 and 88-U-34 (1991); *Green v. D.C. Dep't of Corr.*, 37 D.C. Reg. 8086, Slip Op. No. 257 at p. 4, PERB Case No. 89-U-10 (1990). In the present case, the Hearing Examiner did not recommend such a remedy, and the Board need not consider adding it.

Therefore, upon review of the record, the Board hereby adopts the Hearing Examiner's rational and persuasive finding that the Respondent has violated D.C. Code § 1-617.04(a) (1) and (4) by taking adverse action against Daniels for filing two grievances, thereby restraining and coercing Daniels in the exercise of his rights under D.C. Official Code § 1-617.06(a) (2) and taking reprisal action against him in violation of D.C. Official Code § 1-617.04(a) (1) and (4). In addition, we adopt the Hearing Examiner's recommendation for a remedy requiring a notice posting and a cease and desist order.

ORDER

IT IS HEREBY ORDERED THAT:

1. MPD shall cease and desist from further interference with and retaliation against the Grievant and other members of the bargaining unit for engaging in protected activities.

2. MPD shall conspicuously post within ten (10) days from the issuance of this Decision and Order no less than two copies of the attached notice where notices to employees are normally posted. The notice shall remain posted for thirty (30) consecutive days.

3. Respondent shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order that the notices have been posted accordingly.

4. 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 Chairman Charles Murphy and Members Donald Wasserman, Keith Washington, Ann Hoffman, and Yvonne Dixon

Washington, D.C.

March 19, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-U-26 is being transmitted to the following parties on this the 25th day of March, 2015.

Anthony M. Conti
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, THIS NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1510, PERB CASE NO. 08-U-26 (Mar. 19, 2015).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

WE SHALL cease and desist from violating D.C. Official Code § 1-617.04(a) (1) and (4) by the actions and conduct set forth in Slip Opinion No. 1510.

WE SHALL NOT, in any like or related manner: (1) interfere, restrain, coerce; or (2) take any reprisals against employees for exercising or pursuing their protected rights guaranteed by the Labor-Management Subchapter of the District of Columbia Comprehensive Merit Personnel Act.

District of Columbia Metropolitan Police Department

Date: _____ By: _____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 19, 2015

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
American Federation of Government Employees, Local 3721,	)	PERB Case No. 12-E-06
Petitioner,	)	Opinion No. 1511
and	)	
District of Columbia Fire and Emergency Medical Services,	)	Decision and Order
Respondent.	)	

DECISION AND ORDER

I. Statement of the Case

The matter before the Board arises from an Enforcement Petition ("Petition") filed on August 12, 2012, by American Federation of Government Employees, Local 3721 ("AFGE"). AFGE alleged that the District of Columbia Fire and Emergency Medical Services ("FEMS") failed to comply with the Board's April 25, 2012, order in *District of Columbia Fire and Emergency Medical Services v. American Federation of Government Employees, Local 3721*, 59 D.C. Reg. 9757, Op. No. 1258, PERB Case No. 10-A-09 (2012) ("PERB Order"), which upheld a November 24, 2009 Arbitration Award ("Award") that directed FEMS to compensate paramedics and EMTs "appropriate overtime pay for the previously uncompensated hours worked over 40 in a workweek from October 1, 2006, forward", plus liquidated damages and attorneys' fees.[1]

[1] *See* (Petition at 1).

The questions before the Board are whether FEMS failed to comply with PERB's Order and if so, whether PERB should grant AFGE's Petition and seek enforcement of the Order in the D.C. Superior Court in accordance with D.C. Official Code § 1-617.13(b)[2] and PERB Rule 560 *et seq*. For the reasons stated below, the Board finds that FEMS has fully complied with PERB's Order and therefore denies AFGE's Petition.

II. Background

The Award ordered:

> The Agency shall compensate the FEMS paramedics and EMTs appropriate overtime pay for the previously uncompensated hours worked over 40 in a workweek from October 31, 2006, forward. An amount equal to the overtime back pay ordered herein is ordered to be paid to those employees as liquated damages. The Agency is directed to pay the Union reasonable attorney's fees and costs associated with this grievance.

PERB upheld the Award on April 25, 2012, and FEMS did not appeal PERB's Order. In July 2012, AFGE sent emails to FEMS demanding that the agency comply with the Award and PERB's Order.[3] On August 10, 2012, AFGE filed the instant Petition for Enforcement.[4] On August 13, 2012, AFGE also filed an Unfair Labor Practice Complaint[5] ("ULP") alleging that FEMS' failure to comply with the Award and PERB's Order constituted bad faith in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5). In August 2014, AFGE withdrew its ULP Complaint in PERB Case No. 12-U-33, but stated that it was not withdrawing its Petition in this enforcement case.

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[2] D.C. Official Code § 1-617.13(b): "The Board may request the Superior Court of the District of Columbia to enforce any order issued pursuant to this subchapter, including those for appropriate temporary relief or restraining orders. No defense or objection to an order of the Board shall be considered by the Court, unless such defense or objection was first urged before the Board. The findings of the Board with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole. The Court may grant such temporary relief or restraining order as it deems just and proper and enter a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Board."

[3] (Petition at 2-3).

[4] In December 2012, AFGE filed an Amended Petition that included an additional request that PERB seek enforcement of the Award's granting of attorneys' fees, which AFGE had not listed in its original Petition. *See* (Amended Petition at 1). However, at PERB's July 18, 2014, informal conference, AFGE conceded that on February 14, 2013, FEMS paid AFGE $48,961.05 in attorneys' fees pursuant to the Award, and stated that it was therefore no longer seeking enforcement of that portion of the Award. Additionally, in March 2013, AFGE filed a motion to amend its Petition again to include an additional request for interest on the monies owed to the employees. *See* (Motion to Amend Petition). Nevertheless, because of the Board's determination in this Decision and Order that AFGE effectively agreed to the amounts FEMS proposed to pay the employees in full satisfaction of the Award and PERB's Order (or alternatively that AFGE is estopped from seeking further enforcement of the Award), the Board finds that AFGE's March 2013 Motion to Amend its Petition to include an additional award for interest is also moot and therefore does not need to be addressed.

[5] PERB Case No. 12-U-33.

In this case, FEMS asserted in its August 29, 2012 Response to AFGE's Petition that it fully intended to comply with the Award and PERB's Order, but needed significantly more time to calculate the appropriate amounts that each of the 200-plus employees, both active and inactive, was owed over the then nearly six-year period covered by the Award. FEMS argued that because it did not dispute that it was required to comply with the Award and PERB's Order, it was not necessary for PERB to grant AFGE's Petition for Enforcement.[6]

On May 13, 2014, PERB's Executive Director requested written updates from both parties regarding the status of FEMS' compliance. In its May 15, 2014 written update, FEMS asserted that it had "compensated appropriate overtime pay for previously uncompensated hours worked over 40 hours in a workweek from October 31, 2006, forward, for all FEMS paramedics and EMTS who could be located"; "paid liquidated damages in an amount equal to the overtime back pay discussed above for all FEMS paramedics and EMTs who could be located", and "tendered to the Union a check dated February 14, 2013 for payment of attorney fees in the amount of $48,961.05."[7] Accordingly, FEMS contended that it had fully complied with the Award and PERB's Order.[8]

AFGE asserted in its May 28, 2014 written update that FEMS had not yet fully complied with the Award and PERB's Order.[9] AFGE contended that while FEMS "has provided a portion of the awarded money, it erroneously reduced the amount paid to each employee by its perceived overpayment of previously paid overtime."[10] AFGE claimed that the reduction was a unilateral decision that "drastically and unjustly reduced both the back pay amount earned by each employee, as well as the matching liquidated damages paid out to each employee."[11]

On June 24 and July 18, 2014, PERB's Executive Director held informal conferences with the parties in accordance with its investigatory authority under D.C. Official Code § 1-605.02(7) and PERB Rule 500.4. At the informal conferences, FEMS stated that on May 2, 2013, it emailed AFGE's then counsel, Leisha Self, and AFGE's representative, Kenny Lyons, a proposal with its calculations of what each employee was owed,[12] as well as the methodology that was used to determine those amounts.[13] FEMS further contended that after the parties participated in a PERB-hosted mediation in spring 2013 without reaching a settlement,[14] Ms. Self emailed FEMS' representatives on July 9 and 15, 2013, demanding that FEMS begin making payments.[15] FEMS asserted that it considered Ms. Self's demands to constitute an acceptance of the proposed calculations. On August 20, 2013, FEMS' representative emailed Ms. Self and Mr. Lyons notifying them that FEMS had "finally secured funding to pay the EMTs

[6] (Response to Enforcement Petition at 4-5).
[7] (FEMS' Response to Request for Compliance Update at 2).
[8] *Id*.
[9] (AFGE's Response to Request for Compliance Update at 1).
[10] *Id*. at 2-3.
[11] *Id*.
[12] *See* (Union's Support Documentation, provided during June 24, 2014, informal conference).
[13] (Agency's Support Documentation, provided during July 18, 2014, informal conference).
[14] Because mediations are confidential, the Board will not consider either of the parties' assertions of what was conveyed or discussed during the spring 2013 mediation session.
[15] (Agency's Support Documentation, provided during June 24, 2014, informal conference).

and Paramedics associated with the [Award] consistent with the calculations previously provided." Also in that August 20, 2013 email, FEMS' counsel requested a meeting with Ms. Self and Mr. Lyons "to discuss … the timing and method of payment."[16] On August 22, 2013, AFGE responded to FEMS' email stating that it was available to meet with FEMS on August 27, 2013.[17] Additionally, AFGE suggested that the parties stop copying PERB in their email exchanges, stating that their discussions "no longer relate to the mediation, as it has ended."[18] On or about October 1, 2013, FEMS began making payments to the employees in accordance with the proposed calculations. Many of the employees who received payments signed a "Case Compliance" form acknowledging that they had received the checks "pursuant to… [PERB] Case Nos. 10-A-09, 12-E-06, and 12-U-33".[19] FEMS argued that, based on Ms. Self's emails in July 2013 and AFGE's later knowledge that FEMS had secured funding and was making payments based on the proposed calculations, AFGE in effect agreed to the proposed calculations and FEMS has therefore fully complied with the Award and PERB's Order.

At PERB's June 24 and July 18, 2014 informal conferences, AFGE, represented by new counsel because Ms. Self had retired, explained that the original grievance that led to the Award and PERB's Order stemmed from FEMS' adoption of a "flex" schedule, wherein the EMTs and paramedics worked 48 hours a week for 4 weeks, and then worked 36 hours a week for the next 4 weeks. FEMS paid overtime for time worked over 48 hours during the long weeks, and for time worked over 36 hours during the short weeks. AFGE contended that when FEMS calculated the amounts it owed under the Award for the non-payment of overtime for hours over 40 during the long weeks, it unilaterally decided to also deduct the overtime pay each employee had received for hours 37-40 during the short weeks. AFGE argued that those deductions were inappropriate because the Award only addressed the unpaid overtime for the long weeks and made no mention of a remedy for any overpayment of overtime during the short weeks. AFGE further noted that the deductions negatively affected the amounts that each employee received in liquidated damages under the Award.

In response to FEMS' position that AFGE had agreed to the methodology and amounts of the calculations, AFGE asserted that a settlement agreement had never been signed, so FEMS could not argue that AFGE ever agreed to the calculations. AFGE further stated that Ms. Self only demanded that FEMS begin making payments so that the employees would start receiving at least some of the money they were owed, but that AFGE fully intended to address the errors in the calculations and methodology at a later date.

FEMS countered that if AFGE knowingly allowed the agency to make payments in accordance with the proposed calculations while secretly intending to challenge those

[16] (Agency's Support Documentation, provided during July 18, 2014, informal conference).
[17] *Id.* The Board notes that according to the parties' email exchanges, the August 27, 2013 meeting was originally intended to be in person, but was changed to a conference call at FEMS' request. PERB did not participate in or attend the meeting.
[18] *Id.*
[19] *See* (Agency's Support Documentation, provided during June 24, 2014, informal conference); *and* (Agency's Support Documentation, provided during July 18, 2014, informal conference).

calculations later on, then such was evidence of bad faith and PERB should find that FEMS complied with the Award and deny AFGE's Petition for Enforcement.

At the July 18, 2014, informal investigatory conference, Chris LeCour, Deputy Director of the Office of the Chief Financial Officer's Pay and Retirement Services section, provided an explanation as to why the District collected the amounts that had been overpaid during the short weeks when it calculated the amounts owed under the Award. He explained that in PeopleSoft (the District's pay services program), employees who worked the short weeks were paid an extra 4 hours for retirement purposes, but that because of the flex schedule, those extra 4 hours were erroneously paid as overtime (time and a half) even when the employees did not work over 36 hours. Mr. LeCour explained that when the amounts owed to each employee for the long weeks under the Award were calculated, the District invoked its right under D.C. Municipal Regulations, Title 6B § 2900, *et seq*. ("DCMR Chap. 29") (governing Employee Debt Set-Offs) to deduct the amounts that those employees had been erroneously overpaid during the short weeks, and that such was made clear when the calculations were presented to AFGE. AFGE stated that it did not dispute that the employees may have owed the District for the short week overpayments, but contended that it was improper for FEMS' to unilaterally decide to collect those amounts from the payments it made to the employees for the long weeks pursuant to the Award. AFGE argued that rather, FEMS should have initiated a separate proceeding to collect the overpayments and that, accordingly, PERB should find that FEMS has not yet paid the full amounts owed under the Award and grant its Enforcement Petition.

III. Analysis

As stated previously, the questions before the Board in this Enforcement case are whether FEMS fully complied with PERB's Order, and if not, whether PERB should seek judicial enforcement of its Order in the D.C. Superior Court.[20] D.C. Official Code § 1-617.13(b) states that "the findings of the Board with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole." Accordingly, PERB has the authority to determine whether or not its own orders have been complied with as long as its conclusions are supported by substantial evidence from the whole record.[21]

In this matter, FEMS did not dispute that it was obligated to pay the FEMS paramedics and EMTs appropriate overtime pay for hours worked over 40 during the long weeks, liquidated damages under the Fair Labor Standards Act[22], and attorneys' fees in accordance with the Award and PERB's Order.[23] Additionally, neither party disputed that: (1) on May 2, 2013, FEMS provided AFGE's then counsel, Ms. Self, and AFGE's representative, Mr. Lyons, with its

[20] *See* D.C. Official Code § 1-617.13(b).
[21] *Id*.
[22] 29 U.S.C. § 216 *et seq*.
[23] (Response to Enforcement Petition at 4-5).

proposed calculations for the payouts;[24] (2) even though the parties did not reach a settlement during a PERB-hosted mediation in spring 2013, Ms. Self later emailed FEMS twice in July 2013 and demanded that FEMS cease any further delays in making the payments to the employees;[25] (3) on August 20, 2013, FEMS emailed Ms. Self and Mr. Lyons asserting that it had "finally secured funding to pay the EMTs and paramedics associated with the FLSA overtime arbitration case consistent with the calculations previously provided";[26] (4) beginning on or about October 1, 2013, FEMS began issuing payments in accordance with the calculations "to all FEMS paramedics and EMTs who could be located";[27] (5) included in the payment amounts was "an amount equal to the overtime back pay" for the liquidated damages;[28] (6) a substantial number of the employees who received payouts signed "Case Compliance" forms "pursuant to… [PERB] Case Nos. 10-A-09, 12-E-06, and 12-U-33";[29] (7) on February 14, 2013, FEMS "tendered to the Union a check… for payment of attorney fees in the amount of $48,961.05";[30] and (8) AFGE raised no objections with PERB or FEMS when it learned in August 2013 that FEMS had secured funding for the payouts "consistent with the calculations previously provided"—or when FEMS began making payments in October 2013 in accordance with those calculations—until May 28, 2014, when it responded to PERB's request for a written update on the status of FEMS' compliance with the Award and PERB's Order.[31]

A. The Parties' Conduct Constituted An Implied-in-Fact Settlement Agreement

The U.S. Supreme Court defines an implied-in-fact contract as "an agreement … founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding."[32] The District of Columbia Court of Appeals has recognized implied-in-fact agreements as "a true contract that contains all the required elements of a binding agreement[, and which] differs from other contracts only in that it has not been committed to writing or stated orally in express terms, but rather is inferred from the conduct of the parties in

[24] (Agency's Support Documentation, provided during July 18, 2014, informal conference); (Union's Support Documentation, provided during June 24, 2014, informal conference).
[25] (Agency's Support Documentation, provided during June 24, 2014 informal conference).
[26] (Agency's Support Documentation, provided during July 18, 2014, informal conference).
[27] (Agency's Support Documentation, provided during June 24, 2014 informal conference); (FEMS' Response to Request for Compliance Update at 2); (AFGE's Response to Request for Compliance Update at 2).
[28] *Id.* The Board notes that it is only finding that it is undisputed that the calculations included an amount for the liquidated damages. The Board recognizes that AFGE does dispute the amounts that were allocated for the liquidated damages on grounds that the calculations matched the net amount paid out to each employee after the offsets for the short weeks instead of the pre-offset amounts for the unpaid overtime for the long weeks. However, the Board finds that, based on its determination in this Decision and Order that AFGE effectively agreed to FEMS' proposed calculations, it is not necessary to address AFGE's dispute because, by agreeing to the calculations and their methodology, AFGE also agreed to the amounts that were allocated and paid out for the liquidated damages.
[29] (Agency's Support Documentation, provided during June 24, 2014 informal conference).
[30] (FEMS' Response to Request for Compliance Update at 2); *see also* footnote 4 herein.
[31] (FEMS' Response to Request for Compliance Update at 2); (AFGE's Response to Request for Compliance Update at 2).
[32] *Baltimore & O.R. Co. v. United States*, 261 U.S. 592, 597 (1923).

the milieu in which they dealt."[33] In order to establish that an implied-in-fact agreement existed—for example, for services—the facts must demonstrate that: (1) "the services were carried out under such circumstances as to give the recipient reason to understand that the services were rendered for the recipient and not for some other person"; (2) there were circumstances that put the recipient on notice that the services were not rendered gratuitously; and (3) the services must have been beneficial to the recipient.[34]

Applying those elements to the undisputed facts of the instant case, the Board finds that AFGE, by its conduct, agreed to the calculations FEMS proposed, and that accordingly, FEMS has fully complied with the Award and PERB's Order. There can be no doubt that FEMS prepared the calculations for the EMTs and paramedics that AFGE exclusively represents and no one else; nor can there be any doubt that FEMS obtained the funding for the payouts and then made payments to those EMTs and paramedics in accordance with the calculations, and no one else.[35] Further, it is clear from the facts that FEMS did not "gratuitously" go through the processes of generating the calculations, obtaining the funding for the payouts, and then making the payments to AFGE's members. Indeed, FEMS only did so with the full expectation of a *quid pro quo* exchange of consideration from AFGE—that its payments would fully and completely satisfy its obligations under the Award and PERB's Order. The Board finds that it was reasonable for FEMS to conclude that AFGE had accepted its proposed calculations when Ms. Self, after having received and considered the proposed calculations, demanded that FEMS cease any further delays in making the payments to AFGE's members.[36] The record undisputedly demonstrates that AFGE was fully aware of the methodology that FEMS had employed in generating the calculations, and that it was also fully aware that FEMS had obtained the funding and later made the payouts in accordance with those calculations.[37] The record further shows that AFGE did not object to or raise concerns about the calculations after Ms. Self issued her demands in July 2013, despite having numerous key opportunities to do so. Nor is there any indication that AFGE offered any counter-proposals or demanded that FEMS generate alternate calculations.[38] Additionally, it is undisputed that a significant number of AFGE's members signed "Case Compliance" forms in which they acknowledged receiving their payments "pursuant to… [PERB] Case Nos. 10-A-09, 12-E-06, and 12-U-33."[39] Last, there can be no question that FEMS' actions were "beneficial" to AFGE because (1) all of the EMTs and paramedics who could be located received their payments; (2) those payments included an amount for liquidated damages; and (3) FEMS paid AFGE what it owed in attorneys' fees under the Award and PERB's Order.[40]

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[33] *Fred Ezra Co. v. Pedas*, 682 A.2d 173, 176 (D.C. 1996) (internal citations omitted).
[34] *See Id.*
[35] *Id.*
[36] *Id.*
[37] *See* (Agency's Support Documentation, provided during June 24, 2014, informal conference); *and* (Agency's Support Documentation, provided during July 18, 2014, informal conference).
[38] *Id.*
[39] (Agency's Support Documentation, provided during June 24, 2014, informal conference).
[40] *Fred Ezra Co., supra*, 682 A.2d at 176.

Thus, because the undisputed facts in this case demonstrate that FEMS presented an unambiguous offer that AFGE by virtue of its conduct accepted, and because that offer and acceptance contained a reasonable exchange of consideration and covered all the requirements of the Award and PERB's Order, the Board finds that the parties entered into an implied-in-fact settlement agreement wherein FEMS, having performed the stated terms of the agreement, completely satisfied and fulfilled all of its obligations under the Award and PERB's Order.[41] Further, by agreeing to the calculations, AFGE stipulated to the District's collection of the offset amounts for the short weeks as well as the amounts that FEMS allocated and paid out for the liquidated damages.[42] Accordingly, AFGE's disputes regarding those matters are rejected.

B. Alternatively, Promissory Estoppel Prevents AFGE from Seeking Further Enforcement of the Award and PERB's Order Because FEMS Reasonably Relied On AFGE's Acceptance of the Proposed Calculations to its Detriment

The District of Columbia Court of Appeals holds that parties can enforce a promise under the theory of promissory estoppel if: (1) there is evidence of a promise; (2) the promise reasonably induced reliance upon it; and (3) the promise was actually reasonably relied upon to the detriment of the promisee.[43] The United States District Court for the District of Columbia further holds, however, that promissory estoppel is not available when the promise relied upon was indefinite, and/or when an there is an express, integrated, and enforceable contract between the parties.[44]

In this case, even if the parties' conduct did not constitute the formation of an enforceable implied-in-fact settlement agreement, the Board would still find that the undisputed facts demonstrate that AFGE communicated an unambiguous promise to accept FEMS' calculations in full satisfaction of the Award and PERB's Order when Ms. Self, after having received and duly considered FEMS' proposed calculations in May 2013, later demanded in July 2013 that FEMS begin making payments.[45] There can be no doubt that FEMS' reliance on that promise was reasonable, especially considering the facts that AFGE did not present any counteroffers or alternate calculations, or raise any objections to FEMS' calculations until May 28, 2014, long after FEMS had unambiguously communicated in August 2013 that it had secured funding for the payouts "consistent with the calculations previously provided", and that it would soon begin making payments. Last, the record further shows that when FEMS paid AFGE's attorneys' fees, secured the funding for the payouts, and then made the payments to the 200+ EMTs and paramedics, including liquidated damages, it did so to its detriment and with the full expectation

[41] *Id*.
[42] *See also* footnote 4 herein.
[43] *Simard v. Resolution Trust Corp., et al.*, 639 A.2d 540, 552 (D.C. 1994).
[44] *Greggs v. Autism Speaks, Inc.*, 987 F.Supp2d 51, 55 (D. D.C. 2014).
[45] *See Id*.; *see also* (Agency's Support Documentation, provided during June 24, 2014, informal conference); (Agency's Support Documentation, provided during July 18, 2014, informal conference); *and* (AFGE's Response to Request for Compliance Update).

that such would completely satisfy its obligations under the Award and PERB's Order.[46] Therefore, because AFGE conveyed a promise to accept the calculations and resulting payments, and because FEMS reasonably relied on that promise to its detriment, AFGE is estopped from now trying to obtain additional funds from FEMS under the Award and/or from seeking any further enforcement of PERB's Order.[47]

C. Equitable Estoppel Also Prevents AFGE from Seeking Further Enforcement of the Award and PERB's Order

The District of Columbia Court of Appeals holds that a party can invoke equitable estoppel if he can demonstrate that "he changed his position prejudicially in reasonable reliance on a false representation or concealment of material fact which the party to be estopped made with knowledge of the true facts and intent to induce the other to act." Further, the Court directed that "there must be a causal relationship between the alleged prejudice … and the reliance on the estopped party's representations…."[48]

In this case, the undisputed facts demonstrate that FEMS prejudicially changed its position by obtaining the funding for the payouts—and then by actually making the payments—only after Ms. Self implied that AFGE had agreed to the proposed calculations in July and August 2013.[49] As stated previously, it is undisputed that once AFGE demanded that FEMS begin making payments in July 2013, AFGE raised no objections to the calculations with FEMS or PERB until May 28, 2014, despite being fully aware as early as August-October 2013 that FEMS had secured the funding and was making payments based on those calculations.[50] Furthermore, AFGE asserted at PERB's June 24, 2014 informal conference that Ms. Self only demanded that FEMS begin making payments so that the employees would start receiving at least some of the money they were owed, but that AFGE fully intended to address the errors in the calculations and methodology at a later date. Thus, based on these facts and assertions, it is apparent that AFGE intentionally gave FEMS the impression that it had agreed to the calculations in order to induce FEMS to begin making payments, and that AFGE further did not disclose its intentions to raise objections to the calculations and seek more money later on after the payments had been made. Further, there is no question that there was a causal connection between AFGE's indication that it had agreed to the calculations and the steps FEMS took in reliance on that agreement, as FEMS would not likely have obtained the funding or made the payments if AFGE had not given the impression that it had agreed to the calculations, or if AFGE had timely disclosed its intention challenge the calculations in the future.[51] Finally, as noted above, AFGE conceded at the July 18, 2014 informal conference that the employees probably would have been required to repay the money they received for the short week

[46] *See Simard*, *supra*.
[47] *Id*.
[48] *Nolan v. Nolan*, 568 A.2d 479, 485 (1990) (internal citations omitted).
[49] *See Id*.
[50] *See* (Agency's Support Documentation, provided during June 24, 2014, informal conference); *and* (Agency's Support Documentation, provided during July 18, 2014, informal conference).
[51] *See Nolan, supra*.

overpayments at some point later on even if the District had not included those deductions in its calculations.

Therefore, because FEMS reasonably and prejudicially relied on AFGE's indication that it had agreed to the calculations, notwithstanding AFGE's intent to challenge the amounts and methodology later on, the Board finds that AFGE is now equitably estopped from seeking additional enforcement of the Award or PERB's Order.[52]

D. Conclusion

Based on the foregoing, and in accordance with its authority under D.C. Official Code § 1-617.13(b), the Board finds that AFGE, by its conduct, effectively agreed to the amounts FEMS proposed to pay the employees in full satisfaction of the Award and PERB's Order. Alternatively, the Board finds that AFGE is estopped from seeking further enforcement of the Award and PERB's Order. Thus, the Board finds that FEMS has fully complied with the Award and PERB's Order, and AFGE's Petition for Enforcement is therefore denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFGE's Petition for Enforcement is denied, and the matter is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman, Keith Washington, Yvonne Dixon, and Ann Hoffman.

March 19, 2015

Washington, D.C.

[52] *Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-E-06, Op. No. 1511, was transmitted via File & ServeXpress and e-mail to the following parties on this the 25th day of March, 2015.

April L. Fuller, Esq.
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VIA FILE & SERVEXPRESS AND EMAIL

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VIA FILE & SERVEXPRESS AND EMAIL

/s/ Colby J. Harmon
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO,	PERB Case No. 12-E-10
Petitioner,	Opinion No. 1512
and	Decision and Order
District of Columbia Public Schools,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The matter before the Board arises from an Enforcement Petition ("Petition")[1] filed on or about September 6, 2012, by American Federation of State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO ("AFSCME"). AFSCME alleged that the District of Columbia Public Schools ("DCPS") failed to comply with the Board's July 26, 2012, Order in *American Federation of State, County and Municipal Employees, Local 2921, AFL-CIO v. District of Columbia Public Schools*, 59 D.C. Reg. 11364, Slip. Op. No. 1299, PERB Case No. 05-U-19 (2012)[2] (hereinafter "Slip Op. No. 1299").[3] DCPS did not file a response to AFSCME's Petition.

The questions before the Board are whether DCPS failed to comply with the Board's Order in Slip Op. No. 1299 and if so, whether PERB should grant AFSCME's Petition and seek enforcement of the Order in the D.C. Superior Court in accordance with D.C. Official Code § 1-

[1] The Board notes that AFSCME originally filed its Petition under PERB Case No. 05-U-19. However, on October 1, 2014, PERB notified the parties that it had given the matter an enforcement case number, namely 12-E-10.
[2] Included with AFSCME's Petition as Exhibit A.
[3] (Petition at 1-2).

617.13(b)[4] and PERB Rule 560 *et seq*. For the reasons stated below, the Board finds that DCPS has not complied with paragraph 2[5] in the Order of Slip Op. No. 1299, and therefore hereby grants AFSCME's Petition for Enforcement with regard to that paragraph. However, the Board will not seek judicial enforcement of paragraphs 3, 4, 5, and 6 of its Order in Slip Op. No. 1299.

II. Background

Slip Op. No. 1299 in PERB Case No. 05-U-19 originated from an unfair labor practice complaint filed by AFSCME on January 7, 2005, in which AFSCME alleged that in 2003, an arbitration award ("Applewhaite Award") ordered DCPS to begin providing AFSCME with proper notice prior to conducting reductions-in-force ("RIFs"). In 2004, DCPS conducted a RIF without giving AFSCME any prior notice. On June 15, 2004, AFSCME filed a group grievance ("Grievance") challenging the RIF, but on October 1, 2004, DCPS refused to process the Grievance. On January 7, 2005, AFSCME filed its unfair labor practice complaint before PERB alleging that DCPS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it failed and refused to process AFSCME's Grievance, and when it failed to comply with the notice requirements in the Applewhaite Award.[6] DCPS did not file an answer to the complaint, and PERB assigned the matter to a hearing examiner.

In its July 26, 2012 Decision and Order in PERB Case No. 05-U-19 (Slip Op. No. 1299), the Board adopted the hearing examiner's findings[7] that: (1) because DCPS did not file an answer in the case, all of the material facts were deemed admitted[8]; (2) DCPS was bound by the 2003 Applewhaite Award because it did not challenge or appeal the Award; nor did it seek clarification of the Award's terms[9]; (3) DCPS repudiated the parties' collective bargaining agreement and therefore committed unfair labor practices under D.C. Official Code §§ 1-617.04(a)(1) and (5) when it failed and refused to process AFSCME's Grievance and when it failed to give AFSCME proper notice prior to its 2004 RIF.[10]

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[4] D.C. Official Code § 1-617.13(b): "The Board may request the Superior Court of the District of Columbia to enforce any order issued pursuant to this subchapter, including those for appropriate temporary relief or restraining orders. No defense or objection to an order of the Board shall be considered by the Court, unless such defense or objection was first urged before the Board. The findings of the Board with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole. The Court may grant such temporary relief or restraining order as it deems just and proper and enter a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Board."

[5] The Board notes that paragraphs 1 and 7 of the Order in Slip Op. No. 1299 did not require any action by either of the parties. Therefore, the Board will not discuss those paragraphs herein.

[6] *AFSCME Local 2921 v. DCPS*, *supra*, Op. No. 1299 at ps.1-3, PERB Case No. 05-U-19.

[7] *Id*. at 3-4, 6.

[8] *Id*. at 3; *see also* PERB Rule 520.7.

[9] *Id*. at 2, 4.

[10] *Id*. at 3-4 (*citing University of the District of Columbia Faculty Association / NEA v. University of the District of Columbia*, 39 D.C. Reg. 9628, Op. No. 320, PERB Case No. 92-A-04 (2004) (holding that parties who arbitrate a matter pursuant to a collective bargaining agreement are bound by the arbitrator's award); *and American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority*, 46 D.C. Reg. 4398, Op. No. 497, PERB Case No. 96-U-23 (1996) (holding that failing or refusing to implement an arbitration award

Upon finding that the hearing examiner's findings and recommendations were reasonable, supported by the record, and consistent with PERB precedent,[11] the Board ordered the following:

1. The Hearing Examiner's Report and Recommendation is adopted.

2. The District of Columbia Public Schools will cease and desist from violating D.C. Code § 1-617.04(a)(1) and (5) by refusing to process group grievances filed by AFSCME District Council 20, Local 2921 and by failing to comply with the Applewhaite Award as it pertains to notifications about reductions in force.

3. The District of Columbia Public Schools shall conspicuously post within ten (10) days from the issuance of this Decision and Order the attached Notice where notices to employees are normally posted. The Notice shall remain posted for thirty (30) consecutive days.

4. The District of Columbia Public Schools shall notify the Public Employee Relations Board, in writing, within fourteen (14) business days from the issuance of this Decision and Order that the Notice has been posted accordingly.

5. AFSCME District Council 20, Local 2921 shall have thirty (30) business days from the issuance of this Decision and Order to submit a statement of the actual costs incurred in processing the instant matter, together with associated receipts, to the District of Columbia Public Schools.

6. The District of Columbia Public Schools shall pay to AFSCME District Council 20, Local 2921, the reasonable costs associated with bringing this matter within thirty (30) business days from the date it receives a statement of the actual costs incurred and associated receipts. The District of Columbia Public Schools shall notify the Public Employee Relations Board, in writing, when it has paid the reasonable costs to AFSCME District Council 20, Local 2921.

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constitutes a failure to bargain in good faith and is an unfair labor practice under D.C. Official Code § 1-617.04(a)(5))).

[11] *Id.*; *see also American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003) (holding that the Board will affirm a Hearing Examiner's findings if the findings are reasonable, supported by the record, and consistent with Board precedent).

7. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.[12]

DCPS did not appeal or challenge the Board's Order.[13]

On or about September 6, 2012, AFSCME filed the instant Petition for Enforcement, alleging that as of that date, DCPS had "not complied with any portion of [the Board's Order in Slip Op. No. 1299], including and especially the requirements set forth in paragraphs 2-4…; nor ha[d] DCPS taken any steps toward compliance with the order."[14] AFCSME's Certificate of Service that accompanied the Petition certified that the Petition was duly served *via* U.S. Mail on: 1) DCPS' General Counsel; 2) a Supervisory Attorney with the D.C. Office of Labor Relations and Collective Bargaining; and 3) an Assistant Attorney General in the D.C. Office of the Solicitor General.[15] Notwithstanding, DCPS did not file a response to AFSCME's Petition.

III. Analysis

As stated previously, the questions before the Board in this Enforcement case are: has DCPS fully complied with the Board's Order in Slip Op. No. 1299, and if not, should PERB seek enforcement of that Order in the D.C. Superior Court.[16] D.C. Official Code § 1-617.13(b) states that "the findings of the Board with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole." Accordingly, PERB has the authority to determine whether or not its own orders have been complied with as long as its conclusions are supported by substantial evidence from the whole record.[17]

Additionally, PERB Rule 560.2 states that after a petition for enforcement has been filed, "the responding party shall have ten (10) days from service to respond to the petition." PERB Rule 560.3 directs that "[f]ailure by the responding party to file [a response] …may be construed as an admission of the petitioner's allegations."

In this matter, it is uncontested that AFSCME's Petition was duly served on DCPS and its representatives and that DCPS thereafter failed to file a response. Thus, in accordance with its authority under D.C. Official Code § 1-617.13(b), the Board construes DCPS' failure to file a response as an admission of AFSCME's allegation that DCPS has failed to comply with the Board's Order in Slip Op. No. 1299. This finding is substantially bolstered by the undisputed facts that DCPS also did not: 1) appeal or raise any challenges to the 2003 Applewhaite Award; 2) file an answer to AFSCME's 2005 unfair labor practice complaint in PERB Case No. 05-U-19; or 3) appeal or raise any challenges to the Board's findings and Order in Slip Op. No. 1299

[12] *AFSCME Local 2921 v. DCPS*, *supra*, Op. No. 1299 at p. 6, PERB Case No. 05-U-19.
[13] *See* (Petition at 2).
[14] (Petition at 2).
[15] (Petition at Cert. of Service).
[16] *See* D.C. Official Code § 1-617.13(b).
[17] *Id*.

in PERB Case No. 05-U-19. Accordingly, AFSCME's Petition for Enforcement of the Board's Order in Slip Op. No. 1299 is granted with two exceptions, as noted below.

A. The Board Will Seek Judicial Enforcement of Paragraph 2 of its Order in Slip Op. No. 1299, PERB Case No. 05-U-19.

Paragraph 2 of the Board's Order of Slip Op. No. 1299 ordered DCPS to "cease and desist from violating D.C. [Official] Code § 1-617.04(a)(1) and (5)" by refusing to process group grievances filed by AFSCME and by failing to give prior notice when conducting a RIF as required by the Applewhaite Award.[18] In a March 2, 2015 email from DCPS' counsel to PERB, DCPS asserted that, since July 26, 2012 (the date Slip Op. No. 1299 was issued), DCPS has processed all group grievances submitted by AFSCME and has fully complied with the Applewhaite Award's notice requirement when conducting RIFs.[19] However, in a March 3, 2015 email to PERB, DCPS' counsel also admitted that DCPS still has not processed AFSCME's June 15, 2004 Grievance, which was the underlying Grievance at issue in PERB Case No. 05-U-19.[20] DCPS argued in its March 3 email that despite the Board's finding that DCPS committed an unfair labor practice by failing to process the Grievance, the Board's Order in Slip Op. No. 1299 only ordered DCPS to cease violating D.C. Official Code § 1-617.04(a)(1) and (5) going forward, and did not expressly order DCPS to retroactively process AFSCME's Grievance.[21]

The Board wholly dismisses DCPS' contention. As mentioned previously, DCPS did not challenge or seek clarification of the Applewhaite Award. It did not file an Answer to AFSCME's unfair labor practice complaint in PERB Case No. 05-U-19; nor did it challenge PERB's final Decision and Order in PERB Case No. 05-U-19 (Slip Op. No. 1299). Moreover, DCPS did not file a response to AFSCME's instant Petition for Enforcement. Based on DCPS' failure to file timely responses in these cases, the Board declines to entertain DCPS' efforts to now raise an argument that attempts to parse the language of the Board's Order in Slip Op. No. 1299.[22]

Furthermore, in accordance with its aforementioned authority under D.C. Official Code § 1-617.13(b), the Board finds that its Order in Slip Op. No. 1299 unquestionably required DCPS to process AFSCME's June 15, 2004 Grievance. Indeed, when the Board found that DCPS violated D.C. Official Code § 1-617.04(a)(1) and (5) by failing to process the Grievance, and additionally when it ordered DCPS to cease violating D.C. Official Code §§ 1-617.04(a)(1) and (5), the Board undoubtedly intended for DCPS to cease violating the statute by failing to process

[18] *AFSCME Local 2921 v. DCPS*, *supra*, Op. No. 1299 at p. 6, PERB Case No. 05-U-19.
[19] E-mail from Michael D. Levy, Supervisory Attorney, Office of Collective Bargaining and Labor Relations, to Colby J. Harmon, Attorney-Advisor, Public Employee Relations Board, and Brenda C. Zwack, Partner, Murphy Anderson, PLLC (Mar. 02, 2015, 06:01pm EST).
[20] E-mail from Michael D. Levy, Supervisory Attorney, Office of Collective Bargaining and Labor Relations, to Colby J. Harmon, Attorney-Advisor, Public Employee Relations Board, and Brenda C. Zwack, Partner, Murphy Anderson, PLLC (Mar. 03, 2015, 11:18am EST).
[21] *Id*.
[22] *See* PERB Rules 520.7 and 560.3.

not just all similar subsequent grievances, but that very Grievance as well. Thus, even if the Board was to entertain DCPS' contention that Slip Op. No. 1299 only required DCPS to process future grievances, that argument would fail because the plain language of the Board's Order clearly required DCPS to process AFSCME's 2004 Grievance as well as all future similar grievances. Therefore, because DCPS has admitted that it still has not processed AFSCME's June 15, 2004 Grievance, PERB will seek judicial enforcement of paragraph 2 of its Order in Slip Op. No. 1299 in the D.C. Superior Court unless full compliance with the paragraph is documented to the Board *via* File & ServeXpress within 10 business days of the issuance of this Decision and Order.[23]

B. PERB Will Not Seek Judicial Enforcement of Paragraphs 3 and 4 of its Order in Slip Op. No. 1299, PERB Case No. 05-U-19.

The Board will not seek judicial enforcement of paragraphs 3 and 4 of its Order in Slip Op. No. 1299, which required DCPS to "conspicuously post within ten (10) days from the issuance of [Slip Op. No. 1299]" a Notice detailing its violations of D.C. Official Code §§ 1-617.04(a)(1) and (5), and to "notify [PERB], in writing, within fourteen (14) business days from the issuance of [Slip Op. No. 1299] that the Notice ha[d] been posted accordingly."[24] In conjunction with PERB's investigation of this case, DCPS' counsel sent PERB an email on September 15, 2014, which showed that DCPS did post the Notice for 30 days, but not until after September 20, 2012, which was more than a month and a half after the Board issued Slip Op. No. 1299 on July 29, 2012.[25] In so doing, DCPS clearly violated the Board's Order to post the Notice within 10 days of the issuance of Slip Op. No.1299. It is further uncontested that DCPS violated the Board's Order to notify PERB in writing within 14 business days that the Notice had been posted. Notwithstanding, in an effort to preserve PERB's and the D.C. Superior Court's resources, PERB will not seek judicial enforcement of paragraphs 3 and 4 of its Order in Slip Op. No. 1299 in the D.C. Superior Court. However, the Board asserts in the strongest terms possible that the time limits the Board sets in its orders are not to be skirted or ignored. Accordingly, in appropriate future cases, the Board will not hesitate to seek judicial enforcement of its orders in the D.C. Superior Court if parties violate the time periods that the Board sets.

C. PERB Will Not Seek Judicial Enforcement of Paragraphs 5 and 6 of its Order in Slip Op. No. 1299, PERB Case No. 05-U-19.

The Board will not seek judicial enforcement of paragraphs 5 and 6 of its Order in Slip Op. No. 1299, which (1) ordered AFSCME to submit to DCPS within 30 days of July 26, 2012 (the date Slip Op. No. 1299 was issued), "a statement of the actual costs incurred in processing [PERB Case No. 05-U-19], together with associated receipts"; and (2) ordered DCPS to pay

[23] *See Fraternal Order of Police/Department of Corrections Labor Committee (on behalf of Dexter Allen) v. District of Columbia Department of Corrections*, 59 D.C. Reg. 3919, Slip Op. No. 920 at p. 7, PERB Case No. 07-E-02 (2007).
[24] *AFSCME Local 2921 v. DCPS*, *supra*, Op. No. 1299 at p. 6, PERB Case No. 05-U-19.
[25] E-mail from Michael D. Levy, Supervisory Attorney, Office of Collective Bargaining and Labor Relations, to Colby J. Harmon, Attorney-Advisor, Public Employee Relations Board (Sept. 15, 2014, 03:06pm EDT).

AFSCME the amount that AFSCME submitted within 30 business days after receiving it and to thereafter notify PERB in writing that it had done so.[26] During PERB's investigation of this enforcement case, AFSCME's counsel sent an email to PERB on September 15, 2014, stating that AFSCME could not confirm that it ever submitted to DCPS its statement of costs.[27] Therefore, because AFSCME did not timely comply with the Board's Order to submit a statement of costs to DCPS within 30 days of July 26, 2012, the Board will not seek judicial enforcement of paragraphs 5 and 6 of its Order in Slip Op. No. 1299 in the D.C. Superior Court.

D. Conclusion

Based on the foregoing, and in accordance with its authority under D.C. Official Code § 1-617.13(b), the Board finds that DCPS has not complied with paragraph 2 of the Board's Order in Slip Op. No. 1299, PERB Case No. 05-U-19. Accordingly, the Board will seek judicial enforcement of that paragraph in the D.C. Superior Court unless full compliance with the paragraph is documented to the Board *via* File & ServeXpress within 10 business days of the issuance of this Decision and Order.[28] Additionally, even though DCPS violated the Board's Orders to post a Notice detailing its violations of D.C. Official Code §§ 1-617.04(a)(1) and (5) within 10 days of the issuance of Slip Op. No. 1299 and to notify PERB within 14 business days that the Notice had been posted, it is still apparent that DCPS did post the Notice. Thus, in an effort to preserve PERB's and the D.C. Superior Court's resources, PERB will not seek judicial enforcement of paragraphs 3 and 4 of its Order in Slip Op. No. 1299 in the D.C. Superior Court. Finally, the Board finds that because AFSCME did not timely comply with the Board's Order to submit a statement of costs to DCPS within 30 days of July 26, 2012, the Board will not seek judicial enforcement of paragraphs 5 and 6 of its Order in Slip Op. No. 1299 in the D.C. Superior Court.

[26] *AFSCME Local 2921 v. DCPS*, *supra*, Op. No. 1299 at p. 6, PERB Case No. 05-U-19.
[27] E-mail from Brenda C. Zwack, Counsel, O'Donnell, Schwartz & Anderson, PC, to Colby J. Harmon, Attorney-Advisor, Public Employee Relations Board, and Michael D. Levy, Supervisory Attorney, Office of Collective Bargaining and Labor Relations (Sept. 15, 2014, 03:23pm EDT).
[28] *See FOP/DOCLC v. DOC*, *supra*, Slip Op. No. 920 at p. 7, PERB Case No. 07-E-02.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFSCME's Petition for Enforcement of Paragraph 2 of the Board's Order in Slip Op. No. 1299, PERB Case No. 05-U-19, is granted.

2. PERB will seek judicial enforcement of paragraph 2 of the Board's Order in Slip Op. No. 1299 in the D.C. Superior Court unless full compliance with the Board's orders in the paragraph is documented to the Board *via* File & ServeXpress within 10 business days of the issuance of this Decision and Order.

3. AFSCME's Petition for Enforcement of Paragraphs 3, 4, 5 and 6 of the Board's Order in Slip Op. No. 1299, PERB Case No. 05-U-19, is denied.

4. 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, Keith Washington, Yvonne Dixon, and Ann Hoffman.

March 19, 2015

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-E-10, Op. No. 1512, was transmitted via File & ServeXpress and email to the following parties on this the 25th day of March, 2015.

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/s/ Colby J. Harmon
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
District of Columbia Department of Youth Rehabilitation Services,	)	PERB Case No. 15-A-02
Agency,	)	Opinion No. 1513
v.	)	
Fraternal Order of Police / Department of Youth Rehabilitation Services Labor Committee,	)	Decision and Order
Union.	)	

DECISION AND ORDER

On November 17, 2014, petitioner District of Columbia Department of Youth Rehabilitation Services Labor Committee ("DYRS") filed a timely arbitration review request ("Request") appealing an Arbitration Award[1] ("Award") issued in a grievance arbitration[2] brought by the Respondent Fraternal Order of Police/Department of Youth Rehabilitation Services Labor Committee ("FOP"). DYRS bases its Request upon the Board's authority under D.C. Official Code § 1-605.02(6) to modify, set aside, or remand an award where the arbitrator exceeded his jurisdiction. DYRS contends the Arbitrator was without authority or exceeded his jurisdiction when he found that FOP's grievance was arbitrable despite the collective bargaining agreement's[3] express requirements for the filing of group grievances. DYRS further asserts that the Arbitrator's finding violated Article 30, Section 8(4) of the collective bargaining agreement, which prohibits arbitrators from adding to, subtracting from, or modifying the provisions of the collective bargaining agreement through an award. As a remedy, DYRS requests that PERB set aside the Award. For the reasons explained below, the Board finds that the Arbitrator did not exceed his jurisdiction, and therefore denies DYRS' Request.

[1] *See* (Request, Exhibit 1) (hereinafter cited as "Award").
[2] *See Id.*, Exhibits 2 and 4.
[3] *See Id.*, Exhibit 3 (hereinafter cited as "CBA").

I. Statement of the Case

The grievance before the Arbitrator was filed by FOP on June 18, 2013.[4] The grievance alleged that DYRS violated the collective bargaining agreement when it issued and unilaterally implemented Policy No. DYRS-015, a Time, Attendance and Leave Policy, on June 17, 2013.[5] DYRS-015 applied to all non-probationary Youth Development Representatives ("YDR's") in the bargaining unit, and outlined the discipline to be applied for employees who violated it.[6] As a remedy, FOP asked the Arbitrator to order that DYRS-015 and any corrective and adverse actions issued to employees under it be rescinded, and that the affected employees be made whole for losses incurred as a result of any imposed discipline.[7]

DYRS argued that the grievance was improperly designated and filed as a "union/class" grievance when it should have been filed as a "group" grievance. Under Article 30, Section 3(D)(2) of the collective bargaining agreement, "group" grievances are those "involving a number of employees in the unit" and require that "[a]ll employees of the group must sign the grievance."[8] Under Article 30, Section 3(D)(3), "union/class" grievances may be "signed by the Union President or designee", but "will be processed only if the issue raised is common to all bargaining unit employees."[9] FOP's grievance in this matter was designated in the subject line as a "Union Grievance Concerning Time, Attendance, and Leave Policy", and was only signed by FOP Chairperson Takisha Brown.[10] Further, FOP's Notice of Intent to Arbitrate was also designated in the subject line as a "Union Grievance" and again was only signed by Ms. Brown.[11]

DYRS contended that DYRS-015 was not common to all bargaining unit employees because it only applied to non-probationary YDR's, and did not apply to the unit's probationary YDR's and non-YDR's.[12] Accordingly, DYRS argued that FOP's grievance did not meet the requirements of a "union/class" grievance and instead needed to have been filed as a "group" grievance, and therefore needed to be signed by every employee affected by DYRS-015.[13] DYRS' position was that because FOP's grievance did not meet the procedural requirements of either Section 3(D)(2) or Sections 3(D)(3), the entire grievance was nonarbitrable.[14]

In the Award, the Arbitrator rejected DYRS' nonarbitrability argument, stating:

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[4] Award at 1.
[5] On June 18, 2003, FOP also filed an unfair labor practice complaint with PERB which made similar allegations. That case (PERB Case No. 13-U-31) is still pending before PERB.
[6] Award at 1.
[7] *Id.* at 1-2.
[8] *See Id.* at 2; *see also* CBA at 37.
[9] *Id.*
[10] (Request, Exhibit 2) (hereinafter cited as "Grievance").
[11] (Request, Exhibit 4) (hereinafter cited as "Intent to Arbitrate").
[12] Award at 12.
[13] *Id.* at 12-13.
[14] *Id.* at 13.

> The record establishes that the Agency previously had accepted the Union's grievances filed as Union Grievances on behalf of all YDRs without the required signatures. Perhaps more importantly, there is no evidence indicating that the Agency has asserted nonarbitrability of a Union Grievance involving only YDRs as opposed to all job classifications in the unit. Indeed, it appears that the Agency has not previously asserted that such grievances were not signed by all YDRs, as is required for Group Grievances; except that in the instant grievance to the Agency's response at Step 3, Director Stanley noted that the grievance appears to be a Group Grievance and was not signed by all employees. In the same vein, former Human Resources Director Howell testified that he remembered handling grievances but didn't remember them being called one thing or the other.
>
> The above facts indicate that the Agency has not required the Union to include all bargaining unit employees in grievances filed as Union Grievances. When coupled with the unrebutted practical difficulties in connection with obtaining the signatures, as noted by the Union, I find that the failure to garner the signatures of all bargaining unit employees lies somewhere between the parties' tacit agreement regarding the filing of Union Grievances and the fairness of, as the parties appear to have acknowledged, placing a nearly unsurmountable burden on the Union's ability to represent collectively the vast majority of the bargaining unit. For these reasons, I find that the grievance is arbitrable.[15]

On the merits, the Arbitrator found that DYRS-015 directly conflicted with several provisions in the parties' collective bargaining agreement as well as certain regulations in the District of Columbia Personnel Manual ("DPM"). Accordingly, the Arbitrator held that DYRS wrongly issued the policy without FOP's consent, and sustained the grievance.[16] As a remedy, the Arbitrator ordered DYRS to immediately and retroactively rescind DYRS-015 and any disciplinary actions that were issued as a result of it.[17]

DYRS now asks PERB to set aside the Award based on its assertion that the Arbitrator was without authority or exceeded his jurisdiction when he found that FOP's grievance was arbitrable.[18] DYRS does not challenge the Arbitrator's findings on the merits.[19]

[15] *Id.* at 19.
[16] *Id.* at 19-22.
[17] *Id.* at 22.
[18] (Request at 4, 6-14).
[19] *Id.* at 4, 12-13.

II. Analysis

D.C. Official Code § 1-605.02(6) authorizes the Board to modify or set aside an arbitration award in only three limited circumstances: 1) if an 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.

DYRS only raises arguments that the Arbitrator was without or exceeded his authority when he found that FOP's grievance was arbitrable, and does not make any contentions that the Arbitrator's finding was on its face contrary to law and public policy or that it was procured by fraud, collusion, or other similar and unlawful means.[20]

A. Deferral to Arbitrator on Questions of Procedural Arbitrability

The Board finds that the Arbitrator had exclusive jurisdictional authority to determine whether FOP's grievance was procedurally arbitrable, and defers to the Arbitrator's conclusion.

Article 30, Section 10[21] of the parties' collective bargaining agreement expressly authorized the Arbitrator to determine whether FOP's grievance was arbitrable. The record and Award show that the Arbitrator properly followed the process outlined in Section 10 by first ruling on the arbitrability question as a threshold issue before proceeding to his analysis of the merits.[22] Further, the arbitrability of FOP's grievance was one of the precise issues the parties placed before the Arbitrator for resolution.[23] Thus, DYRS cannot now argue that the Arbitrator exceeded his jurisdiction or authority when he addressed and resolved that very question.

Moreover, the D.C. Court of Appeals has held that "issues of procedural arbitrability, i.e., whether prerequisites such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate have been met, are for the arbitrators to decide."[24] Here, the crux of DYRS' argument before the Arbitrator was that FOP's grievance was nonarbitrable because it did not meet the prerequisite procedural requirements of Article 30, Sections 3(D)(2)-(3) in the parties' collective bargaining agreement (i.e the "conditions precedent to an obligation to arbitrate").[25] There can be no doubt that DYRS's argument ultimately concerned procedure, since the parties and the Arbitrator continually referred to DYRS's nonarbitrability arguments as "the procedural piece" of the case.[26] Therefore, because the issue before the Arbitrator was wholly a question of procedural arbitrability, the Board finds it was exclusively for the Arbitrator

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[20] *Id.*
[21] Article 30, Section 10 – Questions of Grievability: "For matters arising under the terms of this Agreement, in the event either party should assert a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue. Any dispute of grievability or arbitrability shall be referred to arbitration as a threshold issue(s)."
[22] Award at 18-19.
[23] *See* Award at 12; *see also* (Request at f. 5); *and* (Opposition to Request at 2).
[24] *Washington Teachers' Union, Local No. 6, AFT v. D.C. Public Schools*, 77 A.3d 441, 446, fn. 10 (2013).
[25] *Id.*; *see also* Award at 12-13; (Request at 11-12); *and* (Opposition to Request at 2).
[26] *See, i.e.* Transcript at 42-43, 56 (filed with DYRS's Request as an attachment).

to decide, and defers to the Arbitrator's analysis and conclusion that FOP's grievance was arbitrable.[27]

B. Deferral to the Arbitrator's Factual Findings and Witness Credibility Assessments

Additionally, the Board defers to the factual findings and witness credibility assessments that the Arbitrator made to reach his conclusion that FOP's grievance, while technically non-compliant with the collective bargaining agreement, was still arbitrable because DYRS had previously accepted and processed other grievances that were similarly non-compliant.[28]

DYRS contends that "nowhere in the record of the hearing does the Agency state that it previously had accepted the Union's grievances on behalf of all YDR's without any so-called required signatures."[29] DYRS further argues that:

> [t]he only basis upon which [the Arbitrator] relies upon for this faulty assertion regarding the Agency's alleged prior history of accepting Union grievances filed as Union grievances on behalf of all YDRs without their signatures is the hearing testimony of the Union Chairperson, Takisha Brown [who testified that, in the past, management had accepted grievances pertaining primarily to the 200+ YDR's, but that were signed by the Board chair].[30]

Notwithstanding DYRS' assertion, Ms. Brown was not the only witness the Arbitrator relied on in his findings. Indeed, the Arbitrator also noted the testimony of DYRS' former Human Resources Director Timothy Howell, who DYRS called as its "one witness [related] to the procedural piece" of the case.[31] Mr. Howell testified that during his brief tenure as Director of Human Resources at DYRS, he was aware of "seven or eight" grievances that had been filed by FOP, and that while he did not recall whether DYRS had expressly distinguished any of those as "union/class" grievances or "group" grievances, he was sure that none of them had 200+signatures.[32] In its Request, DYRS argues that PERB should discount Mr. Howell's testimony because he was only with the agency for nine months, and because he testified that he never personally responded to any of the grievances.[33]

The Board has held that it will not second guess an arbitrator's credibility determinations or overturn an arbitrator's conclusions on the basis of a disagreement with the arbitrator's factual

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[27] *Id.*; *see also District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Thomas Pair)*, 61 D.C. Reg. 11609, Slip Op. No. 1487 at p. 6, PERB Case No. 09-A-05 (2014) (holding that questions of procedural arbitrability are "exclusively" for the arbitrator to decide, and that the Board will defer to the arbitrator's conclusions).
[28] Award at 18-19.
[29] (Request at 7).
[30] *Id.* at 7-8 (citing Transcript at 61).
[31] *See* Award at 19; *and* Transcript at 42-43.
[32] Transcript at 51, 53, 55-56.
[33] (Request at f. 7).

findings.[34] In this case, the Board will not second guess the Arbitrator's reliance on Ms. Brown's unambiguous testimony that DYRS had previously, as a matter of practice, always accepted grievances labeled as "union/class" grievances even when the subject matters of those grievances were not common to all members of the bargaining unit.[35] DYRS's only witness on that issue, Mr. Howell, said nothing to rebut or contradict Ms. Brown's assertion; nor did he offer any examples wherein DYRS had rejected grievances that were not compliant with Article 30, Sections 3(D)(2)-(3).[36] Considering that Ms. Brown and Mr. Howell were the only witnesses the parties called upon to testify on this issue, DYRS can hardly argue now that the Arbitrator erred or exceeded his authority when he credited their testimony to reach his conclusion that FOP's grievance was arbitrable because DYRS had previously accepted other similarly non-compliant grievances.[37] Furthermore, the Board places very little weight in DYRS's argument that Mr. Howell's testimony should be discounted because first and foremost, he was called by DYRS to be its "one witness" on this issue, and secondly, even though Mr. Howell's tenure with the agency was short, he still oversaw the processing of seven or eight grievances and could not recall that any of them were rejected for being non-compliant with Article 30, Sections 3(D)(2)-(3), or that the agency had distinguished them as either "union/class" or "group" grievances.[38] Accordingly, the Board is without authority to upset or second-guess the factual findings and witness credibility assessments that the Arbitrator made to conclude that FOP's grievance was arbitrable.[39]

C. Deferral to the Arbitrator's Interpretation of the Collective Bargaining Agreement

The Board further defers to the Arbitrator's interpretations of the parties' collective bargaining agreement.

The Board has long held that by agreeing to submit the settlement of a grievance to arbitration, it is the arbitrator's interpretation, not the Board's, for which the parties have bargained.[40] The Board has also adopted the Supreme Court's holding in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, that arbitrators bring their "informed judgment" to bear on the interpretation of collective bargaining agreements…."[41] Further, the Board has held that when parties submit a matter to arbitration, they "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."[42] Lastly, the "Board will not substitute its own

[34] *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections*, 59 D.C. Reg. 9798, Op. No. 1271 at p. 6, PERB Case No. 10-A-20 (2012).
[35] Award at 19; *see also* Transcript at 43-56.
[36] *Id.*; *see also* Transcript at 58-61.
[37] *Id.*
[38] *See* Transcript at 42-43, 51, 53, 55-56.
[39] *FOP/DOC Labor Committee v. DOC*, *supra*, Op. No. 1271 at p. 6, PERB Case No. 10-A-20.
[40] *See University of the District of Columbia and University of the District of Columbia Faculty Association*, 39 D.C. Reg. 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992).
[41] 363 U.S. 593, 597 (1960).
[42] *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *and*

interpretation or that of the agency for that of the duly designated arbitrator."[43]

In this case, Article 30, Section 10 of the parties' collective bargaining agreement expressly authorized the Arbitrator to resolve questions of arbitrability.[44] Additionally, Article 30, Section 2 of the agreement authorized the Arbitrator to resolve "any alleged violation of [the] Agreement… that affect[s] terms and conditions of employment,[45] In his exercise of these powers, the Arbitrator brought his "informed judgment" to bear on the arbitrability question before him, reasonably applied his interpretation of Article 30, Sections 3(D)(2)-(3), and concluded that FOP's technically noncompliant grievance was still arbitrable based on DYRS' established practice of accepting and processing similarly noncompliant grievances.[46] Article 30, Section 8(5) of the parties' agreement states that "[t]he Arbitrator's award shall be binding upon both parties." Therefore, because the parties expressly placed the arbitrability question before the Arbitrator, authorized the Arbitrator to interpret their collective bargaining agreement, and agreed beforehand to be bound by his conclusions, the Board cannot and will not substitute DYRS' interpretation over that of the parties' duly designated Arbitrator; nor will the Board set aside the Arbitrator's Award as DYRS requests.[47]

D. The Arbitrator Did Not Exceed His Authority

The Board finds that the Arbitrator did not add to, subtract from, or modify Article 30, Sections 3(D)(2)-(3) of the parties' collective bargaining agreement, and thus did not exceed his authority in violation of Article 30, Section 8(4).[48] In order to determine if an arbitrator has exceeded his jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement."[49] The U.S. Court of Appeals for the Sixth Circuit in *Michigan Family Resources, Inc. v. Service Employees International Union Local 517M*, has explained what it means for an award to "draw its essence" from a collective bargaining agreement by stating the following standard:

[1] Did the arbitrator act 'outside his authority' by resolving a dispute not

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District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (Grievance of Angela Fisher), 51 D.C. Reg. 4173, Slip Op. No. 738 PERB Case No. 02-A-07 (2004).

[43] *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 D.C. Reg. 3616, Slip Op. No. 157, PERB Case No. 87-A-02 (1987).

[44] CBA at 40.

[45] *Id.* at 36.

[46] Award at 18-19; and *United Steelworkers*, *supra*.

[47] *MPD v. FOP*, *supra*, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04; *see also DOC and Teamsters, Local Union 246*, *supra*, Slip Op. No. 157, PERB Case No. 87-A-02; *and UDC and UDCFA*, *supra*, Slip Op. No. 320, PERB Case No. 92-A-04.

[48] Article 30, Section 8(4): "The Arbitrator shall not have the power to add to, subtract from, or modify the provisions of this Agreement through the award."

[49] *MPD and FOP (on Behalf of Kenneth Johnson)*, *supra*, Slip Op. No. 925, PERB Case No. 08-A-01 (*quoting D.C. Public Schools v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156, PERB Case No. 86-A-05 (1987)); *see also Dobbs, Inc. v. Local No. 1614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 813 F.2d 85 (6th Cir. 1987).

> committed to arbitration?; [2] Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?"; "[a]nd [3] [I]n 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.[50]

In this case, DYRS argues multiple times throughout its Request that the Arbitrator appeared to be confused about what constitutes a "union/class" grievance under the collective bargaining agreement because the Award analyzed and discussed whether DYRS had previously accepted other grievances that did not apply to all members of the bargaining unit, or contain the signatures of every member affected by the grievance's subject matter.[51] DYRS suggests that because Article 30, Section 3(D)(3) only requires that "union/class" grievances be signed by the union President and be applicable to all bargaining unit members, the Arbitrator's discussion of whether all 200+ non-probationary YDRs were required to sign FOP's grievance "reveals a profound misunderstanding of both the record before him and what management's assertions are regarding this issue", and had "[no] basis whatsoever."[52]

However, the Award clearly states that the Arbitrator was not just evaluating whether FOP's grievance met the requirements of a "union/class" grievance under Article 30, Section 3(D)(3), which the Arbitrator conceded it did not, but also whether it qualified as a "group" grievance under Article 30, Section 3(D)(2), which "[applies to] a number of employees in the unit" and requires that "[a]ll employees of the group must sign the grievance."[53] Although the Arbitrator noted that FOP's grievance did not technically qualify under that provision either, he still found it was arbitrable because DYRS had an established practice of not requiring "group" grievances to be signed by all YDR's even if they were labeled as "union" grievances and were only signed by the union President. As discussed previously, the Arbitrator's finding in this regard was supported by the un-rebutted testimony of Ms. Brown and DYRS' own witness, Mr. Howell.[54] Accordingly, the Board finds that the Award demonstrates that the Arbitrator had a clear and sound understanding of the issues before him, and further shows that he "arguably" construed and applied the contract in reaching his conclusion that FOP's grievance was arbitrable.[55] Thus, DYRS' argument that the Arbitrator appeared to be confused is rejected.[56]

DYRS further argues that the Arbitrator's determination that FOP's grievance was

[50] 475 F.3d 746, 753 (6th Cir. 2007).
[51] (Request at 6-12).
[52] *Id.* (quoted portion on page 10).
[53] *See* Award at 18-19; *see also* CBA at 37.
[54] *See* Transcript at 42-43, 51, 53, 55-56.
[55] *Id.*; *and Michigan Family Resources*, *supra*, 475 F.3d at 753.
[56] *Id.* (The Board notes that under *Michigan Family Resources*, *supra*, even if the Arbitrator had been confused and had made "serious," "improvident" or "silly" errors in the Award as a result, such would still be insufficient grounds upon which the Board could upset or overturn the Award).

arbitrable added to, subtracted from, or modified the parties' collective bargaining agreement in violation of Article 30, Section 8(4).[57] DYRS relies on a U.S. Court of Appeals for the Sixth Circuit case, *Cement Divisions, National Gypsum, Co. v. United Steelworkers of America*, which held that:

> An Award fails to derive its essence from the agreement when: (1) an award conflicts with express terms of the collective bargaining agreement; (2) an award imposes additional requirements that are not expressly provided in the agreement; (3) an award is without rational support or cannot be rationally derived from the terms of the agreement; and (4) an award is based on general considerations of fairness and equity instead of the precise terms of the agreement.[58]

In this case, the Award did not violate any of these standards. For instance, the Award does not conflict with the express terms of the agreement. Under Article 30, Sections 3(D)(1)-(3), grievances are acceptable as long as they are signed and pertain to an individual, a group within the bargaining unit, or to the entire unit.[59] Nothing in the Award adds to, subtracts from, or modifies those rights. Additionally, the Award does not impose any additional requirements that are not expressly stated in the agreement. Further, as stated previously, the Award is more than rationally supported by the record—including the testimony of DYRS' own witness, Mr. Howell, which wholly supports the Arbitrator's analysis and conclusions[60]—and more than sufficiently derives its conclusions from the terms and conditions of the parties' agreement. Last, while the Arbitrator relied on Ms. Brown's testimony to conclude that requiring all 200+ YDR's to sign every grievance filed on their behalf would be impractical and unfair, and would place "a nearly insurmountable burden on the Union's ability to represent collectively the vast majority of the bargaining unit",[61] nothing in that conclusion changes the undisputed fact that DYRS had previously, until this grievance, always accepted and processed FOP's grievances regardless of how they were labeled, and regardless of who signed them. Indeed, DYRS previously never made any distinctions between "union/class" grievances or "group" grievances." They were all simply accepted and processed as just "grievances."[62] Moreover, as discussed previously, the parties expressly placed the question of arbitrability before the Arbitrator, authorized him to interpret their agreement, and agreed to be bound by his conclusions.[63] Thus, the Board holds that the Arbitrator's decision drew its essence from the

[57] (Request at 11-12).
[58] 793 F.2d 759, 766 (6th Cir. 1986) (internal citations omitted).
[59] The Board categorically rejects DYRS' argument that the Arbitrator was unclear about which unit he was referring to on page 19 of the Award. *See* (Request at 9). The Board finds it is self evident that he was referring to the bargaining unit for which FOP is the exclusive representative. The Board further notes that even if it had been unclear which unit he was referring to, such by itself would not provide sufficient grounds to upset or overturn the Award. *See* PERB Rule 501.1; *and Michigan Family Resources, supra,* 475 F.3d at 753.
[60] *See* Transcript at 51-56.
[61] Award at 19.
[62] *See* Transcript at 42-56.
[63] *MPD v. FOP, supra,* Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04.

parties' collective bargaining agreement and therefore did not violate Article 30, Section 8(4) of the parties' agreement.[64]

In sum, under the guidelines of *Michigan Family Resources, supra*, the Award demonstrates that the Arbitrator (1) resolved only the precise questions presented to him by the parties; (2) did not commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the Award; (3) "arguably" construed and applied the contract in developing the Award's factual findings and witness credibility assessments, and (4) exercised his express authority to analyze and interpret the applicable provisions of the parties' agreement and to resolve questions of arbitrability.[65] Accordingly, the Board finds that the Award's arbitrability determination adequately drew its essence from the parties' collective bargaining agreement and that the Arbitrator therefore did not exceed his authority.[66]

E. Conclusion

Based on the foregoing, the Board finds that: (1) DYRS' Request concerns a question of procedural arbitrability that was exclusively for the arbitrator to decide; (2) DYRS' arguments constitute nothing more than a mere disagreement with the Arbitrator's findings and witness credibility assessments, which were reasonable and supported by the record; (3) the parties expressly placed the question of arbitrability before the Arbitrator, authorized him to interpret their agreement, and agreed to be bound by his interpretation; and (4) the Arbitrator's finding that FOP's case was arbitrable drew its essence from the parties' collective bargaining agreement. Accordingly, the Board rejects DYRS' arguments and finds no cause to reverse or set aside the Arbitrator's finding that FOP's grievance was arbitrable. DYRS' Request for a review of the Award is therefore denied and the matter is dismissed in its entirety with prejudice.

[64] *Id.*
[65] 475 F.3d at 753.
[66] *Id.*

ORDER

IT IS HEREBY ORDERED THAT:

1. DYRS' Request is denied and the matter is dismissed in its entirety with prejudice.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman, Keith Washington, Yvonne Dixon, and Ann Hoffman.

March 19, 2015

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-02, Opinion No. 1513 was transmitted *via* File & ServeXpress and email to the following parties on this the 25th day of March, 2015.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20 and Local 2091	
Complainant	PERB Case No. 14-U-03
v.	Opinion No. 1514
Department of Public Works	
Respondent	

DECISION AND ORDER

I. Statement of the Case

On December 19, 2013, the American Federation of State, County and Municipal Employees, District Council 20 and Local 2091 ("Union" or "AFSCME") filed an Unfair Labor Practice Complaint ("Complaint") against D.C. Department of Public Works ("Agency" or "DPW"), alleging that DPW had violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by unilaterally implementing a production quota for employees. DPW filed an Answer, denying the allegations in AFSCME's Complaint and raising affirmative defenses. In Opinion No. 1450, the Board ordered an unfair labor practice hearing in the above-captioned matter.[1] For the following reasons, the Board dismisses the Complaint against DPW.

II. Hearing Examiner's Report and Recommendation

A. Background

This case involves Solid Waste Inspectors ("Inspectors") in the SWEEP[2] department of DPW. As part of the Inspectors' job duties, Inspectors issue either warnings or notices of violations ("NOV") when an Inspector finds a violation of the District's sanitation regulations.[3] In

[1] *AFSCME, District Council 20 and Local 2091 v. Dept. of Public Works*, 61 D.C. Reg. 1561, Slip Op. No. 1450, PERB Case No. 14-U-03 (2014).
[2] Solid Waste Education and Enforcement Program.
[3] HERR at 4.

2007, the D.C. Department of Human Resources mandated that DPW develop performance goals for its Inspectors.[4] In 2009, DPW hired a consulting firm to assist DPW develop productivity standards.[5] DPW and several union leaders subsequently discussed recommendations for performance goals with DPW's consultant.[6]

In March 2012, Sybil Hammond and Hallie Clemm, managers at DPW's Solid Waste Administration, gave Andre Lee, an AFSCME representative, a revised version of the Performance Evaluation and "invited AFSCME's comments."[7] Several Union members made handwritten comments on the document from DPW. This document was returned to DPW management in July. After three weeks, Lee learned that DPW had rejected AFSCME's proposed revisions.[8] On December 19, 2013, the Union filed its ULP Complaint, alleging that DPW violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by unilaterally implementing a performance system of NOV quotas.[9]

B. Hearing Examiner's Conclusions

Before the Hearing Examiner, the parties disputed whether the rate of NOVs issued per Inspector was a performance goal or a performance quota. The Hearing Examiner found that the system DPW used for measuring performance in relation to the number of NOVs issued per Inspector were performance goals and not a quota.[10] The Hearing Examiner next concluded that DPW did not commit an unfair labor practice when it established production goals for the number of NOVs issued per Inspector, because it was within DPW's management rights under the D.C. Official Code § 1-617.08(a), regarding DPW's efficiency of service and determining the mission of the agency.[11]

Based on the determination that the performance evaluations were not subject to mandatory bargaining, the Hearing Examiner evaluated whether DPW had a duty to engage in impact and effects bargaining with the Union. The Hearing Examiner found that DPW did not have a duty to engage in impact and effects bargaining, because the Union did not make an "unambiguous request to bargain impact and effects of the productivity goals…."[12]

The Hearing Examiner also found that the Union failed to establish a past practice for which DPW needed to bargain prior to implementation.[13] The Union contended that Inspectors were not required to issue a minimum number of NOVs and that DPW's past practice was to allow Inspectors to determine the number of NOVs to be issued. The Union argued that this past practice became a term and condition of the Inspectors' employment, which required DPW to bargain over

[4] *Id.* at 5.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] HERR at 1.
[10] *Id.* at 9.
[11] *Id.* at 12.
[12] *Id.*
[13] *Id.* at 14-15.

prior to implementation.[14] The Hearing Examiner rejected the Union's argument, finding that the Union could not provide sufficient evidence to establish a past practice.[15]

The Hearing Examiner concluded that the Complaint should be dismissed.

III. Discussion

In the Complaint, the Union alleged "DPW did not bargain with the Union before unilaterally imposing a production quota on the issuance of NOVs."[16] In addition, the Union asserted that "[t]he implementation of a production quota such as a minimum number of daily or monthly NOV issuances is a mandatory subject of bargaining."[17] Further, the Union alleged that DPW had a past practice of "not imposing a minimum number of NOV issuances and of emphasizing community education over fines to the community and issuing warnings rather than NOVs."[18]

A. Performance evaluations' negotiability

The Union filed Exceptions to the Hearing Examiner's finding that the Union had failed to establish that the Agency had a past practice allowing the Inspectors to determine the number of NOVs that they issued.[19] Further, the Union challenged the Hearing Examiner's findings and conclusions that DPW instituted a production "goal" in its performance evaluation system of the Inspectors, and not a "quota." The Union argued that the institution of a "quota" was a mandatory subject of bargaining.[20]

The Board declines to determine whether the NOV issuance rate per Inspector was a quota or goal, as the distinction does not disturb the fact that the NOVs issued per Inspector was a part of DPW's performance management system, which is a non-negotiable management right. D.C. Official Code § 1-613.53(b) states, "Notwithstanding any other provision of law or of any collective bargaining agreement, the implementation of the performance management system established in this subchapter is a non-negotiable subject for collective bargaining."[21] As the performance evaluation system was not a mandatory subject of bargaining, DPW did not have a duty to bargain before implementation of the system.[22] Further, as the statute makes the issuance rate of NOVs non-negotiable, the statute precludes consideration of a past practice related to performance evaluations. The Board has held that a duty to bargain over a unilateral change in a past practice is

[14] HERR at 14-15.
[15] *Id.* at 15.
[16] Complaint at 2.
[17] *Id.* at 3.
[18] *Id.* at 3.
[19] AFSCME's Exceptions at 15-16.
[20] *Id.* at 5.
[21] *See American Federation of Government Employees, Local 631, and Department of Public Works*, 59 D.C. Reg. 15175 , Slip Op. No. 1334, PERB Case No. 09-U-18 (2012).
[22] As the Hearing Examiner did not discuss D.C. statutory law or PERB precedent on the matter, the Board declines to address the Hearing Examiner's analysis of this issue.

limited by statutory rights.[23] Even if the Board were to reject the Hearing Examiner's factual-finding that there was no past practice, the Union's Exceptions would fail. The Board finds that DPW did not violate the CMPA by failing to bargain with the Union over the performance evaluation system for SWEEP Inspectors prior to its implementation.

B. Impact and effects bargaining

Notwithstanding the non-negotiability of a management right, management violates its statutory duty to bargain when it implements a management decision in the face of a timely union request to bargain over impact and effects.[24] In prior cases, the Board has held that "although the implementation of a performance evaluation system is a non-negotiable subject of collective bargaining, an agency is obligated to bargain in good faith over the adverse impact a performance evaluation may have on the terms and conditions of an employee's employment."[25]

Unions enjoy the right to impact and effects bargaining concerning a management rights decision only if they make a timely request to bargain.[26] Absent a request to bargain concerning the impact and effects of the exercise of a management right, an employer does not violate D.C. Code § 1-617.04(a)(1) and (5) by unilaterally implementing a management right under the CMPA.[27] Furthermore, an unfair labor practice has not been committed until there has been a general request to bargain and a "blanket" refusal to bargain.[28]

The Hearing Examiner found that DPW did not violate its duty to engage in impact and effects bargaining, because "PERB precedent requires a clear and timely demand to bargain impact and effects issues" is incorrect.[29] The Hearing Examiner's conclusion that a timely request for impact and effects bargaining must be "clear" is not established in Board precedent.[30]

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[23] *District Council 20, American Federation of State, County, and Municipal Employees, Locals 1200, 2776, 2401 and 2087 v. District of Columbia Government, et. al.*, 46 D.C. Reg. 6513, Slip Op. No. 590 at p. 9, PERB Case No. 97-U-15 A (1999). *See also, American Federation of Government Employees, Local 631, and Department of Public Works*, 59 D.C. Reg. 15175, Slip Op. No. 1334, PERB Case No. 09-U-18 (2012).

[24] See *American Federation of Government Employees, Local 383 v. D.C. Department of Human Services*, 49 D.C. Reg. 770, Slip Op. No. 418, PERB Case No. 94-U-09 (2002); *International Brotherhood of Police Officers, Local 446 v. D.C. General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994).

[25] *See American Federation of Government Employees, Local 631, and Department of Public Works*, 59 D.C. Reg. 15175, Slip Op. No. 1334, PERB Case No. 09-U-18 (2012) (citations omitted).

[26] *D.C. Nurses Association v. Department of Mental Health*, 59 D.C. Reg. 9763, Slip Op. No. 1259, PERB Case No. 12-U-14 (2012); *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 29 D.C. Reg. 2975, Slip Op. No. 43, PERB Case No. 82-N-01 (1982).

[27] *Fraternal Order of Police v. D.C. Metropolitan Police Department*, 59 D.C. Reg. 5427, Slip Op. No. 984, PERB Case No. 08-U-09 (2012) (quoting *American Federation of Government Employees, Local Union No. 383, AFL-CIO v. District of Columbia Department of Human Services*, 49 D.C. Reg. 770, Slip Op. No. 418, PERB Case No. 94-U-09 (2002)).

[28] *FOP v. Department of Corrections*, 49 D.C. Reg. 8937, Slip Op. No. 679, PERB Case Nos. 00-U-36 and 00-U-40 (2002); *International Brotherhood of Police Officers v. D.C. General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992).

[29] See *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992).

[30] *Id.*

In its Exceptions, the Union disputed the Hearing Examiner's findings and argued that it requested impact and effects bargaining in July 2012, and that the Union learned three weeks after its request that it was denied.[31] If the Board was to accept the Union's factual assertion as to when it requested impact and effects bargaining and it was denied, the Board must dismiss the Complaint as untimely.

After reviewing the record and the Union's factual assertions regarding impact and effects bargaining, the Board finds that the Union's unfair labor practice allegation with respect to DPW's duty to engage in impact and effects bargaining is untimely. The Union asserts that DPW refused to bargain in July 2012 or August 2012. The Complaint was filed in December 2013. Board Rule 520.4 provides: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." The Board has held that Rule 520.4 is jurisdictional and mandatory.[32] The Board does not have discretion to extend the deadline for initiating an action.[33] Therefore, the Board dismisses the Union's allegation that the Agency failed to engage in impact and effects bargaining as untimely.

IV. Conclusion

To the extent discussed above, the Board rejects the reasoning in the Hearing Examiner's Report and Recommendation but reaches the same conclusion. The Board finds that the number of NOVs issued by an individual Solid Waste Inspector was a part of DPW's performance evaluation system and, therefore, a non-negotiable management right. In addition, the Board finds that AFSCME's allegation that DPW failed to engage in impact and effects bargaining was untimely filed. Therefore, the Board dismisses the Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFSCME's Unfair Labor Practice Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, Member Keith Washington, and Member Donald Wasserman

Washington, D.C.

March 19, 2015

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[31] Union Exceptions at 9.
[32] *Hoggard v. D.C. Public Schools and AFSCME Council 20, Local 1959*, 43 D.C. Reg. 1297, Slip Op. No. 352, PERB Case No. 93-U-10 (1993), *aff'd sub nom., Hoggard v. Public Employee Relations Board*, MPA-93-33 (D.C. Super. Ct. 1994), *aff'd*, 655 A.2d. 320 (D.C. 1995); *see also Public Employee Relations Board v. D.C. Metropolitan Police Department*, 593 A.2d 641 (D.C. 1991).
[33] *Hoggard,* Slip Op. No. 352.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-U-03 was transmitted to the following parties on this the 25th day of March, 2015.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	)	PERB Case No. 14-U-10
Complainant	)	Opinion No. 1515
v.	)	
Metropolitan Police Department	)	
Respondent	)	

DECISION AND ORDER

I. Statement of the Case

On February 28, 2014, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") filed a timely Unfair Labor Practice Complaint ("Complaint" or "ULP") against the Metropolitan Police Department ("MPD"), alleging that MPD violated D.C. Official Code § 1-617.04(a)(1) of the Comprehensive Merit Personnel Act ("CMPA"). MPD submitted an Answer, denying the allegations.

Pursuant to D.C. Official Code § 1-605.2(3) and Board Rule 520.14, the Board has reviewed the findings and conclusions of the Hearing Examiner, adopts the Hearing Examiner's findings and conclusions, except herein noted. Based on the record, the Board finds that MPD committed an unfair labor practice for the reasons discussed below.

II. Hearing Examiner's Report and Recommendation

On July 29, 2014, a hearing took place in the above-captioned matter before Hearing Examiner Earl Shamwell. Based on credibility determinations and evidence presented by the parties, the Hearing Examiner found that MPD had violated the CMPA by its conduct during a meeting with a union member.

A. Background

An MPD officer ("Officer"), represented by FOP, was issued a subpoena to testify at a D.C. Superior Court criminal trial.[1] Upon arrival on the day of the hearing, the Officer attempted to check-in with the MPD Court Liaison Division ("CLD"), which is an administrative component of MPD's Internal Affairs Bureau.[2] According to the Officer, she was told by a CLD worker that she would not need to check-in for the trial, because the subpoena had been issued by the defendant.[3] While waiting to testify, the Officer was approached by two CLD officials. The two CLD officials told the Officer that she could not testify in uniform or with her police pistol, because she had been called as a witness by the defendant.[4] The Officer explained to the CLD officials that she was testifying in her official capacity as a police officer, and that she was acting in accordance with a "general order" on the subject.[5] After some discussion between the CLD officials and the Officer over the issue, the matter was dropped, and the Officer testified at the trial. [6]

According to the Officer, she felt that she might be disciplined after her discussion with the CLD officials. Subsequently, the Officer went to the then FOP Executive Steward Elroy Burton.[7] Burton asked that the Officer submit a written description ("PD 119") of what had happened on the day she had testified.[8] Based on the Officer's account of her interaction with the CLD officials, Burton reviewed the Officer's PD 119 report, and drafted a letter to the D.C. Inspector General, charging MPD with obstruction of justice and witness intimidation in a criminal matter[9]. The Inspector General referred the matter to MPD Chief of Police Cathy Lanier for investigation.

On October 31, 2013, the Officer was directed to report to CLD for an interview. The Officer and a union representative met with CLD Inspector Grogan, who presented the Officer with typed questions. The Officer and her union representative filled out the responses to the questions, and submitted them to Grogan.[10]

On or about November 3, 2013, the Assistant Chief of Internal Affairs Michael Anzallo assigned the matter to Grogan for review and handling.[11] The CLD officials who had questioned the Officer at the courthouse were investigated and exonerated. However, it was determined that a follow-up interview with the Officer should be conducted.

[1] HERR at 2.
[2] *Id*.
[3] *Id.*
[4] *Id.*
[5] HERR at 2-3.
[6] *Id.*
[7] *Id.* at 3.
[8] *Id* at 4.
[9] *Id.*
[10] HERR at 4.
[11] *Id.*

On November 6, 2013, the Officer and her union representative Nicholas Deciutiis met with MPD Internal Affairs Lieutenant Brown and Grogan. Brown and Grogan conducted an interview of the Officer, which was audio recorded.[12] No further interviews were conducted.

B. Hearing Examiner's Findings

MPD argued before the Hearing Examiner that the interviews were permissible under the contract and were not retaliatory.[13] The Hearing Examiner found that the interviews were permissible.[14] However, the Hearing Examiner found, based on the totality of the circumstances, that MPD's conduct at the November 6, 2013 meeting violated the CMPA.[15] In particular, the Hearing Examiner found that Brown and Grogan's questions "implied that when officers have issues with CLD, they had best go through the proper MPD channels, and not the union…."[16] Further, the Hearing Examiner found that the "line of questioning conveyed something in the way of a veiled threat of possible discipline for officers who elected to go to the Union for assistance with CLD concerns, as opposed to resorting to MPD to resolve the problem."[17] In light of the Hearing Examiner's factual findings, he found that MPD had engaged in conduct that violated the CMPA.[18]

C. Hearing Examiner's Recommendation

The Hearing Examiner recommended that the Board order MPD to (1) cease and desist from similar conduct that would violate the FOP's and the union member's rights under the CMPA, (2) cease and desist interrogating the union member and other similarly situated employees about seeking assistance from FOP and inquiring into their discussions about the assistance, (3) post a notice of the violations, and (4) pay FOP's reasonable costs for litigating this matter.[19]

II. Discussion

A. FOP's Exceptions

FOP filed timely Exceptions to the Hearing Examiner's Report and Recommendation, on the grounds that the Hearing Examiner erred when he (1) decided that PERB does not recognize a labor relations privilege, and (2) did not recommend discipline of MPD violators.[20]

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[12] HERR at 5.
[13] *Id.* at 13.
[14] *Id.*
[15] *Id.* at 14-16.
[16] *Id.* at 15.
[17] HERR at 15-16.
[18] *Id.* at 16.
[19] *Id.*
[20] FOP requested that an alleged typographical error be corrected in the Hearing Examiner's Report and Recommendation. As the typographical error does not affect the Hearing Examiner's Report and Recommendation

1. Labor Relations Privilege

A Motion to Dismiss was filed by MPD, asserting that FOP's Complaint relied on a labor relations privilege, which is not recognized by PERB, and that the Complaint did not contain allegations that the Board had jurisdiction to consider. In an Order by the Hearing Examiner, the Hearing Examiner concluded that PERB does not recognize a labor relations privilege, but found that the Complaint contained allegations that the Board had jurisdiction to determine.[21] FOP filed Exceptions to the Hearing Examiner's ruling that PERB does not recognize a labor relations privilege.

A labor relations privilege is defined as protection against compelled disclosure of "a confidential communication exchanged between an individual union member and a union official concerning labor relations information, or a confidential communication exchanged between an individual management member and a management official concerning labor relations information."[22] In order for the Board to consider the issue of privilege, the privilege must have been raised at a time prior to the disclosure. No evidence has been asserted or presented that the Officer raised this privilege at any time that she was questioned. Therefore, as the privilege was not invoked at the time of questioning, the Board declines to address the merits of the Hearing Examiner's determination that PERB does not recognize a labor relations privilege, as the issue is not ripe in the present case. The Board denies FOP's Exceptions on the labor relations privilege, and declines to adopt the Hearing Examiner's determination that the Board does not recognize a labor relations privilege, on the grounds that the issue is not ripe in the present case.

2. Discipline

FOP asserts that the Hearing Examiner erred when he did not recommend that MPD discipline the management officials who interviewed the union member. In its Exceptions, FOP asserts no law or Board case law that would require the Board to recommend discipline of management officials to MPD. Therefore, the Board finds that FOP's Exceptions are a mere disagreement with the Hearing Examiner. The Board notes that the Hearing Examiner recommended a Notice posting and an award of costs.

B. MPD's Exceptions

MPD filed timely Exceptions to the Hearing Examiner's Report and Recommendation, arguing that (1) all allegations pertain to the labor relations privilege, which is not recognized by PERB, (2) the Hearing Examiner improperly applied NLRB case law, and (3) the Hearing Examiner considered allegations that were not raised in the Complaint.

to the extent that it disturbs the Hearing Examiner's findings and conclusions, which is before the Board, the Board declines to address the alleged typographical error as an Exception meriting discussion.

[21] Hearing Examiner's Order.

[22] Rubinstein, Mitchell H., "Is a Full Labor Relations Evidentiary Privilege Developing?", 29 Berkeley J. Emp. & Lab. L. 221, 223 (2008).

1. Allegations all regarded labor relations privilege

MPD asserts the Complaint should be dismissed in its entirety, because all the allegations in the Complaint are related to the labor relations privilege issue, which the Hearing Examiner found does not exist.[23] The Board denies MPD's Exceptions.

As the Board has discussed above, the labor relations privilege was not invoked by FOP, and the labor relations issue is not considered ripe in the present case. MPD argues that the Complaint only alleges that the labor relations privilege was violated, and that the allegations were not separate and distinct from the labor relations privilege violation, requiring the Board to dismiss the Complaint. The Board rejects MPD's argument.

The Board finds that the Complaint contains allegations of the CMPA that are separate and distinct from the labor relations privilege issue. Even though FOP argued that MPD's questioning of the Officer violated the labor relations privilege, FOP also argued that the questioning was improper because MPD violated D.C. Official Code § 1-617.04(a). These allegations can be separated from the labor relations privilege issue, because the labor relations privilege is not determinative of finding a violation. The Board finds that MPD's Exceptions are a mere disagreement with the Hearing Examiner's Report and Recommendation. Therefore, the Board rejects MPD's Exceptions.

2. Matters considered outside of the record

MPD argues that the Board should reject the Hearing Examiner's Report and Recommendation, because the Hearing Examiner erred by considering information outside of the Complaint. MPD asserts that the Hearing Examiner's Report and Recommendation considered facts not included in the Complaint and that the Hearing Examiner based his conclusion on those facts not disclosed in the Complaint.[24] Further, MPD argues that the only unfair labor practice that was alleged specifically related to only Grogan's questions at the November 6, 2013 interview. In addition, MPD asserts that Board Rule 520.3 requires proof of the allegations contained in the Complaint.

Board Rule 520.3(d) states that an unfair labor practice complaint shall contain "[a] clear and complete statement of the facts constituting the alleged unfair labor practice, including date,

[23] MPD's September 15, 2014 Exceptions.
[24] MPD's Exceptions at 8-9.

time and place of occurrence of each particular act alleged, and the manner in which D.C. Code Section 1-618.4(sic) of the CMPA is alleged to have been violated…." MPD asserts that Board Rule 520.3 requires proof. The plain language of the rule does not require proof. Further, the Board has held that a complainant need not prove its case on the pleadings. The complaint must plead or assert allegations that, if proven, would establish the alleged statutory violations.[25] In the Complaint, FOP argued that management officials improperly questioned the Complainant the November 6, 2013 meeting, and that at the meeting MPD interfered with, restrained, intimidated, or coerced an employee in exercise of the rights guaranteed by the CMPA in violation of D.C. Official Code § 1-617.04(a)(1), which protects the rights of employees to form, join, or assist any labor organization in accordance with D.C. Official Code § 1-617.06(a)(2).[26] The Complaint made allegations of the time, occurrence, place and manner of the CMPA violations. In short, the Complaint stated enough facts to put MPD on notice of FOP's allegations. This policy is reflected in D.C. Super Ct. Civ. R. 8(a) and (e), requiring that a "plaintiff need only plead sufficient facts such that the complaint 'fairly puts the defendant on notice of the claim against him.'"[27] The Hearing Examiner found that "the gravamen of the Union complaint of unlawful interference, intimidation and coercion and 'prying' by MPD Officials" centered around the November 6, 2013 meeting.[28] This allegation was asserted in the Complaint, argued before the Hearing Examiner, and ultimately decided based on a factual assessment of the record. Therefore, the Board finds that FOP properly pled the allegations for which the Hearing Examiner made his report and recommendation.

In its Exceptions, MPD also attempts to draw parallel reasoning to another similar case, *FOP v. MPD*, PERB Case No. 09-U-50. In that case, even though, the legal principles of CMPA violations were asserted in the complaint, the factual allegations that served as the grounds for the Hearing Examiner's determination that MPD had violated the CMPA were not asserted in the Complaint and the Board declined to find a violation.[29] The present case can be differentiated from PERB Case No. 09-U-50, because the Complaint before the Board contains the factual allegations that at the November 6, 2013 meeting MPD officials improperly pried into and asked questions regarding the Union's representation of the Officer. The Board finds that FOP pled sufficient facts to put MPD on notice of the possible allegations and statutory violations. The Board finds that MPD's Exceptions are a mere disagreement with the Hearing Examiner's findings and conclusions. Therefore, the Board rejects MPD's Exceptions.

3. Improper case law

[25] *See, Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at 4, PERB Case No. 96-U-22 (1996); *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); and *Goodine v. FOP/DOC Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).
[26] Complaint at 4.
[27] *Carey v. Edgewood Management Corp.*, 754 A.2d 951, 954 (D.C. 2000).
[28] HERR at 12.
[29] MPD's Exceptions at 12-13.

MPD argues that the Hearing Examiner improperly applied the National Labor Relations Board ("NLRB") case law where PERB's precedent was clear, and that the Hearing Examiner should have applied PERB's found in*AFGE, Local 1403 v. D.C. Office of the Attorney General,* adopting *Wright Line v. NLRB* burden shifting.[30] MPD contends that *AFGE, Local 1403 v. D.C. Office of the Attorney General* is dispositive, stating that PERB's precedent as applied to the present case would require PERB to arrive at a different outcome. In particular, MPD argues that PERB's adoption of the NLRB's *Wright Line* test would require a different outcome than the Hearing Examiner's findings.[31] The Hearing Examiner considered this argument before him, and found that MPD's arguments were based on construing FOP's allegations as assertions that the interviews were conducted as retaliation against the Officer for going to her union representatives.[32] The Hearing Examiner rejected MPD's arguments, because he agreed with MPD that the interviews were permissible and not retaliatory, and that the Complaint alleged improper conduct by the management officials at the interview. Specifically, the Hearing Examiner differentiated a violation of D.C. Official Code § 1-617.04(a)(3), involving retaliation, as opposed to D.C. Official § 1-617.04(a)(1), which the Hearing Examiner found applicable, because he determined that the Complaint alleged that MPD interfered with, restrained or coerced the Officer in the November 6, 2013 meeting.

In addition, the Board finds that MPD's argument based upon *AFGE v. OAG* can be differentiated from the present case. In *AFGE v. OAG*, the Hearing Examiner found that, based on all the circumstances of the case, the questionnaire provided to the union official directly related to OAG's managerial authority and was not accompanied with threats of discipline and reprisal.[33] The conduct of the MPD officials in *AFGE v. OAG* was not part of the factual findings of the Hearing Examiner. In contrast, the Hearing Examiner in the present case made a factual determination based on the circumstances of the case and found that the conduct and line of questioning by the MPD official was intimidating and threatening. The Board finds that MPD's Exceptions that the Hearing Examiner applied the wrong case law is actually a mere disagreement with the Hearing Examiner's factual findings regarding MPD's conduct. The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner."[34] MPD's Exceptions do not assert grounds for overturning the Hearing Examiner's findings.

In FOP's Opposition, FOP argues that the Hearing Examiner relied on PERB case law to arrive at his conclusion that the proper test to apply is "whether the conduct in question had a

[30] MPD's Exceptions at 6.
[31] MPD's Exceptions at 7 (citing *Neal v. D.C. Dep't of Human Resources*, PERB Case No. 98-U-05 (2001)(adopting *Wright Line v. Bernard L. Lamoureux*, 251 NLRB 1083 (1980), enf'd 662 F.2d 899 (1st Cir. 1981, cert den. 455 U.S. 989 (1982)).
[32] HERR at 12.
[33] AFGE v. OAG, 2008 WL 4537674, at 5.
[34] *Council of School Officers, Local 4, American Federation of School Administrators v. District of Columbia Public Schools*, 59 DC Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08; *Tracy Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995).

reasonable tendency in the totality of circumstances to interfere with, restrain or coerce the employee."[35] The Board finds that the Hearing Examiner applied the appropriate PERB case law.

Further, the Hearing Examiner's analysis of whether MPD intimidated the Officer was proper. As the FLRA has articulated:

> The standard for determining whether management's statement or conduct independently violates § 7116(a)(1) [prohibiting the agency from interfering with, restraining, or coercing any employee in the exercise by the employee of any right under the FLRA] is an objective one. The question is whether, under the circumstances, the statement or conduct tends to coerce or intimidate the employee, or whether the employee could reasonably have drawn a coercive inference from the statement. Although the circumstances surrounding the making of the statement are considered, the standard is not based on the subjective perceptions of the employee or on the intent of the employer. The standard is satisfied where, *inter alia*, a statement explicitly links an employee's protected activity with treatment adverse to the employee's interests.[36]

In the present case, the Hearing Examiner made a factual determination, having been presented with the audiotaped meeting, that management's "line of questioning conveyed something in the way of a veiled threat of possible discipline for officers who elected to go to the Union for assistance with CLD concerns, as opposed to resorting to MPD to resolve the problem." The Board finds that the Hearing Examiner's conclusions are reasonable and supported by the record. Therefore, the Board finds that MPD's Exceptions are a mere disagreement with the Hearing Examiner's determination, and rejects MPD's Exceptions.

C. Conclusion

The Board finds that the Hearing Examiner's findings, conclusions and recommendations, as discussed above to be reasonable, persuasive and supported by the record. The Exceptions filed by both parties were without merit. The Board adopts the Hearing Examiner's Report and Recommendation finding that MPD violated D.C. Official Code § 1-617.04(a)(1), by MPD's conduct during a November 6, 2013 meeting where the questioning was found to be intimidating and threatening. The Board declines to determine the issue regarding the labor relations privilege as it is not ripe in the present case.

[35] FOP Oppositions at 4 (citing HERR at 11 and *FOP/D.C. Housing Labor Committee v. D.C. Housing Authority*, Slip Op. No. 1410, PERB Case No. 11-U-23 (2013)).
[36] *FAA v. NATCA*, 64 FLRA 365 (December 31, 2009).

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Metropolitan Police Department, its agents and representatives, shall cease and desist from interfering with, restraining, or coercing the Fraternal Order of Police/Metropolitan Police Department Labor Committee and any bargaining unit employees in exercise of their rights guaranteed by the Comprehensive Merit Personnel Act.
2. MPD shall cease and desist from interrogating bargaining unit employees about their decision to seek assistance from FOP; what they might expect to receive from such assistance; whether they intended to file a grievance with FOP; and why they did not bring their concerns to MPD officials, as opposed to FOP.
3. MPD shall conspicuously post within ten (10) days from the issuance of this Decision and Order the attached Notice where notices to bargaining unit members are normally posted. The Notice shall remain posted for thirty (30) consecutive days.
4. MPD shall pay FOP all reasonable costs associated with this matter.
5. MPD shall advise PERB within thirty (30) days of the date of the date of issuance of this decision of the actions that have been taken to implement this Order.
6. Pursuant to Board Rule 559.1, this Board's Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, Member Keith Washington, and Member Donald Wasserman

Washington, D.C.

March 19, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order and Notice in PERB Case No. 14-U-10 was transmitted to the following parties on this the 26th day of March, 2015.

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NOTICE

TO ALL EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT ("MPD"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1515, PERB CASE NO. 14-U-10.

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered MPD to post this Notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(1) by the actions and conduct set forth in Slip Opinion No. 1515.

WE WILL cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA").

WE WILL NOT, in any like or related manner, interfere, restrain or coerce employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

Metropolitan Police Department

Date:_____ By:_____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 26, 2015