

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council passes Law 21-13, Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015
- D.C. Council schedules a public roundtable on the President's Task Force on 21st Century Policing Final Report
- Office of Contracting and Procurement updates procedures for procurement by competitive sealed proposals
- District Department of the Environment schedules a public hearing on the Fiscal Year 2016 Weatherization Assistance Program Draft State Plan
- Office of the State Superintendent of Education announces funding availability for the School Improvement Grant (SIG) Program
- Department of Health announces funding availability for the Effi Barry HIV/AIDS Capacity Building Program and the School-Based Health Center Program
- DC Taxicab Commission updates the requirements for transitioning the taxicab fleet to the uniform color scheme

# DISTRICT OF COLUMBIA REGISTER

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MAYOR

VICTOR L. REID, ESQ.  
ADMINISTRATOR

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## COUNCIL OF THE DISTRICT OF COLUMBIA

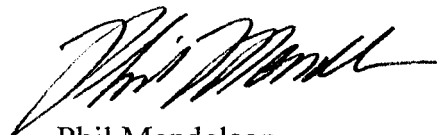
## NOTICE

## D.C. LAW 21-12

**"Pre-K Student Discipline 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 21-1 on first and second readings March 17, 2015, and April 14, 2015, respectively. Following the signature of the Mayor on May 6, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-50 and was published in the May 15, 2015 edition of the D.C. Register (Vol. 62, page 5942). Act 21-50 was transmitted to Congress on May 11, 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 21-50 is now D.C. Law 21-12, effective June 23, 2015.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

May	11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, 29
June	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22

## COUNCIL OF THE DISTRICT OF COLUMBIA

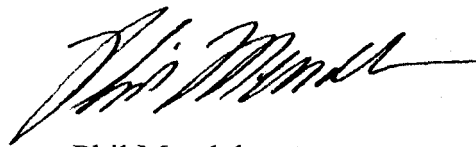
## NOTICE

## D.C. LAW 21-13

**"Health Benefit Exchange Authority Financial Sustainability 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 21-8 on first and second readings March 17, 2015, and April 14, 2015, respectively. Following the signature of the Mayor on May 6, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-51 and was published in the May 15, 2015 edition of the D.C. Register (Vol. 62, page 5946). Act 21-51 was transmitted to Congress on May 11, 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 21-51 is now D.C. Law 21-13, effective June 23, 2015.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

May	11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, 28, 29
June	1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-94**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JUNE 25, 2015**

To adjust, on a temporary basis, certain allocations requested in the Fiscal Year 2015 Budget Request Act pursuant to the Omnibus Appropriations Act, 2009.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2015 Second Revised Budget Request Temporary Adjustment Act of 2015".

Sec. 2. Pursuant to section 817 of the Omnibus Appropriations Act, 2009, approved March 13, 2009 (123 Stat. 699; D.C. Official Code § 47-369.02), the Fiscal Year 2015 budgets for the following agencies shall be adjusted by the following amounts:

**TITLE II—DISTRICT OF COLUMBIA FUNDS—SUMMARY OF EXPENSES**

\$99,652,000 is removed from local funds (including an increase of \$106,000 in dedicated taxes); \$215,000 is increased in other funds; and \$260,000 is increased in enterprise and other funds; to be allocated as follows:

**Government Direction and Support**

The appropriation for Governmental Direction and Support is decreased by \$7,073,000 in local funds and increased by \$162,000 in other funds; to be allocated as follows:

- (1) Department of General Services. – (\$5,500,000) is removed from local funds;
- (2) Office of the Secretary. – (\$100,000) is removed from local funds;
- (3) Office of Contracting and Procurement. – (\$500,000) is removed from local funds;
- (4) Office of Risk Management. – (\$200,000) is removed from local funds;
- (5) Department of Human Resources. – (\$84,000) is removed from local funds and \$162,000 is added to be available in other funds;
- (6) Office of Campaign Finance. – (\$233,000) is removed from local funds;
- (7) Office of the District of Columbia Auditor. – (\$122,000) is removed from local funds;
- (8) Office of the Attorney General. – (\$300,000) is removed from local funds;
- (9) Contract Appeals Board. – (\$24,000) is removed from local funds; and
- (10) Public Employee Relations Board. – (\$11,000) is removed from local funds.

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**Economic Development and Regulation**

The appropriation for Economic Development and Regulation is decreased by \$3,015,000 in local funds; to be allocated as follows:

(1) Department of Employment Services. – (\$372,000) is removed from local funds;

(2) Office of the Deputy Mayor for Planning and Economic Development. – (\$136,737) is removed from local funds;

(3) Office of Motion Picture and Television Development. – (\$1,507,000) is removed from local funds; and

(4) Commission on the Arts and Humanities. – (\$1,000,000) is removed from local funds.

**Public Safety and Justice**

The appropriation for Public Safety and Justice is decreased by \$1,792,000 in local funds; to be allocated as follows:

(1) Office of Unified Communications. – (\$1,401,000) is removed from local funds;

(2) Department of Forensic Sciences. – (\$196,000) is removed from local funds; and

(3) Office of Administrative Hearings. – (\$194,000) is removed from local funds.

**Public Education**

The appropriation for Public Education is decreased by \$15,542,000 in local funds; to be allocated as follows:

(1) Office of the State Superintendent of Education. – (\$6,182,000) is removed from local funds;

(2) Office of the Deputy Mayor for Education. – (\$4,000,000) is removed from local funds;

(3) District of Columbia Public Charter Schools. – (\$2,500,000) is removed from local funds;

(4) State Board of Education. – (\$10,000) is removed from local funds; and

(5) Special Education Transportation. – (\$2,850,000) is removed from local funds.

**Human Support Services**

The appropriation for Human Support Services is decreased by \$28,119,000 in local funds (including an increase of \$106,000 in dedicated taxes) and increased by \$53,000 in other funds; to be allocated as follows:

(1) Department of Human Services. – (\$600,000) is removed from local funds;

(2) Department of Parks and Recreation. – (\$1,750,000) is removed from local funds;

(3) Department of Health Care Finance. – (\$25,085,000) is removed from local

## ENROLLED ORIGINAL

funds (including an increase of \$106,000 in dedicated taxes) and \$53,000 is added to be available in other funds;

(4) Department of Youth Rehabilitation Services. – (\$463,000) is removed from local funds;

(5) Office on Latino Affairs. – (\$10,000) is removed from local funds;

(6) Office on Asian and Pacific Islander Affairs. – (\$6,000) is removed from local funds;

(7) Office of Veterans Affairs. – (\$5,000) is removed from local funds; and

(8) Office on Aging. – (\$200,000) is removed from local funds.

**Public Works**

The appropriation for Public Works is decreased by \$175,000 in local funds; to be allocated as follows:

(1) District Department of Transportation. – \$250,000 is added to be available in local funds; and

(2) Department of Motor Vehicles. – (\$425,000) is removed from local funds.

**Financing and Other**

The appropriation for Financing and Other is decreased by \$43,936,000 in local funds; to be allocated as follows:

(1) Repayments of Loans and Interest. – (\$20,328,000) is removed from local funds;

(2) Certificates of Participation. – (\$22,670,000) is removed from local funds;

(3) Non-departmental. – (\$6,300,000) is removed from local funds;

(4) Workforce Investments. – (\$8,000,000) is removed from local funds;

(5) TIF and PILOT Transfer. – \$9,907,000 is added to be available in local funds; and

(6) Emergency and Contingency Reserve Funds. - \$3,455,000 is added to be available in local funds.

**Enterprise and Other Funds**

The appropriation for Enterprise and Other Funds is increased by \$260,000 in enterprise and other funds; to be allocated as follows:

(1) University of the District of Columbia. – \$260,000 is added to be available in enterprise and other funds.

Sec. 3. Of the Fiscal Year 2015 local funds within the budget of the Office of the Deputy Mayor for Public Safety and Justice, \$700,000 shall be reallocated from the Justice Grants Administration program to the Community-Based Violence Reduction Fund.

ENROLLED ORIGINAL

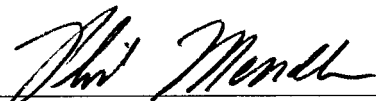
Sec. 4. Fiscal impact statement.


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

Sec. 5. Effective date.

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

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

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
June 25, 2015

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-95**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JUNE 25, 2015**

To amend, on an emergency basis, the Rental Housing Conversion and Sale Act of 1980, to clarify that a bona fide offer of sale for a housing accommodation with 5 or more units, for purposes of demolition or discontinuance of housing use, made in the absence of an arm's length third-party contract, shall be based on current, applicable, matter-of-right zoning regulations or laws, or by an existing right to convert to another use, that the offer may take into consideration the highest and best use of the property, and to establish the right of a tenant organization to a determination of the appraised value of a housing accommodation under certain circumstances.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "TOPA Bona Fide Offer of Sale Clarification Emergency Amendment Act of 2015".

Sec. 2. The Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3401.01), is amended as follows:

(a) Section 103 (D.C. Official Code § 42-3401.03) is amended as follows:

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

"(1A) Beginning January 1, 2014, "appraised value" means the value of a housing accommodation as of the date of the appraisal, based on an objective, independent property valuation, performed according to professional appraisal industry standards.

"(1B) Beginning January 1, 2014, "bona fide offer of sale" means an offer of sale for a housing accommodation or the interest in the housing accommodation, that is either:

"(A) For a price and other material terms that are at least as favorable as those accepted by a purchaser in an arm's length third-party contract; or

"(B) In the absence of an arm's length third-party contract, an offer of sale with a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the housing accommodation, or the appraised value."

(2) A new paragraph (12A) is added to read as follows:

"(12A) Beginning January 1, 2014, "matter-of-right" means a land use, development density, or structural dimension to which a property owner is entitled by current zoning regulations or law."



## ENROLLED ORIGINAL

(b) Section 402 (D.C. Official Code § 42-3404.02) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “Before an owner” and inserting the phrase “Before October 7, 2014, before an owner” in its place.

(2) New subsections (a-1), (a-2), (a-3), and (a-4) are added to read as follows:

“(a-1) Beginning October 7, 2014, before an owner of a housing accommodation may sell the housing accommodation or issue a notice to vacate for purposes of demolition or discontinuance of housing use, the owner shall give the tenant an opportunity to purchase the housing accommodation at a price and terms that represent a bona fide offer of sale.

“(a-2) Beginning January 1, 2014, whenever an offer of sale is made to tenants for a housing accommodation with 5 or more units that is required by subsection (a) or (a-1) of this section before the owner may issue a notice to vacate for purposes of demolition or discontinuance of housing use, and the offer is made in the absence of an arm’s-length third-party contract, the following shall apply:

“(1) The sales price contained in the offer of sale shall be less than or equal to a price and other material terms comparable to that at which a willing seller and a willing buyer would sell and purchase the housing accommodation, or the appraised value of the housing accommodation as determined by this subsection.

“(2) An appraised value shall only be based on rights an owner has as a matter-of-right as of the date of the offer, including any existing right an owner may have to convert the property to another use.

“(3) Within the restrictions of paragraph (2) of this subsection, an appraised value may take into consideration the highest and best use of the property.

“(4) The owner of the housing accommodation shall have the burden of proof to establish that an offer of sale under this subsection is a bona fide offer of sale.

“(5)(A) A tenant organization registered according to section 411(1) may challenge the offer presented by an owner of a housing accommodation as not being a bona fide offer of sale, and request a determination of the appraised value of the housing accommodation.

“(B) The tenant organization shall request an appraisal by delivering the request to the Mayor and the owner by hand or by certified mail, within 45 days of receipt of a valid bona fide offer of sale.

“(C)(i) The tenant organization and owner of the housing accommodation shall jointly select an appraiser. If within 14 days after a tenant organization has requested an appraisal, the tenant organization and owner of the housing accommodation have not agreed upon an appraiser, either party may request that the Mayor select an appraiser.

“(ii) A request that the Mayor select an appraiser shall be in writing and delivered by hand or by certified mail to the Mayor and to the owner or tenant organization, respectively.

“(iii) The Mayor shall select the appraiser on a sole source basis within 7 days of receiving the request for an appraiser.

“(D) The tenant organization and owner of the housing accommodation shall pay one-third and two-thirds of the cost of the appraisal, respectively.

## ENROLLED ORIGINAL

“(E)(i) The appraiser shall hold an active license to be a Certified General Real Property Real Estate Appraiser that has been issued by District of Columbia Board of Real Estate Appraisers.

“(ii) The owner shall give the appraiser full, unfettered access to the property.

“(iii) The owner shall respond within 7 days to any request for information from the appraiser.

“(iv) The tenant organization may give the appraiser information relevant to the valuation of the property.

“(F) The appraisal shall be completed expeditiously according to standard industry timeframes.

“(6) Beginning with the date of a tenant organization request for an appraisal, and for each day thereafter until the tenant organization receives the appraisal, the negotiation period described in section 411(2) shall be extended by one day.

“(7)(A) The determination of the appraised value of the housing accommodation in accordance with this subsection shall become the sales price of the bona fide offer of sale for the housing accommodation, unless:

“(i) The owner and the tenant organization agree upon a different sales price of the housing accommodation; or

“(ii) Within 14 days of the receipt of the appraisal by the owner, the owner elects to withdraw the offer of sale.

“(B) The owner shall withdraw the offer of sale by delivering a letter of withdrawal to the Mayor and a member of the board of directors of the tenant organization, by hand or by certified mail. Upon such election, the owner shall reimburse the tenant organization for its entire share of the cost of the appraisal within 14 days. An owner who withdraws an offer of sale in accordance with this paragraph, shall be precluded from making a subsequent offer of sale to the tenant organization without an arm’s-length third party contract, for 6 months from the date of the election to withdraw the offer of sale.

“(8) Within 30 days of the receipt of the appraisal conducted by an appraiser selected by the Mayor according to this subsection, either the tenant organization or the owner of the housing accommodation may appeal the appraisal as being in violation of the requirements of this subsection, to the Superior Court of the District of Columbia for the court to take any appropriate action the court may deem necessary.

“(a-3) Notwithstanding subsections (a-1) and (a-2) of this section, for a tenant organization that before the effective date of the TOPA Bona Fide Offer of Sale Clarification Emergency Amendment Act of 2015, passed on emergency basis on June 2, 2015 (Enrolled version of Bill 21-222), has registered the tenant organization with the Mayor according to section 411(1), and has requested an appraisal of the housing accommodation by delivering the request to the Mayor and the owner by hand or by certified mail, the following shall apply:

“(1) Beginning January 1, 2014, before an owner of a housing accommodation may sell the accommodation, or issue a notice of intent to recover possession or notice to vacate

## ENROLLED ORIGINAL

for purposes of demolition or discontinuance of housing use, the owner shall give the tenant an opportunity to purchase the accommodation at a price and terms that represent a bona fide offer of sale.

“(2) If within 360 days of the date of the issuance of a bona fide offer of sale pursuant to this subsection, an owner has neither sold, or is in the process of selling, the property pursuant to that bona fide offer of sale nor taken possession of the property, the owner shall comply anew with the requirements of this subsection before the owner may again act to sell the housing, or issue a notice of intent to recover possession or notice to vacate for purposes of demolition or discontinuance of housing use.

“(3) For the purposes of this subsection, in the case of multi-unit housing, the term:

“(A)(i) “A bona fide offer of sale” means a sales price that is less than or equal to the appraised value of the real property, multi-unit housing, and any other appurtenant improvements (“property”) plus, except as provided in sub-subparagraph (ii) of this subparagraph, the amount of liens existing before the sale or transfer; provided, that the liens shall be satisfied by the seller in the sale or transfer transaction.

“(ii) If the seller and the purchaser agree that the purchaser shall assume the liens, if any, a bona fide offer of sale means a sale price that is less than or equal to the appraised value of the property less the amount of any lien assumed by the purchaser.

“(B)(i) “Appraised value” means an objective property valuation based on the current state of the property and existing zoning, building, and occupancy permits that is no more than 6 months older than the date of issuance of the offer of sale that has been determined by 2 independent appraisals performed by 2 appraisers qualified to perform multi-unit appraisals.

“(ii) Of the 2 appraisers required by sub-subparagraph (i) of this subparagraph, one shall be selected by the owner and one shall be selected by the tenant. If the appraisers fail to agree upon a fair market value, the owner and the tenant shall jointly select and pay a third appraiser, whose appraisal shall be binding, or agree to take an average of the 2 appraisals.

“(C) “Multi-unit housing” means housing with 5 or more units.

“(a-4) Subsection (a-3) shall expire on October 9, 2015.”.

(c) Section 411(4) (D.C. Official Code § 42-3404.11(4)) is amended by striking the phrase “the owner has not sold or contracted for the sale of the accommodation” and inserting the phrase “the owner has not sold or contracted for the sale of the accommodation, or in the case of an offer of sale given for the purposes of demolition or discontinuance of housing use, has not issued a notice to vacate for demolition or discontinuance of housing use, pursuant to section 501(g) or section 501(i) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.01(g) or (i))” in its place.

Sec. 3. The Tenant Opportunity to Purchase Temporary Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-166; 61 DCR 11101), is repealed.

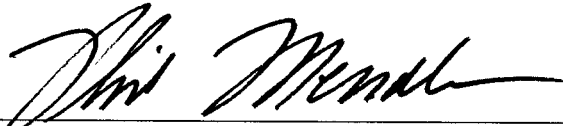
ENROLLED ORIGINAL

Sec. 4. Fiscal impact statement.

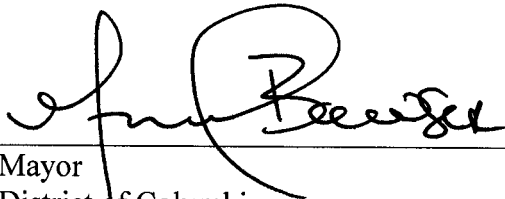
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

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



\_\_\_\_\_  
Chairman  
Council of the District of Columbia



\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
June 25, 2015

**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](http://www.dccouncil.us).

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

- |         |  |
|---------|--|
| B21-261 | Sale of Synthetic Drugs Amendment Act of 2015<br><br>Intro. 6-18-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary |
| <hr/>   |  |
| B21-271 | Early Learning Quality Improvement Network Amendment Act of 2015<br><br>Intro. 6-22-15 by Councilmember Grosso and referred to the Committee on Education        |
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**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC ROUNDTABLE**  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC ROUNDTABLE**

on

**PR 21-215, Seventh Master Agreement between the University of the District of Columbia and the University of the District of Columbia Faculty Association and Faculty Pay Scale Changes Emergency Approval Resolution of 2015**

on

**Monday, July 6, 2015  
10:00 a.m., Hearing Room 412, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of a public roundtable of the Committee of the Whole on PR 21-215, Seventh Master Agreement between the University of the District of Columbia and the University of the District of Columbia Faculty Association and Faculty Pay Scale Changes Emergency Approval Resolution of 2015. The roundtable will be held at 10:00 a.m. on Monday, July 6, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of PR 21-215 is to approve the Seventh Master Agreement and the July 7, 2014 Binding Interest Arbitration Award, as well as the resulting faculty pay scale adjustments, between the University of the District of Columbia (UDC) and the UDC Faculty Association. The last Master Agreement between these two entities expired in 2008.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or email Christina Setlow, Deputy Committee Director, at [csetlow@dccouncil.us](mailto:csetlow@dccouncil.us), and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Thursday, July 2, 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 July 2, 2015 the testimony will be distributed to Councilmembers before the roundtable. 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 21-215 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 roundtable, 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 July 13, 2015.

**Council of the District of Columbia  
COMMITTEE ON THE JUDICIARY  
NOTICE OF PUBLIC ROUNDTABLE  
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

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**COUNCILMEMBER KENYAN R. McDUFFIE, CHAIRPERSON  
COMMITTEE ON THE JUDICIARY**

**ANNOUNCES A PUBLIC ROUNDTABLE ON**

**THE PRESIDENT'S TASK FORCE ON 21<sup>ST</sup> CENTURY POLICING  
FINAL REPORT**

**Tuesday, July 14, 2015, 2:00 p.m.  
The George Washington University Law School  
Faculty Conference Center  
2000 H Street, N.W.  
Washington, D.C. 20052**

On Tuesday, July 14, 2015, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on the Judiciary, will hold a public roundtable on the President's Task Force on 21<sup>st</sup> Century Policing Final Report. The report is available here:  
[http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf)

The roundtable will include a robust discussion of best practices and policy recommendations for improving policing and promoting crime reduction while building public trust. The roundtable will be held in the Faculty Conference Center of The George Washington University Law School, located at 2000 H Street, N.W., at 2:00 p.m.

The Committee has invited experts in policing and related fields to provide testimony. The Committee invites the public to submit *written testimony*, which will be made part of the official record. The public is invited to attend, but members of the public who wish to provide oral testimony will be invited to testify at a roundtable to be scheduled in the fall of 2015.

Copies of written statements by members of the public should be submitted either to the Committee on the Judiciary or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. The record will close at the end of the business day on Tuesday, July 28, 2015.

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**CONSIDERATION OF TEMPORARY LEGISLATION**

**B21-256**, Medical Marijuana Cultivation Center Expansion Amendment Temporary Amendment Act of 2015; **B21-260**, Sale of Synthetic Drugs Temporary Amendment Act of 2015; and **B21-282**, Ward 5 Paint Spray Booth Moratorium Temporary Act of 2015 was adopted on first reading on June 30, 2015. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on July 14, 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 reprogrammings are available in Legislative Services, Room 10.  
Telephone: 724-8050

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**Reprog. 21-83:** Request to reprogram \$2,200,000 of Fiscal Year 2015 Local funds budget authority from the Workforce Investment Account to the Office of Unified Communications (OUC), the Department of Public Works (DPW), and the District Department of the Environment (DDOE) was filed in the Office the Secretary on June 25, 2015. This reprogramming ensures that the aforementioned agencies are able to cover various needs as described below:

\$800,000 to OUC to cover the costs of contractual support for 911 operators in order to meet the current call demand, fund the call center training for both new and existing staff, and cover a projected overtime spending pressure; \$900,000 to DPW will cover the increased costs of the District's recycling program; and \$500,000 to DDOE to fully fund the Heat and Eat program within the Low-Income Heating and Energy Assistance Program.

RECEIVED: 14 day review begins June 26, 2015

**Reprog. 21-84:** Request to reprogram \$3,784,266 of Fiscal Year 2015 Local funds budget authority within the Department of Corrections (DOC) was filed in the Office of the Secretary on June 25, 2015. The reprogramming is needed for critical security supplies, pharmaceutical equipment, inmate healthcare, training academy, and security equipment needs for the remainder of the fiscal year.

RECEIVED: 14 day review begins June 26, 2015

**Reprog. 21-85:** Request to reprogram \$3,700,000 of Capital funds budget authority and allotment within the Department of General Services (DGS) was filed in the Office of the Secretary on June 25, 2015. The reprogramming is needed to fund several projects which are planned and ready for implementation in the summer of 2015.

RECEIVED: 14 day review begins June 26, 2015

**Reprog. 21-86:** Request to reprogram \$5,000,000 of Fiscal Year 2015 Local funds budget authority, of which \$2,000,000 is within the Metropolitan Police Department (MPD) and \$3,000,000 is from MPD to the Pay-As-You-Go (Paygo) Capital fund was filed in the Office of the Secretary on June 25, 2015. This reprogramming ensures that funding is available for critical security supplies, IT contractors, Police and Fire Clinic contract, and completion of Capital project ATE01C.

RECEIVED: 14 day review begins June 26, 2015

**Reprog. 21-87:** Request to reprogram \$1,055,924 of Fiscal Year 2015 Local fund budget authority within the Department of Parks and Recreation (DPR) was filed in the Office of the Secretary on June 25, 2015. This reprogramming ensures that DPR's operating expenditures are properly recorded within personal and nonpersonal services categories.

RECEIVED: 14 day review begins June 26, 2015

**Reprog. 21-88:** Request to reprogram \$1,430,000 of Fiscal Year 2015 Local funds budget authority within the Office of the Chief Financial Officer (OCFO) was filed in the Office of the Secretary on June 25, 2015. This reprogramming supports the replacement of aging computer network servers and the acquisition of encryption security licenses to comply with the "Clean Hands" legislation, which determines if an applicant for a license or permit has an outstanding obligation to the District government over \$100.

RECEIVED: 14 day review begins June 26, 2015

**Reprog. 21-89:** Request to reprogram \$2,550,000 of Capital funds budget authority and allotment to the Department of Parks and Recreation (DPR) was filed in the Office of Secretary on June 25, 2015. This reprogramming is to support the cost of improvements to the former Kenilworth Elementary School, which is an adaptive use project, destined to become the Kenilworth Recreation Center.

RECEIVED: 14 day review begins June 26, 2015

**Reprog. 21-90:** Request to reprogram \$100,100 of capital funds budget authority and allotment to the Department of General Services (DGS) was filed in the Office of the Secretary on June 25, 2015. This reprogramming will fund the purchases of equipment, moving services, and interior finishes for the Columbia Heights Recreation Center.

RECEIVED: 14 day review begins June 26, 2015

**Reprog. 21-91:** Request to reprogram \$2,354,542 of Capital funds budget authority and allotment from the Department of General Services (DGS) to Reverse Pay-As-You-Go (Paygo) Capital Project and subsequently to the Local funds budgets of DGS and DCPS was filed in the Office of the Secretary on June 25, 2015. This reprogramming is necessary to fund the cost of various school modernization and small capital projects.

RECEIVED: 14 day review begins June 26, 2015

**Reprog. 21-92:** Request to reprogram \$1,788,897 of Fiscal Year 2015 Local funds budget authority within the Department of Employment Services (DOES) was filed in the Office of the Secretary on June 26, 2015. This reprogramming ensures that funding is provided for the reconfiguration of space for programmatic activities, technology enhancements, and alignment of the budget with projected spending in various programs for personnel, supplies, equipment, and contractual services.

RECEIVED: 14 day review begins June 29, 2015

## ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

## NOTICE OF PUBLIC HEARING

Posting Date: July 3, 2015  
Petition Date: August 17, 2015  
Hearing Date: August 31, 2015

License No.: ABRA-097148  
Licensee: Fast Good, LLC  
Trade Name: Beefsteak  
License Class: Retailer's Class "CR"  
Address: 800 22<sup>nd</sup> St., N.W.  
Contact: Kayla Brown, Agent: 407-299-2555

WARD 2

ANC 2A

SMD 2A07

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 14<sup>th</sup> Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date.

**LICENSEE REQUESTS THE FOLLOWING SUBSTANTIAL CHANGE TO THE NATURE OF ITS OPERATIONS:**

Request a sidewalk café with 24 seats

**CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION**

Sunday through Saturday 10:30 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 3, 2015
Petition Date: August 17, 2015
Hearing Date: August 31, 2015
Protest Date: November 18, 2015

License No.: ABRA-099365
Licensee: DC Yacht Charter and Tour Company, LLC
Trade Name: "Celebrity" and "Finished Business"
License Class: Retailer's Class "CX" Marine Vessel
Address: 1300 Maine Ave., S.W.
Contact: Dennis F. Walton, Agent: 540-220-8465

WARD 6

ANC 6D

SMD 6D04

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on November 18, 2015.

NATURE OF OPERATION

Marine Vessels serving catered food with a Total Occupancy Load of 128 on Celebrity and a Total Occupancy Load of 51 on Finished Business.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday 1 pm - 1 am, Monday through Saturday 10 am - 1 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

ON

**6/19/2015\*\***

**\*\*RESCIND**

Notice is hereby given that:

License Number: ABRA-097883

License Class/Type: A Retail - Liquor Store

Applicant: Gokulesh, LLC

Trade Name: Hop, Cask, & Barrel

ANC: 2E02

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

**1717 WISCONSIN AVE NW**

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

**8/3/2015\*\***

***A HEARING WILL BE HELD ON:***

**8/17/2015\*\***

***AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009***

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

**ENDORSEMENTS: Tasting**

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

ON

**7/03/2015**

Notice is hereby given that:

License Number: ABRA-097883

License Class/Type: A Retail - Liquor Store

Applicant: Gokulesh, LLC

Trade Name: Hop, Cask, & Barrel

ANC: 2E02

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

**1717 WISCONSIN AVE NW**

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

**8/17/2015**

***A HEARING WILL BE HELD ON:***

**8/31/2015**

***AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009***

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

**ENDORSEMENTS: Tasting**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING****\*\*CORRECTION**

Posting Date: June 26, 2015  
Petition Date: August 10, 2015  
Hearing Date: August 24, 2015

License No.: ABRA-090804  
Licensee: CS Bond ST AB-S Holdings, LLC  
Trade Name: The Savoy Suites Hotel  
License Class: Retailer's Class "C" Hotel  
Address: 2505 Wisconsin Ave., N.W.  
Contact: Roderic Woodson, Esq.: 202-457-7138

WARD 3

ANC 3C

SMD 3C08

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 14<sup>th</sup> Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date.

**LICENSEE REQUEST THE FOLLOWING SUBSTANTIAL CHANGE TO ITS NATURE OF OPERATIONS:**

Request an additional Summer Garden with 136 seats and Entertainment Endorsement for the Summer Garden. \*\* Additionally, to expand the seating capacity inside the restaurant to 98, the bar/lounge to 58, and the Total Occupancy load to 153.

**CURRENT HOURS OF OPERATION**

Sunday through Saturday 24 hours

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION OF PREMISES**

Sunday 10 am – 12 am, Monday through Saturday 8 am – 1 am

**HOURS OF OPERATION OF SUMMER GARDEN**

Sunday 7 am – 12 am, Monday through Saturday 7 am – 1 am

**HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN**

Sunday 10 am – 12 am, Monday through Saturday 8 am – 1 am

**HOURS OF ENTERTAINMENT FOR SUMMER GARDEN**

Sunday 6 pm – 12:30 am, Monday 6 pm – 1:30 am



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 3, 2015
Petition Date: August 17, 2015
Hearing Date: August 31, 2015

License No.: ABRA-093610
Licensee: Good Essen-U Street, LLC
Trade Name: Tico
License Class: Retailer's Class "C" Restaurant
Address: 1926 14th Street, N.W.
Contact: Michael Schlow: 202-686-7600

WARD 2 ANC 2B SMD 2B09

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 Change of Hours.

CURRENT HOURS OF OPERATION

Sunday through Thursday 7 am - 12 am Friday & Saturday 7 am - 2 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 8 am - 12 am Friday & Saturday 8 am - 2 am

PROPOSED HOURS OF OPERATION

Sunday through Saturday 7 am - 2 am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Saturday 8 am - 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 3, 2015
Petition Date: August 17, 2015
Hearing Date: August 31, 2015
Protest Hearing: November 18, 2015

License No.: ABRA-099450
Licensee: Southeast Restaurant Group, LLC
Trade Name: Wicked Bloom Social Club
License Class: Retailer's Class "C" Tavern
Address: 1540 North Capitol Street, N.W.
Contact: Scott Jacobs: 202 733-1919

WARD 5 ANC 5E SMD 5E05

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 November 18, 2015 at 4:30 pm.

NATURE OF OPERATION

New Tavern serving crated drinks and beer with fresh-made sandwiches. Entertainment Endorsement. Total Occupancy Load is 49.

HOURS OF OPERATON

Sunday through Thursday 11 am – 2 am, Friday and Saturday 11 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 11 am – 1 am, Friday and Saturday 11 am – 2 am

HOURS OF ENTERTAINMENT

Sunday through Saturday 5 pm –11 pm

## DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PUBLIC HEARING  
AND  
NOTICE TO COMMENT IN WRITINGWeatherization Assistance Program  
Draft State Plan for Fiscal Year 2016**Hearing: Wednesday, July 29, 2015, 4:30 pm – 6:30 pm**

District Department of the Environment  
1200 First Street, NE, 5<sup>th</sup> Floor  
NoMa-Gallaudet University Metro Stop, Washington, D.C.

**Written Comments due by: July 29, 2015, 6:30 pm**

The District Department of the Environment (“DDOE”) provides abbreviated notice to the public to present its feedback, input, and comments on the Weatherization Assistance Program (WAP) Draft State Plan 2016. DDOE intends to review all components of the State Plan at the public hearing. Feedback may be expressed in person at the public hearing or in writing.

**Authority** for the program is provided by:

- District Department of the Environment Establishment Act of 2005, § 101 *et seq.*, effective February 15, 2006, as amended (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq.* (2013 Repl.));
- District of Columbia Office of Energy Act of 1980, § 2 *et seq.*, effective March 4, 1981, as amended (D.C. Law 3-132; D.C. Official Code § 8-171.01 *et seq.* (2013 Repl.));
- Clean and Affordable Energy Act of 2008, § 101 *et seq.*, effective Oct. 22, 2008, as amended (D.C. Law 17-250; D.C. Official Code § 8-1773.01, 8-1774.01 *et seq.* (2013 Repl.)); and
- Mayor’s Order 2006-61, dated June 14, 2006, and its delegations of authority.

**Comments may be provided in person or in writing.** A person need not attend the public hearing in order to submit comments on the WAP Draft State Plan 2016.

**The public hearing** will take place at the above-stated time and place. The public hearing will continue until the presiding officer determines that everyone has had a meaningful opportunity to be heard. The presiding officer may limit the time in which to comment. A person who cannot be present at the opening time may reserve a time to speak, by contacting DDOE, as described below, in this notice. A person attending the public hearing should check in with the guard in the building lobby, and then go to DDOE’s reception desk on the 5<sup>th</sup> floor.

**Written comments** may be submitted directly to DDOE by mail, hand delivery, or email. Instructions for submitting written comments appear below, in this notice. DDOE will accept written comments until Wednesday, July 29, 2015, 6:30 pm.

**Obtaining text of the WAP Draft State Plan 2016.** The document will be available on DDOE's website and at DDOE's offices, as described below in this notice. The WAP Draft State Plan 2016 will become available at the DDOE web page, described below, in this notice, as follows:

A person may obtain a copy of the document by any of the following methods:

- Download, by visiting DDOE's website, [ddoe.dc.gov](http://ddoe.dc.gov). Look for the title/section, "EnergySmart DC", click on it, choose "Energy Assistance and Weatherization" and click on it. Page down to the section titled "Publications" to find the document's listing. Click on it. Follow the link to the document in PDF format, which can be downloaded;
- Email a request to [WAP2016.StatePlan@dc.gov](mailto:WAP2016.StatePlan@dc.gov) with "Request copy of WAP State Plan 2015" in the subject line;
- Get a copy in person, by making an appointment to examine a copy in DDOE's offices at the 5th floor reception desk at the street address below (call DDOE reception at 202-535-2600 and mention the State Plan by name). DDOE is located one block west of the NOMA Red Line Station, at the corner of M Street and First Street NE; or
- Mail DDOE, by writing to DDOE at 1200 First Street, N.E., 5th Floor, Washington, DC 20002, "Attn: Request copy of WAP Draft State Plan 2016" on the outside of the letter.

The State Plan contact: For additional information regarding the public hearing or written comments please send an email to [WAP2016.StatePlan@dc.gov](mailto:WAP2016.StatePlan@dc.gov).

DDOE appreciates the time, insight, and expertise that go into submitting comments. DDOE will carefully consider all of the comments that it receives.

### **Instructions for Submitting Written Comments**

Written comments should: (1) identify the commenter, and commenter's organization, if any; (2) be clearly marked "WAP Draft State Plan 2016", and be mailed or hand-delivered to DDOE Energy Administration, Energy Efficiency and Conservation Branch, 1200 First Street, NE, 5<sup>th</sup> floor Washington DC 20002.

**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
TUESDAY, SEPTEMBER 15, 2015  
441 4<sup>TH</sup> 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 FIVE**

19061  
ANC-5D      **Application of 1106 Montello LLC**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the floor area ratio requirements under § 771.2, the lot occupancy requirements under § 772.1, and the off-street parking requirements under § 2101.1, and a special exception from the green area ratio requirements under § 3405.1, to convert an existing two-story masonry building into a four-story, seven-unit apartment house with ground floor retail in the C-2-A District at premises 1140 Florida Avenue N.E. (Square 4070, Lot 84).

**WARD FIVE**

19062  
ANC-5D      **Application of 1106 Montello LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the size of parking space requirements under § 2115.1, to allow the construction of a ninth dwelling unit to a proposed four-story, eight-unit apartment building in the C-2-A District at premises 1112 Montello Avenue N.E. (Square 4070, Lots 82-83).

**WARD SIX**

19064  
ANC-6A      **Application of Andrew Hollinger**, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the nonconforming structure requirements under § 2001.3, to allow the construction of a rear deck to an existing two-story, one-family dwelling in the R-4 District at premises 1007 F Street N.E. (Square 961, Lot 21).

**WARD TWO**

19023  
ANC-2A      **Appeal of ANC 2A**, pursuant to 11 DCMR §§ 3100 and 3101, from a November 24, 2014 determination by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to allow a sidewalk café within public space at an existing hotel in the R-5-E District at premises 924 25th Street N.W. (Square 16, Lot 884).

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**WARD EIGHT**

19063            **Application of Woinshet Mekonnen**, pursuant to 11 DCMR § 3104.1, for a  
ANC-8A           special exception from the new residential development requirements under §  
                         353, to allow the construction of three new one-family dwellings in the R-5-A  
                         District at premises 2306-2308 16th Street S.E. (Square 5753, Lots 73, 74, and  
                         75).

**THIS CASE WAS POSTPONED BY THE APPLICANT'S REQUEST FROM THE  
PUBLIC HEARING OF JUNE 9, 2015:**

**WARD FIVE**

19004            **Application of 1933 Montana Ave LLC**, pursuant to 11 DCMR § 3104.1,  
ANC-5D           for special exceptions from the number of parking spaces requirements under §  
                         2108.2, the accessory parking space location requirements under § 2116.7, and  
                         the parking space accessibility requirements under § 2117.4, to allow a new  
                         medical office use in the R-4 District at the southeast corner of 16th Street N.E.  
                         and Oates Street N.E. (Square 4073, Lots 52 and 803).

**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](http://www.dcoz.dc.gov). All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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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, September 10, 2015, @ 6:30 p.m.**  
**Jerrily R. Kress Memorial Hearing Room**  
**441 4<sup>th</sup> Street, N.W., Suite 220-South**  
**Washington, D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 15-07 (MRP Residential – Consolidated Review and Approval of a Planned Unit Development)**

**THIS CASE IS OF INTEREST TO ANC 6C**

On March 19, 2015, the Office of Zoning received an application from MRP Residential (the “Applicant”) requesting approval of a consolidated planned unit development to facilitate the development of the property. The Office of Planning submitted its report in support of setting the application down for a public hearing on April 10, 2015. On April 27, 2015, the Commission set down the application for a public hearing. The Applicant provided its prehearing statement on June 2, 2015.

The property that is the subject of this application consists of approximately 14,485 square feet of land area and requires relief from the minimum area requirements of § 2401.1(c). The property is located on the south side of H Street, N.E. between 3<sup>rd</sup> Street and 4<sup>th</sup> Street, N.E. The property is located in the C-2-B Zone District of the H Street Overlay and housing subarea. It is located in the medium-density residential and moderate-density commercial land use category on the Future Land Use Map of the District of Columbia Comprehensive Plan.

The Applicant proposes to develop the property with a 90-foot residential building with ground-floor retail. The building will include approximately 80,500 square feet of residential development and 6,160 square feet of ground floor retail. The project will include approximately 125 residential units, including over 6,500 square feet of affordable housing. The project will have a floor area ratio of 6.0 and include approximately 29 parking spaces. No map amendment is proposed in connection with this application.

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

**How to participate as a witness.**

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most



**Z.C. NOTICE OF PUBLIC HEARING  
Z.C. CASE NO. 15-07  
PAGE 2**

important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

**How to participate as a party.**

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

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations.

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.

**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.**

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail ([donna.hanousek@dc.gov](mailto:donna.hanousek@dc.gov)), or by calling (202) 727-0789.

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.

Z.C. NOTICE OF PUBLIC HEARING  
Z.C. CASE NO. 15-07  
PAGE 3

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to [zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov); or by fax to (202) 727-6072. Please include the case number on your submission. **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.**

## OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF FINAL RULEMAKING

The Chief Procurement Officer (CPO) of the District of Columbia, pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06 (2012 Repl.)) (the “Act”), hereby gives notice of the adoption of the final rulemaking to amend Sections 1647 and 1648 of Chapter 16 (Procurement by Competitive Sealed Proposals), of Title 27 (Contracts and Procurement), of the District of Columbia Municipal Regulations (DCMR).

This rulemaking updates the regulations and outlines the procedures applicable to procurement by competitive proposals. The amendments authorize preaward debriefings for unsuccessful offerors, and outlines the applicable process, as well as clarifies the procedures for postaward debriefings to unsuccessful offerors. These changes are necessary to fully implement the Act and to ensure transparent and fair procurement.

The CPO gave notice of her intent to adopt these rules on February 25, 2015, and the emergency and proposed rules were published in the *D.C. Register* on March 20, 2015, at 62 DCR 3421. No comments were received and no changes have been made to the text of the rules as published. The CPO took final action to adopt these rules on April 22, 2015.

The rules will become effective upon publication of this notice in the *D.C. Register*.

**Chapter 16, PROCUREMENT BY COMPETITIVE SEALED PROPOSALS, of Title 27 DCMR, CONTRACTS AND PROCUREMENT, of the DCMR is amended as follows:**

**Section 1647 is amended to read as follows:**

**1647           PREAWARD DEBRIEFINGS**

- 1647.1           Offerors excluded from the competitive range or otherwise excluded from the competition before award may submit a written request for a preaward debriefing to the contracting officer.
- 1647.2           The contracting officer shall make reasonable efforts to debrief the unsuccessful offeror as soon as practicable, unless the Director determines that to do so is not in the best interest of the District.
- 1647.3           A preaward debriefing shall include, at a minimum:
- (a)           The District’s evaluation of significant elements in the offeror’s proposal;
  - (b)           A summary of the rationale for eliminating the offeror from the competition; and

- (c) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

1647.4 A preaward debriefing shall not disclose:

- (a) The number of offerors;
- (b) The identity of another offeror;
- (c) The content of another offeror's proposal;
- (d) The ranking of other offerors;
- (e) The evaluation of other offerors; or
- (f) Any information prohibited by § 1648.3(b) of this chapter.

**Section 1648 is amended to read as follows:**

**1648 POSTAWARD DEBRIEFINGS**

1648.1 If a contract is awarded on a basis other than price alone, the contracting officer shall provide a postaward debriefing for any unsuccessful offeror that submits a written request for a debriefing, unless the Director determines that to do so is not in the best interest of the District.

1648.2 If a postaward debriefing is held, the information provided shall include, at a minimum:

- (a) The District's evaluation of the significant weak or deficient factors in the unsuccessful offeror's proposal;
- (b) The overall evaluated cost or price (including unit prices), the numeric technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;
- (c) The overall numeric ranking of all offerors, if any ranking was developed by the procuring agency during the evaluation;
- (d) A summary of the rationale for award; and
- (e) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations and other applicable authorities were followed.

1648.3 The postaward debriefing shall not:

- (a) Include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors; or
- (b) Reveal any information prohibited from disclosure by Section 417 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-354.17 (2012 Repl.)) or exempt from release under the District of Columbia Freedom of Information Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code §§ 2-531 *et seq.* (2012 Repl.)), including:
  - (1) Information which has been designated as confidential and proprietary by an offeror;
  - (2) Trade secrets and commercial or financial information where disclosure would impair the competitive position of an offeror, including cost breakdowns, profit, indirect cost rates, and similar information;
  - (3) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency, including the names and written comments of the members of the evaluation panel;
  - (4) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy, including offerors' employees' names, résumés, contact information, the names of offerors' partners and the names of individuals providing reference information about an offeror's past performance; and
  - (5) Federal tax identification numbers or other information specifically exempted from disclosure by statute.

## OFFICE OF CONTRACTING AND PROCUREMENT

**NOTICE OF FINAL RULEMAKING**

The Chief Procurement Officer of the District of Columbia (CPO), pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06 (2012 Repl.)) (the “Act”), hereby gives notice of the adoption of the following final rulemaking to replace Chapter 21 (Required Sources of Goods and Services), of Title 27 (Contracts and Procurement), of the District of Columbia Municipal Regulations (DCMR).

The rulemaking updates Chapter 21 and implements the provisions in the Act that apply to required sources of goods and services. It also incorporates the source requirements of the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014, effective June 10, 2014, as amended (D.C. Law 20-108; D.C. Official Code §§ 2-218.01 *et seq.* (2012 Repl.)) (the “CBE Act”).

The CPO gave notice of her intent to adopt these emergency and rules on February 25, 2015, and the proposed rules were published in the *D.C. Register* on March 20, 2015, at 62 DCR 3424. No comments were received and no changes have been made to the text of the rules as published. The CPO took final action to adopt these rules on April 22, 2015.

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

**Chapter 21, REQUIRED SOURCES OF GOODS AND SERVICES, of Title 27 DCMR, CONTRACTS AND PROCUREMENTS, is amended as follows:**

**Section 2100, PRIORITIES FOR USE OF GOVERNMENT SUPPLY SOURCES, is repealed and replaced with:**

**2100 PRIORITIES FOR USE OF REQUIRED SOURCES**

2100.1 Except as otherwise authorized by this title or law, each agency shall satisfy requirements for goods and services from or through the sources listed below in descending order of priority:

- (a) Existing agency inventories;
- (b) Excess personal property from the Surplus Property Division of the Office of Contracting and Procurement (OCP);
- (c) Existing requirements contracts;
- (d) Existing indefinite quantity contracts, to the extent of the minimums stated in those contracts;

- (e) For contracts of \$250,000 or less, qualified small business enterprises (SBE) on the District of Columbia Supply Schedules (DCSS) in accordance with § 2104;
- (f) For contracts of \$250,000 or less, qualified certified business enterprises (CBE) on the DCSS in accordance with § 2104;
- (g) For contracts of \$250,000 or less, qualified small business enterprises (SBE) in accordance with § 2105;
- (h) For contracts of \$250,000 or less, qualified CBEs, in accordance with § 2105; and
- (i) Other sources, including federal schedules and cooperative purchasing agreements.

**Section 2101, EXCESS PERSONAL PROPERTY, is amended to read as follows:**

**2101 EXCESS PERSONAL PROPERTY**

- 2101.1 When requirements cannot be met from existing agency inventories, each agency shall use excess personal property as its first source of supply in fulfilling its requirements.
- 2101.2 Each agency shall ensure that all personnel make positive efforts to satisfy agency requirements by obtaining and using excess personal property before initiating contract action, including obtaining current information regarding the availability of excess personal property from the Surplus Property Division of the OCP.

**Section 2102, PROCUREMENT OF UTILITY SERVICES, is repealed and replaced with:**

**2102 EXISTING REQUIREMENTS CONTRACTS**

- 2102.1 The use of District requirements contracts shall be mandatory for all District agencies listed under the contract as using agencies.
- 2102.2 When goods or services are available under a District requirements contract, a contracting officer shall not:
  - (a) Solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to the requirements contract; or
  - (b) Request formal or informal quotations from other contractors for the purpose of making price comparisons.

**Section 2103, DISTRICT TERM CONTRACTS AND FEDERAL SUPPLY SCHEDULES, is repealed and replaced with:**

**2103 EXISTING INDEFINITE QUANTITY CONTRACTS**

2103.1 The use of District indefinite quantity contracts shall be mandatory to the extent of the minimums stated in those contracts.

**Section 2104, ORDERING FROM THE SUPPLY SCHEDULES, is repealed and replaced with:**

**2104 DISTRICT OF COLUMBIA SUPPLY SCHEDULES**

2104.1 Except as provided by §§ 2101, 2102, 2103, 2104.2 and 2104.3, the contracting officer shall award contracts of \$250,000 or less to a qualified SBE on the DCSS.

2104.2 If the contracting officer determines in writing that there are not at least two (2) qualified SBEs on the DCSS that can provide the goods or services, the contracting officer may use a qualified CBE on the DCSS that can provide the goods or services.

2104.3 If the contracting officer determines in writing that the price offered by the SBE or CBE is believed to be 12% or more above the likely price in the open market, the contracting officer may decline to award a contract under this section, and may issue the solicitation in the set-aside market under § 2105.

2104.4 A copy of each determination made under this section shall be submitted promptly to the Director of the Department of Small and Local Business Development (DSLBD).

**Section 2105, TERMINATION OF ORDERS, is repealed and replaced with:**

**2105 MANDATORY SET-ASIDES**

2105.1 Except as provided by §§ 2101, 2102, 2103, 2104 and 2105.2 and 2105.3, the contracting officer shall award contracts of \$250,000 or less to a qualified SBE.

2105.2 If the contracting officer determines in writing that there are not at least two (2) qualified SBEs that can provide the goods or services, the contracting officer may use a qualified CBE that can provide the goods or services.

2105.3 If the contracting officer determines in writing that the price offered by the SBE or CBE is believed to be 12% or more above the likely price in the open market, the contracting officer may decline to award a contract under this section, and issue the solicitation in the open market.



2105.4 A copy of each determination made under this section shall be submitted promptly to the Director of the DSLBD.

**Section 2106, SALES DISCOUNT UNDER MULTIPLE AWARD SCHEDULE PROCUREMENT PROGRAM, is repealed and replaced with:**

**2106 FEDERAL SCHEDULES**

2106.1 Except as provided by §§ 2101, 2102, 2103, 2104 and 2105, the contracting officer may utilize federal schedules that offer programs to the District following the applicable schedule procedures.

2106.2 Except as otherwise provided in a federal schedule, all schedule contract terms and conditions apply to contracts between the schedule contractor and the District.

**Section 2107, [RESERVED], is amended to read as follows:**

**2107 SALES DISCOUNT UNDER DISTRICT OF COLUMBIA SUPPLY SCHEDULE PROGRAM**

2107.1 The Director may charge and collect, on a quarterly basis, a sales discount in the amount of one percent (1%), on all sales, purchase orders, delivery orders, task orders, and purchase card transactions invoiced under contracts awarded under the DCSS.

**Section 2108, [RESERVED] is repealed.**

**Section 2109, [RESERVED], is repealed.**

**Section 2110, PROCUREMENT FROM THE BLIND AND SEVERELY HANDICAPPED, is repealed.**

**Section 2111, PROCUREMENT FROM FEDERAL PRISON INDUSTRIES, INC., is repealed.**

**Section 2112, EXCEPTIONS FROM HANDICAPPED AND FEDERAL PRISON INDUSTRIES, INC. SOURCE REQUIREMENTS, is repealed.**

**Section 2113, [RESERVED], is repealed.**

**Section 2114, [RESERVED], is repealed**

**Section 2115, PROCUREMENT OF PRINTING AND RELATED GOODS, is repealed.**

**Section 2116, LEASING OF MOTOR VEHICLES, is repealed.**

**Section 2199, DEFINITIONS, is amended to read as follows:**

**2199**            **DEFINITIONS**

2199.1            When used in this chapter, the following terms and phrases shall have the meaning ascribed:

**Director** - the Director of the Office of Contracting and Procurement (OCP) or the District of Columbia Chief Procurement Officer (CPO).

**Excess personal property** - any personal property under the control of a District agency that the agency head or a designee determines is not required for its needs and for the discharge of its responsibilities.

**District of Columbia Supply Schedule** - indefinite quantity contracts made with more than one (1) CBE supplier for comparable goods and services at varying prices.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (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 of an amendment to Section 1910 (Personal Care Services) of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules establish standards governing reimbursement of personal care 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 and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. Personal care services assist waiver participants with activities of daily living including bathing, toileting, transferring, dressing, eating, feeding, and assisting with incontinence.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 3, 2015, at 62 DCR 003979, amending the previously published final rules for personal care services to ensure that they are consistent with rates set by the District of Columbia State Plan for Medical Assistance for services rendered by a personal care aide. No comments were received and no changes were made to the emergency and proposed rules.

The Director of DHCF adopted these rules as final on June 24, 2015, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Section 1910, PERSONAL CARE SERVICES, of 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:**

**1910 PERSONAL CARE SERVICES**

1910.1 The purpose of this section is to establish standards governing Medicaid eligibility for personal care services for individuals enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and

Developmental Disabilities (ID/DD Waiver) and to establish conditions of participation for providers of personal care services.

- 1910.2 Personal care services are the activities that assist the person with activities of daily living including bathing, toileting, transferring, dressing, eating, feeding, and assisting with incontinence.
- 1910.3 To be eligible for Medicaid reimbursement for personal care services under the ID/DD Waiver, the person shall:
- (a) Exhaust all available personal care services provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving personal care services under the ID/DD Waiver;
  - (b) Be unable to independently perform one or more activities of daily living for which personal care services are needed;
  - (c) Be in receipt of a written order for PCA services by a physician in accordance with Subsections 5006.1 and 5006.2 of Title 29 DCMR; and
  - (d) Be authorized for personal care services based on a comprehensive assessment of the person's support needs and risk screening using the DDA Level of Need Assessment and Screening Tool (LON), or its successor, and reflected in the person's Individual Support Plan (ISP) and Plan of Care.
- 1910.4 Persons eligible for personal care services under the ID/DD Waiver shall be exempt from the requirement to obtain an authorization for services from DHCF or its agent under Section 5003 of Chapter 50 of Title 29 DCMR.
- 1910.5 Personal care services eligible for Medicaid reimbursement shall include, but not be limited to the activities identified under Subsection 5006.7 of Chapter 50 of Title 29 DCMR.
- 1910.6 Medicaid reimbursable personal care services shall not include:
- (a) Services that require the skills of a licensed professional as defined by the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*);
  - (b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the beneficiary and shopping for items not used by the person receiving services; and
  - (c) Money management.

- 1910.7 Personal care services delivered by a personal care aide shall be supervised by a registered nurse. The registered nurse shall review the person's health management care plan, if available, in order to make the initial assessment for personal care services
- 1910.8 The registered nurse shall conduct an initial assessment with the person enrolled in the ID/DD Waiver within seventy two (72) hours of receiving authorization for personal care services from DDS.
- 1910.9 A plan of care for the delivery of personal care services shall be developed in accordance with Subsection 5005.2 of Chapter 50 of Title 29 DCMR.
- 1910.10 In order to be eligible for Medicaid reimbursement for personal care services, the provider shall review the plan of care at least once every sixty (60) days, and shall update or modify the plan of care as needed. The registered nurse shall notify the person's physician of any significant change in the beneficiary's condition.
- 1910.11 If an update or modification to the plan of care requires any change in the frequency, duration, or scope of personal care services provided to the person enrolled in the ID/DD Waiver, the provider shall obtain an updated authorization for personal care services from DDS in accordance with § 1910.3(d).
- 1910.12 To be eligible for Medicaid reimbursement for personal care services, a provider shall:
- (a) Be a home care agency licensed pursuant to the requirements for home care agencies as set forth in the Health Care and Community Residence Facility, Hospice and Home Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.* (2012 Repl.)), and implementing rules;
  - (b) Be enrolled as a Medicare home health agency qualified to offer skilled services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 C.F.R. § 484; and
  - (c) Comply with the requirements under Section 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.
- 1910.13 A home care agency shall meet the requirements described under Section 5008 (Staffing) and Section 5010 (Staffing Agencies) of Chapter 50 of Title 29 of the DCMR.
- 1910.14 In order to be eligible for Medicaid reimbursement, each direct support professional (DSP) including personal care aides providing personal care services

shall comply with Section 1906 (Requirements of Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

- 1910.15 In order to be eligible for Medicaid reimbursement, each personal care services provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1910.16 In order to be eligible for Medicaid reimbursement, each personal care services provider shall comply with the record maintenance requirements described under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, and Section 5013 of Chapter 50 of Title 29 DCMR.
- 1910.17 In order to be eligible for Medicaid reimbursement, each provider of personal care services shall comply with the denial, suspension, reduction or termination of services requirements under Section 5007 of Chapter 50 of Title 29 DCMR.
- 1910.18 In order to be eligible for Medicaid reimbursement, each provider of personal care services shall develop contingency staffing plans to provide coverage for a person receiving personal care services if the assigned personal care aide cannot provide the service or is terminated by the provider.
- 1910.19 If person receiving personal care services seeks to change providers, the DDS service coordinator shall assist the person in selecting a new provider. In order to be eligible for Medicaid reimbursement for personal care services, the current provider shall continue to provide services until the transfer to the new provider has been completed.
- 1910.20 Personal care services shall not be provided in a hospital, nursing facility, intermediate care facility, or other living arrangement that includes personal care as part of the reimbursed service.
- 1910.21 Personal care services may be provided by family members other than the person's spouse, parent, guardian, or any other individual legally responsible for the person receiving services who ordinarily would perform or be responsible for performing services on the person's behalf.
- 1910.22 Family members who provide personal care services, with the exception of those listed under Subsection 1910.21, shall meet the requirements for direct support professionals referenced under Subsection 1910.14.
- 1910.23 In order to be eligible for Medicaid reimbursement, personal care services shall not be provided concurrently with the following ID/DD Waiver services:
- (a) Residential Habilitation;
  - (b) Supported Living;

- (c) Host Home; and
- (d) Shared Living.

1910.24 The Medicaid reimbursement rate for personal care services shall be the same as the rate listed in Subsection 5015.1(Reimbursement) of Chapter 50 (Medicaid Reimbursement for Personal Care Aide Services) of Title 29 (Public Welfare) of the DCMR.

**DISTRICT OF COLUMBIA TAXICAB COMMISSION****NOTICE OF FINAL RULEMAKING**

The District of Columbia Taxicab Commission, pursuant to the authority set forth in Sections 8(c)(2), (5), (19), and 14 of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2),(5),(19), and 50-313 (2014 Repl.)), hereby gives notice of its intent to adopt amendments to Chapter 5 (Taxicab Companies, Associations and Fleets) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

These rules require a vehicle to be repainted to the uniform color scheme if the vehicle changes ownership, affiliation, or association, or if the owner is granted an extension in excess of one (1) year of the vehicle's required retirement date pursuant to § 609. The rulemaking would support the transition of the taxicab fleet to the uniform color scheme, as required by the Act.

The proposed rulemaking was adopted by the Commission on December 10, 2014 and published in the *D.C. Register* on February 20, 2015 at 62 DCR 002353. The Commission did not receive any comments during the comment period, which expired on March 23, 2015. No changes were required and none have been made.

The Commission voted to adopt this rulemaking as final on May 13, 2015, and it will become effective upon publication in the *D.C. Register*.

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

**Chapter 5, TAXICAB COMPANIES, ASSOCIATIONS AND FLEETS, is amended as follows:**

**Section 503, TAXICAB COLORINGS AND MARKINGS, is amended as follows:**

503.1 Uniform color scheme. Each vehicle used as a taxicab shall be in compliance with the uniform color scheme in § 503.3 if:

- (a) It is entering service pursuant to:
  - (1) D.C. Official Code § 50-321(d)(1) and any implementing provisions of this title;
  - (2) Section 609, as a replacement for a vehicle required to be retired under that section; or
  - (3) Any other provision of this title or other applicable law;
- (b) It is repainted in whole or in part, regardless of the reason;



- (c) The ownership, association, or affiliation of the vehicle is changed in any way, regardless of the reason; or
- (d) It is required to be repainted in whole or in part pursuant to:
  - (1) Subsection 609.7, as a condition of the Office's approval of the owner's application for an extension in excess of one (1) year of the vehicle's retirement under §§ 609.2 through 609.5; or
  - (2) Any other provision of this title or other applicable law.

## DISTRICT OF COLUMBIA TAXICAB COMMISSION

**NOTICE OF FINAL RULEMAKING**

The District of Columbia Taxicab Commission, pursuant to the authority set forth in Sections 8(c)(3),(5) and (19), and 13 of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(3), (5), (19), and 50-312 (2014 Repl.)), hereby gives notice of its intent to adopt amendments to Chapters 6 (Taxicab Parts and Equipment) and 18 (Wheelchair Accessible Paratransit Taxicab Service) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

These rules: (1) update and clarify the data fields which must be captured by each modern taximeter system (“MTS”) and transmitted by the payment service provider (“PSP”) to the Commission’s taxicab information system (“TCIS”) or its replacement, to ensure that the Commission receives the trip data needed for research, passenger safety, investigation of public complaints, reconciliation with passenger surcharge deposits, and other lawful purposes under the Act; and (2) clarify the additional fields which must be captured by each MTS and transmitted by the PSP for trips provided by the taxicab companies approved to participate in the Coordinated Alternative Paratransit Service (“CAPS-DC”), now called “Transport DC”, program under Chapter 18.

The proposed rulemaking was adopted by the Commission on December 10, 2014 and published in the *D.C. Register* on February 20, 2015 at 62 DCR 002355. The Commission did not receive any comments during the comment period, which expired on March 23, 2015. No changes were required to the proposed rulemaking, and none have been made.

The Commission voted to adopt this rulemaking as final on May 13, 2015, and it will become effective upon publication in the *D.C. Register*.

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

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

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

- (c) Transmit to the TCIS every twenty-four (24) hours via a single data feed consistent in structure across all PSPs, in a manner and format established by the Office, the following data:
  - (1) The operator’s DCTC operator’s license (face card) number;
  - (2) The vehicle’s PVIN;
  - (3) The vehicle’s tag (license plate) number;

- (4) The vehicle's vehicle identification Number (VIN);
- (5) The name of the PSP;
- (6) The name and association of the vehicle owner and related information reported as follows:
  - (A) The word "independent" if the vehicle is owned by the operator and not associated with a taxicab association or with a fleet of a taxicab company;
  - (B) The name of the taxicab association or fleet if the vehicle is owned by the operator and associated with a taxicab association or with a fleet of a taxicab company; or
  - (C) The name of the taxicab company if the vehicle is owned by a company but leased to a driver.
- (7) The PSP-assigned tour of duty identification number;
- (8) The date and time when the operator completed the required login process pursuant to Subsection 603.9(a) at the beginning of the tour of duty;
- (9) The time (duration) and mileage of each trip;
- (10) The date and time of pickup and drop-off of each trip;
- (11) The address and/or geospatially-recorded place of pickup and drop-off of each trip;
- (12) The number of passengers;
- (13) The unique trip identification number assigned by the PSP;
- (14) The taximeter fare and an itemization of the rates and charges pursuant to § 801;
- (15) The form of payment (cash payment, cashless payment, voucher, or digital payment), the payment method, and, if a digital payment, the name of the DDS;
- (16) The date and time of logoff at the end of the tour of duty;

- (17) The date and time that the data transmission to the TCIS takes place;
- (18) The date on which the vehicle's insurance policy expires;
- (19) The vehicle's odometer reading;
- (20) The vehicle's type of propulsion according to § 609;
- (21) The vehicle's taximeter brand and model;
- (22) An acknowledgment that the vehicle's MTS unit incorporates the safety equipment required by § 603.8(n)(3); and
- (23) If applicable, all additional trip data required by the Office for a vehicle performing a trip in the Coordinated Alternative Paratransit Service ("CAPS-DC") pilot program under Chapter 18.

**Chapter 18, WHEELCHAIR ACCESSIBLE PARATRANSIT TAXICAB SERVICE, is amended as follows:**

**Section 1806, TAXICAB COMPANIES AND OPERATORS – OPERATING REQUIREMENTS, is amended as follows:**

**Subsection 1806.9, paragraph (b)(4) is amended to read as follows:**

- (4) Has an MTS unit which complies with § 603, including the reporting of any additional trip data for payment reconciliation and program compliance, in a manner and format directed by the Office, pursuant to § 603.9(c)(23).

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**

**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs, pursuant to Sections 104 and 105 of the Department of Consumer and Regulatory Affairs Civil Infraction Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.04 and 2-1801.05 (2012 Repl.)), and Mayor's Order 86-38, dated March 4, 1986, hereby gives notice of the intent to amend Chapters 33 (Department of Consumer and Regulatory Affairs (DCRA) Infractions) and 34 (Fire and Emergency Medical Services (EMS) Department Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking will conform Title 16 rules to the provisions of the 2013 District of Columbia Construction Codes, which became effective upon publication in the *D.C. Register* on March 28, 2014 at 61 DCR 3251-Part 2, and were subsequently amended on January 2, 2015 at 62 DCR 103.

Pursuant to Section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.4 (2012 Repl.)), a proposed resolution approving the proposed rulemaking will be submitted to the Council of the District of Columbia for a forty-five (45) day period of review, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the *D.C. Register* or Council approval of the amendment.

**Chapter 33, DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS (DCRA) INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:**

**Strike Section in its entirety and insert a new Section 3306 in its place to read as follows:**

**3306 CONSTRUCTION CODE INFRACTIONS**

**3306.1 CONSTRUCTION INFRACTIONS**

The following abbreviations apply to this section:

IBC- International Building Code (2012 edition)

IPC- International Plumbing Code (2012 edition)

IPMC - International Property Maintenance Code (2012 edition)

3306.1.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-A DCMR §§ 105.1, 105.1.1 and 105.1.3 (failure to obtain required permit; working without a required permit);

- (b) 12-A DCMR § 105.1 (work or conditions exceeding scope of permit);
- (c) 12-A DCMR § 105.1.2 (working outside of permitted construction hours);
- (d) 12-A DCMR § 105.1.3 (working outside of permitted hours without a required after-hours permit);
- (e) 12-A DCMR § 105.1.8 (failure to submit timely permit application for emergency work)
- (f) 12-A DCMR § 109.2 (failure to notify code official when stages of construction are reached that require inspection);
- (g) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a 'Stop Work Order');
- (h) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);
- (i) 12-A DCMR § 115.5 (failure to comply with terms of posted "Unsafe Notice");
- (j) 12-A DCMR § 1603.2 (exceeding load restrictions);
- (k) 12-A DCMR § 3307.1 (failure to protect adjoining property owner from damage);
- (l) 12-A DCMR § 3307.2 (failure to provide required notification to owner of adjoining premises);
- (m) 12-A DCMR § 3303.4 (failure to comply with site treatment requirements after demolition or raze);
- (n) 12-A DCMR § 105.1.6 (HVAC work performed by non-D.C. licensed mechanic);
- (o) 12-A DCMR § 105.1.6 (plumbing work performed by non-D.C. licensed plumber);
- (p) IPC § 307.1 (failure to leave any part of a building or premises that is changed or replaced in safe structural condition after installing or repairing any part of a plumbing and drainage installation);

- (q) 12-A DCMR § 115.3 (failure to comply with notice of unsafe structure or equipment);
  - (r) 12-F DCMR § 403.4 (improper signage for public plumbing facilities); or
  - (s) 12-A DCMR § 105.1.6 (work performed by non-DC-licensed electrician).
- 3306.1.2 Violation of any of the following provisions shall be a Class 2 infraction:
- (a) 12-A DCMR § 115.1 (allowing/creating unsafe structures, conditions or equipment);
  - (b) 12-A DCMR § 110.1 (use or occupancy of a premises, or change of load, without obtaining a certificate of occupancy);
  - (c) 12-A DCMR § 109.3.14 (failure to obtain final inspection; use or occupancy of building or structure without final inspection);
  - (d) IBC § 3301.2 (improper storage and placement of construction equipment and materials);
  - (e) IBC § 3302 (failure to maintain construction safeguards);
  - (f) IBC § 3306 (failure to protect pedestrian traffic during construction, remodeling or demolition activities);
  - (g) 12-A DCMR § 3307.7 (failure to repair and restore flashing on adjoining property where damaged during construction);
  - (h) 12-F DCMR § 1101.2 (failure to drain storm water into a separate storm sewer system, or a combined sewer system, or an approved place of disposal); or
  - (i) IPC § 802.1.4 (swimming pool water discharge into public/park space).
- 3306.1.3 Violation of any of the following provisions shall be a Class 3 infraction:
- (a) 12-A DCMR § 105.1.7 (failure to post and maintain required raze notice);
  - (b) 12-A DCMR § 105.1.9 (failure to post permit);

- (c) 12-A DCMR § 110.1.8 (failure to post certificate of occupancy);
- (d) 12-A DCMR § 117.1 (failure to post occupant load signs);
- (e) 12-A DCMR § 117.2 (failure to post design live loads; removal or defacement of design live load signs); or
- (f) IPMC § 506.2 (Plumbing stack, vent, waste or sewer line are not properly maintained or kept free of obstructions, leaks and defects);
- (e) 12-A DCMR § 105.1.6 (plumbing work performed by non-D.C.-licensed plumber);
- (f) 12-A DCMR §§ 105.1, 105.1.1 and 105.1.3 (working without a permit; failure to obtain required permit);
- (g) IPC § 307.1 (failure to leave any part of a building or premises that is changed or replaced in safe structural condition after installing or repairing any part of a plumbing and drainage installation);
- (h) 12-A DCMR § 115.3 (failure to comply with notice of unsafe structure or equipment);
- (i) 12-F DCMR § 403.4 (improper signage for public plumbing facilities); or
- (j) Any provision of the District of Columbia Construction Codes adopted pursuant to the Construction Codes Approval and Amendment Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code §§ 6-1401 *et seq.*) which is not cited elsewhere in Title 16 of the DCMR shall be a Class 3 infraction.

3306.1.4 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) IPMC § 505.4 (water heating facilities improperly installed or maintained, or incapable of providing adequate amount of hot water at peak demand); or
- (b) IPC § 604.7 (failure to install water pressure booster system to provide required flow pressures at fixture outlets).

## 3306.2 BOILER INFRACTIONS



- 3306.2.1 Violation of any of the following provisions shall be a Class 1 infraction:
- (a) 12-E DCMR §§ 1004.7 and 1001.3; 12-A DCMR §§ 105.1 and 105.1.1 (installation, relocation, alteration or repair of a boiler or pressure vessel without a permit);
  - (b) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a stop work order);
  - (c) 12-A DCMR § 114.3 (unauthorized removal or obstruction of a posted stop work order);
  - (d) 12-E DCMR §§ 1003.1 and 1003.3 (operation without a current Certificate of Inspection for a boiler or pressure vessel);
  - (e) 12-A DCMR § 115.5; 12-E DCMR § 1003.17.1 (violation of conditions of posted Unsafe to Use notice);
  - (f) 12-A DCMR § 108.5; 12-E DCMR § 1003.17; 12-G DCMR §108.4.1 (removal of Unsafe to Use placard without authorization);
  - (g) 12-E DCMR § 1001.4 (operation of boiler or pressure vessel without proper D.C. engineer's license);
  - (h) 12-E DCMR § 1003.2 (failure to obtain final inspection of work for which a permit is required);
  - (i) 12-E DCMR §1003.5 (operation in excess of allowable pressure stated on certificate of inspection);
  - (k) 12-E DCMR § 1003.6 (operation of equipment without safety appliances and piping; removal or tampering with safety appliances or piping);
  - (l) 12-E DCMR § 1003.17.1 (operation of unsafe or condemned equipment); or
  - (m) 12-A DCMR § 115.1 (failure to take down, remove or make safe defective or unsafe conditions or equipment).
- 3306.2.2 Violation of any of the following provisions shall be a Class 2 infraction:
- (a) 12-E DCMR § 1003.14 (failure to comply with insurance company reporting duties);

- (b) 12-E DCMR § 1003.12.3 (failure to file inspection reports with the code official);
- (c) 12-E DCMR §§ 1001.5; 1003.12; 1003.9 (failure to inspect annually); or
- (d) 12-E DCMR § 1018.1.5 (welder working without a valid D.C. authorization card).

3306.2.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 12-E DCMR § 1001.2 (improper boiler or pressure vessel operation);
- (b) 12-E DCMR § 1003.16 (failure to make a timely repair, alteration, or cleaning, to a boiler or pressure vessel as specified in a notice);
- (c) 12-E DCMR § 1003.4 (failure to notify code official that equipment is not covered by current certificate of inspection); or
- (d) 12-E DCMR § 1003.17.2 (failure to notify code official of unsafe condition);

3306.2.4 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) 12-E DCMR § 1003.1 (certificate of inspection not properly posted); or
- (b) 12-E DCMR § 1005.3 (failure to provide unobstructed and accessible means of egress for power boiler rooms)

### 3306.3 ELEVATOR INFRACTIONS

The following abbreviations apply to this section:

IPMC - International Property Maintenance Code (2012 edition)

IFC - International Fire Code (2012 edition)

The following abbreviation applies to this section and identifies referenced standards adopted by the 2013 District of Columbia Construction Codes:

ASME- American Society of Mechanical Engineers

- 3306.3.1 Violation of any of the following provisions shall be a Class 1 infraction:
- (a) 12-A DCMR §§ 105.1 and 105.1.1 (installation, relocation or alteration of elevators, escalators, dumbwaiters, man lift(s), and other conveying systems without a permit);
  - (b) 12-A DCMR §§ 105.1 and 105.1.1 (failure to obtain required permit; working without a required or valid permit);
  - (c) 12-A DCMR § 105.1 (work or conditions exceeding scope of permit);
  - (d) 12-A DCMR § 105.1.8 (failure to submit timely permit application for emergency work);
  - (e) 12-A DCMR § 105.1.2 (working outside of permitted construction hours);
  - (f) 12-A DCMR § 105.1.3 (working outside of permitted hours without a required after-hours permit failure to obtain after hours permit);
  - (g) 12-A DCMR § 105.1.9 (failure to post permit);
  - (h) 12-A DCMR § 109.2 (failure to notify code official when stages of construction are reached that require inspection);
  - (i) 12-A DCMR § 3010.3 (failure to obtain a final inspection of work for which a permit is required);
  - (j) 12-A DCMR § 3010.3 (failure to obtain a valid certificate of inspection within thirty (30) working days after completion of final inspection);
  - (k) 12-A DCMR § 3010.1; 12-G DCMR § 606.1 (operation of an elevator or conveying system without a valid certificate of inspection or limited approval of use);
  - (l) 12-A DCMR § 3010.8; 12-G DCMR § 606.6 (failure to maintain at least one passenger elevator in operation in buildings equipped with passenger elevators);
  - (m) 12-A DCMR §§ 108.5, 3010.10.2; 12-G DCMR § 108.4.1, 606.8.2 (removal of unsafe to use placard or operation of placarded equipment without code official authorization);

- (n) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a Stop Work Order);
- (o) 12-A DCMR § 114.3 (unauthorized removal or obstruction of a posted stop work order);
- (p) 12-A DCMR § 115.5; 12-G DCMR § 108.5 (failure to comply with terms of unsafe notice);
- (q) 12-A DCMR §§ 3001.2, 3010.5; 12-G DCMR §§ 606.3, 606.3.1 through 606.3.4 (failure to comply with referenced standards for maintenance, repair, replacement and testing):
  - (i) ASME A17.1 Rule 8.6.1.6.1 (making safety devices inoperative or ineffective);
  - (ii) ASME A17.1 Rule 8.6.1.6.3(c) (using or allowing to be used temporary wiring and insulators or blocks in the armatures or poles of magnetically operated switches, contactors, or relays);
  - (iii) ASME A17.1 Rule 8.6.1.6.3(d) (leaving jumpers installed or storing jumpers in machine rooms, control rooms, machine spaces, control spaces or other prohibited locations);
  - (iv) ASME A17.1 Rule 8.6.1.6.3(f) (substituting or allowing to be substituted a wire or other current carrying device for the correct fuse or circuit breaker in an elevator circuit);
  - (v) ASME A17.1 Rule 8.6.2.1 (repairing or allowing repairs to be made with parts not of equivalent material, strength, and/ or design);
  - (vi) ASME A17.1 Rule 8.6.4.19; Appendix N (failure to comply with Periodic Test Requirements - Category 1 (electric elevators));
  - (vii) ASME A17.1 Rule 8.6.4.20; Appendix N (failure to comply with Periodic Test Requirements - Category 5 (electric elevators));
  - (viii) ASME A17.1 Rule 8.6.5.14; Appendix N (failure to comply with Periodic Test Requirements - Category 1 (hydraulic elevators));

- (ix) ASME A17.1 Rule 8.6.5.16; Appendix N (failure to comply with Periodic Test Requirements - Category 5 (hydraulic elevators));
  - (x) ASME A17.1 Rules 8.6.4.19.6 and 8.6.1.1.1 (failure to maintain Firefighters' Emergency Operation and signaling devices in working order at all times);
  - (xi) ASME A17.1 Rule 8.6.8.1 (failure to repair or replace cracked or damaged handrails on escalators/ moving walks that present a pinching effect);
  - (xii) ASME A17.1 Rule 8.6.8.2 (failure to maintain and correct Step-to-Skirt Clearance on escalators/ moving walks);
  - (xiii) ASME A17.1 Rule 8.6.8.4.1 (failure to remove escalator from operation for combplates with two adjacent missing teeth);
  - (xiv) ASME A17.1 Rule 8.6.8.4.3 (failure to maintain adjustment of comb-step impact devices on escalator/moving walk); or
  - (xv) ASME A17.1 Rule 8.6.8.15; Appendix N (failure to comply with Periodic Test Requirement - Category 1 (escalators and moving walks)).
- (r) 12-A DCMR §§ 3001.2, 3010.5; 12-G DCMR §§ 606.3, 606.3.1 through 606.3.4) (failure to comply with referenced standards for welding):
- (i) ASME A17.1 Rules 8.8.1(a) and 8.6.2.2 (welding of parts, except for tack welds later incorporated into finished welds, by unqualified welder);
  - (ii) ASME A17.1 Rules 8.8.2 and 8.6.2.2 (failure of welding to conform to applicable design and procedure requirements);
  - (iii) ASME A17.1 Rules 8.8.3 and 8.6.2.2 (failure to weld materials other than steel in accordance with requirements applicable to the specific materials used).
- (s) 12-A DCMR §§ 3001.2, 3010.5; 12-G DCMR §§ 606.3, 606.3.1-606.3.4) (failure to comply with referenced standards for periodic tests, inspections and maintenance of existing equipment):

- (i) ASME A17.1 Rule 8.11.2.1; Appendix N (failure to perform periodic inspection (six (6) month) of electric elevator);
- (ii) ASME A17.1 Rule 8.11.2.1.5(a); Appendix N (failure to inspect, or to pass inspection of, pit access, lighting, stop switch and condition (electric elevator));
- (iii) ASME A17.1 Rules 2.7.1.1, 2.7.1.1.2 and 2.7.3.4; (failure to comply with requirements for fire-resistant, self-closing and self-locking access doors for pits);
- (iv) ASME A17.1 Rule 8.11.3.1; Appendix N (failure to perform periodic inspection (six (6) month) of hydraulic elevator);
- (v) ASME A17.1 Rule 8.11.3.1.5(a); ASME 17.2 Item 5.1; Appendix N (failure to inspect, or to pass inspection of, pit access, lighting, and condition (hydraulic elevator));
- (vi) ASME A17.1 Rule 8.11.4.1; Appendix N (failure to perform periodic inspection (six (6) month) of escalator or moving walkway);
- (vii) ASME A17.1 Rule 8.11.4.1(c); ASME 17.2 Items 7.3 and 9.3 Appendix N (failure to inspect, or to pass inspection of, handrails (escalator/moving walk)); or
- (viii) ASME A17.1 Rule 8.11.4.1(g); ASME 17.2 Items 7.7 and 9.7; Appendix N (failure to inspect, or to pass inspection of, combplates (escalator/moving walk)).
- (t) IFC § 901.6 (failure to inspect, test, or maintain fire detection, alarm, and extinguishing systems, mechanical smoke exhaust systems, and smoke and heat vents in an operative condition at all times; failure to replace or repair where defective);
- (u) 12-G DCMR § 108.1.2 (Unsafe or dangerous equipment on the premises or within a structure which is in such disrepair or condition, in whole or in part, that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure);
- (v) 12-A DCMR § 115.1 (Abandoned, deteriorated, unsafe, unsanitary, or deficient equipment, or equipment which constitutes a fire hazard, or is otherwise dangerous to human life or the public

welfare, or that involves illegal or improper use, or occupancy or inadequate maintenance);

- (w) 12-G DCMR § 108.1.6 (unserviceable equipment on the premises or within a structure);
- (x) 12-G DCMR § 109.1; 12-A DCMR § 116.1 (operating defective or dangerous equipment that immediately endangers the health or safety of occupants of the premises or those in the proximity of the premises); or
- (y) IFC § 607.1 (failure to provide emergency recall and in-car operation).

3306.3.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 12-G DCMR § 606.4; 12-A DCMR § 3010.6 (failure to submit report of inspections and tests to the code official within thirty (30) days after completion of inspection and tests);
- (b) 12-A DCMR § 3010.4.1; 12-G DCMR § 606.2.1 (failure to display most current certificate of inspection);
- (c) 12-A DCMR §§ 3001.2 and 3010.5; 12-G DCMR §§ 606.3, 606.3.1 through 606.3.4 (failure to comply with referenced standards):
  - (i) ASME A17.1 Rule 8.6.1.2.1; 12-A DCMR § 3009.5 (failure to provide and/ or maintain a written Maintenance Control Program);
  - (ii) ASME A17.1 Rule 8.6.4 (failure to maintain or test electric elevators in conformance with ASME A17.1, 8.6.1 through 8.6.4);
  - (iii) ASME A17.1 Rule 8.6.4.13.1(c) (failure to maintain door reopening devices (electric elevator));
  - (iv) ASME A17.1 Rule 8.6.4.13.1(l) failure to maintain door restrictors (electric elevator);
  - (v) ASME A17.1 Rule 8.6.4.15 (failure to maintain car emergency system including emergency operation of signaling devices, lighting, communication, and ventilation (electric elevator));

- (vi) ASME A17.1 Rule 8.6.4.16 (failure to maintain/correct electric elevator to provide stopping accuracy at the landings during normal operation);
- (vii) ASME A17.1 Rule 8.6.4.19.7; 12-A DCMR § 3009.5 (failure to perform testing of Standby or Emergency Power Operation (electric elevator));
- (viii) ASME A17.1 Rule 8.6.8.4.1 (failure to repair or replace combplates with any broken teeth (escalator or moving walk));
- (ix) ASME A17.1 Rule 8.6.8.13 (failure to clean the interiors of escalators or components to prevent accumulations of oil, grease, lint, dirt, and refuse);
- (x) ASME A17.1 Rule 8.11.2.1.1(f); ASME 17.2 Item 1.6; Appendix N (failure to inspect, or to pass inspection of, Car Emergency Signal (phone and alarm bell) in electric elevator);
- (xi) ASME A17.1 Rule 8.11.2.1.2(b); ASME 17.2 Item 2.1; Appendix N (failure to inspect, or to pass inspection of, means of access to machine room/spaces, control room/spaces (electric elevator));
- (xii) ASME A17.1 Rules 2.7.1.1.2 and 2.7.3.4; ASME A17.2 Item 2.1 (failure to comply with requirements for fire-resistant, self-closing and self-locking access doors for machine rooms/spaces, or control rooms/spaces);
- (xiii) ASME A17.1 Rule 8.11.2.1.2(i); ASME 17.2 Item 2.6; Appendix N (failure to inspect, or to pass inspection of, ventilation for machine room/spaces, control room/spaces (electric elevator));
- (xiv) ASME A17.1- Rule 8.11.2.1.3(q); ASME 17.2 Item 2.12; Appendix N (failure to inspect or to pass inspection of, hoistway smoke control (electric elevator));
- (xv) ASME A17.1- Rules 8.11.2.1.4(m) and 2.7.6.4; Appendix N (failure to inspect or to provide means necessary for tests (electric elevator));



- (xvi) ASME A17.1 Rule 8.11.3.1.1(f); ASME 17.2 Item 1.6; Appendix N (failure to inspect, or to pass inspection of, Car Emergency Signal (phone and alarm bell) (hydraulic elevator));
- (xvii) ASME A17.1 Rule 8.11.3.1.2(i); ASME 17.2 Item 2.6; Appendix N (failure to inspect, or to pass inspection of, ventilation for machine room/spaces, control room/spaces (hydraulic elevator));
- (xviii) ASME A17.1 Rule 8.11.3.1.3(l); ASME 17.2 Item 3.11; Appendix N (failure to inspect, or to pass inspection of, hoistway smoke control (hydraulic elevator));
- (xix) ASME A17.1 Rules 8.11.3.1.4(l); 2.7.6.4, 3.7.1.8, 3.7.1.9, and 3.7.1.10; Appendix N (failure to inspect or to provide means necessary for tests (hydraulic elevator));
- (xx) ASME A17.1 Rule 8.11.4.1(e); ASME 17.2 Items 7.5 and 9.5; Appendix N (failure to inspect, or to pass inspection of, lighting (escalator/ moving walk); or
- (xxi) ASME A17.1 Rule 8.11.4.1(k); ASME 17.2 Item 7.11; Appendix N (failure to inspect, or to pass inspection of, skirt obstruction devices (escalator/moving walk)).

3306.3.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 12-A DCMR §§ 3001.2, 3010.5; 12-G DCMR §§ 606.3 606.3.1 through 606.3.4 (failure to comply with referenced standards):
  - (i) ASME A17.1 Rule 8.6.1.4.1 (failure to maintain maintenance records);
  - (ii) ASME A17.1 Rule 8.6.1.6.5 (failure to provide a class “ABC” fire extinguisher);
  - (iii) ASME A17.1 Rule 8.6.4.1.1 (failure to maintain suspension means sufficiently clean so they can be visually inspected (electric elevator));
  - (iv) ASME A17.1 Rule 8.6.4.2.1 (failure to maintain governor ropes clean (electric elevator));

- (v) ASME A17.1 Rule 8.6.4.13.1(h) (failure to maintain sills and bottom guides, fastenings, condition and engagement (electric elevator));
- (vi) ASME A17.1 Rule 8.6.4.13.1(k) (failure to maintain door closers (electric elevator));
- (vii) ASME A17.1 Rule 8.6.8.4.2 (failure to maintain adjustment of combplates in mesh with the slots in the step surface so that the points of the teeth are always below the upper surface of the treads (escalator/moving walk));
- (viii) ASME A17.1 Rule 8.6.8.6.1 (failure to repair or replace steps with broken treads (escalator/moving walk));
- (ix) ASME A17.1 Rule 8.6.8.6.2 (failure to repair or replace steps with dented or damaged risers (escalator/moving walk));
- (x) ASME A17.1 Rule 8.6.8.6.3 (failure to repair or replace steps that are worn damaged and that do not provide proper engagement with the combplates (escalator/moving walk));
- (xi) ASME A17.1 § 8.1 (failure to provide required keys for access, operation, inspection, maintenance, repair, and emergency access);
- (xii) ASME A17.1 § 8.1 (failure to restrict key access to personnel in the assigned security level);
- (xiii) ASME A17.1 § 8.9, Rule 8.6.1.5.1 (failure to provide Code Data Plate);
- (xiv) ASME A17.1 Rule 8.11.1.7 (failure to provide unique or product specific procedures or methods required to inspect or test equipment);
- (xv) ASME A17.1 Rule 8.11.2.1.1(h); ASME A17.2 Item 1.8; Appendix N (failure to inspect, or to pass inspection of, correct door closing force (electric elevator));
- (xvi) ASME A17.1 Rule 8.11.2.1.1(n); ASME 17.2 Item 1.14; Appendix N (failure to inspect, or to pass inspection of, ventilation (electric elevator));

- (xvii) ASME A17.1 Rule 8.11.2.1.2(f); ASME 17.2 Item 2.3; Appendix N (failure to inspect, or to pass inspection of, lighting and receptacles for machine room/spaces, control room/spaces (electric elevator));
- (xviii) ASME A17.1 Rule 8.11.2.1.2(h); ASME 17.2 Item 2.5; Appendix N (failure to inspect, or to pass inspection of, housekeeping for machine room/spaces, control room/spaces (electric elevator));
- (xix) ASME A17.1 Rule 8.11.2.1.3(b); ASME 17.2 Item 3.2; Appendix N (failure to inspect, or to pass inspection of, car top light and outlet (electric elevator));
- (xx) ASME A17.1 Rule 8.11.3.1.1(n); ASME 17.2 Item 1.14; Appendix N (failure to inspect, or to pass inspection of, ventilation (hydraulic elevator));
- (xxi) ASME A17.1- Rule 8.11.3.1.2(f); ASME 17.2-Item 2.3; Appendix N (failure to inspect, or to pass inspection of, lighting and receptacles for machine room/spaces, control room/spaces (hydraulic elevator));
- (xxii) ASME A17.1 Rule 8.11.3.1.2(h); ASME 17.2 Item 2.5; Appendix N (failure to inspect, or to pass inspection of, housekeeping for machine room/spaces, control room/spaces (hydraulic elevator));
- (xxiii) ASME A17.1 Rules 8.11.3.1.2(x) and 8.6.5.7; ASME 17.2 Item 2.36; Appendix N (failure to inspect or to pass inspection of hydraulic fluid loss record (hydraulic elevator));
- (xxiv) ASME A17.1 Rule 8.11.3.1.3(b); ASME 17.2 Item 3.2; Appendix N (failure to inspect or to pass inspection of car top light and outlet (hydraulic elevator));
- (xxv) ASME A17.1 Rule 8.11.4.1(d); ASME 17.2 Items 7.4 and 9.4; Appendix N (failure to inspect entrance and egress (escalator/moving walk));
- (xxvi) ASME A17.1 Rule 8.11.4.1(i); ASME 17.2-Items 7.10 and 9.10; Appendix N (failure to inspect or to pass inspection of steps and treadway - per step (escalator/moving walk));  
or

(xxvii) ASME A17.1 Rule 8.11.4.1(s); ASME 17.2 Items 2.1 and 4.1; Appendix N (failure to inspect or pass inspection of machine space access, lighting, receptacle, and condition of remote machine rooms (escalator/moving walk)).

3306.3.4 Violation of the following provisions shall be a Class 4 infraction:

- (a) 12-A DCMR §§ 3001.2, 3010.5; 12-G DCMR §§ 606.3, 606.3.1 through 606.3.4 (failure to comply with referenced standards for maintenance):
  - (i) ASME A17.1 Rule 8.6.1.4.2 (failure to have the maintenance records available to elevator personnel);
  - (ii) ASME A17.1 Rule 8.6.1.6.2 (allowing excess lubricant to accumulate and / or overflow from catch containers);
  - (iii) ASME A17.1 Rule 8.6.1.6.3(a) (failure to maintain up-to-date wiring diagrams); or
  - (iv) ASME A17.1 Rule 8.6.1.6.7 (failure to repair or replace damaged or missing signs or data plates).
- (b) 12-A DCMR §§ 3001.2, 3010.5; 12-G DCMR §§ 606.3, 606.3.1 through 606.3.4 (failure to comply with referenced standards for maintenance, inspection and testing of electric elevators):
  - (i) ASME A17.1 Rule 8.6.4.3.4 (failure to keep rails clean and free of lint and dirt accumulation and excessive lubricant. failure to provide a means to collect lubricant at the base of the rail);
  - (ii) ASME A17.1 Rule 8.6.4.7.1 (failure to maintain hoistways and pits free of dirt, rubbish, and stored materials);
  - (iii) ASME A17.1 Rule 8.6.4.7.4 (allowing water and oil to accumulate on floors);
  - (iv) ASME A17.1 Rule 8.6.4.8.1 (failure to keep floors and machinery and control spaces free of water, dirt, rubbish, oil, and grease);
  - (v) ASME A17.1 Rule 8.6.4.8.2 (Storing, or allowing to be stored, articles or materials not necessary for the maintenance or operation of the elevator in machine rooms, control rooms, machine spaces, or control spaces);

- (vi) ASME A17.1 Rule 8.6.4.9 (failure to keep the tops of cars free of oil, water, dirt, rubbish, and stored lubricants, spare parts, tools, or other items); or
  - (vii) ASME A17.1 Rule 8.6.4.19.6 (failure to perform testing of Firefighters' Emergency Operation).
- (c) 12-A DCMR §§ 3001.2, 3010.5; 12-G DCMR §§ 606.3, 606.3.1 through 606.3.4 (failure to comply with referenced standards):
- (i) ASME A17.1 Rule 8.6.11.1 (failure to subject monthly, by authorized personnel, to Phase I recall by use of the key switch, and a minimum of one-floor operation on Phase II, or failure to make available to elevator personnel a record of findings (all elevators with firefighters' emergency operation));
  - (ii) ASME A17.1 Rule 8.11.2.1.1(o); ASME 17.2 Item 1.15; Appendix N (failure to inspect or to pass inspection of signs and operating device symbols (electric elevator));
  - (iii) ASME A17.1 Rule 8.11.3.1.1(o); ASME 17.2 Item 1.15; Appendix N (failure to inspect or to pass inspection of signs and operating device symbols (hydraulic elevator));
  - (iv) ASME A17.1 Rule 8.11.3.1.2(d); Appendix N (failure to provide means necessary for tests in machine room/spaces, control room/spaces (hydraulic elevator));
  - (v) ASME A17.1 Rule 8.11.4.1(f); ASME 17.2 Items 7.6 and 9.6; Appendix N (failure to inspect or to pass inspection of caution signs (escalator/moving walk));
  - (vi) ASME A17.1 Rule 8.11.4.1(p); ASME 17.2 Items 7.16 and 9.16; Appendix N (failure to inspect or pass inspection of ceiling intersection guards (escalator/moving walk)); or
  - (vii) ASME A17.1 Rule 8.11.4.1(v); ASME 17.2 Items 8.14 and 10.14; Appendix N (failure to inspect or to pass inspection of code data plate (escalator/moving walk)).
- (d) 12-G DCMR § 606.9 (failure to provide required signage).

3306.4

DCRA FIRE AND SMOKE PROTECTION INFRACTIONS

The following abbreviations apply to this section:

IFC §- International Fire Code (2012 edition)

IBC- International Building Code (2012 edition)

IPMC §- International Property Maintenance Code (2012 edition)

NEC-National Electrical Code (2011 edition)

NFPA- National Fire Protection Association

3306.4.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-G DCMR § 108.1; 12-A DCMR § 115.5 (failure to remedy unsafe or dangerous structures, premises or equipment);
- (b) 12-A DCMR § 114.1 (failure to comply with terms of a stop work order);
- (c) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);
- (d) IPMC § 702.1 (failure to provide safe, continuous and unobstructed path of travel from any point in a building to the public way);
- (e) IBC § 709.3 (failure to maintain all required fire resistance rated doors or smoke barriers);
- (g) IFC § 901.4.1 (failure to maintain in an operative condition at all times fire protection and life safety systems, devices, units, or service equipment);
- (h) 12-H DCMR § 906.1 (failure to provide fire extinguishers);
- (i) IFC § 1003.1 (failure to maintain in a safe condition and free of all obstructions the means of egress from each part of the building);
- (j) IPMC § 702.3 (means of egress doors not readily openable);
- (k) IPMC § 702.4 (improper maintenance of emergency escape openings; required emergency escape and rescue openings not operational from inside of room without the use of keys or tools; devices placed over emergency escape and rescue openings not releasable or removable from the inside);
- (l) IPMC § 703.2 (fire or smoke stop doors not maintained in operable condition; fire doors or smoke barrier doors blocked, obstructed or

otherwise inoperable);

- (m) IPMC § 704.2 (smoke alarms not properly installed or maintained)
- (n) IBC § 1004.3 (overcrowding or admitting persons beyond the established posted occupant load for assembly occupancy);
- (o) IFC § 507.5.4 (access to fire hydrants is obstructed);
- (p) IBC § 912.3 (access to fire department connections obstructed by fences, bushes, trees, walls or other fixed or moveable object);
- (q) IFC § 1006.1 (failure to provide adequate lighting for stairways, hallways, and other means of egress);
- (r) IBC § 1020.1 (exit used for a purpose that interferes with its function as a means of egress); or
- (s) IBC § 1027.1 (exits fail to discharge directly to the exterior of the building; the exit discharge fails to provide a direct and unobstructed access to a public way; exit discharge fails to meet the required discharge capacity).

3306.4.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) IPMC § 308.1 (permitting the accumulation of rubbish or garbage, including combustible and noncombustible waste materials of any kind);
- (b) IFC § 904.11 (failure to install properly or maintain an automatic fire-extinguishing system for a commercial cooking system );
- (c) IFC § 904.11.1 (failure to install properly or maintain a manual actuation device for a commercial cooking system;
- (d) NEC (NFPA 70) § 110.32 (failure to provide the required clearance between all electrical service equipment and storage);
- (e) IFC § 904.11.5 (failure to provide a sufficient number of portable fire extinguishers);
- (f) IFC § 906.2; 12-G DCMR § 704.1.2 (failure to maintain, test, or recharge hand-operated portable fire extinguishing equipment);

- (g) IFC § 315.3.2 (improper storage of combustible material in exits or enclosures for stairways or ramps);
- (h) IFC § 315.3.3 (improper storage of combustible material in boiler rooms, mechanical rooms or electrical equipment rooms)
- (i) IFC § 315.3 (failure to separate combustible material from heaters or heating devices);
- (j) IBC § 1005.3 (means of egress fails to meet the sizing requirements based upon occupant load);
- (k) IBC § 1008.1.9 (egress doors not readily openable from the egress side without the use of a key or special knowledge or effort);
- (l) IBC § 1008.1.10 (doors not equipped with approved panic hardware or fire exit hardware);
- (m) IBC § 1008.1.2 (exit doors swing in the wrong direction);
- (n) 12-E DCMR § 1003.6 (failure to equip boilers or unfired pressure vessels with required safety appliances and piping);
- (o) IBC § 1011.6.3 (failure to provide emergency lights, alarms, or power back-ups);
- (p) IBC § 1011.1 (impaired visibility of exit signs));
- (q) IBC § 716.5.9 (failure to maintain self- or automatic-closing fire doors);
- (r) IBC § 707.1 (failure to maintain fire barriers);
- (s) IBC § 709 (failure to maintain smoke barriers);
- (t) IBC § 1004.3 (failure to conspicuously post sign stating the number of occupants permitted within room or space for assembly occupancy);
- (u) IBC § 1011.1 (failure to mark exits or exit access doors with required exit signs);
- (v) IBC §§ 1011.3 and 1011.6.2 (failure to illuminate exit signs);
- (w) IBC § 806.1 (decorative materials are not non-combustible or flame resistant).



3306.4.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) IFC §§ 904.1 and 904.4 (alternative automatic fire-extinguishing systems are not properly inspected and tested); or
- (b) IBC § 1006.1 (failure to illuminate means of egress at all times when the building is occupied).

### 3306.5 ENERGY INSPECTION INFRACTIONS

The following abbreviation applies to this section and refers to referenced standards adopted by the 2013 District of Columbia Energy Conservation Code:

ASHRAE- American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

3306.5.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-I DCMR § R402.4.1.2 (failure to test and verify air leakage);
- (b) 12-I DCMR § R403.2.2 (failure to verify duct tightness); or
- (c) 12-I DCMR § C303.1.3, C401.2, C402.3, C407, ASHRAE 90.1 (failure to comply with fenestration requirements for applicable pathway)

**Strike Section 3309 in its entirety and insert a new Section 3309 in its place to read as follows:**

### **3309 PROPERTY MAINTENANCE INFRACTIONS**

The following abbreviations apply to this section:

IPMC §- International Property Maintenance Code (2012 edition)

3309.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-G DCMR § 102.2 (failure to maintain utility, service, facility, equipment, system, device or safeguards in good working order);
- (b) 12-G DCMR § 102.2 (failure to maintain utility, service, facility, equipment, system, device or safeguards in good working order);

- (c) 12-G DCMR § 108.1.1 (unsafe Structures);
- (d) 12-G DCMR § 108.1.2 (unsafe equipment);
- (e) 12-G DCMR § 108.1.3 (structure is unfit for human occupancy);
- (f) 12-G DCMR § 108.1.4 (unlawful Structure);
- (g) 12-G DCMR § 108.1.5 (dangerous structure or premises);
- (h) 12-G DCMR § 108.1.6 (unserviceable equipment);
- (i) 12-G DCMR § 108.4.1 (removal of placard by an unauthorized person);
- (j) 12-G DCMR § 108.5 (occupying a placarded premises or operating placarded equipment);
- (k) 12-G DCMR § 109.1 (building poses imminent danger to building occupants);
- (l) 12-G DCMR § 310.1 (failure to install required carbon monoxide detector);
- (m) 12-G DCMR § 310.1.1 (failure to install single station carbon monoxide detector properly);
- (n) 12-G DCMR § 310.1.2 (failure to install combination smoke/ carbon monoxide detector properly);
- (o) 12-G DCMR § 310.2 (failure to maintain carbon monoxide detection system);
- (p) 12-G DCMR § 310.2.1 (failure to replace or repair carbon monoxide detectors within fifteen (15) days of receipt of notification from occupant or tenant that replacement or repairs are needed);
- (q) 12-G DCMR § 603.1.1(improperly located gas meter or fuel-fired appliances);
- (r) IPMC § 603.2 (failure to connect fuel-burning equipment to an approved chimney or vent);
- (s) IPMC § 603.3 (failure to maintain required clearances to combustible materials);

- (t) IPMC § 603.4 (failure to maintain safety controls for fuel-burning equipment);
- (u) IPMC § 603.5 (failure to provide supply of air for fuel-burning equipment);
- (v) IPMC § 701.2 (failure to provide and maintain required fire safety facilities and equipment);
- (w) 12-G DCMR § 701.3 (failure to properly store hazardous, combustible, flammable, explosive or other hazardous materials);
- (x) IPMC § 702.1 (failure to provide clear path of travel to the public way);
- (y) IPMC § 702.2 (failure to maintain aisles unobstructed);
- (z) IPMC § 702.3 (failure to make means of egress doors readily openable);
- (aa) 12-G DCMR § 702.4 (failure to maintain required emergency escape openings and egress facilities);
- (bb) IPMC § 703.1 (failure to maintain required fire-resistance rating);
- (cc) IPMC § 703.2 (failure to maintain required opening protective, fire or smoke stop doors);
- (dd) IPMC § 704.1 (failure to maintain required systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire);
- (ee) IPMC § 704.1.1 (failure to inspected and maintain automatic sprinkler system);
- (ff) 12-G DCMR § 704.1.2 (failure to provide and maintain fire extinguisher);
- (gg) 12-G DCMR § 704.2 (failure to install required smoke alarms);
- (hh) IPMC § 704.3 (failure to hardwire smoke alarm);
- (ii) IPMC § 704.4 (failure to interconnect smoke alarms as required);
- (jj) 12-G DCMR § 704.5 (failure to maintain fire alarm system);

(kk) 12-G DCMR § 704.5.1 (failure to maintain manual fire alarm box);  
or

(ll) IPMC § 704.5.4.4 (tampering with smoke alarm).

3309.2 Violation of any of the following provisions shall be a Class 2 infraction:

(a) 12-G DCMR § 102.5 (failure to make repairs or installations in a workmanlike manner);

(b) 12-G DCMR § 104.3 (failure to allow code official entry to structure or premises);

(c) 12-G DCMR § 104.3.3 (tenant refusal to permit inspection);

(d) 12-G DCMR § 104.3.4 (owner or operator refusal to permit inspection);

(e) 12-G DCMR § 105.4 (failure to follow provisions of 12-A DCMR § 104.9.1 with respect to the use of used materials and equipment);

(f) IPMC § 301.2 (failure to maintain premises in safe and sanitary condition);

(g) IPMC § 301.3 (failure to maintain vacant structures and land in a clean, safe, secure and sanitary condition to prevent causing a blighting problem or adversely affecting the public health and safety);

(h) IPMC § 302.6 (failure to correct condition where pipes, ducts, conductors, fans or blowers discharging gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant );

(i) IPMC § 303.2 (failure to provide proper enclosure of swimming pool, hot tub and/or spa);

(j) IPMC § 304.1 (failure to maintain exterior of structure in good repair, structurally sound and sanitary);

(k) IPMC § 304.1.1 (permitting an unsafe exterior structural condition to exist on premises);

(l) 12-G DCMR § 304.2.1 (failure to properly eliminate peeling,

- flaking, chipping and defective paint on a pre-1978 structure);
- (m) IPMC § 304.4 (failure to maintain a structural member to provide a safe, firm and substantial base and support for the structure at all points);
  - (n) IPMC § 304.10 (failure to maintain exterior stairway, deck, porch and balcony structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads);
  - (o) 12-G DCMR § 304.11 (failure to maintain chimneys, cooling towers, smoke stacks, and similar appurtenances structurally safe and sound, and in good repair);
  - (p) IPMC § 304.12 (failure to maintain handrails and guards);
  - (q) IPMC § 304.18 (failure to provide building security);
  - (r) IPMC § 304.18.1 (failure to provide proper deadbolt lock);
  - (s) IPMC § 304.18.2 (failure to provide proper window lock);
  - (t) IPMC § 305.1 (failure to maintain interior of structure and equipment therein in good repair, structurally sound and sanitary);
  - (u) IPMC § 305.1.1 (permitting to exist on premises an unsafe interior structural condition);
  - (v) IPMC § 305.2 (failure to maintain structural members structurally sound, and capable of supporting the imposed loads);
  - (w) 12-G DCMR § 305.3 (failure to maintain interior surfaces in good repair);
  - (x) 12-G DCMR § 305.3 (failure to maintain interior surfaces in good repair);
  - (y) 12-G DCMR § 305.3.1 (failure to properly eliminate peeling, flaking, chipping and defective paint in a pre-1978 structure);
  - (z) 12-G DCMR § 305.4 (failure to maintain walking surface in sound condition and good repair);
  - (aa) IPMC § 305.5 (failure to maintain handrails and guards in sound condition and good repair);

- (bb) IPMC § 306.1.1 (failure to correct unsafe condition);
- (cc) 12-G DCMR § 307.1 (failure to provide proper handrails and/or guardrails in good repair);
- (dd) IPMC § 401.2 (occupying or allowing the occupancy of premises not in compliance with light, ventilation or space conditions);
- (ee) IPMC § 403.4 (failure to provide proper exhaust system to remove injurious, toxic, irritating or noxious fumes, gases, dusts or mists);
- (ff) IPMC § 403.5 (failure to properly exhaust clothes dryer);
- (gg) 12-G DCMR § 404.1 (failure to arrange units to provide privacy);
- (hh) IPMC § 404.2 (habitable room has less than minimum room width);
- (ii) IPMC § 404.3 (space has less than minimum ceiling height);
- (jj) IPMC § 404.4.1 (insufficient room area);
- (kk) 12-G DCMR § 404.4.1.1 (failure to comply with special provisions for existing high-density transient uses);
- (ll) IPMC § 404.4.2 (improper access through bedroom);
- (mm) 12-G DCMR § 404.4.3 (failure to provide properly accessible water closet);
- (nn) 12-G DCMR § 404.4.3 (failure to provide properly accessible lavatory);
- (oo) IPMC § 404.4.4 (kitchen or nonhabitable space used for sleeping purposes);
- (pp) IPMC § 404.4.5 (bedroom does not comply with applicable provisions of the property maintenance code including but not limited to requirements of Chapters 4, 5, 6 and 7);
- (qq) 12-G DCMR § 404.4.6 (subdivided room does not comply with the requirements for a habitable space);
- (rr) IPMC § 404.5 (dwelling unit is overcrowded);
- (ss) IPMC § 404.6 (failure to provide the minimum requirements for

- space and occupancy for an efficiency unit);
- (tt) IPMC § 501.2 (failure to provide and maintain required plumbing facilities and plumbing fixtures);
  - (uu) IPMC § 504.3 (failure to correct plumbing system hazard);
  - (vv) IPMC § 505.1 (failure to provide proper water supply to plumbing fixtures);
  - (ww) IPMC § 505.2 (failure to protect water supply from contamination);
  - (xx) IPMC § 505.3 (failure to provide adequate water supply system);
  - (yy) IPMC § 505.4 (failure to comply with requirements regarding water heaters);
  - (zz) IPMC § 506.1 (failure to connect plumbing fixture to an approved sewer system);
  - (aaa) IPMC § 506.2 (failure to maintain plumbing stack, vent, waste and sewer lines);
  - (bbb) IPMC § 601.2 (failure to provide and maintain required mechanical and electrical facilities);
  - (ccc) 12-G DCMR § 702.5 (failure to arrange exits properly);
  - (ddd) 12-G DCMR § 702.6 (failure to provide and maintain required exit signs);
  - (eee) 12-G DCMR § 702.7 (failure to provide signage for stairway doors);
  - (fff) 12-G DCMR § 704.5.2 (failure to install required fire alarm signage adjacent to each manual fire alarm box);
  - (ggg) 12-G DCMR § 704.5.3 (failure to post and distribute written notice that provides information about fire alarm systems in the building);  
or
  - (hhh) 12-G DCMR § 704.6 (failure to have a have a fire safety and evacuation plan in high-rise building and hold fire drills as required).

- 3309.2.1 Violation of any of the following provisions shall be a Class 3 infraction:
- (a) 12-G DCMR § 302.1 (failure to maintain exterior property and premises in clean, safe and sanitary condition);
  - (b) IPMC § 302.3 (failure to maintain sidewalk, walkway, driveway, stairs or other walking surface safe for walking purposes);
  - (c) 12-G DCMR § 302.4 (excessive vegetative growth or weeds exceeding eight (8) inches in height is unattended or creates a dense area of shrubbery that is a detriment to the health, safety and welfare of the public);
  - (d) IPMC § 302.5 (failure to maintain structures and exterior property free from rodent harborage and infestation);
  - (e) IPMC § 302.6 (failure to correct condition where pipes, ducts, conductors, fans or blowers discharging gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant );
  - (f) IPMC § 302.7 (failure to maintain all accessory structures, including detached garages, fences and walls structurally sound and in good repair);
  - (g) IPMC § 302.8 (failure to comply with a requirement concerning motor vehicles);
  - (h) IPMC § 302.9 (failure to remove markings, carvings or graffiti and restore exterior surface to approved state of maintenance and repair);
  - (i) IPMC § 303.1 (failure to maintain swimming pool);
  - (j) IPMC § 304.1 (failure to maintain exterior surfaces);
  - (k) IPMC § 304.2 (failure to maintain required protective treatment on exterior surfaces);
  - (l) IPMC § 304.5 (failure to maintain foundation wall);
  - (m) IPMC § 304.6 (failure to maintain exterior walls in a structurally sound condition);



- (n) 12-G DCMR § 304.7 (failure to comply with a requirement concerning gutters or drainage);
- (o) 12-G DCMR § 304.7.1 (failure to drain storm water to approved place of disposal);
- (p) IPMC § 304.8 (failure to maintain decorative feature in good repair with proper anchorage and in a safe condition);
- (q) IPMC § 304.9 (failure to maintain overhang extensions in good repair with proper anchorage and in a safe condition);
- (r) 12-G DCMR § 304.11.2 (failure to provide a flue opening with a flue crock, or with a metal or masonry thimble);
- (s) IPMC § 304.13 (failure to maintain windows, skylights and door frames);
- (t) IPMC § 304.15 (failure to maintain exterior doors);
- (u) IPMC § 304.16 (failure to maintain basement hatchway);
- (v) 12-G DCMR § 304.18.3 (failure to provide proper basement hatchway lock);
- (w) IPMC § 304.19 (failure to maintain exterior gate in good condition);
- (x) 12-G DCMR § 308.1 (failure to maintain premises free from any accumulation of rubbish and garbage);
- (y) 12-G DCMR § 308.2 (failure to dispose of rubbish in approved containers);
- (z) 12-G DCMR § 308.2.1 (failure to maintain proper rubbish storage facilities);
- (aa) 12-G DCMR § 308.2.2 (permitting to exist on the premises discarded or abandoned refrigerators or similar equipment without first removing the doors);
- (bb) 12-G DCMR § 308.2.3 (operator of a housing business permitting the accumulation of rags, waste paper, broken furniture or any combustible junk);
- (cc) 12-G DCMR § 308.3 (Occupant of a structure not disposing of

garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers);

- (dd) 12-G DCMR § 308.3.1 (Owner of the dwelling failed to supply either an approved mechanical food waste grinder in each dwelling unit or an approved leak-proof, covered, outside garbage container);
- (ee) 12-G DCMR § 308.3.2 (failure to provide and cause to be utilized approved leak-proof containers provided with close-fitting covers for the storage of garbage until removed from the premises for disposal);
- (ff) 12-G DCMR § 308.4 (failure to maintain storage receptacles in clean condition);
- (gg) 12-G DCMR § 309.1 (failure to maintain structure free from insect and rodent infestation);
- (hh) 12-G DCMR § 309.2 (Failed to exterminate prior to renting or leasing the structure);
- (ii) 12-G DCMR § 309.3 (Failed to exterminate one-family dwelling or single-tenant nonresidential structure);
- (jj) 12-G DCMR § 309.4 (failure to maintain non-residential structure containing multiple occupants free from insects, rodents and rodent harborages );
- (kk) 12-G DCMR § 309.4.1(failure to correct condition that cause infestation of non-residential structure);
- (ll) 12-G DCMR § 309.5 (failure to maintain multiple occupancy residential structures and exterior property free from insects, rodents and rodent harborages);
- (mm) 12-G DCMR § 309.5.1 (failure of owner to provide required extermination services);
- (nn) 12-G DCMR §§ 402.1 through 402.1.2 (failure to provide adequate lighting in space intended for human occupancy);
- (oo) 12-G DCMR § 402.2 (failure to provide common areas, stairways and means of egress with sufficient illumination);

- (pp) IPMC § 402.3 (failure to provide sufficient illumination);
- (qq) 12-G DCMR § 402.3.1 (failure to provide bathroom, toilet room and other similar rooms sufficient illumination);
- (rr) 12-G DCMR § 403.1 (failure to provide proper natural or artificial ventilation);
- (ss) IPMC § 403.2 (failure to provide proper ventilation for bathroom or toilet room);
- (tt) IPMC § 403.3 (allowing cooking, cooking facility, or cooking appliance in rooming unit or dormitory unit);
- (uu) IPMC § 404.7 (spaces occupied for food preparation purposes do not contain suitable space and equipment to store, prepare and serve foods in a sanitary manner including adequate facilities for the sanitary disposal of food wastes and refuse);
- (vv) 12-G DCMR § 404.7.1 (failure of owner who furnishes facilities for cooking, storage or refrigeration of food that are not within a sleeping unit or dwelling unit to maintain those facilities in a safe and sanitary condition and in good working order);
- (ww) IPMC § 502.1 (failure to provide and maintain required plumbing facilities and plumbing fixtures in dwelling units);
- (xx) IPMC § 502.2 (failure to provide and maintain required plumbing facilities and plumbing fixtures in rooming house);
- (yy) IPMC § 502.3 (failure to provide and maintain required plumbing facilities and plumbing fixtures in hotel);
- (zz) IPMC § 502.4 (failure to provide required plumbing facilities for employees);
- (aaa) IPMC § 502.4.1 (failure to provide proper drinking facilities for employees);
- (bbb) IPMC § 502.5 (failure to maintain public toilet facilities in safe, sanitary and working condition);
- (ccc) IPMC § 503.1 (failure to provide privacy for bathrooms and toilet rooms);
- (ddd) IPMC § 503.2 (failure to provide convenient access to toilet rooms

and bathrooms serving hotel units, rooming units or dormitory units or housekeeping units);

- (eee) IPMC § 503.3 (failure to provide convenient access to employee toilet facilities);
- (fff) 12-G DCMR § 503.4 (failure to provide proper floor and wall base in toilet room);
- (ggg) IPMC § 504.1 (failure to properly install and maintain plumbing fixture);
- (hhh) IPMC § 504.2 (failure to provide adequate clearances for usage and cleaning of plumbing fixtures);
- (iii) 12-G DCMR § 505.4.1(failure to have water heating facility inspected annually and maintain the inspection and service reports available onsite);
- (jjj) IPMC § 506.3 (failure to maintain grease interceptor);
- (kkk) IPMC § 507.1 (allowing drainage to discharge in a manner that creates a public nuisance);
- (lll) IPMC § 602.2 (failure to provide proper heating facilities for residential occupancies capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms);
- (mmm)12-G DCMR § 602.3 (failure to supply heat during a period starting no later than October 1 and ending no earlier than May 1);
- (nnn) 12-G DCMR § 602.4 (failure to provide sufficient heat in indoor occupiable work spaces);
- (ooo) 12-G DCMR § 602.6 (failure to have heating facility inspected annually and maintain the inspection and service reports available onsite);
- (ppp) IPMC § 603.1; 12-G DCMR § 603.1.1 (failure to properly install and maintain mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances);
- (qqq) IPMC § 603.6 (failure to remove unapproved energy conservation devices);

- (rrr) IPMC § 604.1 (failure to provide electrical system);
  - (sss) 12-G DCMR § 604.2 (failure to provide sufficient electrical service for a dwelling unit);
  - (ttt) IPMC § 604.3 (failure to correct electrical system hazard);
  - (uuu) IPMC § 604.3.1(failure to repair or replace electrical equipment that has been exposed to water);
  - (vvv) IPMC § 604.3.2 (failure to repair or replace electrical equipment that has been exposed to fire);
  - (www) IPMC § 605.1(failure to properly install and maintain electrical equipment, wiring and appliances in a safe manner);
  - (xxx) IPMC § 605.2 (failure to provide and maintain proper electrical receptacles);
  - (yyy) IPMC § 605.3 (failure to provide and maintain proper electric luminaire);
  - (zzz) 12-G DCMR § 605.4 (failure to perform preventative maintenance on switchboards having a capacity of 1000 amperes or larger);
  - (aaaa) IPMC § 607.1 (failure to maintain duct system free of obstructions and capable of performing the required function);
  - (bbbb) 12-G DCMR § 608.1 (failure to maintain air conditioning system);  
or
  - (cccc) 12-G DCMR § 608.2 (failure to have air conditioning system inspected annually and maintain the inspection and service reports available onsite).
- 3309.2.2 Violation of any of the following provisions shall be a Class 4 infraction:
- (a) IPMC § 302.2 (failure to maintain grading of premises to prevent erosion or the accumulation of stagnant water);
  - (b) 12-G DCMR § 304.3 (failure to properly display premises address);
  - (c) 12-G DCMR § 304.7.2 (failure to grade premises so that storm drainage flows away from buildings and to an approved place of

disposal);

- (d) 12-G DCMR § 304.7.3 (failure to grade premises so avoid accumulation of water);
- (e) 12-G DCMR § 304.11.1 (failure to close a chimney opening which is unused);
- (f) IPMC § 304.13.1 (failure to glazing materials free from cracks and holes);
- (g) IPMC § 304.13.2 (failure to maintain openable windows);
- (h) 12-G DCMR § 304.14 (failure to maintain insect screens);
- (i) IPMC § 304.17 (failure to provide basement windows with protection from entry by rodents); or
- (j) IPMC § 305.6 (failure to maintain interior doors).

**Insert a new Section 3314 to read as follows:**

**3314 GREEN BUILDING CODE AND ALTERNATIVE COMPLIANCE PATH INFRACTIONS**

The following abbreviations apply to this section and refer to referenced standards adopted by the 2013 District of Columbia Green Construction Code:

ASHRAE- American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

LEED-Leadership in Energy & Environmental Design

**3314.1 GREEN BUILDING CODE INFRACTIONS**

- (a) 12-K DCMR § 405.3 (failure to comply with fifty percent (50%) native planting requirement). Fine Amount: \$20.00 per square foot of unplanted native planting area as specified in construction documents.
- (b) 12-K DCMR § 406.1 (failure to comply with seventy-five percent (75%) diversion requirement for land-clearing debris). Fine Amount:
  - (1) \$60.00 per ton of land-clearing debris [based on waste hauling receipts and documentation]; or
  - (2) \$16.00 per cubic yard of land-clearing debris [based on waste hauling receipts and documentation].

- (c) 12-K DCMR § 406.1 (failure to provide verification of compliance with seventy-five percent (75%) diversion requirement for land-clearing debris). Fine Amount: \$1.00 per square foot of land area disturbed as submitted at permit.
- (d) 12-K DCMR § 503.1 (failure to comply with requirement to recycle or salvage at least fifty percent (50%) of nonhazardous construction waste). Fine Amount:
  - (1) \$60.00 per ton of land-clearing debris [based on waste hauling receipts and documentation]; or
  - (2) \$16.00 per cubic yard of land-clearing debris [based on waste hauling receipts and documentation].
- (e) 12-K DCMR § 503.2 (failure to provide verification of compliance with requirement to recycle or salvage at least fifty percent (50%) of nonhazardous construction waste). Fine Amount: \$1.00 per square foot of building submitted at permit.
- (f) 12-K DCMR § 505.1 (failure to comply with material selection requirements); fine amount \$0.05 per dollar below the minimum forty percent (40%) based on cost required by code.
- (g) 12-K DCMR § 505.3 (failure to provide documentation verifying compliance with material selection or whole building life cycle). Fine Amount: two percent (2%) of “Estimated Cost of Work” in permit application.
- (h) 12-K DCMR § 903.2 (failure to provide preliminary commissioning report to code official upon request). Fine Amount: \$1.00 per square foot of *gross floor area* of the *project* as submitted at permit.
- (i) 12-K DCMR § 903.3 (failure to provide final commissioning report to code official upon request). Fine Amount: \$2.00 per square foot of *gross floor area* of the *project* as submitted at permit.
- (j) 12-K DCMR Appendix A § A104.9.4 (failure to complete vegetated roof elective). Fine Amount: \$20.00 per square foot of unplanted vegetated roof area based on submitted and approved construction documents.
- (k) 12-K DCMR Appendix A § A104.10 (failure to complete native planting elective). Fine Amount: \$20.00 per square foot of unplanted native planting area based on submitted and approved construction documents.

- (l) 12-K DCMR Appendix A § A105.1 (failure to provide documentation of compliance with elective). Fine Amount: \$1.00 per square foot of gross floor area of project as submitted at permit.
- (m) 12-K DCMR Appendix A § A105.1 (failure to comply with elective to recycle or salvage at least seventy percent (70%) of nonhazardous construction waste). Fine Amount: \$60.00 per ton, or \$16.00 per cubic yard, of nonhazardous waste material [based on waste hauling receipts and documentation].
- (n) 12-K DCMR Appendix A § A105.2 (failure to provide documentation of compliance with elective). Fine Amount: \$1.00 per square foot of gross floor area of project as submitted at permit.
- (o) 12-K DCMR Appendix A § A105.2 (failure to comply with construction waste landfill elective of maximum of 4lbs/sqft). Fine Amount: \$60.00 per ton of nonhazardous waste material [based on waste hauling receipts and documentation].
- (p) 12-K DCMR Appendix A § A105.3, option 1 (failure to comply with fifty percent (50%) material selection elective) fine amount \$0.05 per dollar below the minimum fifty percent (50%) based on cost required by code.
- (q) 12-K DCMR Appendix A § A105.3, option 1 (failure to comply with fifty percent (50%) material selection elective). Fine Amount: 2.5% of “Estimated Cost of Work” in permit application.
- (r) 12-K DCMR Appendix A § A105.3, option 2 (failure to comply with seventy-five percent (75%) material selection elective). Fine amount \$0.05 per dollar below the minimum seventy-five percent (75%) based on cost required by code.
- (s) 12-K DCMR Appendix A § A105.3, option 2 (failure to comply with seventy-five percent (75%) material selection elective). Fine Amount: 3.75% of “Estimated Cost of Work” in permit application.

## 3314.2

## ASHRAE 189.1 INFRACTIONS

- (a) 12-K DCMR § 303.1, ASHRAE 189.1 § 5.4.1.1.a Greenfield sites (failure to retain twenty percent (20%) of native site vegetation). Fine Amount: \$20.00 per square foot of vegetated area based on approved area in construction documents.
- (b) 12-K DCMR § 303.1, ASHRAE 189.1 § 5.4.1.1.b Greenfield sites (failure to develop or retain twenty percent (20%) of site as vegetated area). Fine Amount: \$20.00 per square foot of vegetated area based on approved area



in construction documents.

- (c) 12-K DCMR § 303.1, ASHRAE 189.1 § 5.4.1.1.b Greenfield sites (failure to develop or retain minimum sixty percent (60%) of site vegetated area as native and/or adaptive plants). Fine Amount: \$20.00 per square foot of vegetated area based on approved area in construction documents.
- (d) 12-K DCMR § 303.1, ASHRAE 189.1 § 6.3.1.1 Landscape Design (failure to provide a minimum of sixty percent (60%) of improved landscape as native and/or adaptive plants). Fine Amount: \$20.00 per square foot of planting area based on approved area in construction documents.
- (e) 12-K DCMR § 303.1; ASHRAE 189.1 § 9.3.1.1 Construction Waste Management Diversion (failure to recycle or salvage at least fifty percent (50%) of nonhazardous construction waste). Fine Amount: \$60.00 per ton or \$16.00 per cubic yard of nonhazardous waste material not recycled below the minimum fifty percent (50%) required by code.
- (f) 12-K DCMR § 303.1; ASHRAE 189.1 § 9.3.1.1 Construction Waste Management Diversion (failure to provide verification of compliance at code official request). Fine Amount: \$1.00 per square foot of building submitted at permit.
- (g) 12-K DCMR § 303.1, ASHRAE 189.1 § 9.3.1.2 Construction Waste Management Total Waste (failure to meet construction waste maximum of 1.2 lbs/sqft). Fine Amount: \$60.00 per ton of construction waste material generated above the maximum 1.2 lbs/sqft required by code.
- (h) 12-K DCMR § 303.1, ASHRAE 189.1 § 9.3.1.2 Construction Waste Management Total Waste (failure to provide verification of compliance at code official request). Fine Amount: \$1.00 per square foot of building submitted at permit.
- (i) 12-K DCMR § 303.1, ASHRAE 189.1 § 9.4.1.1 Reduced Impact materials, Recycled Content (failure to meet ten percent (10%) based on cost of recycled content materials). Fine Amount: \$0.05 per dollar below the minimum ten percent (10 %) required by code.
- (j) 12-K DCMR § 303.1, ASHRAE 189.1 § 9.4.1.1 Reduced Impact materials, Recycled Content (failure to provide verification of compliance at code official request). Fine Amount: \$0.05 per dollar of ten percent (10%) of the “Estimated Cost of Work” in permit application.
- (k) 12-K DCMR § 303.1, ASHRAE 189.1 § 9.4.1.2 Reduced Impact materials, Regional Materials (failure to comply with regional materials

requirements). Fine amount: \$0.05 per dollar below the minimum fifteen percent (15%) required by code.

- (l) 12-K DCMR § 303.1, ASHRAE 189.1 § 9.4.1.2 Reduced Impact materials, Regional Materials (failure to provide verification of compliance at code official request). Fine Amount: \$0.05 per dollar of fifteen percent (15%) of the “Estimated Cost of Work” in permit application.
- (m) 12-K DCMR § 303.1, ASHRAE 189.1 § 9.4.1.3 Reduced Impact materials, Biobased products (failure to comply with biobased product requirements). Fine amount \$0.05 per dollar below the minimum five percent (5%) required by code.
- (n) 12-K DCMR § 303.1, ASHRAE 189.1 § 9.4.1.3 Reduced Impact materials, Biobased products (failure to provide verification of compliance at code official request). Fine Amount: \$0.05 per dollar of five percent (5%) of the “Estimated Cost of Work” in permit application.
- (o) 12-K DCMR § 303.1, ASHRAE 189.1 § 9.4 (failure to provide verification of compliance at code official request). Fine Amount: \$0.05 per dollar of forty-five percent (45%) of the reported “Estimated Cost of Work” in permit application.
- (p) 12-K DCMR § 303.1, ASHRAE 189.1 § 10.3.3 Final Commissioning Report (failure to provide final commissioning report to code official upon request). Fine Amount: \$2.00 per square foot of *gross floor area* of the *project* as submitted at permit application.

### 3314.3 LEED INFRACTIONS

- 3314.3.1 12-A DCMR § 101.4.9.4.2.2 (failure to submit evidence of LEED certification within twelve (12)-month period following date of issuance of first certificate of occupancy for occupiable space in a story above grade plane). Fine Amount:
- (a) \$7.50 per square foot of *gross floor area* of construction if the *project* is less than 100,000 square feet (9290 m<sup>2</sup>) of *gross floor area*.
  - (b) \$10.00 per square foot of *gross floor area* of construction if the *project* is equal to or greater than 100,000 square feet (9290 m<sup>2</sup>) of *gross floor area*.
  - (c) The amount of a fine for non-compliance under this sub-section shall not exceed \$3,000,000.

3314.3.2 12-A DCMR § 101.4.9.4.2.2 (failure to submit evidence of LEED certification within forty-eight (48) calendar months after receipt of the first certificate of occupancy for occupiable space in a *story above grade plane*. Fine Amount:

- (a) \$0.02 per square foot of *gross floor area* of the *project* to the District of Columbia.
- (b) The fine shall be assessed for each month that the violation remains uncorrected.
- (c) The fine shall be in addition to any fines issued under Section 3314.3.1 and shall not be subject to the \$3,000,000 limit under Section 3314.3.1.

3314.4 GREEN COMMUNITIES INFRACTIONS

3314.4.1 12-A DCMR § 101.4.9.4.2.3 (failure to submit evidence of compliance with Enterprise Green Community Partners standard within twelve (12)-month period following date of issuance of first certificate of occupancy for occupiable space in a story above grade plane). Fine Amount:

- (a) \$7.50 per square foot of *gross floor area* of construction if the *project* is less than 100,000 square feet (9290 m<sup>2</sup>) of *gross floor area*.
- (b) \$10.00 per square foot of *gross floor area* of construction if the *project* is equal to or greater than 100,000 square feet (9290 m<sup>2</sup>) of *gross floor area*.
- (c) The amount of a fine for non-compliance under this subsection shall not exceed \$3,000,000.

3314.4.2 12-A DCMR § 101.4.9.4.2.3 (failure to submit evidence of compliance with Enterprise Green Community Partners standard within forty-eight (48)-month period following date of issuance of first certificate of occupancy for occupiable space in a story above grade plane). Fine Amount:

- (a) \$0.02 per square foot of *gross floor area* of the *project*.
- (b) The fine shall be assessed for each month that the violation remains uncorrected.

- (c) The fine shall be in addition to any fines issued under Section 3314.4.1 and shall not be subject to the \$3,000,000 limit under Section 3314.4.1.

3314.5 NATIONAL GREEN BUILDING STANDARD (ICC 700) INFRACTIONS

- 3314.5.1 12-A DCMR § 101.4.9.4.2.4 (failure to submit evidence of compliance with the National Green Building Standard, ICC 700, and the EPA's Energy Star New Homes program or Multifamily High Rise Program within twelve (12)-month period following date of issuance of first certificate of occupancy for occupiable space in a story above grade plane). Fine Amount:
- (a) \$7.50 per square foot of *gross floor area* of construction if the *project* is less than 100,000 square feet (9290 m<sup>2</sup>) of *gross floor area*.
  - (b) \$10.00 per square foot of *gross floor area* of construction if the *project* is equal to or greater than 100,000 square feet (9290 m<sup>2</sup>) of *gross floor area*.
  - (c) The amount of a fine for non-compliance under this subsection shall not exceed \$3,000,000.
- 3314.5.2 12-A DCMR § 101.4.9.4.2.4 (failure to submit evidence of compliance with the National Green Building Standard, ICC 700, and the EPA's Energy Star New Homes program or Multifamily High Rise Program within forty-eight (48)-month period following date of issuance of first certificate of occupancy for occupiable space in a story above grade plane). Fine Amount:
- (a) \$0.02 per square foot of *gross floor area* of the *project* to the District of Columbia.
  - (b) The fine shall be assessed for each month that the violation remains uncorrected.
  - (c) The fine shall be in addition to any fines issued under Section 3314.5.1 and shall not be subject to the \$3,000,000 limit under Section 3314.5.1.

**Chapter 34, FIRE AND EMERGENCY MEDICAL SERVICES (EMS) DEPARTMENT INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES AND CIVIL INFRACTIONS, is amended as follows:**

**Section 3401 is amended to read as follows:**

**3401 FIRE CODE INFRACTIONS**

The following abbreviations apply to this section:

IFC §- International Fire Code (2012 edition)

NFPA- National Fire Protection Association

3401.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-H DCMR § 102.2 (change in occupancy that will subject the structure to special provisions of the Fire Code or Building Code without the approval of the code official);
- (b) 12-H DCMR § 105.1.1 (failure to obtain and maintain required permits on the premises, including operational or installation permits as described by 12-H DCMR §§ 105.1.2 and 105.6);
- (c) 12-H DCMR § 104.11.6.2 (obstructing operations of the Fire Department in connection with extinguishment or control of any fire, or action relating to other emergencies);
- (d) 12-H DCMR § 109.2.5 (failure to remedy dangerous condition or remove hazardous materials);
- (e) 12-H DCMR § 110.1.1 (failure to remedy hazardous conditions liable to cause or contribute to the spread of fire in, or on, the premises, building or structure, or endangering life or property);
- (f) IFC § 5003.3.1.4 (failure to remedy hazardous conditions arising from defective or improperly installed equipment for handling or using combustible, explosive or otherwise hazardous materials);
- (g) 12-H DCMR § 110.5 (failure to maintain, on a structure, premises, or lot, the fire protection equipment, systems or devices, means of egress or safeguards required by the Fire Code);
- (h) 12-H DCMR § 109.2.4 (failure to remedy unsafe conditions in an existing structure or vacant structure, or a deficiency in a means of egress);
- (i) 12-H DCMR § 110.2 (refusal to leave, or interference with the evacuation of other occupants or continuance of any operation after receiving an evacuation order);
- (j) 12-H DCMR § 109.2.4 (failure to comply with a notice of violation issued by the code official);

- (k) IFC § 311.2.1 (failure to secure exterior and interior openings of vacant premises);
- (l) IFC § 603.4 (failure to prohibit the use of portable unvented heaters or fuel fired heating equipment in use groups A, E, I, R-1, R-2, R-3 and R-4);
- (m) IFC § 604.1 (failure to maintain and inspect emergency and standby systems in accordance with the Fire Code, NFPA110 and NFPA111);
- (n) IFC § 904.1 (failure to inspect, test and maintain automatic fire-extinguishing systems (except sprinkler systems) in accordance with the Fire Code and the applicable referenced standards);
- (o) IFC § 1004.3 (failure to post occupant load);
- (p) 12-H DCMR § 107.5 (permitting overcrowding or admitting persons beyond the established occupant load); or
- (q) 12-H DCMR § 5609.1.1 (engaging in the manufacturing, possession, storage or display, sale, setting off, or discharge of prohibited fireworks).

3401.2 Violations of any of the following provisions shall be a Class 2 infraction:

- (a) 12-H DCMR § 308.1.4 (operating charcoal burners and other open-flame cooking devices on a balcony or within ten (10) feet of combustible construction);
- (b) IFC § 308.2 (failure to obtain a permit for open flame use in an educational or assembly occupancy);
- (c) IFC § 404.2 (failure to prepare and maintain a fire safety and evacuation plan in accordance with this section);
- (d) IFC § 405.5 (failure to maintain emergency evacuation drill records);
- (e) IFC § 406.3 (failure to ensure employees are provided with fire prevention, evacuation and fire safety training);
- (f) IFC § 505.1 (failure to provide approved legible and visible building address identification);
- (g) IFC § 507.5.4 (obstructing fire hydrants, department connections or other fire protection system control valves);

- (h) IFC § 907.2.11 (failure to install approved single or multi-station smoke alarms in existing dwellings, congregate residences, and hotel and lodging house guestrooms); or
- (i) IFC § 1029.1 (failure to maintain emergency escape windows operational).

3401.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) IFC § 605.3 (failure to provide and maintain required clearance in front of electrical service equipment);
- (b) IFC § 807.4.1 (obstruction of egress or exit access visibility by placement of furnishing or other objects in educational, assembly and in institutional group 4 occupancies);
- (c) IFC § 906.1 (failure to provide fire extinguishers in required occupancies and locations); or
- (d) IFC § 1029.4 (failure to ensure security bars, grilles and screens over emergency escape windows are releasable or removable from the inside without the use of a key or tool).

3401.4 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) IFC § 304.1 (failure to prohibit accumulation of prohibited waste);
- (b) IFC § 310.4 (removing, obscuring, defacing, mutilating or destroying “No Smoking” signs);
- (c) IFC § 807.4.3.2 (failure to limit artwork and teaching material to not more than twenty percent (20%) on walls of corridors in educational occupancies);
- (d) FC § 806.1.1 (failure to prohibit display of natural cut trees in certain occupancies); or
- (e) IFC § 1022.9 (failure to provide stair identification of interior and exterior doors connecting more than three stories).

3401.5 Violation of any provisions of the District of Columbia Fire Code not otherwise listed in Section 3401 shall be a Class 5 infraction.

All persons desiring to comment on these proposed regulations should submit comments in writing to Matthew Orlins, Legislative Affairs Officer, Department of Consumer and Regulatory

Affairs, 1100 Fourth Street, SW, Room 5164, Washington, D.C. 20024, or via e-mail at [matt.orlins@dc.gov](mailto:matt.orlins@dc.gov), not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-4400. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at <http://dcra.dc.gov> by going to the “About DCRA” tab, clicking on “News Room”, and then clicking on “Rulemaking”.



## DISTRICT DEPARTMENT OF THE ENVIRONMENT

**NOTICE OF SECOND PROPOSED RULEMAKING AND PUBLIC HEARING****Second Proposal to Revise the Sulfur Content Requirements for Fuel Oil  
and to Submit the Rulemaking to EPA as a SIP Revision**

The Director of the District Department of the Environment (DDOE or Department), pursuant to the authority set forth in Sections 5 and 6 of the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985, as amended (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 and 8-101.06 (2013 Repl.)); 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 (Air Quality-General Rules), 5 (Air Quality-Monitoring and Testing), and 8 (Air Quality-Asbestos, Sulfur, Nitrogen Oxides, and Lead) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The primary purpose of this rulemaking is to amend 20 DCMR § 801 to reduce the permissible sulfur content of commercially available "home heating" fuel oils used in oil-burning combustion units in the District, and to specify record-keeping and reporting requirements for numbers two (No. 2), four (No. 4), five (No. 5), and heavier residual oils, which are used in industrial, commercial, and institutional (ICI) boilers; No. 2 is also used, along with lighter fuel oils (distillates), in residential, commercial, and municipal heating units. This rulemaking proposes to ban the use of No. 5 and heavier fuel oils, as there are no known users of these higher-polluting fuels in the District at this time. Finally, the District proposes to add one definition and amend another in 20 DCMR § 199, and to amend 20 DCMR § 502.6, related to fuel oil testing requirements; the Department is particularly interested in feedback or suggestions from stakeholders about the proposed testing methods.

The proposed regulations were published in the *D.C. Register* on June 20, 2014 at 61 DCR 006214 (Notice ID 4959336), and then notice of a public hearing was posted in the *D.C. Register* on June 27, 2014 at 61 DCR 006384 (Notice ID 4968066). Three comments were received during the public comment period, in addition to comments from the U.S. Environmental Protection Agency (EPA). One public commenter was supportive of the rule. Two commenters from industry did not object to the proposed 500 parts per million (ppm) limit for sulfur in No. 2 commercial fuel or the July 1, 2016 implementation date, but both encouraged coordination with neighboring jurisdictions before imposing a 15 parts per million (ppm) limit by 2018. One of the industry comments also requested a transition period following changes in sulfur content requirements.

The District notes that there was an extensive negotiation process with industry through the Mid-Atlantic/Northeast Visibility Union (MANE-VU), which was formed by the Mid-Atlantic and Northeastern states, tribes, and federal agencies to coordinate regional haze planning activities for the region. The MANE-VU issued a statement in 2007 entitled "Statement of the [MANE-

VU] Concerning a Course of Action within MANE-VU toward Assuring Reasonable Progress,” which outlined the commitments of all participating members to reduce regional haze by lowering the permissible limits on sulfur in home heating oil. Although neighboring jurisdictions have not adopted a 15 ppm sulfur limit to date, lack of regional coordination regarding this measure should not prevent industry from complying with the District’s sulfur content requirements for home heating oil by 2018 given the ample lead time.

The rulemaking is being re-proposed to address EPA’s concerns about (1) potential confusion between number two (No. 2) diesel fuel, which EPA regulates for use by motor vehicles, and number two (No. 2) home heating oil, which the District is proposing to regulate; and (2) the proposed requirement for written concurrence of the EPA Administrator before waiving fuel requirements in the District.

The revised rulemaking also clarifies that general fuel specifications for fuel oil grade may be acceptable if certain conditions are met. Additional fuel oil test methods were added to § 502.6, including one for identifying fuel oil grade, as identified by the EPA at 40 C.F.R. § 60.17.

### **Summary of the Proposed Amendments**

Beginning on July 1, 2016, it will be unlawful to purchase, sell, offer for sale, store, transport, or use number two (No. 2) commercial fuel oil containing more than five hundred parts per million (500 ppm), or five one-hundredths percent (0.05%) by weight of sulfur; and number four (No. 4) commercial fuel oil containing more than two thousand five hundred parts per million (2,500 ppm) or twenty-five one-hundredths percent (0.25%) by weight of sulfur. Also, in July 2016, the use of residual fuel oil number five (No. 5) and heavier will be prohibited in the District. Beginning on July 1, 2018, it will be unlawful to purchase, sell, offer for sale, store, transport, or use number two (No. 2) commercial fuel oil containing more than fifteen parts per million (15 ppm) or fifteen ten-thousandths percent (0.0015%) by weight of sulfur. Fuel oils stored before the applicable compliance dates may be used after the applicable compliance date. This rulemaking includes third-party sampling and testing requirements as well as record-keeping and reporting requirements.

### **Background**

Commercial fuel oils are processed to meet various legal and regulatory requirements at refineries in places such as the Gulf of Mexico. Processed oil is barged or moved via underground steel pipes from refineries to terminals, where it is stored and blended. Nearby terminals in Maryland and Virginia are connected to pipelines owned by Colonial Pipeline or Plantation Pipe Line Company. Fuel oils are ultimately distributed to customers in the District by truck.

Distillate fuel oil is essentially the same refinery-produced liquid as diesel fuel. The only difference is that fuel oil is dyed red because it is not subject to the same taxes as diesel fuel used in vehicles. *See* 26 C.F.R. § 48.4082-1 (2013). Since 2006, there has been a Federal limit of fifteen parts per million (15 ppm) on the sulfur content of highway diesel fuels. *See* 66 Fed. Reg. 5001 (January 18, 2001).

Fuel oils are combusted primarily to heat buildings during winter months. The combustion of fossil fuels containing sulfur results in emissions of pollutants such as fine particulate matter. Fine particulate matter can cause serious health effects and premature mortality in humans, and contribute to environmental effects such as acid deposition and eutrophication. *See* 64 Fed. Reg. 35714 (July 1, 1999). These rules will reduce emissions of fine particulate matter. The District is a maintenance area under the 1997 annual national ambient air quality standard (NAAQS) for fine particulate matter.

The combustion of fossil fuels containing sulfur also results in emissions of sulfur dioxide. Sulfur dioxide emissions oxidize in the atmosphere to form sulfate particles and are the most significant pollutant involved in the formation of regional haze. Regional haze is a visibility impairment caused when fine particles from manmade or natural sources scatter and absorb sunlight. *See* 64 Fed. Reg. 35714 (July 1, 1999). Regional haze from manmade air pollution has reduced the visibility range in the eastern United States substantially, from an average of ninety miles to an average of between fifteen and twenty-five miles. *See* <http://www.epa.gov/visibility/what.html>. Sulfate particles account for the largest percentage of the total fine particle mass on the twenty percent (20%) haziest days in the mid-Atlantic and northeast regions, according to the 2006 "Contribution Assessment" prepared by the MANE-VU. *See Contributions to Regional Haze in the Northeast and Mid-Atlantic United States*, MANE-VU Contribution Assessment, August 2006, p. 2-1. These rules will allow the District to meet its commitment to MANE-VU to implement reasonable measures that are part of a coordinated course of action designed to assure reasonable further progress towards reducing regional haze.

In 1977, Congress amended the Federal Clean Air Act (CAA) by adding Section 169A (relating to visibility protection for Federal class I areas), which "declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution." *See* 42 USCA § 7491(a)(1). The EPA promulgated its Regional Haze Rule in 1999 (64 Fed. Reg. 35714, July 1, 1999) and amended it in 2005 (70 Fed. Reg. 39104, July 6, 2005). EPA's regulations require all states, even those that do not contain a Federal Class I area, to submit a State Implementation Plan (SIP) revision containing emission reduction strategies to improve visibility in Class I areas that their emissions affect. The EPA regulations require states to demonstrate reasonable progress toward meeting the national goal of a return to natural visibility conditions by 2064. The regulations also encourage states to address haze through regional planning organizations. *See* 64 Fed. Reg. 35714, 35720 (July 1, 1999).

The District intends to accomplish this objective through participation in MANE-VU. As previously noted, MANE-VU was formed by the Mid-Atlantic and Northeastern states, tribes, and federal agencies to coordinate regional haze planning activities for the region. The organization includes portions of Pennsylvania, Delaware, New Jersey, and New York, as inner zone states, as well as Connecticut, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, Vermont, and the District, as outer zone states. On June 20, 2007, MANE-VU adopted a tiered strategy to meet the requirement to make reasonable further progress toward reducing regional haze.

Once finalized, this regulation will be submitted to EPA as a SIP revision.

### **Public Hearing**

Notice is hereby given that a public hearing on these regulations will be held on August 3, 2015, at 5:00 p.m. in Room 555 at 1200 First Street, N.E., 5<sup>th</sup> Floor, in Washington, D.C. This public outreach meeting will afford interested parties an additional opportunity to comment on the proposed regulations.

**Chapter 1, GENERAL RULES, of Title 20 DCMR, ENVIRONMENT, is amended as follows:**

**Section 199, DEFINITIONS AND ABBREVIATIONS, is amended as follows:**

**Section 199 is amended to add the following definition:**

**ASTM** – ASTM International, formally known as the American Society for Testing and Materials, develops international voluntary consensus standards that can be purchased at: <http://www.astm.org/>

**The definition in Section 199 is amended to read as follows:**

**Distillate oil** – any oil that meets the specifications of the American Society for Testing and Materials (ASTM) for number one (No. 1) and number two (No. 2) grades of fuel oil found in ASTM D 396, “Standard Specifications for Fuel Oil.”

**Chapter 5, SOURCE MONITORING AND TESTING, of Title 20 DCMR, ENVIRONMENT, is amended as follows:**

**Section 502, SAMPLING, TESTS, AND MEASUREMENTS, is amended as follows:**

**Subsection 502.6 is amended to read as follows:**

502.6 Testing of fuel oil shall be undertaken in accordance with the most current version of the following methods, as appropriate for the application:

- (a) To obtain fuel samples:
  - (1) ASTM D 270, “Standard Method of Sampling Petroleum and Petroleum Products;”
  - (2) ASTM D 4057, “Practice for Manual Sampling of Petroleum and Petroleum Products;” or

- (3) ASTM D 4177, "Standard Practice for Automatic Sampling of Petroleum and Petroleum Products;"
- (b) To determine the fuel oil grade: ASTM D 396, "Standard Specification for Fuel Oils;"
- (c) To determine the sulfur concentration of fuels:
  - (1) ASTM D 129, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method);"
  - (2) ASTM D 1266, "Standard Test Method for Sulfur in Petroleum Products (Lamp Method);"
  - (3) ASTM D 1552, "Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method);"
  - (4) ASTM D 2622, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry;"
  - (5) ASTM D 4294, "Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry;" or
  - (6) ASTM D 5453, "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence;" and
- (d) Other methods developed or approved by the Department or the Administrator of the United States Environmental Protection Agency (EPA).

**Chapter 8, ASBESTOS, SULFUR, NITROGEN OXIDES, AND LEAD, of Title 20 DCMR, ENVIRONMENT, is amended as follows:**

**Section 801, SULFUR CONTENT OF FUEL OILS, is amended as follows:**

**801 SULFUR CONTENT OF FUEL OILS**

- 801.1 The purchase, sale, offer for sale, storage, transport, or use of fuel oil that contains more than one percent (1%) sulfur by weight in the District is prohibited, if the fuel oil is to be burned in the District.

- 801.2 On and after July 1, 2016, commercial fuel oil that is purchased, sold, offered, stored, transported, or used in the District shall meet the following requirements, unless otherwise specified in § 801.5:
- (a) Number two (No. 2) commercial fuel oil shall not contain sulfur in excess of five hundred parts per million (500 ppm) by weight, or five one-hundredths percent (0.05%) by weight;
  - (b) Number four (No. 4) commercial fuel oil shall not contain sulfur in excess of two thousand five hundred parts per million (2,500 ppm) by weight, or twenty-five one-hundredths percent (0.25%) by weight; and
  - (c) Number five (No. 5) and heavier fuel oils are prohibited.
- 801.3 On and after July 1, 2018, the purchase, sale, offer for sale, storage, transport, or use of number two (No. 2) commercial fuel oil is prohibited if it contains more than fifteen parts per million (15 ppm) or fifteen ten-thousandths percent (0.0015%) by weight of sulfur, unless otherwise specified in § 801.5.
- 801.4 Fuel oil that was stored in the District by the ultimate consumer prior to the applicable compliance date in §§ 801.2 or 801.3, which met the applicable maximum sulfur content at the time it was stored, may be used in the District after the applicable compliance date.
- 801.5 When the United States Environmental Protection Agency (EPA) temporarily suspends or increases the applicable limit or percentage by weight of sulfur content of fuel required or regulated by EPA by granting a waiver in accordance with Clean Air Act § 211(c)(4)(C) provisions, the federal waiver shall apply to corresponding limits for fuel oil in the District as set forth in §§ 801.2 or 801.3.
- 801.6 If a temporary increase in the applicable limit of sulfur content is granted under § 801.5:
- (a) The suspension or increase in the applicable limit will be granted for the duration determined by EPA; and
  - (b) The sulfur content for number two (No. 2) and lighter fuel oils may not exceed five hundred parts per million (500 ppm) by weight.
- 801.7 Unless precluded by the Clean Air Act or the regulations thereunder, subsections 801.2 and 801.3 shall not apply to:
- (a) A person who uses equipment or a process to reduce the sulfur emissions from the burning of a fuel oil, provided that the emissions may not exceed those that would result from the use of commercial fuel oil that meets the applicable limit or percentage by weight specified in §§ 801.2 or 801.3;

- (b) The owner or operator of a stationary source where equipment or a process is used to reduce the sulfur emissions from the burning of a fuel oil, provided that the emissions may not exceed those that would result from the use of commercial fuel oil that meets the applicable limit or percentage by weight specified in §§ 801.2 or 801.3; and
- (c) Commercial fuel oil that is transported through the District but is not intended for purchase, sale, offering, storage, or use in the District.

801.8 For the purpose of determining compliance with the requirements of this section, the sulfur content of fuel oil shall be determined in accordance with the sample collection, test methods, and procedures specified under § 502.6 (relating to sulfur in fuel oil).

801.9 The following recordkeeping and reporting requirements shall apply to any purchase, sale, offering for sale, storage, transportation, or use of commercial fuel oil in the District:

- (a) On or after the applicable compliance dates specified in §§ 801.2 and 801.3, at the time of delivery, the transferor of commercial fuel oil shall provide to the transferee an electronic or paper record of the fuel data described as follows, which must legibly and conspicuously contain the following information:
  - (1) The date of delivery;
  - (2) The name, address, and telephone number of the transferor;
  - (3) The name and address of the transferee;
  - (4) The volume of fuel oil being sold or transferred;
  - (5) The sulfur content of the fuel oil as determined using the sampling and testing methods specified in § 801.8;
  - (6) The date and time the tested sample was taken;
  - (7) The location of the fuel oil during testing;
  - (8) The type of test or test method performed; and
  - (9) The fuel oil grade.
- (b) All applicable records required under paragraph (a) shall be maintained in electronic or paper format for not less than three (3) years;

- (c) An electronic or paper copy of the applicable records required under paragraph (a) shall be provided to the Department upon request;
- (d) The ultimate consumer shall maintain the applicable records required under (a) in electronic or paper format for not less than three (3) years, unless the transfer or use of the fuel oil occurs at a private residence; and
- (e) General fuel specifications are not acceptable for the datum in paragraphs (a)(1) through (a)(8).
- (f) General fuel specifications may be used for the datum in paragraph (a)(9) if:
  - (1) The fuel supplier provides written certification that the fuel oil grade purchased from the terminal was the material delivered to the facility;
  - (2) The fuel specifications include references to appropriate ASTM methods used to determine the fuel oil grade (as referenced in § 502.6); and
  - (3) The Department may opt to require occasional supplemental sampling and testing of the fuel oil to confirm the certifications.

**Section 899, DEFINITIONS AND ABBREVIATIONS, is amended as follows:**

**Section 899 is amended to add the following definitions:**

**Carrier** – A distributor who does not take title to or otherwise have ownership of the commercial fuel oil or gasoline, and does not alter either the quality or quantity of the commercial fuel oil or gasoline.

**Commercial fuel oil** – A fuel oil specifically produced, manufactured for sale, and intended for use in fuel burning equipment. A mixture of commercial fuel oil with noncommercial fuel where greater than fifty percent (50%) of the heat content is derived from the commercial fuel oil portion is considered a commercial fuel oil.

**Distributor** – A person who transports, stores or causes the transportation or storage of commercial fuel oil or gasoline at any point between a refinery, a blending facility or terminal and a retail outlet, wholesale purchaser-consumer's facility or ultimate consumer. The term includes a refinery, a blending facility, or a terminal.



**Noncommercial fuel** – A gaseous or liquid fuel generated as a byproduct or waste product that is not specifically produced and manufactured for sale. A mixture of a noncommercial fuel and a commercial fuel oil when at least fifty percent (50%) of the heat content is derived from the noncommercial fuel portion is considered a noncommercial fuel.

**Retail outlet** – An establishment where commercial fuel oil or gasoline is sold or offered for sale to the ultimate consumer for use in a combustion unit or motor vehicle, respectively.

**Terminal** – A facility that is capable of receiving commercial fuel oil or gasoline in bulk, that is, by pipeline, barge, ship or other transport, and where commercial fuel oil or gasoline is sold or transferred into trucks for transportation to retail outlets, wholesale purchaser-consumer's facilities, or ultimate consumers. The term includes bulk gasoline terminals and bulk gasoline plants.

**Transferee** – A person who is the recipient of a sale or transfer. The term includes the following:

- (a) Terminal owner or operator;
- (b) Carrier;
- (c) Distributor;
- (d) Retail outlet owner or operator; and
- (e) Ultimate consumer.

**Transferor** – A person who initiates a sale or transfer. The term includes the following:

- (a) Refinery owner or operator;
- (b) Terminal owner or operator;
- (c) Carrier;
- (d) Distributor; and
- (e) Retail outlet owner or operator.

**Ultimate consumer** – With respect to a commercial fuel oil transfer or purchase, the last person, facility owner or operator or entity who in good faith receives the commercial fuel oil for the purpose of using it in a combustion unit or for purposes other than resale.

### **Public Participation**

Comments on these proposed rule must be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Ms. Jessica Daniels, District Department of the Environment, Air Quality Division, 1200 First Street, NE, 5th Floor, Washington, D.C. 20002 or sent electronically to [jessica.daniels@dc.gov](mailto:jessica.daniels@dc.gov). Copies of the proposed rule and ASTM methods adopted by reference may be obtained between the hours of 9:00 a.m.

and 5:00 p.m. at the address listed above for a small fee to cover the cost of reproduction or on-line at <http://ddoe.dc.gov>.

All comments will be treated as public documents and may be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. The Department will look for the commenter's name and address on the comment. If a comment is sent by electronic mail ("email"), the email address will be automatically captured and included as part of the comment that is placed in the public record to be 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.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS****NOTICE OF SECOND EMERGENCY RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs (DCRA), pursuant to Sections 104 and 105 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.04 and 2-1801.05 (2012 Repl.)), Mayor's Order 1986-38, dated March 4, 1986, and Mayor's Order 2004-46, dated March 22, 2004, hereby gives notice of the adoption of the following emergency rulemaking to amend Chapters 33 (Department of Consumer & Regulatory Affairs (DCRA) Infractions) and 34 (Fire and Emergency Medical Services (EMS) Department Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary to address a gap in the enforcement of compliance with the current District of Columbia Construction Codes, adopted March 28, 2014 (61 DCR 3251-Part 2), as amended, (the "2013 Construction Codes"), as violations of the 2013 Construction Codes would not be subject to notices of violation and enforcement proceedings to the extent that the existing regulations refer to a previous version of the Construction Codes. Violations of the 2013 Construction Codes pose an immediate and continuing threat to the public health and safety. This emergency rulemaking is limited to changes in the numbering of provisions between the 2013 Construction Codes and the previous version of the Construction Codes, and does not change the substance or classification of infractions.

This emergency rulemaking does not apply to violations or infractions committed prior to March 28, 2014, whether the prosecution or adjudication of those violations or infractions is instituted before or after said date. Such violations or infractions will be adjudicated pursuant to the existing Title 16.

This emergency rulemaking was adopted on May 23, 2015, to become effective immediately, extending an emergency rulemaking originally adopted on January 23, 2015 and published February 27, 2015 at 62 DCR 2598 in the *D.C. Register*. This emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the date of effectiveness, and will expire on September 20, 2015.

**Chapter 33, DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS (DCRA) INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:**

**Section 3306 is amended to read as follows:**

**3306 BUILDING INSPECTION DIVISION INFRACTIONS****3306.1 CONSTRUCTION INSPECTION INFRACTIONS**

The following abbreviations apply to this section: IPMC - International Property Maintenance Code (2012 edition)

- 3306.1.1 Violation of any of the following provisions shall be Class 1 infraction:
- (a) 12-A DCMR §§ 105.1, 105.1.1 and 105.1.3 (working without required permit);
  - (b) 12-A DCMR § 105.1 (exceeding scope of permit);
  - (c) 12-A DCMR § 115.1 (failure to remedy dangerous conditions or remove hazardous materials);
  - (d) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a 'Stop Work Order');
  - (e) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);
  - (f) 12-A DCMR § 115.5 (failure to comply with terms of posted "Unsafe to Use" notice); or
  - (g) IPMC 302.1 (exterior of property not in clean or sanitary condition).

3306.2 PLUMBING INSPECTION INFRACTIONS

The following abbreviations apply to this section:

IPC- International Plumbing Code (2012 edition)

IPMC- International Property Maintenance Code (2012 edition)

- 3306.2.1 Violation of any of the following provisions shall be a Class 1 infraction:
- (a) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a Stop Work Order);
  - (b) 12-A DCMR § 105.1.6 (HVAC work performed by non-D.C. licensed mechanic);
  - (c) IPC 424.3; IPMC 505.1 (hot water exceeds 120 degrees° F.);
  - (d) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);
  - (e) 12-A DCMR § 105.1.6 (plumbing work performed by non-D.C. licensed plumber); or

- (f) 12-A DCMR §§ 105.1, 105.1.1 and 105.1.3 (working without a permit).

3306.2.2 Violation of the following provisions shall be a Class 2 infraction:

- (a) 12-F DCMR §§ 301.3 and 712.3.5, 1101.2 (sump pump discharge into public space);
- (b) 12-F DCMR §§ 301.3 and 712.3.5, 1101.2 (discharge of water from sump pump directly to adjacent property); or
- (c) IPC 802.1.4 (swimming pool water discharge into public/park space).

3306.2.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) IPMC 506.2 (obstruction of drains);
- (b) IPMC 506.2 (plumbing system not maintained);
- (c) IPMC 603.1 (mechanical system not maintained);
- (d) 12-F DCMR § 1101.2 (downspout(s) not connected to terminals);  
or
- (e) IPMC 506.2 (main sewer line obstructed).

3306.2.4 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) IPMC 505.4 (no hot water at peak demand); or
- (b) IPC 604.7 (inadequate water pressure).

### 3306.3 ELECTRICAL INSPECTION INFRACTIONS

3306.3.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-A DCMR §§ 105.1, 105.1.1 and 105.1.3 (working without the required electrical permit);
- (b) 12-A DCMR § 105.1 (exceeding scope of permit);
- (c) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a Stop Work Order); or

- (d) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order).

#### 3306.4 BOILER INSPECTION INFRACTIONS

The following abbreviations apply to this section:

IMC- International Mechanical Code (2012 edition)

3306.4.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.8 (failure to comply with terms of a Stop Work Order);
- (b) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);
- (c) 12-E DCMR §§ 1003.1 and 1003.3 (failure to obtain a boiler Certificate of Inspection);
- (d) 12-E DCMR §§ 1003.17.1; 12-A DCMR § 115.5 (violation of conditions of posted Unsafe to Use notice);
- (e) 12-E DCMR §§ 1001.3 and 1004.7; 12-A DCMR §§ 105.1 and 105.1.1 (failure to obtain a boiler installation permit);
- (f) 12-E DCMR §§ 1001.3 and 1004.7; 12-A DCMR §§ 105.1 and 105.1.1 (no installations permit for boiler and/or unfired pressure vessels);
- (g) 12-E DCMR § 1001.4; 17 DCMR § 400.2 (operating engineering equipment without proper D.C. engineer's license); or
- (h) 12-E DCMR §§ 1001.3 and 1004.7; 12-A DCMR §§ 105.1 and 105.1.1 (alteration and repair of boilers without required permit).

3306.4.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) IMC 303.3 and 304.9, 1004.3 (improper location or clearance of a boiler); or
- (b) 12-E DCMR § 1018.1 (welder working without a D.C. authorization card).

3306.4.3 Violation of the following provision shall be a Class 3 infraction:

12-E DCMR § 1003.16 (failure to make a timely repair, alteration, or cleaning, to a boiler specified in a notice).

3306.4.4 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) 12-E DCMR §§ 1001.2, 1001.4 and 1003.17 (improper boiler or pressure vessel operation);
- (b) 12-E DCMR § 1003.1 (certificate of inspection not properly posted); or
- (c) 12-E DCMR § 1005.3; IMC 1004.6; 12-A DCMR § 109.6.1 (denial of entry to boiler room).

### 3306.5 ELEVATOR INSPECTION INFRACTIONS

The following abbreviations apply to this section and identify referenced standards adopted by the 2013 District of Columbia Construction Codes:

ASME- American Society of Mechanical Engineers

NFPA- National Fire Protection Association

3306.5.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-A DCMR §§ 105.1 and 105.1.1 (installation of elevators, escalators, dumbwaiters, man lift(s), and other conveying systems without a permit);
- (b) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a Stop Work Order);
- (c) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order).or
- (d) 12-A DCMR §§ 115.5 and 3010.10.2 and 3010.10.3; 12-G DCMR §§ 108.5, 606.8.2 and 606.8.3 (failure to comply with terms of posted Unsafe to Use notice).

3306.5.2 Violation of any of the following provisions shall be a Class 2 infraction:

12-A DCMR §§ 3001.2 and 3010.5; 12-G DCMR §§ 606.3, 606.3.1-606.3.4 (failure to comply with any of the following maintenance, testing and inspection standards):

- (a) ASME A17.1- Rules 8.11.4.1, 8.11.2.1 and 8.6.8.15 (failure to have semi-annual inspections performed);
- (b) ASME A17.1- Rule 1002.3 (failure to schedule five-year governor speed and safety test);
- (c) ASME A17.1- Rule 2.2.4.5(e), 2.7.3.4 and 8.11.2.1.2 (b) (failure to provide required fire rated door at elevator machine room with self-closing and self-locking device);
- (d) ASME A17.1- Rules 2.2.4.5(e) and 2.7.3.4 (failure to provide a UL listed fire rated self-closing, self-locking, device at machine room door of elevators or pit doors);
- (e) ASME A17.1 – Rules 8.11.3.1.1(f) and 8.11.4.1(e) (failure to provide emergency light and bell operation); or
- (f) ASME A17.1 – Rules 2.27.1, 8.11.2.1.1(f) and 8.11.3.1.1(f) (failure to repair emergency phone on elevators).

3306.5.3 Violation of any of the following provisions shall be a Class 3 infraction:

12-A DCMR §§ 3001.2 and 3010.5; 12-G DCMR §§ 606.3 and 606.3.1-606.3.4 (failure to comply with any of the following maintenance, testing and inspection standards):

- (a) ASME A17.1- Rule 8.11.3.1.2(j) (failure to provide required class fire extinguisher in elevator machine room);
- (b) ASME A17.1- Rule 8.6.4.13.1(h) (failure of elevator to level at floor);
- (c) ASME A17.1- Rule 8.11.2.1.1(o) (failure to post fire emergency instruction pictograph adjacent to each non-egress hall push button);
- (d) NFPA 70 § 620-51(c) (main line disconnects unable to be locked in the off position);
- (e) ASME A17.1-Rule 8.6.4.7.1 (failure to remove all materials not related to the operation from the pit).

3306.5.4 Violation of any of the following provisions shall be a Class 4 infraction:



12-A DCMR §§ 3001.2 and 3010.5; 12-G DCMR §§ 606.3 and 606.3.1-606.3.4 (failure to comply with any of the following maintenance, testing and inspection standards):

- (a) ASME A17.1- Rule 8.6.4.7.1 (excessive lint and dust in hoist ways);
- (b) ASME A17.1- Rule 8.6.4.8.2 (non-related equipment in elevator machine room);
- (c) ASME A17.1- Rules 8.6.4.13.1(c); 8.6.4.13.1(k), and 8.6.4.13.1(l) (elevator door reopening device/closure button in disrepair); or
- (d) ASME A17.1-Rule 8.6.4.7.1 (unclean elevator pits)

**Section 3309 is amended to read as follows:**

**3309 DCRA FIRE PROTECTION DIVISION INFRACTIONS**

The following abbreviations apply to this section:

IFC- International Fire Code (2012 edition)

IBC- International Building Code (2012 edition)

IPMC- International Property Maintenance Code (2012 edition)

The following abbreviation applies to this section and identifies referenced standards adopted by the 2013 District of Columbia Construction Codes:

NFPA- National Fire Protection Association

3309.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-A DCMR §§ 115 and 116; 12-H DCMR § 108.3 (failure to remedy dangerous conditions to remove hazardous materials);
- (b) 12-A DCMR §§ 114.1, 114.1.1, 114.6, 114.7 and 114.9 (failure to comply with terms of a stop work order);
- (c) 12-A DCMR § 114.3 (unauthorized removal of a posted stop work order);
- (d) [RESERVED];
- (e) [RESERVED];
- (f) IBC 709.3; IPMC 703, 703.1 and 703.2 (failure to maintain all required fire resistance rated doors or smoke barriers);
- (g) IFC 901.4.1; IPMC 704.1 and 704.1.1; IBC 904.1; 12-G DCMR §§ 704.1.2, 704.2 and 704.5 (failure to maintain in an operative condition at all times fire protection and life safety systems, devices, units, or service

equipment);

- (h) 12-H DCMR § 906.1; 12-G DCMR § 704.1.2; 12-A DCMR § 906.1 (failure to provide fire extinguishers);
- (i) IFC 1003.1; IPMC 702.1 and 702.3 (failure to maintain in a safe condition and free of all obstructions the means of egress from each part of the building);
- (j) IBC 1004.3 (overcrowding or admitting persons beyond the established posted occupants load);
- (k) IFC 507.5.4; IBC 912.3 (fire hydrants, fire department inlet connections, or fire protection system control valves are obstructed in such manner as to interfere with firefighting access);
- (l) IFC 1006.1 and 1006.2; IBC 1006.1 and 1006.2; 12-G DCMR § 402.2 (failure to provide adequate lighting for stairways, hallways, and other means of egress); or
- (m) IBC 1027.1, 1027.2 and 1027.5 (exits fail to discharge directly at a public way or at a yard, court, or open space of the required width and size to provide all occupants with a safe access to a public way).

3309.2

Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 12-G DCMR § 308.1 (permitting the accumulation of waste paper, wood, hay straws, weeds, litter, or combustible or flammable waste or rubbish of any kind);
- (b) IFC 904.11; IBC 904.11 (failure to provide or maintain an automatic activation kitchen hood fire extinguishing system);
- (c) IFC 904.11.1; IBC 904.11.1 (failure to provide or maintain a manual activation device for the hood fire extinguishing system);
- (d) NFPA 70 110.32 (failure to provide the required clearance between all electrical service equipment and storage);
- (e) IFC 904.11.5 (failure to provide a sufficient number of portable fire extinguishers for commercial cooking equipment);
- (f) IFC 906.2; 12-G DCMR § 704.1.2 (failure to maintain, test, or recharge hand-operated portable fire extinguishing equipment);
- (g) IFC 315.3.2 (storing combustible or flammable materials on any portion of an exit, elevator car, stairway, fire escape, or other means of egress);
- (h) IBC § 1005.1 (door openings fail to meet the requirements of minimum width based upon occupant load);
- (i) IBC 1008.1.10 (doors are not equipped with approved panic hardware);
- (j) IBC 1008.1.2 (exit doors swing in the wrong direction);
- (k) 12-E DCMR § 1003.6 (failure to provide an oil burner emergency switch);

- (l) IBC 1011.6.3 (failure to provide emergency lights, alarms, or power back-ups);
- (m) IBC 1011.1 (permitting decorations, furnishings, or equipment that impairs the visibility of exit signs);
- (n) IBC 716.5.9, 707.1 and 709 (failure to maintain self-closing and automatic doors or to provide a fire or smoke barrier);
- (o) IBC 1004.3 (failure to conspicuously post sign stating the number of occupants permitted within such space for each place of assembly);
- (p) IBC 1011.1 (failure to maintain exit signs in theaters or other places of public assembly); or
- (q) IBC 806 (decorative materials are not non-combustible or flame resistant).

3309.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) IFC 904.1 and 904.4; IPMC 704.1.1; 12-G DCMR § 704.1.2 (extinguishing systems are not inspected and tagged);
- (b) IBC 1006.1; 12-G DCMR § 702.6 (exit signs are not maintained or clearly illuminated at all times when the building is occupied); or
- (c) Any provision of the District of Columbia Construction Codes adopted pursuant to the Construction Codes Approval and Amendment Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code §§ 6-1401 *et seq.*) which is not cited elsewhere in this section shall be a Class 3 infraction.

**Chapter 34, FIRE AND EMERGENCY MEDICAL SERVICES (EMS) DEPARTMENT INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:**

**Section 3401 is amended to read as follows:**

**3401 FIRE CODE INFRACTIONS**

The following abbreviations apply to this section:  
IFC- International Fire Code (2012 edition)

3401.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 12-H DCMR § 102.3 (change in occupancy that will subject the structure to special provisions of the Fire Code or Building Code without the approval of the code official);

- (b) 12-H DCMR § 105.1.1 (failure to obtain and maintain required permits on the premises, including operational or installation permits as described by 12-H DCMR §§ 105.1.2 and 105.6;
- (c) 12-H DCMR § 104.11.6.2 (obstructing operations of the Fire Department in connection with extinguishment or control of any fire, or action relating to other emergencies);
- (d) 12-H DCMR § 109.2.5 (failure to remedy dangerous condition or remove hazardous materials);
- (e) 12-H DCMR § 110.1.1 (failure to remedy hazardous conditions liable to cause or contribute to the spread of fire in, or on, the premises, building or structure, or endangering life or property);
- (f) IFC 5003.3.1.4 (failure to remedy hazardous conditions arising from defective or improperly installed equipment for handling or using combustible, explosive, or otherwise hazardous materials);
- (g) 12-H DCMR § 110.5 (failure to maintain, on a structure, premises, or lot, the fire protection equipment, systems or devices, means of egress or safeguards required by the Fire Code);
- (h) 12-H DCMR 109.2.4 (failure to remedy unsafe conditions in an existing structure or vacant structure, or a deficiency in a means of egress);
- (i) 12-H DCMR § 110.2 (refusal to leave, or interference with the evacuation of other occupants or continuance of any operation after receiving an evacuation order);
- (j) 12-H DCMR § 109.2.4 (failure to comply with a notice of violation issued by the code official);
- (k) IFC 311.2.1 (failure to secure exterior and interior openings of vacant premises);
- (l) IFC 603.4 (failure to prohibit the use of portable unvented heaters or fuel fired heating equipment in use groups A, E, I, R-1, R-2, R-3, and R-4);
- (m) IFC 604.1 (failure to maintain and inspect emergency and standby systems in accordance with the Fire Code, NFPA110 and NFPA111);
- (n) IFC 904.1 (failure to inspect, test and maintain automatic fire-extinguishing systems (except sprinkler systems) in accordance with the Fire Code and the applicable referenced standards);

- (o) IFC 1004.3 (failure to post occupant load);
- (p) 12-H DCMR § 107.6 (permitting overcrowding or admitting persons beyond the established occupant load); or
- (q) 12-H DCMR § 5609.1.1 (engaging in the manufacturing, possession, storage or display, sale, setting off, or discharge of prohibited fireworks).

3401.2 Violations of any of the following provisions shall be a Class 2 infraction:

- (a) 12-H DCMR § 308.1.4 (operating charcoal burners and other open-flame cooking devices on a balcony or within ten (10) feet of combustible construction);
- (b) IFC 308.2 (failure to obtain a permit for open flame use in an educational or assembly occupancy);
- (c) IFC 404.2 (failure to prepare and maintain a fire safety and evacuation plan in accordance with this section);
- (d) IFC 405.5 (failure to maintain emergency evacuation drill records);
- (e) IFC 406.3 (failure to ensure employees are provided with fire prevention, evacuation and fire safety training);
- (f) IFC 505.1 (failure to provide approved legible and visible building address identification);
- (g) IFC 507.5.4 (obstructing fire hydrants, department connections or other fire protection system control valves);
- (h) IFC 907.2.11 (failure to install approved single or multi-station smoke alarms in existing dwellings, congregate residences, and hotel and lodging house guestrooms); or
- (i) IFC 1029.1 (failure to maintain emergency escape windows operational).

3401.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) IFC 605.3 (failure to provide and maintain required clearance in front of electrical service equipment);
- (b) IFC 807.4.1 (obstruction of egress or exit access visibility by placement of furnishing or other objects in educational, assembly and in institutional Group 4 occupancies);

- (c) IFC 906.1 (failure to provide fire extinguishers in required occupancies and locations); or
- (d) IFC 1026.1 (failure to ensure security bars, grilles and screens over emergency escape windows are releasable or removable from the inside without the use of a key or tool).

3401.4 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) IFC 304.1 (failure to prohibit accumulation of prohibited waste);
- (b) IFC 310.4 (removing, obscuring, defacing, mutilating or destroying “No Smoking” signs);
- (c) IFC 807.4.3.2 (failure to limit artwork and teaching material to not more than twenty percent (20%) on walls of corridors in educational occupancies);
- (d) IFC 806.1.1 (failure to prohibit display of natural cut trees in certain occupancies); or
- (e) IFC 1022.9 (failure to provide stair identification of interior and exterior doors connecting more than three stories).

3401.5 Violation of any provisions of the Fire Code not otherwise listed in this section shall be a Class 5 infraction.

Copies of the emergency rules can be obtained from Matthew Orlins, Legislative Affairs Officer, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5164, Washington, D.C. 20024, or via e-mail at [matt.orlins@dc.gov](mailto:matt.orlins@dc.gov). A copy fee of one dollar (\$1.00) will be charged for each copy of the emergency rulemaking requested. Free copies are available on the DCRA website at <http://dcra.dc.gov> by going to the “About DCRA” tab, clicking on “News Room”, and then clicking on “Rulemaking”.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2015-171  
June 24, 2015

**SUBJECT:** Establishment — Leadership Council for a Cleaner Anacostia River

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act of 1973, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2014 Repl.), it is hereby **ORDERED** that:

**I. ESTABLISHMENT**

There is established a Leadership Council for a Cleaner Anacostia River (“**Leadership Council**”) in the executive branch of the District government.

**II. PURPOSE**

The Leadership Council shall serve as a multi-jurisdictional advisory group for the District's For a Cleaner Anacostia River, The Anacostia River Sediment Project (“**For a Cleaner Anacostia River Project**”), a project to sample, study, and remediate contaminated sediments in the Anacostia River. The Leadership Council will utilize the knowledge and influence of its members to advise and support the District's For a Cleaner Anacostia River project, and to address ongoing pollution to the river from sources in multiple jurisdictions, throughout the Anacostia River's watershed.

**III. ADMINISTRATION**

- A. The District Department of the Environment (“**DDOE**”) shall directly support the activities of the Leadership Council and coordinate and schedule all activities necessary for the Leadership Council to function effectively.
- B. The Leadership Council's Chairperson may establish and oversee the work of partnerships, teams, committees, or subcommittees as it deems necessary to carry out the purposes of this Order.
- C. Any affected District agencies shall cooperate with the Leadership Council, participate in meetings upon request, and provide, in a timely

manner, any information that the Leadership Council may reasonably request to carry out the provisions of this Order.

#### **IV. MEMBERSHIP AND PROCEDURE**

- A. The Leadership Council shall consist of twenty (20) members, comprised of officials from federal, state, and local government, representatives from environmental and other nongovernmental organizations, and representatives of communities adjacent to the Anacostia River.
- B. Members of the Leadership Council shall be selected on behalf of the Mayor by the Director of DDOE.
- C. The Director of DDOE shall either:
  - a. Serve as chairperson, or
  - b. Serve as co-chairperson with a non-government member selected by the Director of DDOE.
- D. The Leadership Council shall hold periodic meetings, scheduled by the Director of DDOE, where members shall receive For a Cleaner Anacostia River Project updates, discuss issues pertaining to project implementation, share relevant data, and exchange ideas and best practices.


#### **V. SUNSET**

The Leadership Council shall remain active until a Record of Decision, which selects a cleanup approach for remediating the Anacostia River's sediment, is published by the District. The Record of Decision is expected by June 30, 2018. After the Record of Decision is published, the Administration may restructure the Leadership Council so that it can most effectively advise DDOE on the oversight of the restoration of the river.



VI. EFFECTIVE DATE: This Order shall be effective immediately.

  
MURIEL E. BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2015-172  
June 25, 2015

**SUBJECT:** Delegation of Authority to the Director of the Department of General Services to Execute Documents Pursuant to the Soccer Stadium Development Amendment Act of 2014, as amended by the Soccer Stadium Development Technical Clarification Emergency Amendment Act of 2015


**ORIGINATION AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198; 87 Stat. 790, D.C. Official Code, §§ 1-204.22(6) and (11) (2014 Repl.), it is hereby **ORDERED** that:

1. The Director of the Department of General Services (“**DGS**”) is delegated the authority vested in the Mayor pursuant to sections 103(a)(2), 103(b), 103(d), and 103(e) of the Soccer Stadium Development Amendment Act of 2014, effective March 11, 2015, D.C. Law 20-233, D.C. Official Code § 10-1651.01 *et seq.*, as amended by the Soccer Stadium Development Technical Clarification Emergency Amendment Act of 2015, effective May 8, 2015, 2015, D.C. Act 21-59, 62 DCR 5962 and any substantially similar successor legislation (“**Soccer Legislation**”). The Director of DGS is further delegated the Mayor’s authority with respect to the ground lease described in section 104 of the Soccer Legislation.
2. The authority delegated by the Mayor to the Director of DGS herein may be further delegated to subordinates under the personnel authority of the Director of DGS.

3. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
MURIEL E. BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

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**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2015-173  
June 25, 2015

**SUBJECT:** Delegation of Authority to the Deputy Mayor for Planning and Economic Development to Execute Documents Pursuant to the Soccer Stadium Development Amendment Act of 2014, as amended by the Soccer Stadium Development Technical Clarification Emergency Amendment Act of 2015


**ORIGINATION AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198; 87 Stat. 790, D.C. Official Code, §§ 1-204.22(6) and (11) (2014 Repl.), it is hereby **ORDERED** that:

1. The Deputy Mayor for Planning and Economic Development is delegated the authority vested in the Mayor to enter into and transmit to the Council a labor peace agreement and a revised development agreement pursuant to section 104, of the Soccer Stadium Development Amendment Act of 2014, effective March 11, 2015, D.C. Law 20-233, D.C. Official Code § 10-1651.01 *et seq.*, as amended by the Soccer Stadium Development Technical Clarification Emergency Amendment Act of 2015, effective May 8, 2015, 2015, D.C. Act 21-59, 62 DCR 5962 and any substantially similar successor legislation ("**Soccer Legislation**"). The Deputy Mayor for Planning and Economic Development is further delegated the Mayor's authority to implement sections 105 and 108 of the Soccer Legislation.
2. The authority delegated by the Mayor to the Deputy Mayor for Planning and Economic Development herein may be further delegated to subordinates under the personnel authority of the Deputy Mayor for Planning and Economic Development.

3. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
MURIEL E. BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-174  
June 25, 2015

**SUBJECT:** Delegation of Rulemaking Authority to the Department of Public Works Pursuant to An Act Providing for the Removal of Snow and Ice from the Paved Sidewalks of the District of Columbia

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2014 Repl.), and pursuant to section 8 of An Act Providing for the removal of snow and ice from the paved sidewalks of the District of Columbia ("**Act**"), approved September 16, 1922, 42 Stat. 845, to be codified at D.C. Official Code § 9-607, it is hereby **ORDERED** that:

1. The Director of the Department of Public Works is delegated authority to promulgate rules pursuant to section 8 of the Act.
2. **EFFECTIVE DATE:** This Order shall be effective immediately.




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MURIEL E. BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

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**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2015-175

June 29, 2015


**SUBJECT:** Designation of Special Event Areas — Open House for the Mayor's Anacostia Office

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as the Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2014 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:


1. The following public space areas as identified below shall be designated as a Special Event Area to accommodate activities associated with an Open House for the Mayor's Anacostia Office.
2. On Wednesday, July 1, 2015, from 3:00pm to 7:00pm, Shannon Place, S.E., between Chicago Street and W Street, S.E. shall be identified as a special event area.
3. That block of Shannon Place, S.E. shall be closed to vehicular traffic from 3:00pm to 7:00pm.
4. The designated area and the ceremonies shall be operated and overseen by the Executive Office of the Mayor.
5. This Order is an authorization for the closure of the designated streets only, and the operating entities shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event on the designated street. All building, health, life, safety, ADA and use of public space requirements shall remain applicable to the Special Event Area designated by this Order.

6. **EFFECTIVE DATE:** This Order shall become effective immediately.



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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, JULY 8, 2015  
2000 14<sup>TH</sup> 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

- Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-AUD-00031;** Pub Management, Inc., t/a Zoo Bar Café, 3000 Connecticut Ave NW, License #60391, Retailer CR, ANC 3C  
**Failed to Maintain Books and Records, Failed to Meet Food Sales Requirements**
- Show Cause Hearing (Status)** **9:30 AM**  
**Case # 14-CMP-00166;** Kookoovaya, Inc., t/a We, the Pizza, 305 Pennsylvania Ave SE, License #82062, Retailer CR, ANC 6B  
**Failed to File Quarterly Statements (4rd Quarter 2014)**
- Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00261;** La Morentia Restaurant, LLC, t/a La Morentia, 3539 Georgia Ave NW, License #86595, Retailer CR, ANC 1A  
**Failed to File Quarterly Statements (4rd Quarter 2014)**
- Show Cause Hearing (Status)** **9:30 AM**  
**Case # 14-CMP-00597;** Cava Mezze Grill Tenleytown, LLC, t/a Cava Mezze Grill, 4237 Wisconsin Ave NW, License #90698, Retailer CR, ANC 3E  
**No ABC Manager on Duty**

Board's Calendar

July 8, 2015

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-00023**, CSBT, Inc., t/a Town House Tavern Restaurant, 1637 R Street NW, License #24682, Retailer CR, ANC 2B

**Failed to File Quarterly Statements (3rd Quarter 2014), Failed to Maintain Books and Records, Interfered with an Investigation, Stock Purchase Agreement and Transfer of the License without Board Approval**  
*This hearing is cancelled due to the cancellation of the license. See Board Order No. 2015-311, issued June 27, 2015.*

**Show Cause Hearing (Status) 9:30 AM**

**Case # 14-CMP-00785**; CSBT, Inc., t/a Town House Tavern Restaurant, 1637 R Street NW, License #24682, Retailer CR, ANC 2B

**No ABC Manager on Duty**

*This hearing is cancelled due to the cancellation of the license. See Board Order No. 2015-311, issued June 27, 2015.*

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-251-00041**; Caribbean Vibes, Inc., t/a Club Timehri, 2493 18th Street NW, License #77730, Retailer CT, ANC 1C

**Failed to Follow Security Plan, Failed to Preserve a Crime Scene**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 14-AUD-00119**; Jha Corporation, t/a Recessions II, 1823 L Street NW License #60567, Retailer CR, ANC 2B

**Failed to Maintain Books and Records**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 14-CMP-00776**; Po'Boy, LLC t/a Johnny's Half Shell, 400 North Capitol Street NW, License #74573, Retailer CR, ANC 6C

**No ABC Manager on Duty**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 14-251-00309**; Howard Theatre Entertainment, LLC, t/a Howard Theatre 620 T Street NW, License #88646, Retailer CX

**Allowed the Establishment to be Used for an Unlawful or Disorderly Purpose**

**Show Cause Hearing\* 10:30 AM**

**Case # 14-251-00017**; Jam Venture, LLC, t/a Opera Ultra Lounge, 1400 I Street NW, License #84711, Retailer CN, ANC 2C

**Interfered with an Investigation, Failed to Follow Security Plan**

Board's Calendar  
July 8, 2015

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

**Show Cause Hearing\*** **1:30 PM**  
**Case # 14-CMP-00706;** Neighborhood Restaurant Group XV, LLC, t/a Red Apron Butchery/The Partisan, 709 D Street NW, License #90742, Retailer CR ANC 2C  
**Failed to Take Steps Necessary to Ensure Property is Free of Litter**

**Show Cause Hearing\*** **2:30 PM**  
**Case # 14-CC-00189 and # 14-251-00258;** Acott Ventures, t/a Shadow Room 2131 K Street NW, License #75871, Retailer CR, ANC 2A  
**Sale to Minor Violation (two counts), Failed to Take Steps Necessary to Ascertain Legal Drinking Age (two counts)**

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
CANCELLATION AGENDA

WEDNESDAY, JULY 8, 2015  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-024682 – **Townhouse Tavern Restaurant** – Retail – C – Restaurant – 1637 R STREET NW, [Licensee has requested Cancellation of License.]

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ABRA-097290 - **Todd Brill** – Solicitor’s License – 2800 V STREET NE  
[The employer, Bacchus Importers, LTD, has requested cancellation of this license, as the employee no longer works for the company.]

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ABRA- 090123 – **Jason S. Parsons** – Solicitor’s License – 2800 V STREET NE  
[The employer, Bacchus Importers, LTD, has requested cancellation of this license, as the employee no longer works for the company.]

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ABRA-085932 – **Jeffrey M. Snow** – Solicitor’s License – 2800 V STREET NE  
[The employer, Bacchus Importers, LTD, has requested cancellation of this license, as the employee no longer works for the company.]

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ABRA-083886 – **Robert A. Moulthrop** – Solicitor’s License – 2800 V STREET NE  
[The employer, Bacchus Importers, LTD, has requested cancellation of this license, as the employee no longer works for the company.]

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**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING  
INVESTIGATIVE AGENDA**

**WEDNESDAY, JULY 8, 2015  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

**On July 8, 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-AUD-00076 Grand Central, 2447 18TH ST NW Retailer C Restaurant, License#: ABRA-076693

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2. Case#15-251-00110 Takoma Station Tavern, 6914 4TH ST NW Retailer C Tavern, License#: ABRA-079370

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3. Case#15-CMP-00351 Town House Tavern Restaurant, 1637 R ST NW Retailer C Restaurant, License#:ABRA-024682

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4. Case#15-CC-00010 Kogod Liquors, 441 NEW JERSEY AVE NW Retailer A Retail - Liquor Store, License#:ABRA-024868

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5. Case#15-251-00097 Madam's Organ, 2461 18TH ST NW Retailer C Tavern, License#: ABRA-025273

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6. Case#15-AUD-00077 Morrison-Clark Inn, 1015 L ST NW Retailer C Hotel, License#: ABRA-020149

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7. Case#15-AUD-00075 Chateau Inc, 3439 BENNING RD NE Retailer C Restaurant, License#: ABRA-010574

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8. Case#15-CMP-00218(a) B Cafe/Brookland Cafe, 3740 12TH ST NE Retailer C Restaurant,  
License#: ABRA-083121

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9. Case#15-CC-00023 Cities, 919 19th ST NW Retailer C Restaurant, License#: ABRA-086319

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10. Case#15-AUD-00070 Das Ethiopian Cuisine, 1201 28TH ST NW Retailer C Restaurant,  
License#: ABRA-086644

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11. Case#15-251-00111 Echostage, 2135 QUEENS CHAPEL RD NE Retailer C Nightclub,  
License#: ABRA-090250

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12. Case#15-CC-00009 Golden Angel Trading Inc., 914 Rhode Island AVE NE Retailer A Retail  
- Liquor Store, License#:ABRA-097033

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LEGAL AGENDA

WEDNESDAY, JULY 8, 2015 AT 1:00 PM  
2000 14<sup>th</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Settlement Agreement between ANC 2B and Beacon Hotel & Corporate Headquarters. *Beacon Hotel & Corporate Headquarters*, 1615 Rhode Island Ave. N.W., Retailer C, License No.: 077109.\*

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2. Review of Final Rulemaking for Adams Morgan Moratorium Zone, approved by the Council on June 16, 2015.

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**\* In accordance with D.C. Official Code §2-574(b) Open Meetings Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, JULY 8, 2015 AT 1:00 PM  
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Class Change from Retailer CR to Retailer CT. ANC 2F. SMD 2F04. Outstanding fine/citation: Case #14-CMP-00586, 9/13/2014, No ABC Manager, Citation #4062, \$2000 fine. No conflict with Settlement Agreement. *Veranda*, 1100 P Street NW, Retailer CR, License No. 073443.

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2. Review Application for Class Change from Retailer CR to Retailer CT. ANC 1B. SMD 1B02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Freedom Lounge*, 1920 9<sup>th</sup> Street NW, Retailer CR, License No. 097277.

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3. Review Application for Class Change from Retailer CR to Retailer CT. ANC 2B. SMD 2B01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Madrid Restaurant (Formerly Odeon Café)*, 1714 Connecticut Avenue NW, Retailer CR, License No. 005811.

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4. Review Application for Class Change from Retailer DR to Retailer CR. ANC 2B. SMD 2B04. Outstanding fines/citations: Case #15-CMP-00330, 5/19/2015, No ABC Manager on Duty, Citation #5181, \$250 fine; Case #12-CMP-00356, 5/1/2012, Quarterly Statement, Citation #7263, \$500 fine. No conflict with Settlement Agreement. *Java House*, 1645 Q Street NW, Retailer DR, License No. 072780.

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5. Review Application for Summer Garden Endorsement. ANC 6E. SMD 6E02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Ivy and Coney*, 1537 7<sup>th</sup> Street NW, Retailer CT, License No. 092860.

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6. Review Request for Portable Bar in Summer Garden. ANC 5D. SMD 5D01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Bidwell*, 1309 5<sup>th</sup> Street NE, Retailer CT, License No. 092990.
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7. Review Request to Temporarily Reactivate Previously-Used Secondary Warehouse Space, located at 3525 V Street NE, for 3-4 Months. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Capital Eagle*, 2815 V Street NE, Wholesaler A, License No. 026023.
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8. Review Application for Manager's License. *Erinn M. Smith*, ABRA-099406.
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9. Review Application for Manager's License. *Francisco Valenzuela-Guzman*, ABRA-099504.
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10. Review Application for Manager's License. *Carlos A. Palma*, ABRA-099549.
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11. Review Manager's License Renewal Application. *Ronald A. Cestoni*, ABRA-092460.
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**\*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.**

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION****NOTICE OF FUNDING AVAILABILITY**

School Improvement Grant (SIG) Program

Application Release Date: Tuesday, July 7, 2015

Mandatory Application Assistance Workshop: Tuesday, July 21, 2015

Application Submission Deadline: Friday, August 21, 2015

The District of Columbia Office of the State Superintendent of Education (OSSE) is soliciting applications for the purpose of awarding School Improvement Grant (SIG) funds to local education agencies (LEAs) that demonstrate the greatest need for the funds and the strongest commitment to use the funds to provide adequate resources in order to raise substantially the achievement of students in their lowest-performing schools. School Improvement Grants, authorized under section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965 (Title I or ESEA), are grants made to state educational agencies (SEAs) to make competitive sub-grants to LEAs. SIG funds are used for the purpose of implementing one of the US Department of Education's approved turnaround models: Turnaround, Transformation, Restart, Evidence-Based Whole-School Reform Model, Early Learning Model and Closure.

**Eligibility:** LEAs that have schools identified as Priority or Focus under the District of Columbia's Waiver to the Elementary and Secondary Education Act (ESEA) are eligible to apply.

**Length of Awards:** Grant awards will be made for a period of three (3) years, pending funding availability and the LEA/school's satisfactory implementation of the SIG grant guidelines.

**Available Funding for Awards:** The amount available for this award period is \$1,322,532.05.

**Anticipated Number of Awards:** It is anticipated that OSSE will have funding available for approximately two (2) to four (4) new awards. While LEAs with Focus schools are eligible to apply for SIG funding, LEAs with Priority schools will receive preference in the selection process given the limited amount of available SIG funding (\$1,322,532.05) and the large number of schools currently classified as Priority schools.

The Request for Applications (RFAs) will be released on Tuesday, July 7, 2015, and the deadline for submission is Friday, August 21, 2015, at 4:00 p.m. The RFA will be available on OSSE's website, [www.osse.dc.gov](http://www.osse.dc.gov) and can also be found on the Enterprise Grants Management System's website at <https://osse.mtwgms.org/wdcossegmsweb/logon.aspx> and the Grants Clearinghouse at <http://opgs.dc.govpage/opgs-district-grants-clearinghouse>.

The OSSE will facilitate one (1) mandatory LEA application technical assistance workshop for grant applicants. Applicants are required to attend the mandatory LEA application technical

assistance workshop, scheduled from 10:00 a.m. to 12:00 p.m. on Tuesday, July 21, 2015 at the Office of the State Superintendent of Education, 810 1st Street, NE, 8th Floor (Conference Room 806 B), Washington, D.C. 20002. Failure to attend the technical assistance workshop will disqualify an LEA from applying for SIG funds.

For additional information regarding this competition, please contact Dr. LeeTosha Henry, Program Analyst, via email at [leetosha.henry@dc.gov](mailto:leetosha.henry@dc.gov) or (202) 481-3797.

**BOARD OF ELECTIONS****CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

**VACANT: 2A08 and 3D07**

Petition Circulation Period: **Monday, July 6, 2015 thru Monday, July 27, 2015**

Petition Challenge Period: **Thursday, July 30, 2015 thru Wednesday, August 5, 2015**

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Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections  
441 - 4<sup>th</sup> Street, NW, Room 250N  
Washington, DC 20001**

For more information, the public may call **727-2525**.

**DEPARTMENT OF EMPLOYMENT SERVICES  
OFFICE OF WAGE AND HOUR**

**PUBLIC NOTICE**

**District of Columbia Minimum Wage Increase – 2015**

Beginning July 1, 2015, the minimum wage in the District of Columbia will increase from \$9.50 per hour to \$10.50 per hour for all workers, regardless of size of employer. The Minimum Wage Amendment Act of 2013 was signed into law on January 15, 2014 after unanimous passage by the D.C. Council and includes provisions to further increase the minimum wage through 2016.

Under the law, the District's minimum wage is slated to increase by \$1.00 on July 1 each year from 2014 through 2016, capping at \$11.50 per hour. Beginning July 1, 2017, the District's minimum wage will increase annually in proportion to the annual average increase in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area for the preceding 12 months.

The base minimum wage for tipped restaurant employees will remain at \$2.77 per hour. However, if an employee's hourly tip earnings (averaged weekly) added to the base minimum wage do not equal the District's full minimum wage, the employer must pay the difference.

Every employer subject to the provisions of the Act must post the D.C. Minimum Wage poster in or about the premises at which any employee covered is employed.

Please direct all inquiries to:

Mohammad Sheikh  
Deputy Director, Labor Standards Bureau  
(202) 671-0588

**DISTRICT DEPARTMENT OF THE ENVIRONMENT**

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, 5<sup>th</sup> Floor, Washington, DC, intends to issue an air quality permit (#6246-R1) to Federal Bureau of Prisons – Central Office to operate an emergency fire pump with a 105 hp John Deere Model 4045TF220 diesel fuel fired engine at the Federal Bureau of Prisons – Central Office, located at the GSA HOLC Building, 320 First Street NW, Washington, DC 20534. The contact person for facility is Brett Barrientos, Facility Manager, at 202 532-5842. The applicant's mailing address is 320 First Street NW, Washington, DC 20534.

Emissions:

Maximum emissions from the 105 hp fire pump engine, operating five hundred (500) hours per year, is expected to be as follows:

<b>Pollutant</b>	<b>Maximum Annual Emissions (tons/yr)</b>
Total Particulate Matter (PM Total)	0.058
Oxides of Sulfur (SO <sub>x</sub> )	0.054
Oxides of Nitrogen (NO <sub>x</sub> )	0.81
Volatile Organic Compounds (VOC)	0.065
Carbon Monoxide (CO)	0.18

The proposed overall emission limits for the equipment are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from this unit, 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, 5<sup>th</sup> Floor  
Washington, DC 20002  
[Stephen.Ours@dc.gov](mailto:Stephen.Ours@dc.gov)

**No written comments or hearing requests postmarked after August 3, 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, 5<sup>th</sup> Floor, Washington, DC, intends to issue an amended air quality permit (#6943-A1) to Gallaudet University to construct and operate one (1) 42.00 MMBtu per hour dual fuel (natural gas and No. 2 fuel oil) fired boiler (burner model number LNICM11A-GO-30) at Gallaudet University, Central Utilities Building, located at 800 Florida Avenue NE, Washington, DC 20002.

The reason of the amendment to Permit (#6943) is that Gallaudet University was unable to complete the construction of the boiler as originally planned and therefore requested an extension of the performance testing deadline in the earlier permit. This amendment extends the performance testing deadline to December 31, 2015. This amendment will also be used to slightly modify emission limits so that they are rounded to the nearest hundredths place consistent with a separate permit for an identical unit at the facility.

The contact person for the facility is Amon Brown, Interim Director, Office of Administration, Gallaudet University, at (202) 651-5007. The facility's mailing address is 800 Florida Avenue NE, Washington, DC 20002.

Emissions:

Maximum emissions from the unit operating 24 hours per day for 365 days per year burning natural gas are expected to be as follows:

	<b>Maximum Annual Emissions</b>
<b>Pollutant</b>	<b>(tons/yr)</b>
Total Particulate Matter (PM Total)	0.883
Sulfur Dioxide (SO <sub>2</sub> )	0.108
Nitrogen Oxides (NO <sub>x</sub> )	5.335
Volatile Organic Compounds (VOC)	4.599
Carbon Monoxide (CO)	6.807

Alternatively, although use of No. 2 fuel oil is severely limited to periods of gas supply emergencies, periods of gas curtailment, and periodic testing, as a worst case estimate, assuming that the No. 2 fuel oil were the only fuel used, maximum annual emissions (24 hours per day, 365 days per year) would be as follows:



	<b>Maximum Annual Emissions</b>
<b>Pollutant</b>	<b>(tons/yr)</b>
Total Particulate Matter (PM Total)	2.631
Sulfur Dioxide (SO <sub>2</sub> )	0.284
Nitrogen Oxides (NO <sub>x</sub> )	22.07
Volatile Organic Compounds (VOC)	6.991
Carbon Monoxide (CO)	6.807

The proposed revised emission limits for the equipment are as follows:

- a. The 42.00 million BTU per hour dual fuel-fired boiler (identified as Boiler #1) shall not emit pollutants in excess of those specified in the following table [20 DCMR 201]:

<b>Pollutant</b>	<b>Short-Term Limit (Natural Gas) (lb/hr)</b>	<b>Short-Term Limit (No. 2 Fuel Oil) (lb/hr)</b>
Carbon Monoxide (CO)	1.55	1.55
Oxides of Nitrogen (NO <sub>x</sub> )	1.22	5.04
Total Particulate Matter (PM Total)*	0.20	0.60
Volatile Organic Compounds (VOC)	1.05	1.60
Sulfur Dioxide (SO <sub>2</sub> )	0.02	0.07

\*PM Total includes both filterable and condensable fractions.

- b. Visible emissions shall not be emitted into the outdoor atmosphere from the boiler, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- c. In addition to complying with Condition (b), the Permittee shall not discharge from the unit any emissions that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity. [40 CFR 60.43c(c)]
- d. 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]
- e. Total suspended particulate matter emissions from the boiler shall not exceed 0.07 pound per million BTU. [20 DCMR 600.1]
- f. Emissions shall not exceed those achieved with the performance of annual combustion adjustments on the boiler. To show compliance with this condition, the Permittee shall, each calendar year, perform adjustments of the combustion processes of the boiler with the following characteristics [20 DCMR 805.8(a) and (b)]:

- i. Inspection, adjustment, cleaning or replacement of fuel burning equipment, including the burners and moving parts necessary for proper operation as specified by the manufacturer;
- ii. Inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO<sub>x</sub> and, to the extent practicable, minimize emissions of CO;
- iii. Inspection of the air-to-fuel ratio control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer; and
- iv. Adjustments shall be made such that the maximum emission rate for any contaminant does not exceed the maximum allowable emission rate as set forth in this section.

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, 5<sup>th</sup> Floor  
Washington, DC 20002  
[Stephen.Ours@dc.gov](mailto:Stephen.Ours@dc.gov)

**No written comments or hearing requests postmarked after August 3, 2015 will be accepted.**

For more information, please contact Stephen S. Ours at (202) 535-1747.

**FRIENDSHIP PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

Friendship Public Charter School is soliciting proposals from qualified vendors for **Educational Consultant**. The competitive Request for Proposal can be found on FPCS website at <http://www.friendshipschools.org/procurement>. Proposals are due no later than 4:00 P.M., EST, July 20<sup>th</sup> 2015. No proposal will be accepted after the deadline. Questions can be addressed to: [ProcurementInquiry@friendshipschools.org](mailto:ProcurementInquiry@friendshipschools.org)

**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Alarm System Services and Monitoring**

Friendship PCS intends to enter into a sole source contract with United Security to provide alarm system monitoring, key card access, and service for legacy alarm systems at its Chamberlain, Woodridge, Blow Pierce, Collegiate, Tech Prep, and Southeast facilities and to replicate the legacy alarm systems at its Armstrong and Nicholson facilities. The decision to sole source is based on United Security's role as the exclusive provider of this service, which includes a universal key card access system and centralized emergency notification system for all Friendship PCS facilities. The fee for service is approximately \$100,000

**DEPARTMENT OF HEALTH (DOH)  
HIV/AIDS, HEPATITIS, STD & TB ADMINISTRATION (HAHSTA)  
NOTICE OF FUNDING AVAILABILITY (NOFA)  
RFA # HAHSTA\_EBP071015**

**Effi Barry HIV/AIDS Capacity Building Program**

The Government of the District of Columbia, Department of Health (DOH) HIV/AIDS, Hepatitis, STD & TB Administration (HAHSTA) is soliciting applications from District organizations to participate in the Effi Barry HIV/AIDS Program. The Effi Barry Program is a capacity-building initiative that seeks to strengthen the infrastructure of District medical and non-medical providers and to prepare organizations to fully embrace the high-impact prevention strategies. This year, the Effi Barry Program will provide funding to implement new innovative approaches focusing on building organizational capacity for sustainability within the changing landscape of HIV and a single award for training, technical assistance and capacity building.

Up to **\$400,000** will be made available for the Effi Barry Program through FY 16 DC Appropriated funds. The funds are authorized by the "Effi Slaughter Barry HIV/AIDS Initiative Act of 2008". DOH is soliciting applications to support two program areas under this RFA:

- **Effi Barry HIV/AIDS Institute:** one (1) award for up to \$150,000. The awardee will provide basic HIV service competencies and advanced skills in health care systems, data and health informatics, volunteer management, Board and Executive Director Development, and high impact prevention including biomedical through a variety of mechanisms.
- **Innovation Applicants:** up to six (6) awards for organizations; total funding amount of \$250,000 with no single award more than \$50,000.

<b>PrEP</b>	<b>Billing</b>	<b>Resource Management</b>
<ul style="list-style-type: none"> <li>• Outreach/Awareness</li> <li>• Expanded STD Screening and appropriate Treatment referral</li> <li>• PrEP Adherence Counseling</li> <li>• Support Services</li> </ul>	<ul style="list-style-type: none"> <li>• Financial Billing Infrastructure</li> <li>• Cost Analysis of Services</li> <li>• Unit of service versus cost reimbursement</li> <li>• Invoicing and Documentation</li> </ul>	<ul style="list-style-type: none"> <li>• Cash Flow</li> <li>• Cash Reserve Allocation/Management</li> <li>• Adequate monitoring of expenditures and receivables.</li> <li>• Operating from a Social Service</li> </ul>

**The release date for RFA # HAHSTA\_EBP071015 is Friday, July 10, 2015.** The RFA will be available for pick up at 899 North Capitol Street, NE, 4th Floor, Washington, DC and on the website at <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse> under the District Grants Clearinghouse on Friday, July 10, 2015. Submission deadline is **Wednesday, July 29, 2015 no later than 4:45 p.m.**

The Pre-Application meeting will be held in the HAHSTA offices located at 899 North Capitol Street, NE, Washington, DC 20002 4th Floor, on **Wednesday, July, 15, 2014** from 2:30pm – 4:00pm. Please contact Anthony E. Fox at [Anthony.Fox@dc.gov](mailto:Anthony.Fox@dc.gov) or (202) 671-4937 for additional information.

**DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH ADMINISTRATION**

**NOTICE OF FUNDING AVAILABILITY  
Request for Applications (RFA) # CHA\_SBHC071715**

**School-Based Health Center**

The Government of the District of Columbia, Department of Health's (DOH), Community Health Administration (CHA) is soliciting applications from qualified organizations to improve access to care for high school students in grades 9<sup>th</sup> thru 12<sup>th</sup> by operating a School-Based Health Center (SBHC). The overall goal of this SBHC is to address the primary and urgent care needs of students in the school by providing better access to health care services.

The following entities are eligible to apply for grant funds under this RFA: Private non-profit organizations. Private entities include hospitals, community health centers, community-based and faith-based organizations having documentation of providing medical or nursing services to School-Based Health Centers. All organizations must be located within and provide services in the District of Columbia.

The Community Health Administration expects to make one award for up to \$325,000.00 to operate the newly constructed SBHC located at Roosevelt Senior High School. This grant will be funded using FY 16 District Appropriated funds. An award is contingent upon the availability of funds. The projected start-up date for an award is October 1, 2015.

**The release date for RFA# CHA\_SBHC071715 is Friday, July 17, 2015.**

This RFA will be posted on the Office of Partnership and Grant Services website under the DC Grants Clearinghouse at <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse> on Friday, July 17, 2015. A limited number of copies of the RFA will be available for pick up at DOH/CHA offices located at 899 North Capitol Street, NE Washington, DC 20002 3<sup>rd</sup> floor.

**The Request for Application (RFA) submission deadline is 4:45 pm Friday, August 14, 2015.**

The **Pre-Application Conference** will be held in the District of Columbia at 899 North Capitol Street, NE, 3<sup>rd</sup> Floor Conference Room, Washington, DC 20002, on **Thursday, July 23, 2015, from 10:00am – 12:30pm.**

If you have any questions please contact Luigi Buitrago via e-mail [luigi.buitrago@dc.gov](mailto:luigi.buitrago@dc.gov) or by phone at (202) 442-9154.

\*\*DOH/CHA is located in a secured building. Government issued identification must be presented for entrance.

**KINGSMAN ACADEMY PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Food Service Management Services**

**Kingsman Academy PCS** is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2015-2016 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Request for Proposals (RFP) such as; student data, days of service, meal quality, etc. may be obtained beginning on Friday, **July 10, 2015** from Mr. Hasan at 571-348-4213 or [procurement@kingsmanacademy.org](mailto:procurement@kingsmanacademy.org).

Proposals will be accepted at 1375 E Street, NE, Washington, DC 20002 on Thursday, August 6, 2015, not later than **1:00 P.M.**

**All bids not addressing all areas as outlined in the IFB (RFP) will not be considered.**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-32**

March 24, 2015

VIA ELECTRONIC MAIL

Mr. Stephen Marcus

RE: FOIA Appeal 2015-32

Dear Mr. Marcus:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”) redacted documents improperly and provided insufficient justification for doing so.

Background

On October 6, 2014, you submitted a request under the DC FOIA to the DCRA seeking the following:

- Copies of all documents, physical and electronic, including any email correspondence, relating to construction to be performed, including but not limited to, the building of a site wall and fence on the property of Sean P. Glass located at 3329 Q Street, N.W., Washington, DC 20007.
- Copies of all documents, physical and electronic, including any email correspondence, between the Department of Consumer and Regulatory Affairs and Sean Glass and/or his architect Robert Gurney relating to construction to be performed, including but not limited to, the building of a site wall and fence on the property of Sean P. Glass located at 3329 Q Street, N.W., Washington, DC 20007.
- Copies of all documents, physical and electronic, including any email correspondence, relating to documents submitted to The Old Georgetown Board and/or the Commission on Fine Arts by the Department of Consumer and Regulatory Affairs in connection with construction to be performed including but not limited to, the building of a site wall and fence on the property of Sean P. Glass located at 3329 Q Street, N.W., Washington, DC 20007.
- Copies of all documents, physical and electronic, including any email correspondence, between the District of Columbia Department of Consumer and Regulatory Affairs and the Office of Planning and/or Timothy Dennee relating to construction to be performed,

including but not limited to, the building of a site wall and fence on the property of Sean P. Glass located at 3329 Q Street, N.W., Washington, DC 20007.

- Copies of all documents, physical and electronic, including any email correspondence, between the District of Columbia Department of Consumer and Regulatory Affairs and the Commission on Fine Arts and/or Eve Barsoum relating to construction to be performed, including but not limited to, the building of a site wall and fence on the property of Sean P. Glass located at 3329 Q Street, N.W., Washington, DC 20007.

On appeal, you challenge the DCRA's redactions as "overbroad and inaccurate and he has provided an insufficient justification for the redactions." You also state that the emails that were redacted are not exempt from disclosure because "we sent identical FOIA requests to the Office of Planning and the Historic Preservation Office on October 6, 2014, and the responses we received contain unredacted copies of many of the *same* emails redacted by" DCRA.

DCRA sent this office a response to your appeal on March 19, 2015, advising that it withheld the requested documents as they are a series of emails between the Office of Planning and DCRA employees, specifically Ms. Doris Parker-Woolridge, Assistant General Counsel, and thus attorney-client privilege. However, DCRA concedes that the redacted email correspondence received by you from DCRA is identical to the unredacted email which was provided by the Office of Planning's FOIA officer.

### Conclusion

Based on your assertion, as well as DCRA's, that you have received the email correspondence in question in an unredacted form from the Office of Planning, we consider this matter to be moot and dismiss it; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the DCRA's response.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Gregory M. Evans

Gregory M. Evans  
Associate Director  
Mayor's Office of Legal Counsel

cc: Brandon Bass, FOIA Officer, DCRA (via email)



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-33**

March 13, 2015

Mr. Willie Murphy

RE: FOIA Appeal 2015-33

Dear Mr. Murphy:

This letter responds to the letter you sent to the Chief of the Metropolitan Police Department (“MPD”) dated November 18, 2014, appealing the denial of a request you submitted to the MPD under the District of Columbia Freedom of Information Act (“DC FOIA”). The MPD forwarded this office your appeal, as the DC FOIA provides that the Mayor shall respond to administrative appeals of FOIA decisions.

Background

In your appeal, you assert that on October 21, 2014, you requested from MPD Citizen Complaints (PD-99s), a list of PD Form 150as, MPD incidents, Department Disciplinary Office, and Internal Affairs Division investigations regarding Sixth District Vice Officers B. Vigil and L. Shefman. On November 18, 2014, the MPD responded to your request, stating that it could neither admit nor deny whether any complaints or investigations had been filed regarding Officers Vigil and Shefman. The MPD further stated that any responsive records would be exempt from disclosure under D.C. Official Code § 2-534(a)(2) because producing them would constitute an unwarranted invasion of the officers’ personal privacy.

On appeal, you contend that the officers in question are public officials and “by law any citizen requesting this information should be allowed to obtain these public records concerning these two officer(s) and their work performance.”

In response to your appeal, the MPD sent this office a letter on March 12, 2015, reaffirming its position that disclosing citizen complaint records and disciplinary files of identified police officers would constitute an unwarranted invasion of the officers’ personal privacy.

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to inspect public records is subject to various exemptions that may form the basis for a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute may be examined to construe the local law.

Two provisions of DC FOIA provide exemptions relating to personal privacy. D.C. Official Code § 2-534(a)(3)(C) (“Exemption (3)(C)”) provides an exemption for disclosure for “[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy.” The other provision, D.C. Official Code § 2-534(a)(2) (“Exemption (2)”), applies to “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” While Exemption (2) requires that the invasion of privacy be “clearly unwarranted,” the word “clearly” is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Internal investigations conducted by a law enforcement agency such as MPD fall within Exemption (3)(C) if these investigations focus on acts that could, if proved, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep’t of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). *See also Rugiero v. United States Dep’t of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption “applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well.”) Since the records you seek relate to investigations that could result in civil or criminal sanctions, Exemption (3)(C) applies to your request.

Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of one’s individual privacy interests against the public interest in disclosing his or her disciplinary files. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). On the issue of privacy interests, the D.C. Circuit has held:

[I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C).<sup>1</sup> ‘The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.’ *Bast*, 665 F.2d at 1254.

*Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir. 1984).

Here, we find that Officers Vigil and Shefman have sufficient privacy interests in allegations of their misconduct. “[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter,

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<sup>1</sup> Exemption 7(C) under the federal FOIA is the equivalent of Exemption (3)(C) under the DC FOIA.

an appropriate subject for exemption under 7(C).” *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). An agency is justified in not disclosing documents that allege wrongdoing even if the accused individual was not prosecuted for this wrongdoing, because the agency’s purpose in compiling the documents determines whether the documents fall within the exemption, not the ultimate use of the documents. *Bast v. United States Dep’t of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981).

As discussed above, the D.C. Circuit in the *Stern* case held that individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity and that protection of this privacy interest is a primary purpose of the exemption in question. We believe that the same interest is present with respect to civil disciplinary sanctions that could be imposed on an MPD officer. The records you seek may consist of mere allegations of wrongdoing, the disclosure of which could have a stigmatizing effect regardless of accuracy.

We say “may consist” because, in this case, MPD has not stated, and has maintained that it will not state, whether or not complaint records exist relating to the officers you have identified. This type of response is referred to as a “Glomar” response, and it is warranted when the confirmation or denial of the existence of responsive records would, in and of itself, reveal information exempt from disclosure. *Wilner v. Nat’l Sec. Agency*, 592 F.3d 60, 68 (2nd Cir. 2009). The MPD’s Glomar response is justified in this matter because if a written complaint or subsequent investigation against Officers Vigil and Shepman exists, identifying the written record may result in the harm that the FOIA exemptions were intended to protect.

Your position that there is an overriding public interest in the disclosure of a public employee’s disciplinary files was addressed by the court in *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). In *Beck*, the court held:

The public's interest in disclosure of personnel files derives from the purpose of the [FOIA]--the preservation of "the citizens' right to be informed about what their government is up to." *Reporters Committee*, 489 U.S. at 773 (internal quotation marks omitted); *see also Ray*, 112 S. Ct. at 549; *Rose*, 425 U.S. at 361. This statutory purpose is furthered by disclosure of official information that "sheds light on an agency's performance of its statutory duties." *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that "reveals little or nothing about an agency's own conduct" does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency's own conduct.

*Id.* at 1492-93.

In the instant matter, releasing the disciplinary files of two police officers would constitute an invasion of their privacy under Exemptions (3)(C) and (2) of the DC FOIA and would not shed light on the MPD's performance of its statutory duties.

Conclusion

Based on the foregoing, we uphold the MPD's decision and hereby dismiss your appeal. This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-34**

April 20, 2015

VIA ELECTRONIC MAIL

Garth Kant

RE: FOIA Request 2015-34

Dear Mr. Kant:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On August 5, 2014, you submitted a request under the DC FOIA to the MPD seeking all materials used in the investigation into the October 3, 2013, fatal shooting of Miriam Carey by uniformed agents of the U.S. Secret Service and officers of the U.S. Capitol Police Department. You further requested the final report and findings of that investigation. The MPD denied your request on October 17, 2014, stating that “Although the Internal Affairs Division has completed its investigation of the use of force, the matter is still under investigation by the U.S. Capitol Police and the U.S. Secret Service. The disclosure of the requested report at this time is premature, and would interfere with the ongoing investigation . . .”

On appeal, you challenge various aspects of the MPD’s decision, including its position to deny your request based on the effect it might have upon other agencies since you are seeking information only from the MPD.

In response to your appeal, the MPD advised this office earlier today that it has reevaluated its response to your request. The MPD is now reviewing responsive documents and intends to release them to you subject to appropriate redactions by April 24, 2015.

Conclusion

Based on the MPD’s representation that will be providing you with redacted versions of the documents you are seeking by the end of this week, we consider this matter to be moot and dismiss it; however, the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the MPD’s response.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-35**

March 16, 2015

VIA ELECTRONIC MAIL

Mr. Darryl Hawkins

RE: FOIA Appeal 2015-35

Dear Mr. Hawkins:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a) (“DC FOIA”). You assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On January 12, 2015, you submitted a request to MPD for video footage from January 10, 2015, between 5:45 a.m. to 6:15 a.m. from the camera located at 12th Street and Constitution Avenue, N.W. The MPD responded to your request on January 16, 2015, explaining that according to the MPD’s Technical Information Division (“TID”), the camera from which you sought footage was inoperable on January 12, 2015, and as a result no footage could be recovered.

The MPD responded to your appeal in a letter to this office dated March 13, 2015. MPD reiterated its position and stated that upon receiving your appeal, an MPD FOIA officer contacted the TID again, and the TID verified that the camera from which you seek footage was inoperable on January 10, 2015.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body ...” Id. at § 2-532(a).

Public records are defined under the DC FOIA as including “all books, papers, maps, photographs, cards, tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images), or other documentary materials, regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Public records include information stored in an electronic format.” D.C. Official Code § 2-502(18). The right created

under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

The MPD has indicated that it does not possess the records that you have requested. Under the DC FOIA, an agency is required to disclose materials only if they are “retained by a public body.” D.C. Official Code § 2-502(18). Here, MPD does not possess the camera footage you have requested because the camera in question was not working on the date for which you requested footage.

### Conclusion

Based on the foregoing, we uphold the MPD’s determination that it does not possess any records that are responsive to your request. If you are dissatisfied with the decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor’s Office of Legal Counsel

cc: Ronald Harris, Esq., MPD (via email)



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-36**

March 23, 2015

VIA ELECTRONIC MAIL

Mr. David Wilson

RE: FOIA Appeal 2015-36

Dear Mr. Wilson:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On November 10, 2014, you submitted a request under the DC FOIA to the MPD seeking “a true and correct copy of the tape recording and the transcript of the June 14, 1999 body recording,” made by a confidential informant (“CI”) as part of a homicide investigation operation run by Detective Michael J. Will. The MPD denied your request on January 6, 2015, stating that the information requested is exempt from disclosures pursuant to D.C. Official Code §§ 2-534 (a)(2), (a)(3)(C), and (a)(3)(D).

On appeal, you challenge the MPD’s response to your request, contending that: (1) the CI’s identity had already been revealed in a public jury trial; (2) that the public’s interest in preventing a wrongful homicide conviction outweighs any personal privacy interests; (3) that the identity of the CI could be redacted; (4) and that the person whose murder-confession the tape contains is now dead and therefore does not have a privacy interest in the matter.

The MPD responded to your appeal in a letter to this office on March 20, 2015. The MPD reaffirmed its position, asserting D.C. Official Code §§ 2-534 (a)(2), (a)(3)(C), and (a)(3)(D). However, the MPD failed to include a *Vaughn* index, indicate whether a search had been conducted, or explain what the scope of any such search had been.

On March 23, 2015, MPD supplemented its response by email to this office. The email included a declaration from Detective Daniel Whalen, a detective assigned to MPD’s Homicide Branch’s Cold Case/Major Case Squad. This declaration indicated that Detective Whalen had performed a search of the homicide file relating to the double homicide of Mr. Ronnie Middleton and Ms. Sabrina Bradley, and indicated that “[t]here is one file for this case in our current inventory.” The declaration went on to state that the one responsive file, a report, indicated the recording in

question had been surrendered to Special Agent Hester of the Bureau of Alcohol, Tobacco & Firearms (“BATF”), and that no transcript or recording had been found in the homicide file. The declaration concludes that if the BATF had provided MPD a copy of the transcript of the recording that “one would expect it to be contained within the MPD homicide case file.”

### Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *See e.g.* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

In support of his position, you cite facts that weigh in favor of his entitlement to receive the records, primarily the fact that the CI’s identity has already been publicly disclosed and the fact that the speaker in the recording is now dead. In its supplemental response, MPD offers that it searched the homicide file and that no recording or transcript was found.

The crux of this matter is the adequacy of the search and your belief that more records exist.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

Accordingly, in order to make a reasonable and adequate search, an agency must make reasonable determinations as to (1) the location of records requested, and (2) the search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C.

2008) (citing *Oglesby*, 920 F.2d at 68). Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *Id.*

An agency can demonstrate that these determinations have been made by a “reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that **all** files likely to contain responsive materials (if such records exist) were searched . . . .” *Id.* (emphasis added). Conducting a search in the record system most likely to be responsive is not by itself sufficient; “at the very least, the agency is required to explain in its affidavit that no other record system was likely to produce responsive documents.” *Id.* (internal quotations omitted).

In this matter, MPD has indicated that it searched the homicide case file related to the recording in question and that the homicide case file is the most likely location of the recording. What MPD has failed to indicate is that the homicide case file is the **only** record system likely to produce a responsive document or that **all** files likely to contain a responsive document were searched. Moreover, while Detective Whalen has indicated that the Major Case Squad’s “current inventory” only includes one file, he did not indicate the search terms used to conduct the search, or whether another squad’s inventory or record system might contain a responsive document. Accordingly, we do not find that the search was reasonable and adequate.

### Conclusion

Based on the foregoing, we reverse the MPD’s decision and hereby remand your appeal. At the very least, MPD shall identify all other record systems in its possession likely to produce responsive documents, including the location where any written correspondence from the BATF regarding this case might be kept, the location of any files relating to the investigation of the alleged accomplices (Mr. Antonio Roberson or Mr. Antoine Draine) are kept, the location of any files pertaining to the confidential informant (Mr. Bobby Capies) are kept, the location of any files pertaining to the gang investigations (the 1-5 Mob and Congress Park Crew) are kept, or any possible archived records systems not included in the MPD’s description of its “current inventory.” If other record systems are identified, MPD shall conduct a search of them for responsive records and provide such records, subject to any applicable exemption. This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Sarah J Forman

Sarah Jane Forman  
Associate Director  
Mayor’s Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-37**

May 29, 2015

VIA ELECTRONIC MAIL

Mr. Jeffrey L. Light

RE: FOIA Appeal 2015-37

Dear Mr. Light:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you (“Appellant”) assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On December 16, 2013, Appellant submitted a request under the DC FOIA to the MPD seeking records referring or relating to Stingray devices or equipment. The request describes Stingray as a cell site simulator manufactured by the Harris Corporation that mimics a wireless carrier cell tower to receive location data and other information from all nearby mobile phones and cellular data devices. The request contained 9 parts as follows:

1. Please provide all manuals, guides, videos, brochures, pamphlets, and other records, whether in print or electronic format, which refer or relate to the installation, training, deployment, or use of any Stingray devices or equipment.
2. Please provide all promotional materials, including letters, emails, brochures, pamphlets, videos, and other records, whether in print or electronic format, which mention or describe Stingray devices or equipment. Please include in this search records produced by, originating from, or sent by third parties which mention or describe Stingray devices or equipment.
3. Please provide all contracts, procurement documents, and other records which reflect the existence of any formal or informal agreement between the District of Columbia and Harris Corporation or its affiliates, representatives, or employees.
4. Please provide all invoices, budgets, and other records which reflect the current, future, or previous expenditure of District of Columbia funds to Harris Corporation or its affiliates, representatives or employees.

5. Please provide all e-mails sent to Cathy Lanier or Steven Sund between January 1, 2009 and the date of your search which are: 1) from any employee of Harris Corporation (i.e., an e-mail address ending in "@harris.com"); OR 2) from anyone, but which contains the terms "Stingray" or "cell site simulator". Excluded from this request are emails from news aggregation services.
6. Please provide all training materials, general or special orders, internal operating procedures, circulars, SiTel modules, or other documents that constitute, refer, or relate to MPD policy on the use of Stingray or other cell site simulators.
7. Please provide any talking points or other documents which constitute, refer, or relate to communications with the media about Stingray or other cell site simulators. Your search should include, but not be limited to, emails to or from Gwendolyn Crump (Gwendolyn.Crump@dc.gov) containing the term "Stingray"; emails to or from Gwendolyn Crump or Cathy Lanier referring or relating to the story by WUSA9 on MPD's use of Stingray (available online at <http://www.wusa9.com/news/article/285084/158/DC-area-police-spying-on-cell-phonedata>); and documents referring or relating to WUSA9's 2013 request for an interview with MPD regarding Stingray (request by Nadia Pflaum, npflaum@wusa9.com or Russ Ptacek, rptacek@wusa9.com).
8. Any documents constituting, referring, or relating to training on tracking civilian cell phones.
9. Please provide all other records that refer or relate to Stingray equipment or devices or any other cell site simulator equipment or devices.

The MPD submitted three responses to Appellant's request: 1) on June 25, 2014, the MPD produced 15 pages of records; 2) on September 5, 2014, the MPD produced 121 pages of records; and 3) on February 2, 2015, the MPD produced 4 pages of records. The MPD disclosed redacted portions of these records claiming exemptions under D.C. Official Code §§ 2-534(a)(1), (a)(2), (a)(3)(E), and (6). ("Exemption 1,"<sup>1</sup> "Exemption 2,"<sup>2</sup> "Exemption 3(E),"<sup>3</sup> and "Exemption 6"<sup>4</sup> respectively). The MPD located other responsive records, an operator manual, reference

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<sup>1</sup> Exemption 1 protects records containing "[t]rade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained."

<sup>2</sup> Exemption 2 protects records containing "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

<sup>3</sup> Exemption 3(E) protects records that would "[d]isclose investigative techniques and procedures not generally known outside the government."

<sup>4</sup> Exemption 6, which allows for protection of information specifically exempted from disclosure by statute outside of DC FOIA, was asserted in conjunction with the Homeland Security Act of 2002 and the Arms Export Control Act of 1976.

guide, and training material. Those records were withheld in their entirety under the same exemptions.

Appellant submitted an appeal to the Mayor on February 21, 2015, challenging the MPD's second and third responses to the FOIA request. Appellant accepts redactions under Exemption 2 but contends all other redactions pursuant to Exemptions 1, 3(E), and 6 were improper. Appellant asserts that the use Exemption 1 is improper because the MPD did not show that the Stingray manufacturer faces actual competition and failed to indicate how disclosure would cause substantial competitive injury citing *Wash. Post Co. v. Minority Bus. Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). Appellant asserts that the use of Exemption 3(E) is improper because the public is aware of the use of Stingray devices; therefore, disclosure would not reveal investigative techniques or procedures that are not generally known outside the government. Appellant asserts that the MPD did not sufficiently explain the statutes it claimed as a basis for Exemption 6. Based on the MPD's limited assertion, Appellant could not determine how the Homeland Security Act of 2002 and the Arms Export Control Act of 1976 could prevent disclosure of the records.

In addition to contesting the MPD's use of exemptions, Appellant asserts that it was improper to withhold training material and manuals in their entirety. Appellant contends that the MPD must redact the relevant records and disclose segregable portions. Appellant asserts that the MPD's redactions of the training material and manuals may also be challenged, but without a portion of the records those challenges cannot be made.

Appellant asserts that the MPD disclosed a redacted brochure that cannot be redacted because it is in public domain having been released by the police department of Miami, Florida.<sup>5</sup> Finally, Appellant asserts that the MPD did not adequately search for responsive records. Specifically, the MPD did not appear to search for parts numbered 5 and 6 of the request.

In a letter dated May 4, 2015, the MPD responded to the appeal reaffirming its redactions and withholdings. In its response, the MPD does not assert Exemption 1 but affirms and clarifies its use of Exemptions 2, 3(E), and 6. The MPD also raises the exemption under D.C. Official Code § 2-534(a)(4) ("Exemption 4").<sup>6</sup> The MPD states that it consulted with the Federal Bureau of Investigation ("FBI") regarding this request to determine the law enforcement sensitive information related to its records of Stingray devices. The MPD describes its nondisclosure agreement ("NDA") with the FBI, which prohibits the disclosure of documents concerning the capabilities of Stingray devices. The MPD asserts that the NDA itself is withheld pursuant to Exemption 4. The MPD explains that the purpose of the NDA is to prevent disclosure of information that could assist people intent on violating the law to evade detection.

The MPD claims that Exemption 3(E) was properly asserted to redact accounting and index numbers of Stingray parts and equipment because the information could be used to perform a

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<sup>5</sup> Appellant cites <http://egov.ci.miami.fl.us/Legistarweb/Attachments/48003.pdf> page 5 of a PDF

<sup>6</sup> Exemption 4, often known as the "deliberative process privilege" or "litigation privilege," protects "[i]nter-agency or intra-agency memorandums or letters ... which would not be available by law to a party other than a public body in litigation with the public body."

cross-index analysis with other publicly available data to ascertain sensitive information relating to the technical capabilities of Stingray systems. The MPD argues that while the use of Stingray devices is known outside the government, the technical capabilities of such systems are not generally known and disclosure of technical capability could allow circumventing of law enforcement.

The MPD clarifies that its use of Exemption 6 to withhold and redact information is used in conjunction with the Arms Control Export Act and International Traffic In Arms Regulation (ITAR), which implements the Arms Export Control Act, 22 U.S.C. § 2778 and Executive Order 13637. The MPD states that Stingray devices are classified as regulated defense articles on the United States Munitions List (USML), and technical details related to USML technology are subject to the non-disclosure provisions of the ITAR, 22 C.F.R., Parts 120-130. The MPD asserts that the Arms Control Export Act and ITAR leave no discretion in the requirement to withhold information from the public.

Addressing Appellant's public domain argument, the MPD asserts that the information cited by Appellant was not disclosed by the Harris Corporation, the federal government, or the MPD; therefore, there is no waiver of the exemption from disclosure. Regarding the materials withheld entirely, the MPD claims that it withheld the training materials and manuals in their entirety, because the non-exempt information is inextricably intertwined with the exempt information. These materials consist of diagrams, flow charts, and other technical information that after redactions are applied would leave no useful information. On May 5, 2015, the MPD submitted training materials and manuals for *in camera* review. In response to Appellant's assertion that the MPD did not adequately search for records sought in parts 5 and 6 of the request, the MPD conducted another search and discovered responsive emails. The MPD states that the emails are presently being reviewed and will be released subject to appropriate redactions. The MPD states that there are over 900 pages of emails. At the time of the response, the MPD estimates that the review will take at least two weeks, and Appellant will be notified when the review has been completed.

### Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect ... and ... copy any public record of a public body ..." *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemptions

Appellant raises a valid argument that the MPD did not adequately assert the necessary elements to make redactions or withhold disclosure under Exemption 1. The MPD does not reassert or defend the use of Exemption 1 in its response to this appeal. Therefore, Exemption 1 is not considered in this Appeal. Exemption 2 is not at issue either, because it is not contested by Appellant. Exemption 3(E) is at issue; Appellant argues that the MPD cannot redact or withhold the records under this exemption because the use of the devices is known to the general public. Further, Appellant asserts the use of Exemption 3(E) is improper because the redacted information, prices and model identifications, does not reveal investigative techniques or procedures of law enforcement.

For Exemption 3(E) to apply, the information at issue must not be well known to the public. *See Rugiero v. DOJ*, 257 F.3d 534, 551 (6th Cir. 2001). Even when a surveillance technique is commonly known, courts have endorsed the withholding of details that could allow criminals to circumvent the surveillance.<sup>7</sup> The MPD asserts that while the existence and use of Stingray devices is generally known, the technical capabilities of such devices are not generally known. There are technological countermeasures and efforts to circumvent surveillance by Stingray-like devices.<sup>8</sup> Due to the technical nature of Stingray surveillance, we defer to the MPD's assertion that knowing technological capabilities of the devices could result in increased circumvention. Here, disclosure of product names, costs, and serial numbers could be cross referenced with other available information, to reveal the technological capabilities of the MPD's Stingray equipment because product names, costs, and serial numbers are linked to the technological capabilities of these devices. Due to the MPD's assertion that knowledge of the specific, technical capabilities of the MPD's Stingray equipment could allow criminals to evade detection, the redactions and withholdings by the MPD under Exception 3(E) are proper.

Regarding Exemption 6, the MPD clarified the statutes outside of DC FOIA, the ITAR and the Arms Control Export Act, that it relied upon to prevent the release of technical information concerning the capability of its Stingray devices. The MPD states that Stingray devices have been classified as regulated defense articles on the USML. *See* 22 C.F.R. § 121.1(b). As such, technical details concerning this technology are subject to the non-disclosure provisions of the ITAR. *See* 22 C.F.R. §§ 120-130. The ITAR implements the Arms Export Control Act, 22

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<sup>7</sup> *See, e.g., Soghoian v. DOJ*, 885 F. Supp. 2d 62, 75 (D.D.C. 2012) (protecting electronic surveillance techniques because release of information showing what information is collected during surveillance, how it is collected, and when it is not collected could allow criminals to evade detection); *Lewis-Bey v. DOJ*, 595 F. Supp. 2d 120, 138 (D.D.C. 2009) (protecting details of electronic surveillance techniques, including "circumstances . . . timing of their use, and the specific location where they were employed"); *Boyd v. ATF*, 570 F. Supp. 2d 156, 158-59 (D.D.C. 2008) (concluding ATF properly withheld detailed information regarding use of surveillance equipment).

<sup>8</sup> A basic internet search revealed applications (SnoopSnitch and Android ISMI-Catcher Detector) and articles (*see, e.g. Adrian Dabrowski, et al. IMSI-Catch Me If You Can: IMSI-Catcher-Catchers* available at <https://www.sba-research.org/wp-content/uploads/publications/DabrowskiEtAl-IMSI-Catcher-Catcher-ACSAC2014.pdf>) that focus on circumventing the detection capabilities of Stingray-like devices.



U.S.C. § 2778, and Executive Order 13,637, which control the export and import of defense-related articles and services listed on the USML. Because this equipment is governed by the ITAR, anyone exporting the information is required to obtain a license from the Department of State. *See* 22 C.F.R. § 123.1. An unauthorized export of ITAR-controlled information is a felony. *See* 22 C.F.R., § 127. The technical information does not have to leave the borders of the United States to be deemed an export subject to the regulation. *See* 22 C.F.R. § 120.17 (defining an export as the disclosure of technical data about a defense article to a foreign national, even while located in the United States).

Here, Appellant's client is a reporter who has already published the MPD's initial disclosures from this FOIA request. Publication makes the information accessible to foreign nationals. Thus, if the MPD did not withhold and redact technical information of the Stingray devices the disclosure would constitute an unlawful export under the ITAR and the Arms Control Export Act. Therefore, Exemption 6 is properly asserted because disclosure by the MPD to Appellant would constitute an unlawful export under federal law.

Exemption 4 was raised by the MPD in its response to this appeal. As a result, Appellant has not had the opportunity to respond to its invocation. Exemption 4 has been interpreted to incorporate the protections available in civil discovery. *See United States v. Weber Aircraft Corp.*, 465 U.S. 792, 799-800 (1984); *FTC v. Grolier Inc.*, 462 U.S. 19, 26-27 (1983). The MPD asserts that certain information was withheld and redacted under the law enforcement privilege encompassed in Exemption 4. Exemption 4 is most commonly asserted for the deliberative process privilege. *See, e.g., NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975).

The law enforcement privilege is a qualified privilege recognized at common law that is designed to protect ongoing investigations from premature disclosure, disruption, and compromise. *See Black v. Sheraton Corp. of America*, 564 F.2d 531, 546-47 (D.C. 1977). The purpose of the privilege is to protect the confidentiality of sources as well as law enforcement strategies and accumulated evidence. *Kay v. Pick*, 711 A.2d 1251, 1256 (D.C. 1998) ("The privilege is a conditional one that must be asserted with particularity by a high official of the law enforcement agency who is both authorized to assert the privilege on behalf of the agency and who is in a position to know that the privilege is necessary. The assertion of the privilege must be formal and delineated. The party claiming the privilege must have (1) seen and considered the contents of the documents and (2) himself formed the view that on grounds of public interest, they ought not be produced, (3) state with specificity the rationale of the claimed privilege, namely, 3(a) specifying which documents or class of documents are privileged and 3(b) for what reasons.").

The deliberative process privilege of Exemption 4 is intended to protect the process and promote the quality of agency decisions. *See Sears*, 421 U.S. at 150-51. There are two requirements to invoke the deliberative process privilege. *See Mapother v. DOJ*, 3 F.3d 1533, 1537 (D.C. Cir. 1993). First, the communication must be predecisional. *Ancient Coin Collectors Guild v. U.S. Dep't of State*, 641 F.3d 504, 513 (D.C. Cir. 2011) (stating that predecisional communications are "[a]ntecedent to the adoption of an agency policy"). Second, the communication must be deliberative. *See Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975) (stating that a deliberative communication "makes recommendations or expresses opinions on legal or policy matters").

In this appeal, it is not clear that the law enforcement privilege of Exemption 4 offers protection from disclosure beyond what is provided by Exemption 3(E). Further, the MPD did not state sufficient specificity to prevent disclosure under the law enforcement privilege beyond the protection provided by Exemption 3(E). After examining the NDA that the MPD entered into with the FBI, we conclude the document cannot be withheld in its entirety under law enforcement privilege of Exemption 4. The NDA is responsive to Appellant's FOIA request and shall be produced subject to redactions under DC FOIA. However, the guidance that the FBI communicated to the MPD regarding this appeal is protected from disclosure under the deliberative process privilege of Exemption 4 because it is both predecisional for the MPD and deliberative.

### Public Domain

Appellant argues that a portion of the record disclosed by the MPD, a redacted brochure, must be fully disclosed without redaction because it is in the public domain having been published by the police department of Miami. The Court of Appeals for the District of Columbia Circuit has held that under the public domain doctrine, information that would otherwise be subject to a valid FOIA exemption must be disclosed if that information is preserved in a permanent public record or is otherwise easily accessible by the public. (D.C. Cir. 2001), *Niagara Mohawk Power Corp. v. DOJ*, 169 F.3d 16, 19 (D.C. Cir.1999); *see also The Judicial Watch, Inc. v. United States DOD*, 963 F. Supp. 2d 6, 12 (D.D.C. 2013). In order for the public domain doctrine to apply, a requester must be able to point "to specific information in the public domain that appears to duplicate that being withheld." *Afshar v. U.S. Dep't of State*, 702 F.2d 1125, 1130 (D.C. Cir. 1983); *see, e.g., Edwards v. DOJ*, No. 04-5044, 2004 WL 2905342, at \*1 (D.C. Cir. Dec. 15, 2004).

The MPD's assertion that the brochure was not disclosed by the Harris Corporation, the federal government, or the MPD does not appear to be relevant for the purposes of redaction, based on the public domain doctrine, as described by the courts. *See Students Against Genocide* 257 F.3d at 836 (finding that the public domain doctrine applies if a document is available as a permanent public record regardless of the entity that publishes the record); *see also, Niagara* 169 F.3d at 19. However, the brochure in the public domain does not match the records disclosed to Appellant by MPD.<sup>9</sup> Appellant has not provided sufficient support to apply the public domain doctrine because the records do not match. Therefore, we affirm the MPD's decision to redact the brochure.

### Segregability

Appellant argues that the MPD improperly withheld training material and manuals in their entirety. The basis for this claim is D.C. Official Code § 2-534(b), which requires that an agency produce "[a]ny reasonably segregable portion of a public record . . . after deletion of those portions" that are exempt from disclosure. The phrase "reasonably segregable" is not defined

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<sup>9</sup> Comparing <http://egov.ci.miami.fl.us/Legistarweb/Attachments/48003.pdf> with [https://www.scribd.com/fullscreen/243265839?access\\_key=key-YOLWfl78oCzvd0vLFyWw&allow\\_share=true&escape=false&view\\_mode=scroll](https://www.scribd.com/fullscreen/243265839?access_key=key-YOLWfl78oCzvd0vLFyWw&allow_share=true&escape=false&view_mode=scroll)

under DC FOIA and the precise meaning of the phrase as it relates to redaction and production has not been settled. *See Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 322 n.16 (D.C. Cir. 1982). To withhold a record in its entirety, one interpretation is that an agency must demonstrate that exempt and nonexempt information are so inextricably intertwined that the excision of exempt information would produce an edited document with little to no informational value. *See Antonelli v. BOP*, 623 F. Supp. 2d 55, 60 (D.D.C. 2009).

Here, the MPD claims that redaction of the records would produce documents with no useful information. After reviewing the training material and manuals provided by the MPD, it is apparent that the records consist almost entirely of equipment descriptions, technical specifications, and surveillance techniques that would be withheld under Exemptions 3(E) and 6. After redactions for exemptions were applied little to no information value would remain. Therefore, the training material and manuals were properly withheld.

#### Adequacy of Search

In reviewing Appellant's claim that parts 5 and 6 of the request lacked a sufficient response, the MPD located over 900 pages of responsive emails. In its response the MPD stated that it will disclose the emails subject to applicable redactions. Therefore, this element of the appeal is moot due to the MPD's revised position. The MPD is instructed to review, redact, and disclose the records following the guidance in this determination.

#### Conclusion

Based on the foregoing, we affirm the MPD's revised decision in part, and remand it in part. The MPD shall provide Appellant a copy of its NDA with the FBI subject to redaction and shall state its legal grounds for the redactions under DC FOIA. As the MPD stated in its response to this appeal, the MPD shall produce the records it identified responsive to parts 5 and 6 of the request subject to redaction and shall state its legal grounds for the redactions under DC FOIA.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Sarah Jane Foreman

Sarah Jane Foreman  
Associate Director  
Mayor's Office of Legal Counsel

/s John A. Marsh\*

John A. Marsh  
Legal Fellow  
Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

\*Admitted in Maryland; license pending in the Distinct of Columbia; practicing under the supervision of members of the D.C. Bar

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-38**

March 4, 2015

VIA ELECTRONIC MAIL

Mr. Daniel Siesser

RE: FOIA Appeal 2015-38

Dear Mr. Siesser:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a) (“D.C. FOIA”), dated February 12, 2015 (the “Appeal”). You assert in the Appeal that you requested documents from the Office of the Chief Financial Officer (“OCFO”) pertaining to a data dump of select fields on the Real Property Recordation and Transfer Tax Form FP 7/C, and OFCO failed to respond to your request. In the Appeal, you advised that the information you request was “already public”, that you were requesting that the data be aggregated because “it would take thousands of hours to pull these records individually.”

We forwarded the Appeal to OCFO with a request for a response. OCFO responded by a letter dated February 27, 2015 (the “OCFO Response”). A copy of that Response was sent to you. In their Response, OCFO contends that the FP-7/C tax forms are not permitted to be disclosed under §47-4406(e-1) and the corresponding regulations, and therefore fall within the ambit of exemption (a)(6) of the D.C. FOIA statute.

It is the public policy of the District of Columbia (the “District”) government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Code § 2-537(a). In aid of that policy, D.C. FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id.* at § 2-534.

The D.C. FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is whether the requested records are public, or whether they are exempt from disclosure under D.C. FOIA §2-534(a)(6). D.C. FOIA § 2-534(a)(6) provides an exemption for information specifically exempt from disclosure by statute if the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or

establishes particular criteria for withholding or refers to particular types of matters to be withheld.

With regard to the records at issue in this appeal, the FP 7/C is a tax return form described in §§ 42-1103(b) (1) & (2) as “an integral part of the deed.” Although the DC Code generally provides for the secrecy of tax returns, under §47-4406(e-1) “[t]he confidentiality] provisions of this section shall not apply to the return required by § 42-1103 . . . *unless otherwise provided by regulation.*” In turn, D.C. Code § 42-1103(b)(3) states that “[t]he return shall not be confidential or subject to the provisions of §§ 47-1805.04 and 47-4406, *unless otherwise provided by regulation.* The corresponding regulations, do, in fact, deny public access to these records. Pursuant to 9 DCMR §§ 508 and 608, access to tax returns related to deeds (such as the FP 7/C) is restricted to:

- “(a) The person or persons filing the return or document;
- (b) An official or employee of the District who has duties and responsibilities in connection with those returns or documents;
- (c) An official of the government of the United States when acting in his or her official capacity; or
- (d) An official of a state or political subdivision of a state when acting in his or her official capacity, if similar privileges are accorded to District audit officials by that state or political subdivision.”

Thus, the D.C. code clearly incorporates any nondisclosure provisions pertaining to the FP-7/C tax returns contained in the DCMR. Accordingly, the relevant DCMR provisions in §§ 508 and 608, which prohibit the public disclosure of tax returns such as the FP-7/C are firmly rooted in statutory authority and trigger the application of D.C. FOIA §2-534(a)(6). As Appellant does not qualify under one of the specified categories of persons who are permitted to inspect such records under 9 DCMR §§ 508 and 608, the requested records are exempt from disclosure under D.C. Code § 2-534(a)(6).

We are satisfied with OCFO’s Response based on our review of the relevant law and regulations as they pertain to the requested materials. Therefore, the decision of OCFO is upheld and the appeal is hereby DISMISSED.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court.

Sincerely,

/s Sarah Jane Forman

Sarah Jane Forman  
Associate Director  
Mayor’s Office of Legal Counsel

**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, July 8, 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](http://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 July 7, 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

**TWO RIVERS PUBLIC CHARTER SCHOOL**

**REQUEST FOR PROPOSALS**

**Playground System and Surfacing**

Two Rivers Public Charter School is seeking competitive proposals for a Playground System and Surfacing for a public charter school facility project. For a copy of the RFP, please contact Mr. Ryan Gever of Brailsford & Dunlavey at [rgever@programmanagers.com](mailto:rgever@programmanagers.com).



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 18994 of Rahmin Mehdizadeh and Hun Ah Lee**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to allow the conversion of an existing one-family dwelling into a five-unit apartment building in the C-2-A District at premises 254 15th Street S.E. (Square 1073, Lot 22).

**HEARING DATES:** April 7, 2015, May 5, 2015, and June 16, 2015<sup>1</sup>  
**DECISION DATE:** June 16, 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 ("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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report, dated April 22, 2015, indicating that at a duly noticed and regularly scheduled public meeting on April 20, 2015, at which a quorum was in attendance, the ANC voted 7-3-0 in support of the application. (Exhibit 29.)

The Office of Planning ("OP") submitted a timely report dated April 28, 2015, recommending approval of the application (Exhibit 28) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 30.) On June 12, 2015, DDOT filed a supplemental report indicating that it continued to have no objection to the application. The supplemental DDOT report further indicated that the Applicant is required to provide a minimum of two secure, long-term bicycle racks at a ratio of one space per every three dwelling units, but that these were not shown on the plans<sup>2</sup> and that the Applicant has proposed a robust Transportation Demand Program ("TDM") program. (Exhibit 34.)

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<sup>1</sup> The hearing on this application was postponed from April 7, 2015 and continued from May 5, 2015 to June 16, 2015.

<sup>2</sup> The Board requested that the Applicant supplement the record with plans showing the required bicycle racks. (Exhibit 36.)

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A letter in opposition was submitted to the record from a nearby resident. (Exhibit 23.)

At the May 5th hearing, the Board heard testimony in opposition from four neighbors and asked the Applicant to respond to the neighbors' concerns. The Board continued the hearing to June 16, 2016, to allow the Applicant to work with the neighbors who had testified in opposition. The Board requested that the Applicant file any Traffic Demand Program ("TDM") measures or conditions for mitigation by June 9, 2015. The Applicant timely filed a parking assessment and proposed TDM measures including a residential parking permit ("RPP") restriction. (Exhibits 32 and 33.)

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 § 2101.1. The only parties to the case were the ANC and the Applicant. 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 § 2101.1, 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.

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 36 AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall record a covenant barring residential parking permits, and provide corresponding language in any leases and condominium documents, as well as in non-amendable provisions of the condominium bylaws. The covenant shall be recorded with the Recorder of Deeds Office, to ensure that the restriction runs with the land.
2. The Applicant shall provide new residents information on and/or links to:
  - a. Capital Bikeshare;
  - b. Car-sharing services;

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- c. Ride-hailing services, such as Uber and Lyft;
  - d. Ridescout;
  - e. Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters;
  - f. Commuter Connections Guaranteed Ride Home, which provides commuters who regularly (twice a week) carpool, vanpool, bike, walk or take transit to work with a free and reliable ride home in an emergency; and
  - g. Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool. Participants can earn money for carpooling to work and must complete surveys and log information about their experience.
3. The Applicant shall provide a one-year Capital Bikeshare membership per unit at initial sale and each time the unit is sold during the first five years the building is open. The Applicant shall reflect this condition in the Condominium Declaration and in a non-amendable provision of the condominium bylaws.
  4. The Applicant shall provide a bicycle rack at the rear of the property, including long-term bicycle parking for at least five bicycles.

**VOTE:**       **4-0-1** (Lloyd L. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen<sup>3</sup>, to APPROVE; 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:** June 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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO

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<sup>3</sup> Board Member Cohen stated for the record that she had read the full record to participate in the case.

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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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 05-22A**  
**Z.C. Case No. 05-22A**  
**View 14 Investments, LLC**  
**(PUD Modification @ Square 2868, Lot 155)**  
**June 8, 2015**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on April 20, 2015, to consider an application from View 14 Investments, LLC (“Applicant”), to modify an approved planned unit development (“PUD”) approved pursuant to Z.C. Order No. 05-22. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

**FINDINGS OF FACT**

**The Application, Parties, and Hearings**

1. Pursuant to Z.C. Order No. 05-22, dated January 9, 2006, and effective on February 3, 2006, the Commission granted consolidated approval for a PUD for property located at 2303 14<sup>th</sup> Street, N.W. (Square 2868, Lot 155) (“Subject Property”). The Subject Property has a land area of approximately 34,357 square feet and is located on the east side of 14<sup>th</sup> Street, N.W., between Florida Avenue, N.W. and Belmont Street, N.W., in the C-2-B Zone District.
2. The approved PUD is a mixed-use building known as View 14 that consists of approximately 160 to 195 apartment units, approximately 33,517 square feet of retail and service uses, and a minimum of 151 parking spaces, 15 of which are devoted to retail use. The maximum building height for the Approved PUD is 90 feet, and the maximum density is 6.0 floor area ratio (“FAR”).
3. On March 24, 2014, the Applicant filed an application with the Commission for a modification to the approved PUD. (Exhibits [“Ex.”] 1–4.) (“Application”) The Application requested permission to establish an animal boarding use, specifically a dog day care center use in a portion of the retail space on the ground floor of the Subject Property (“PUD Modification”). The dog day care center use would include pet grooming and overnight animal boarding, which is permitted only by special exception under 11 DCMR § 735.
4. By report dated June 20, 2014, the Office of Planning (“OP”) noted that it was not opposed to the Application being set down for a public hearing. (Ex.11.) However, OP stated that the Applicant had recently applied for a special exception under 11 DCMR § 735 for the same use from the Board of Zoning Adjustment (“BZA”), which the BZA had denied. At the time of the BZA application, § 735.2 provided that a proposed animal boarding use “shall not abut a residence zone.” Although the Applicant claimed

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the proposed use met this criterion, the BZA disagreed and denied the application. OP noted that the Applicant's modification request contended that the BZA made errors in its findings, thus suggesting that the Applicant may be attempting to use the PUD modification as a means of obtaining Commission review of a BZA order. The report also noted that OP recently submitted to the Commission a proposal to clarify § 735's prohibition against an animal boarding use abutting a residence zone, which was assigned Z. C. Case No. 14-10.

5. At its public meeting on June 30, 2014, the Commission voted to hold in abeyance the set down of the Application until after the Commission completed its review of Z.C. Case No. 14-10.
6. On November 24, 2015, the Commission took proposed action to adopt Z.C. Case No. 14-10. The advertised text proposed to amend § 735.2 to eliminate the prohibition against an animal boarding use abutting a residential zone, but to require that the use not be located within 25 feet of a lot within a Residence District — a restriction that the Applicant's proposed use would meet.
7. On December 15, 2014, the Applicant submitted a revised Application and, noting the pendency of Z.C. Case No. 14-10, requested the Commission to set down the revised Application for hearing.
8. On February 9, 2015, the Commission voted to adopt amendments to § 735, which became effective upon the publication of a Notice of Final Rulemaking in the *D.C. Register* on March 13, 2015, and which included the amendment to § 735.2. At that same meeting, the Commission voted 5-0-0 to schedule a public hearing on the Application.
9. On February 13, 2015, the Applicant submitted a prehearing statement. (Ex. 14, 15-15H.) On March 6, 2015, a description of the proposed modification and the notice of the public hearing in this matter were published in the *D.C. Register*. (Ex. 18.) On February 25, 2015, the notice of the public hearing was mailed or emailed to all property owners within 200 feet of the Subject Property, as well as to Advisory Neighborhood Commission ("ANC") 1B, the ANC in which the Subject Property is located.
10. On March 31, 2015, the Applicant submitted a supplemental statement in support of the Application, which provided information regarding the Applicant's outreach to ANC 1B and the Meridian Hill Neighborhood Association ("MHNA"). (Ex. 26.)
11. By letter dated April 17, 2015, MHNA stated that it would support the PUD Modification "[p]resuming the conditions articulated below would be included in a Commission order:" (Ex. 34.)

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- a. Dog walking will be permitted on the 14<sup>th</sup> Street commercial strip only and not on the adjoining residential streets;
  - b. Employees of any animal boarding facility or dog day care center will wear an identifiable uniform while walking pets outside of the facility;
  - c. Members or clients of any animal boarding facility or dog day care center will sign an agreement to obey all traffic and parking regulations; and
  - d. Any animal boarding facility or dog day care center will provide a “concierge” service to retrieve pets from and deliver them to cars as needed, Monday through Friday during peak hours, to obviate the need for parking and stopping.
12. On April 14, 2015, ANC 1B submitted a letter indicating that at its regularly scheduled public meeting on April 2, 2015, at which a quorum was present and notice properly given, the ANC voted unanimously to support the PUD Modification. (Ex. 32.)
  13. By report dated April 10, 2015, OP recommended approval of the PUD Modification. (Ex. 27.) OP asserted that the proposed use would meet the specific special exception conditions of § 735 as amended. Specifically, OP found that the proposed dog day care center would not be located within 25 feet of a lot within a Residence District and that the use would produce no odor or noise objectionable to residential units within the same building or to nearby properties. The OP report also concluded that the dog day care center use would not be inconsistent with the general intent of the approved PUD or with the Comprehensive Plan. In its report, OP stated support for the following conditions to approval: (i) the dog day care operator shall advise clients to refrain from double-parking on streets adjacent to the Subject Property when dropping off and picking up dogs; and (ii) in order to keep dogs from the front yards on the surrounding residential streets, employees of the dog day care center shall only walk dogs along the 14<sup>th</sup> Street corridor.
  14. By report dated April 10, 2015, the District Department of Transportation (“DDOT”) indicated that it has no objections to the PUD Modification. (Ex. 28.) DDOT stated that the existing retail parking spaces provided for the Subject Property satisfy the off-street parking requirements, and that the dog day care center use would not have any adverse impacts on the travel conditions of the District’s transportation network. DDOT also determined that a transportation analysis was not required for the Application.
  15. The public hearing on the Application took place on April 20, 2015. The parties to the case were the Applicant and ANC 1B. No requests for party status were filed for this case.
  16. Mr. Walid Takriti of Acoustonica was accepted as an expert in the area of acoustics and testified on behalf of the Applicant. Mr. William Licko of UDR/View 14 Investments,

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LLC and Mr. Phillip Kasdorf also addressed the Commission on behalf of the Applicant. With respect to the MHNA letter, at the April 20, 2015, hearing, the Applicant stated that it would be willing to agree to MHNA's conditions, except that the Applicant proposed to modify the fourth condition to state the following: as necessary to mitigate adverse traffic impacts, the dog day care center operator will provide a concierge service to retrieve dogs from cars on weekdays only between 7:30 a.m. and 8:30 a.m. The Applicant also stated that based on the dog day care center operator's experience in other U.S. cities, it expects that a significant percent of customers will walk their dogs to and from the dog day care center. The Applicant indicated that ample on-street parking is available in the immediate proximity to the Subject Property, including on 14<sup>th</sup> Street and Florida Avenue, such that stacking or back-up traffic is not likely to be an issue.

17. Mr. Jesse Heier testified in opposition to the Application at the public hearing. Mr. Heier argued that approval of the Application should not be granted because the BZA previously denied the Applicant's request to locate a dog day care center at the Subject Property and that the Applicant was essentially "forum shopping" to achieve a favorable ruling.
18. At the conclusion of the public hearing held April 20, 2015, the Commission voted to take proposed action to approve the PUD Modification, thereby authorizing the referral of the Application for the National Capital Planning Commission ("NCPC") for its review.
19. The NCPC Executive Director, by delegated action dated May 13, 2015, found that the proposed PUD modification would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 39.)
20. On June 8, 2015, the Commission voted to take final action to approve the Application subject to conditions that will be added to the original order of approval.

#### **The Requested PUD Modification**

21. The Applicant requested that the approved PUD be modified to permit an animal boarding use, in this instance dog day care center in a portion of the ground-floor retail space at the Subject Property.
22. The dog day care center will consist of approximately 4,300 square feet of floor area, and the entrance to it will be at the corner of Florida Avenue and 14<sup>th</sup> Street, with frontage along 14<sup>th</sup> Street. The dog day care center will offer cage-free dog day care in five "play parks," pet grooming, and overnight boarding. The facility will include an on-site retail store and a lounge for dog owners who choose to wait at the facility while their dog is being groomed



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23. Within the C-2-B Zone District, an Animal Boarding use is permitted by special exception.
24. Subsection 2405.7 of the PUD regulations authorizes the Commission to approve “any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment.” Subsection 2405.8 further provides that the Commission is “not required to apply the special exception standards normally applied by the Board.”
25. In this case, the Applicant is not seeking the flexibility permitted by § 2405.8, but instead asserts that the proposed use meets the special exception standard applicable to the BZA including the general standard set forth in § 3104 and the specific standards set forth in § 735.
26. As required by § 735.2, the animal boarding use would be in excess of 25 feet from a residence zone. The use would be located on the western side of the building fronting on 14<sup>th</sup> Street, N.W. and the R-5-B Zone District, which is located to the east across a 15-foot alley.
27. The animal boarding use will take place entirely within an enclosed building as required by § 735.4(a).
28. Pursuant to § 735.3 and as described in Findings of Fact 29 through 34, the Applicant has demonstrated that the animal boarding use will produce no noise or odor objectionable to adjacent properties, including residential units located in the same building as the use
29. Twenty-four apartment units are located on the second floor of the building above the retail space. Of those, five units are situated directly above the proposed dog day care center facility. The Applicant submitted a petition with 105 signatures in support of the proposed dog day care center use at the Subject Property, 100 of which were from residents of the Subject Property. (Ex. 13G.) Residents from three of the five units directly above the dog day care center space signed the petition in support. The Applicant stated that it was unable to reach the tenant in one of the five units, and one of the units was vacant at the time of the petition.
30. The Applicant also submitted a noise study conducted by Polysonics, an acoustics consulting firm, regarding the proposed dog day care center’s impact on noise. (Ex. 13E.) According to Polysonics’ report, in order to fully mitigate noise impacts such that the background noise in the abutting residential units remains at required levels, the Applicant will implement the following sound-proofing measures for the build-out of the dog day care center, which meet the requirements of § 735.4(c):

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- a. The Applicant will install an acoustical gypsum board ceiling isolated from the building structure on spring hangers with fiberglass insulation in the ceiling space;
  - b. The Applicant will minimize penetrations in the drywall ceiling and will properly pack, caulk, and seal any piping in the concrete slab to prevent sound leaks;
  - c. The Applicant will install a finished ceiling with acoustical ceiling panels suspended below the gypsum board ceiling; and
  - d. The Applicant will install two-inch wall panels covering at least 50% of the available wall surface in each room for additional sound absorption.
31. The above insulation and noise prevention measures will not have any impact on the flow of fresh air in the building because the air circulation elements and distribution systems would be located in a different “zone” located above the finished ceiling.
32. The operator of the dog day care center will also mitigate noise impacts through the following operational measures:
- a. Every dog will be evaluated to make sure it is a perfect fit for the dog day care center and for the pack of dogs. Chronic barkers will be disjoined from the club;
  - b. Access to the play parks will be restricted to employees, and communication will be done through walkie-talkies, which will limit disruption with the intention of keeping the dogs calm. There will also be a one-way glass to enable staff members and dog owners to observe dogs without disrupting the pack;
  - c. The facility will play “chill music” around the clock, which the dogs enjoy; and
  - d. All of the dog handlers will be trained on several methods to minimize dog barking and will play games with and otherwise engage the dogs.
33. The design, construction, and operational measures proposed for the dog day care center have been successful in other facilities with the same dog day care center operator, including facilities located in mixed-use buildings with residential units located directly above.
34. The dog day care center operator will fully mitigate odor such that the dog day care center use will not create any odors objectionable to adjacent properties, including residential units in the Subject Property. The Applicant will mitigate odor with the following measures:

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- a. As required by § 735.4(f), high-frequency air ventilation systems will be installed to protect against bacteria and odor. The facility will use HEPA filters that will be serviced on a quarterly basis;
- b. The facility will be designed with epoxy floors, impermeable surfaces, and stainless steel equipment. Service stations will be located in every play park and will be stocked with everything that is needed to keep the play park clean;
- c. The dog day care center operator will use commercial cleaning equipment, including commercial scrubbers, commercial window cleaning equipment, sanitizers, central vac systems, and a commercial washer/dryer. The cleaning solutions will be from WAXIE's green product line;
- d. In order to maintain accountability for cleanliness, the dog day care center staff will clean the entire facility and will not use an outside service. The staff will have daily checklists that are broken down per position. New checklists will be started every day, and the general manager will inspect the facility throughout the day. The operator will have "mystery shoppers" visit the facility on a monthly basis to inspect whether the staff is meeting the cleaning goals and service standards;
- e. The facility will have nine individual waste receptacles that will be collected by a waste disposal company at least weekly in accordance with § 735.4(e); and
- f. Each play park will have a "poopee" patch, which is a designated spot for dogs to defecate. Excrement will go through the "grass," down a drain, and out of the building to keep the facility smelling fresh and clean. When urine is deposited on the floor, it will be extracted with a commercial scrubber. The floors will be cleaned with a mini-scrubber that scrubs, disinfects, and extracts moisture from the floor.

### **Public Benefits and Amenities**

35. In its decision for the Approved PUD, the Commission found that the project's benefits and amenities, particularly the provision of housing, affordable housing, and neighborhood-serving retail were reasonable for the development of the Subject Property. Since the requested modification seeks no additional zoning flexibility nor requests a change to any of the public benefits identified in Z.C. Order No. 05-22, there is no need for the Commission to re-examine the issue.

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### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (*Id.* § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this Application as a modification to a previously approved consolidated PUD. Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. (*Id.* § 2409.9.) The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections. (*Id.*) Accordingly, the Commission treats this modification request as a second-stage PUD application.
3. Pursuant to the Zoning Regulations, the Commission has the authority to approve uses that are permitted as special exceptions and would otherwise require approval by the BZA. (*Id.* § 2405.7.)
4. The BZA is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the BZA, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR § 3104.1.) Pursuant to § 735, the BZA may grant special exception relief to allow for an animal boarding use, subject to certain requirements.
5. For the reasons stated in Findings of Fact 26 through 34, the Commission finds that the proposed animal boarding use will meet specific requirements of § 735. Further, the Commission finds that the proposed use will meet the general special exception requirements stated in § 3104.1. The animal boarding use will produce no noise or odors objectionable to adjacent properties, including the residential units in the apartment house above. The Applicant will fully mitigate all noise impacts associated with the use through the implementation of sound-proofing design techniques and operational measures that will ensure that residents of abutting units cannot hear the dogs below. In addition, the Commission finds that the Applicant will fully mitigate all odors associated with the use by utilizing commercial cleaning equipment and supplies and undertaking detailed cleaning schedules and tasks.

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6. Approval of the PUD Modification is appropriate because the proposed use is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed use will promote the orderly development of the property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
7. Granting the PUD modification neither changes any of the underlying factual and legal issues upon which the Commission granted the original application nor requires any additional zoning flexibility. Therefore, the PUD as modified continues to meet all of the requirements of Chapter 24 of the Zoning Regulations.
8. As to Mr. Heier's concerns over forum shopping, the Commission notes that as a result of the amendments made § 735, the earlier decision by the BZA became moot. The Applicant was entitled to bring a new application and rather than have the View 14 property subject to one order issued by the Commission and another by the Board, chose to modify the existing PUD so that all of its uses would be governed under a single case. The Commission finds this both appropriate and desirable.
9. The Commission is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135; D.C. Official Code § 1-309.10(d)), to give great weight to the issues and conditions expressed in the written report of the affected ANC. In this case, ANC 1B voted unanimously to support the modification Application and recommended that the Commission approve the Application. The Commission finds this advice to be persuasive.
10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations. For the reasons stated above, the Commission finds OP's recommendation for approval to be persuasive.
11. The PUD Modification 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 to modify a planned unit development for the property located at 2303 14<sup>th</sup> Street, N.W. (Square 2868, Lot 155). Z.C. Order No. 05-22 is modified by adding the following new conditions:

17. The Applicant is permitted to establish an animal boarding use, specifically a dog day care center use, in a portion of the retail space on the ground floor of the project;

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18. The dog day care center shall be designed in accordance with the plans and materials submitted by the Applicant and marked as Ex. 15A of the record;
19. The dog day care center shall permit dog walking on the 14<sup>th</sup> Street commercial strip only and not on the adjoining residential streets;
20. Employees of the dog day care center shall wear an identifiable shirt or uniform;
21. The dog day care center operator shall require its customers to sign an agreement that obligates them to obey all traffic and parking regulations; and
22. If necessary to mitigate adverse traffic impacts, the dog day care center operator shall provide concierge service to retrieve dogs from vehicles on weekday mornings (Monday through Friday) between 7:30 a.m. and 8:30 a.m.

On April 20, 2015, upon the motion of Vice Chairman Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Application at the close of its hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, Michael G. Turnbull, and Robert E. Miller to approve).

On June 8, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission took final action to **ADOPT** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, Michael G. Turnbull, and Robert E. Miller to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on July 3, 2015.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 14-07**  
**Z.C. Case No. 14-07**  
**1250 4<sup>TH</sup> ST EDENS, LLC**  
**(First-Stage and Consolidated PUD & Related Map Amendment**  
**@ 1270 4<sup>th</sup> Street N.E. (Parcels 129/77, 129/95, and 129/96))**  
**June 8, 2015**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on March 26, 2015 to consider an application from 1250 4<sup>TH</sup> ST EDENS, LLC (“Applicant”) for review and approval of a first-stage and consolidated planned unit development (“PUD”) for Parcels 129/77, 129/95, and 129/96 (“Property”) and a related Zoning Map amendment to rezone the Property from C-M-1 to C-3-C. The application proposes a mixed-use development incorporating retail and 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 hearing was 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**

**Application, Parties, Hearing, and Post-Hearing Submissions**

1. The Property consists of Parcel 129/77 (“North Parcel”) and Parcels 129/95 and 129/96 (“South Parcel”) and is located in the 1200 block of 4<sup>th</sup> Street, N.E.
2. On May 5, 2014, the Applicant submitted an application to the Commission for the review and approval of a consolidated PUD and a related Zoning Map amendment to rezone the South Parcel from the C-M-1 Zone District to the C-3-C Zone District. The original application proposed a mixed-use building with residential, retail, and commercial parking uses. (Exhibits [“Ex.”] 2-2I.) On June 19, 2014, the Office of Planning (“OP”) submitted a setback report. (Ex. 6.)
3. At a public meeting on June 30, 2014, the Commission voted to set the original application down for a public hearing. On August 6, 2014 and August 27, 2014, the Applicant filed prehearing submissions responding to issues raised by the Commission and OP at setback. (Ex. 7-7C, 8-8G2.)
4. The Commission set the original application for public hearing on December 18, 2014. Notice of the public hearing was published in the *D.C. Register* on September 26, 2014 and was mailed to Advisory Neighborhood Commission (“ANC”) 5D and to owners of property within 200 feet of the South Parcel. (Ex. 10, 11.)
5. On November 26, 2014, the Applicant requested a postponement of the hearing. (Ex. 15.) The Commission rescheduled the public hearing for February 19, 2015, published notice of the rescheduled hearing in the *D.C. Register* on December 12, 2014, and mailed

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- notice of the rescheduled public hearing to ANC 5D and to all property owners within 200 feet of the South Parcel. (Ex. 16, 17.)
6. On January 9, 2015, the Applicant posted notice of the public hearing scheduled for February 19, 2015. The notice specifically referenced the inclusion of the North Parcel in the PUD. (Ex. 20.)
  7. On January 21, 2015, the Applicant requested an additional postponement of the hearing. (Ex. 22.) On January 26, 2015, the Applicant amended the original application to incorporate the North Parcel as a first-stage PUD and related rezoning from the C-M-1 Zone District to the C-3-C Zone District. The Applicant proposed the construction of an additional mixed-use building with residential, retail, and commercial parking uses on the North Parcel in order to accommodate the design of the Neal Place extension through the original property. The Applicant also submitted revised plans for the South Parcel modifying the design of the South Parcel building to incorporate an extension of Neal Place through the Property. Finally, the Applicant presented evidence that it had discussed the modifications to incorporate the North Parcel and the Neal Place extension with OP, the District Department of Transportation (“DDOT”) and ANC 5D. The Applicant requested that the Commission set down the first-stage PUD for a public hearing, asked that the Commission waive the requirement for certification under § 3013.7 for the initial pre-hearing submission for the first-stage PUD, and requested that the Commission authorize an abbreviated public notice period so that the modified PUD could be heard at a rescheduled public hearing on March 26, 2015. (Ex. 24-24H.) On January 30, 2015, OP submitted a setdown report for the modified PUD. (Ex. 25.)
  8. At a public meeting on February 9, 2015, the Commission voted to set down the modified application for a public hearing, and granted the Applicant’s requests for waivers of the Commission’s certification and notice. The Commission rescheduled the public hearing for March 26, 2015, published notice of the rescheduled hearing in the *D.C. Register* on February 20, 2015, and mailed notice of the rescheduled hearing to ANC 5D and to property owners within 200 feet of the Property. (Ex. 27, 29.)
  9. The Applicant further updated the application with a supplemental prehearing statement on March 6, 2015. (Ex. 30, 31-31H.)
  10. A public hearing was conducted on March 26, 2015. The Commission accepted Shalom Baranes as an expert in the field of architecture, Dan Van Pelt as an expert in the field of traffic engineering, Mark Pelusi as an expert in the field of landscape architecture, and Dan Duke as an expert in the field of civil engineering. The Commission did not accept Geoff Sharpe as an expert in the field of urban design because he was an employee of the Applicant. The Applicant presented testimony from the experts as well as Sharpe and Jeff Kaufman on behalf of the Applicant and submitted additional plans in support of the application. (Ex. 40A1-40A4.)



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11. In addition to the Applicant, ANC 5D was automatically a party in the proceeding and submitted a report in support of the application. (Ex. 26.)
12. At the hearing, the Commission heard testimony and received evidence from OP, DDOT, and the District Department of the Environment (“DDOE”). (Ex. 33, 34.) The Commission also received a letter in support from the Ward 5 Councilmember, Kenyan McDuffie, and received testimony in support from Ronan Gulstone, Deputy Chief of Staff and Legislative and Policy Director to Councilmember Kenyan McDuffie. (Ex. 41.)
13. The Commission also received a report and testimony in support of the application from ANC 6C, a neighboring ANC, as an organization in support with conditions.<sup>1</sup> (Ex. 37, 42.) At the conclusion of the hearing, the Commission closed the record except for the Applicant’s post-hearing submission and proposed order as well as responses to the Applicant’s post-hearing submission from OP, DDOT, DDOE, and ANC 5D. In the post-hearing submission, the Commission requested that the Applicant provide information regarding the following: an increase in the PUD’s affordable housing component and, in lieu of floor plans identifying the location of affordable housing units, information on how affordable units would be distributed within the PUD; further plans and information regarding the proposed canopies; further plans and information regarding the rooftop recreation space; an increase in the PUD’s LEED commitment; and additional public benefits and project amenities. The Applicant submitted these materials to the Commission in its post-hearing submission dated April 9, 2015. (Ex. 46-46E.)
14. On April 15, 2015, DDOT submitted a supplemental report. (Ex. 51.)
15. On April 15, 2015, ANC 6C submitted a request to re-open the record and a supplemental report. (Ex. 47, 48).
16. On April 21, 2015, the Applicant filed a document objecting to ANC 6C’s request to re-open the record and opposing its additional report. (Ex. 52.)
17. At its April 27, 2015 public meeting, the Commission voted to re-open the record to receive ANC 6C’s supplemental report, and to take proposed action to approve the application. The Commission also left the record for the Applicant to submit additional clarification regarding its request for flexibility in the residential unit count, its affordable housing proffer, roof structure plans showing roof setbacks and night lighting, its sustainability commitments, a commitment to tie the construction of Neal Place to issuance of a certificate of occupancy for the North Parcel building, a clarification of its request for parking flexibility, and additional proposed language regarding the project’s relationship to the Ward 5 Works Industrial Study.

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<sup>1</sup> ANC 6C originally submitted a letter in opposition, but later retracted this letter. (Ex. 21, 23.)

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18. 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 April 28, 2015. (Ex. 54.) The NCPC Executive Director, by delegated action dated May 13, 2015, found that the proposed PUD would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 54A.)
19. On May 4, 2015, the Applicant submitted its list of proffered public benefits of the PUD and draft conditions, pursuant to 11 DCMR § 2403.16, and on May 18, 2015 submitted its final list of proffered public benefits and draft conditions, pursuant to 11 DCMR § 2403.20. (Ex. 53, 55.)
20. On May 18, 2015, the Applicant submitted the information requested by the Commission at the proposed action meeting. (Ex. 56-56C.)
21. On June 8, 2015, 2015, the Commission voted to take final action to approve the application subject to the conditions enumerated in this Order.

## THE MERITS OF THE APPLICATION

### Description of Property and Surrounding Areas

22. The Property consists of approximately 67,200 square feet of land area and is located on the west side of 4<sup>th</sup> Street, S.E. in the Union Market area. The South Parcel is currently improved with a low-scale warehouse and is used for wholesale distribution. The North Parcel is a surface parking lot. The Property is located mid-block and is bounded to the west by a 48-foot-wide strip of property that is privately owned by the District of Columbia and, pursuant to an easement agreement, functions as an alley for surrounding property owners. (Ex. 2-2I, 31-31H.)
23. The entrance to the NoMa/Gallaudet Metrorail station is located approximately one-third of a mile to the southwest of the Property. (Ex. 2-2I, 31-31H.)
24. Adjacent and nearby properties are also improved with low-scale industrial warehouse and wholesale buildings and uses. (Ex. 2-2I, 31-31H.)
25. The Future Land Use Map designates the Property in the mixed-use High-Density Residential/High-Density Commercial/Production, Distribution, and Repair Land Use category. The Property is identified as a Multi-Neighborhood Center on the Generalized Policy Map. (Ex. 2, 2D.)
26. The Union Market area has been targeted for redevelopment by the District as set forth in the Florida Avenue Market Study (“Small Area Plan”). The Small Area Plan calls for rezoning of parcels within the area, including the Property, to permit high-density

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residential and commercial development. The Small Area Plan also calls for the creation of an urban street grid. (Ex. 2, 2I.)

27. The Property is located within the boundaries of ANC 5D. ANC 6C is located two blocks south of the Property, across Florida Avenue N.E. (Ex. 40A1-40A4.)

### **The Project**

28. The Applicant proposes to redevelop the Property into a mixed-use development with two buildings containing a total of approximately 41,042 square feet of retail space and approximately 545-680 residential units. (Ex. 31-31H.)
29. As a part of the Project, the Applicant will also establish an urban street grid surrounding the Property:
- a. Most significantly, the Applicant will incorporate an extension of Neal Place through the Property. The 50-foot-wide extension will match the alignment and dimension of the existing right-of-way to the east of the Property. The Neal Place extension will be provided through a public access easement over a portion of the Project's parking garage. The Applicant revised the design of the Project to incorporate the extension at the request of OP, DDOT, ANC 5D, and ANC 6C, and in furtherance of the Small Area Plan. Until such time as the extension is required to be opened to vehicular traffic, the Applicant will design and construct a temporary pocket park located on the road extension. The pocket park will deliver much needed green space within the Union Market district on an expedited basis;
  - b. Fourth Street, N.E. is currently a one-way street with head-in parking. The Applicant will reconfigure 4<sup>th</sup> Street to two-way traffic and convert the head-in parking to parallel parking. This will eliminate a significant amount of truck traffic and unloading activity that currently takes place on 4<sup>th</sup> Street;
  - c. The reconfiguration of 4<sup>th</sup> Street will widen the public streetscape area along the west side of 4<sup>th</sup> Street. Pursuant to Streetscape Design Guidelines under development with DDOT, the Applicant will construct an urban streetscape along the west side of 4<sup>th</sup> Street from Neal Place to Morse Street containing street trees, a new sidewalk, and a pedestrian amenity zone; and
  - d. The Applicant will also reconstruct a 35-foot wide segment of the private alley to the west of the Property, along the Property's frontage and extending south to Morse Street, with a five-foot wide planting strip, a 30-foot wide paved alley, and security lighting. The Applicant will use the reconstructed public alley for access to the Project's parking garage and loading facilities, which will separate vehicular traffic from pedestrian traffic along 4<sup>th</sup> Street, as requested by DDOT.

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(Ex. 31-31H.)

30. The Project will have a total density of 8.0 floor area ratio (“FAR”) across the Property. The Project will have a maximum height of 110 feet for each building. (Ex. 31-31H, 40A1-40A4.)

South Parcel Building – Consolidated PUD

31. For the building on the South Parcel, the Applicant requested consolidated approval to construct a building with approximately 465 residential units above approximately 29,042 square feet of retail space. (Ex. 31-31H.)
32. The Applicant proposed to incorporate portions of the existing façade into the architectural design of the South Parcel building in order to convey the neighborhood’s authentic industrial characteristics. The Applicant proposed high ceiling retail space along 4<sup>th</sup> Street, which will recapture the feeling of the existing warehouse and create high-quality shopping and dining opportunities along 4<sup>th</sup> Street as called for in the Small Area Plan. (Ex. 31-31H.)
33. The residential portion of the South Parcel building will rise above the retail base in four distinct volumes that articulate the massing along the Property’s 4<sup>th</sup> Street frontage. The upper-story residential component has been set back from the retained warehouse façade to celebrate and strengthen the warehouse façade and developed with fenestration and materials intended to knit together the upper-story residential component with the retained warehouse base. The building is designed to have two distinct cores to make the building feel as if it is two smaller buildings rather than one single building. (Ex. 31-31H.)
34. The South Parcel building includes approximately 400-550 parking spaces within the garage, which will serve not only the Project but also be open to the public and satisfy broader parking demands within the Union Market area.
- a. The Applicant explained that the conversion of one-way streets and head-in parking within the market, combined with the anticipated redevelopment of a surface parking lot that is open to the public, will eliminate a significant amount of parking within the Market area. To replace this lost parking and at the request of the community, the Applicant is constructing replacement public parking spaces within the Project and at other locations. The Applicant provided evidence that the replacement parking essentially replaces the lost supply on an approximately net zero basis;
- b. The Applicant’s transportation study evaluated the impact of the maximum number of parking spaces proposed by the Applicant for the South Parcel building

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and confirmed that the additional vehicles would not impose adverse impacts on traffic conditions. DDOT concurred with the Applicant's analysis; and

- c. The Applicant requested the range of spaces to accommodate flexibility to add or remove parking based on site conditions and financial costs that will be determined through further study in connection with the advancement of building design.

(Ex. 31-31H, 40A1-40A4; Transcript ["Tr.,"] March 26, 2015.)

35. The South Parcel building's parking and loading will be accessed from the private alley to the west of the Project. The Applicant submitted evidence that the reconstructed portions of the alley would be able to accommodate truck turning needs. (Ex. 31-31H.)
36. The South Parcel building will contain approximately 147 to 179 bicycle parking spaces within the building, as well as approximately 20 short-term bicycle parking spaces on the sidewalks surrounding the South Parcel building. (Ex. 31-31H.)
37. The South Parcel will feature rooftop recreation space consisting of a series of outdoor rooms as well as a pool and terrace, which together provide the building's residents with a variety of outdoor recreational amenities. The three indoor rooms associated with these spaces are incidental and accessory to the outdoor areas, and together constitute less than 20% of the overall rooftop recreation space. (Ex. 46-46E.)
38. The South Parcel building will be designed and constructed to the Silver Certification level under the LEED-2009 rating system. In its post-hearing submission, the Applicant further agreed to achieve a minimum of 53 points under the LEED-2009 system, and to obtain Silver Certification. The Applicant also agreed to design and construct the South Parcel building to a minimum green area ratio ("GAR") of 0.22, which exceeds the requirement by 10%. (Ex. 31-31H, 46-46E, 56-56C.)
39. The total gross floor area for the South Parcel building is approximately 384,351 square feet, for a total density of approximately 5.68 FAR. The South Parcel building will have a maximum height of 110 feet. (Ex. 31-31H, 40A1-40A4.)

#### North Parcel Building – First-Stage PUD

40. For the building on the North Parcel, the Applicant requested first-stage approval to construct a building with approximately 165 residential units and approximately 12,000 square feet of retail use. The Applicant proposed a range of residential units +/- 20% for the first-stage PUD component based on market conditions, and agreed to narrow the range prior to the submission of a second-stage PUD for the North Parcel building. (Ex. 31-31H; Tr. March 26, 2015.)

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41. The Applicant proposed a range of 80-200 parking spaces for the North Parcel building, depending on site conditions, financial costs, and market demand. The Applicant agreed to narrow the range of parking spaces prior to the submission of a second-stage PUD for the North Parcel Building, as well as conduct a parking study to assess the demand for and impact of the additional parking spaces and potentially remove parking. The North Parcel building's parking garage will connect to the South Parcel garage and share access through the same entrance off the alley. (Ex. 31-31H, 40A1-40A4; Tr. March 26, 2015.)
42. Loading for the North Parcel building will also be located off the alley. (Ex. 31-31H.)
43. The North Parcel building will contain approximately 48 to 71 bicycle parking spaces within the building. (Ex. 31-31H.)
44. The total gross floor area for the North Parcel building is approximately 153,249 square feet, for a total density of approximately 2.32 FAR. The North Parcel building will be constructed to a maximum height of 110 feet. (Ex. 31-31H, 40A1-40A4.)

### **Zoning Map Amendment**

45. The Property is located in the C-M-1 Zone District. Surrounding property is also located in the C-M-1 Zone District. The C-M-1 Zone District 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 the C-M-1 Zone District. (11 DCMR §§ 800.1, 800.4, 840.1, and 841.1.)
46. The Applicant requested a PUD-related Zoning Map amendment to the C-3-C Zone District for the Property to permit the proposed residential use and to permit the structures to reach the requested height and density. The maximum permitted height in the C-3-C Zone District is 130 feet and the maximum permitted density is 8.0 FAR. (Ex. 31-31H.)
47. Pursuant to the Future Land Use Map and the Small Area Plan, the Commission previously approved two other PUDs and related rezonings from the C-M-1 Zone District to the C-3-C Zone District for a parcel located one block to the south of the Property in Z.C. Order No. 06-40C (2014) ("Gateway PUD") and a parcel located one block to the east of the Property in Z.C. Order No. 14-12 (2015) ("Angelika PUD").

### **PUD Flexibility Requested**

#### **Development Flexibility**

48. The PUD will consist of two above-grade structures separated by the Neal Place extension but connected underground through a shared parking garage. Therefore, the Project will be one building for code purposes but two buildings for zoning purposes.

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Accordingly, the Applicant proposed to construct the entire PUD on a single lot of record, with multiple buildings on the single record lot, pursuant to § 2517 of the Zoning Regulations. (Tr. March 26, 2015.)

49. For the South Parcel building, the Applicant requested flexibility from the rear yard, court, roof structure, parking, and loading requirements. The flexibility was requested in order to accommodate the design of the South Parcel building.
50. Under § 2603 of the Inclusionary Zoning (“IZ”) Regulations, the North Parcel Building would have a minimum set-aside requirement of approximately 11,298 square feet, which constitutes eight percent of its proposed residential gross floor area of 141,249 square feet. As noted in Finding of Fact No. 52c., the Applicant wishes to account for 20% of this set-aside, i.e. 2,260 square feet, in the South Parcel Building. This would not only result in that portion of the North Parcel Building’s IZ requirement being provided in advance of the North Parcel Building’s construction, but all of this additional GFA will be devoted to households earning up to 50% of the Area Median Income. Since the Inclusionary Zoning set-aside is based upon individual buildings, rather than being aggregated throughout the PUD, the Applicant is asking that the Commission reduce the North Parcel Building’s eight percent IZ set-aside requirement by the 2,260 square feet that will be accounted for in the South Parcel Building. Additional flexibility for the North Parcel building will be identified with the future second-stage submission for that building. (Ex. 31-31H, 40A1-40A4, 56-56A.)

#### Design Flexibility

51. The Applicant requested flexibility to modify the interior and exterior design of the PUD as set forth in the conditions of approval and shown on the approved plans. The Applicant also requested flexibility to modify the design of PUD-related improvements in public space to correspond with the final streetscape design guidelines for the Union Market area as well as other design changes requested by DDOT. (Ex. 31-31H, 40A1-40A4, 46-46E.)

#### Project Amenities and Public Benefits

52. As detailed in the Applicant’s testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits:
  - a. Exemplary Urban Design, Architecture, and Open Spaces, through the use of high-quality materials and design that will enhance and celebrate the industrial characteristics of the Union Market district, incorporate portions of the existing warehouse façade, complete the urban street grid, establish the temporary pocket park on the Neal Place extension, and commit to sustainable design features;

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- b. Site Planning and Efficient Land Utilization, through the replacement of low-scale structures and surface parking lot with a mixed-use, transit-oriented development that creates an urban street grid, provides multi-modal transportation connections, strengthens the emerging Union Market area, and fulfills many of the planning goals and policies of the Small Area Plan;
- c. Housing and Affordable Housing, through the provision of approximately 465 residential units (+/- 10%) in the South Parcel Building and approximately 165 residential units (+/- 20%) in the North Parcel Building; and compliance with the requirement of Chapter 26 of the Zoning Regulations subject to the flexibility requested in Finding of Fact 50 to account for 2,260 square feet of the North Parcel Building's IZ requirement in the South Parcel Building. Nevertheless, the PUD in its totality will set aside the required eight percent of its residential gross floor area, or approximately 39,724 square feet based on the proposed residential gross floor area of the North and South Parcel Buildings, for Inclusionary Units. In addition, the Applicant will set aside 20% of this aggregate Inclusionary Zoning set-aside (i.e., 7,946 square feet) Inclusionary Units for households earning up to 50% of the Area Median Income ("AMI"), a deeper level of affordability than is required by Chapter 26 of the Zoning Regulations (the remainder of the Inclusionary units shall be set aside for households earning up to 80% AMI, as required by Chapter 26 of the Zoning Regulations). All of the 50% AMI units will be located in the South Parcel Building. Because the Property is being rezoned from the CM Zone District, which does not allow for the construction of residential uses, all of the housing and affordable housing created by the PUD will exceed what would be delivered as a matter of right, and is therefore considered a public benefit of the PUD;
- d. Street-Engaging Retail Offerings, including approximately 41,000 total square feet of retail space to activate the public realm along 4<sup>th</sup> Street and germinate other development in the vicinity;
- e. Effective and Safe Vehicular and Pedestrian Access and Transportation Demand Management Measures, through pedestrian-oriented street grid patterns and clear separation of pedestrian and vehicular circulation patterns including the design, construction, and maintenance of the Neal Place extension, reconfiguration of 4<sup>th</sup> Street, construction of streetscape improvements on the west side of 4<sup>th</sup> Street, reconstruction of portions of the alley, funding for the Metropolitan Branch Trail transportation demand, parking, loading, and curbside management plans;
- f. Uses of Special Value: Trash Clean-Up, through the regular clean-up of trash along 4<sup>th</sup> Street, N.E. between Florida Avenue and Penn Street, N.E. at the Applicant's expense;



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- g. Employment Opportunities, including a First Source Employment Agreement submitted as Ex. 31F of the Record and notice to ANC 5D of opportunities created through the PUD; and
- h. Sustainability Features, including that both buildings will be designed and constructed to the Silver certification level under the LEED-2009 rating system. In its post-hearing submission, the Applicant further agreed to achieve a minimum of 53 points under the LEED-2009 system, and to obtain Silver Certification.

(Ex. 46-46E, 56-56C.)

### **Compliance with PUD Standards**

- 53. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” The Commission finds that the development incentives for the height, density, flexibility, and related rezoning to C-3-C are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines set forth in the Applicant’s statement and the OP report.
- 54. The Commission credits the testimony of the Applicant and its architectural experts as well as OP, DDOT, and ANC 5D, and finds that the superior design, site planning, streetscape and transportation network improvements, housing and affordable housing, uses of special value, transportation demand, parking, loading and curbside management plans, and employment opportunities of the PUD all constitute acceptable project amenities and public benefits.
- 55. The Commission finds that the PUD as a whole is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities related to urban design, landscaping, and open space, housing and affordable housing, effective and safe transportation access, and uses of special value to the neighborhood and the District as a whole. The Commission credits the testimony of OP, ANC 5D, and Councilmember McDuffie that the PUD will provide significant and sufficient public benefits and project amenities.
- 56. The Commission finds that the character, scale, mix of uses, and design of the PUD are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant’s architectural and transportation planning experts that the PUD represents an efficient and

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economical redevelopment of a strategic and transit-oriented parcel one-third of a mile from a Metrorail station entrance.

57. The Commission credits the testimony of OP and ANC 5D that the PUD will provide benefits and amenities of substantial value to the community and the District commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP and DDOT's testimony that the impact of the PUD on the level of services will not be unacceptable.
58. The Commission credits the testimony of the Applicant's traffic consultant, who submitted a detailed transportation impact analysis that concluded that the PUD would not generate an adverse traffic impact on the surrounding roadway network due to traffic or parking impacts. The Applicant's traffic expert also concluded that the number of parking and loading spaces and the location of access to parking and loading spaces from the alley would not generate adverse impacts on neighboring property. The Commission credits the Applicant's transportation expert and DDOT and finds that the traffic, parking, and other transportation impacts of the PUD on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD, provided that the Applicant submit a parking study and, if required by DDOT, a comprehensive transportation review in connection with the second-stage PUD application for the North Parcel building.

#### **Compliance with the Comprehensive Plan**

59. The Commission credits the testimony of OP and the Applicant regarding the Property's designation as Mixed-Use High-Density Commercial, High-Density Commercial, and Production, Distribution, and Repair on the Future Land Use Map of the District of Columbia. The proposed rezoning to the C-3-C Zone District as well as the height and density of the PUD is consistent with this designation, and the rezoning is necessary to permit the mix of uses, height, and density of the PUD, including in particular residential use. Further, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility.
60. The Commission credits the testimony of the Applicant and OP regarding the compliance of the PUD with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide, and area elements of the plan:
  - a. The Commission finds that the proposed PUD is not inconsistent with the written elements of the Comprehensive Plan and promotes the policies of its Land Use, Transportation, Housing, and Urban Design Citywide Elements and its Upper Northeast Area Element;

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- b. 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;
  - c. 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 Demand Management Plan, provides effective incentives to discourage motor vehicle use;
  - d. The project implements Housing Element policies that encourage expansion of the city's supply of high-quality market-rate and affordable housing, including affordable housing units that exceed the requirements of Inclusionary Zoning;
  - e. 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 of a key site in the Union Market area and will catalyze additional investments in the neighborhood; and
  - f. 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.
61. The Commission credits the testimony of the Applicant, OP, ANC 5D, and Councilmember McDuffie that the PUD is consistent with and furthers the goals of the Small Area Plan and the Ward 5 Industrial Land Transformation Study.

#### Agency Reports

62. By report dated March 16, 2015 and by testimony at the public hearing, OP recommended approval of the application. OP supported the PUD-related rezoning to the C-3-C Zone District, which would support the written elements of the Comprehensive Plan and the Florida Avenue Market Small Area Plan and would not be inconsistent with Future Land Use and Generalized Policy maps of the Comprehensive Plan. OP concluded that the benefits and amenities of the PUD were acceptable given the development incentives requested, and found that the PUD was particularly strong in the area of providing safe and effective transportation access:
- a. OP conditioned its support on the conversion of the Neal Place extension from a park to a road pursuant to terms acceptable to DDOT. The Applicant reached

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agreement with DDOT on the timing of the conversion of the extension, as set forth in the conditions of approval;

- b. OP supported the proposed amount of parking within the South Parcel building, and requested that the Applicant provide a parking study with the second-stage PUD for the North Parcel building. The Applicant also agreed to conduct the parking study, as set forth in the conditions of approval;
- c. OP concluded that retail and pedestrian access should be focused on the public streets, and the primary function for the alley should be parking and loading;
- d. OP requested that the Applicant narrow the proposed range of residential units and parking spaces. At the public hearing, the Applicant explained the justification for the ranges, which was based on a mix of market and site conditions, particularly with respect to the first-stage component of the Project. Specifically, the range of +/- 10% of residential units for the South Parcel and +/- 20% for the North Parcel is appropriate for a PUD of this size, the broader range being provided for the North Parcel because it is in an earlier development stage. Likewise, the number of parking spaces needed will depend on market conditions, and the range provided for the North Parcel will be narrowed for the second-stage PUD; and
- e. OP requested that the Applicant further demonstrate how the PUD furthers the goals of the Ward 5 Works Industrial Land Use study. At the hearing, the Applicant summarized its efforts to incentivize both producers/makers and retailers to come to the Union Market area, and agreed specifically to notify ANC 5D of job opportunities and training programs created through the PUD. The Applicant also provided testimony regarding how the PUD would provide sustainability and streetscape improvements, promote pedestrian and other non-automobile forms of transportation, and invest in new community amenities such as parks, retail, and streetscape improvements, all of which fulfill specific action items of the Ward 5 Works study.

(Ex. 34, Tr. March 26, 2015.) Based on the foregoing, the Commission concludes that the Applicant has addressed OP's conditions and issues.

63. By report dated March 16, 2015 and by testimony at the public hearing, DDOT concurred with the findings and conclusions of the Applicant's transportation study and raised no objection to the PUD:
  - a. DDOT conditioned its support on certain terms related to the timing of the conversion of the Neal Place extension to a roadway. The Applicant and DDOT reached agreement on these terms, as set forth in the conditions of approval;

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- b. DDOT also requested the Applicant consider additional elements to strengthen the transportation demand management plan. As set forth in the conditions of approval, the Applicant agreed to install a transit information screen in the residential lobbies of both the South Parcel building and the North Parcel building, provide each new resident with an annual membership for a car-sharing or bike-sharing program up to a maximum of \$35,000, provide information and website links to transportation services, unbundle parking costs from the price of lease or purchase, and provide six electric car charging stations within the garage;
- c. DDOT also indicated that DDOT would continue to review and approve components of the PUD within its jurisdiction for review and permitting, including streetscape guidelines for the Union Market area, design and construction of streetscape elements in public space, operational and geometric changes to roadways, and a curbside management plan;
- d. DDOT indicated that an additional comprehensive transportation review could be required for the North Parcel building. The Applicant agreed to perform this additional study, if required by DDOT; and
- e. DDOT noted that the proposed canopies exceeded the extent permitted under existing regulations. In its post-hearing submission, the Applicant explained the justification and rationale for the proposed canopies and provided evidence that the canopies were not likely to interfere with other improvements in public space.

(Ex. 33, 46-46E.)

In a supplemental report dated April 15, 2015, DDOT responded to the Applicant's statements in its post-hearing submission related to the canopy projection. DDOT stated that it agreed with the Applicant that the canopies were not likely to interfere with public space, but that DDOT reserved final judgment until the final design of the canopies is submitted during the permitting process. (Ex. 51.)

Based on the foregoing, the Commission finds that the Applicant has addressed DDOT's conditions and issues.

64. Through testimony at the public hearing, a representative of DDOE testified in general support of the PUD:
  - a. DDOE raised concerns regarding the amount of parking within the PUD and potential impacts on air quality, and requested that the Commission condition approval on the Applicant's contribution to further air quality studies. The Commission has previously determined that such environmental reviews take place through established environmental impact screening as a part of the building

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permit process, separate and apart from zoning approval processes; (See Z.C. Order No. 06-27 (Square 54 PUD) at 19-20); and

- b. DDOE testified that the Applicant's commitment to LEED-Silver Certification exceeded the minimum code requirements. DDOE identified potential additional credits that would permit the PUD to achieve Gold Certification, though DDOE also acknowledged that some of the credits would require different building systems. In its post-hearing submission, the Applicant responded to DDOE's recommendations and agreed to achieve additional credits beyond the LEED-Silver minimum.

(Tr. March 26, 2015; Ex. 46-46E.)

65. By letter dated March 25, 2015, Councilmember Kenyan McDuffie, the Councilmember for Ward 5, submitted a letter in support of the PUD. The Councilmember supported the PUD's benefits and found that the PUD fulfilled District objectives as well as goals outlined in the Small Area Plan and in the Ward 5 Industrial Land Transformation Study. The Councilmember also supported the transportation components of the PUD, including the use of the alley for parking and loading access as well as the proposed amount of parking within the PUD. At the hearing, a member of the Councilmember's staff presented additional testimony in support. (Ex. 41; Tr. March 26, 2015.)

#### **Advisory Neighborhood Commission 5D Report**

66. ANC 5D submitted a letter in support of the PUD indicating that at a duly noticed and regularly scheduled monthly meeting on December 9, 2014, with a quorum present, ANC 5D unanimously voted to support the PUD. The ANC supported the integration of the Neal Place extension into the PUD as well as the temporary use of the extension as a pocket park as major public benefits. The ANC also expressed support for the proposed amount of parking, which would serve not only the PUD but also surrounding businesses and the community. Finally, the ANC expressed support for the PUD's retail space, which will bring retail options and amenities to the neighborhood that previously required residents to travel to other parts of the city. (Ex. 26.)

#### **Parties in Support or Opposition**

67. No parties appeared in support or opposition to the application.

#### **Persons and Organizations in Support or Opposition**

68. ANC 6C appeared as an organization in support. The PUD is located approximately two blocks north of the ANC. ANC 6C conditionally supported the application and expressed strong support for PUD's design and proposed uses, including in particular the Neal Place extension. The ANC also expressed support for the Applicant's outreach efforts. ANC

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6C recommended that the Applicant: (1) add clear glass along 50% of the alley façade; (2) improve the alley with a different configuration than proposed by the Applicant and including a pedestrian and bicycle trail; (3) purchase a Capital Bikeshare station; (4) improve the sidewalk along 4<sup>th</sup> Street north from the PUD site to New York Avenue; and (5) provide street cleaning on 4<sup>th</sup> Street from Florida Avenue to New York Avenue. ANC 6C also submitted a plan for the alley prepared by an adjacent property owner. (Ex. 37, 42, 48.)

69. The Commission finds that the Applicant has reasonably addressed these conditions and balanced ANC 6C's desires with the viewpoints and priorities expressed by ANC 5D, OP, DDOT, and the Applicant and its expert witnesses:

- a. Alley Windows: The Applicant explained that it had purposely designed the PUD to focus retail and pedestrian activity on 4<sup>th</sup> Street, the public street, and away from vehicular and truck traffic in the alley. The Applicant also testified that it had explored ANC 6C's request and in response added in clearstory windows to the ground-floor retail uses as well as landscaping along the alley edge, adjacent to the building. The Applicant also agreed to incorporate retail windows along the alley if a retail tenant desires such presence on the alley. The Commission agrees that the focus of retail and pedestrian activity should be on 4<sup>th</sup> Street, and finds that the Applicant has made reasonable efforts to accommodate ANC 6C's concerns;
- b. Alley Configuration: The Applicant explained that the alley is located on District-owned property and is maintained as an alley for surrounding property owners through an easement agreement. The Applicant proposed using the alley as the main vehicular and truck access point to separate vehicles from pedestrians. The Applicant submitted truck turning movements into and out of the PUD's loading facilities. The Applicant explained that it proposed to improve 35 of the 48 feet of alley width, but leave the remaining 13 feet to be improved by other adjacent property owners in connection with the development of their parcels. The Commission agrees with the Applicant, OP, and DDOT that the primary purpose of the alley should be for vehicular and truck traffic, and finds that the Applicant's proposed alley design will not impose adverse impacts on surrounding property owners;
- c. Bikeshare Station: The Applicant explained that it focused its public improvements and benefits on providing basic street and sidewalk infrastructure within the Union Market area, and submitted evidence that a Capital Bikeshare station was already located two blocks east of the Property. The Applicant also agreed to contribute \$10,000 to the NoMa BID's Metropolitan Branch Trail Study, which will further improve the basic transportation infrastructure by assessing and recommending improvements to safety infrastructure and access

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points to the Metropolitan Branch Trail south of Rhode Island Avenue, N.E. The Commission agrees with the Applicant that a contribution to a Bikeshare station is not necessary given all of the other proffered public benefits and improvements created by the PUD, and finds that the proposed contribution to the Metropolitan Branch Trail Study will further improve the PUD's bicycle connectivity;

- d. Sidewalk Improvements North to New York Avenue: The Applicant submitted evidence that through this PUD and other PUDs in the immediate area, it has focused on creating connections to, from, and among various destinations within the Union Market area, the nearby Metrorail station, and the adjacent neighborhoods to the south and east. The Commission finds that pedestrian access improvements will be facilitated along all of the key pedestrian pathways through the area; and
- e. Trash Clean-up: The Applicant agreed to regularly clean 4<sup>th</sup> Street from Florida Avenue, N.E. to Penn Street, N.E. The Commission finds that this responds to the ANC's request.
70. A draft concept plan was filed in the record on behalf of an adjacent property owner. (Ex. 43.) The Commission only reviews the proposal pending before it and whether it satisfies the goals and standards of the PUD process. The Applicant is not required to demonstrate or satisfy that there are no other alternative ways to design components of the PUD which may have greater or lesser impacts than the proposed design. The Applicant is only required to demonstrate that the proposed PUD meets the specific standards of Chapter 24 of the Zoning Regulations. *Washington Canoe Club v. D.C. Zoning Comm'n*, 889 A.2d 995, 99 (2005) (“[T]he applicant is not charged with considering every option that any party in opposition might conceptualize.”) Here, the Commission concludes that the plans for the alley developed by the Applicant and supported by OP, DDOT, ANC 5D, and Councilmember McDuffie meet the PUD standards because it will not have adverse effects on surrounding properties and, in fact, will significantly improve the safety and function of the overall circulation network in the immediate area.

### 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.)



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2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the application as a consolidated PUD or a two-stage 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. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations and as approved by the Zoning Commission.
5. The development of the PUD will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate. The proposed redevelopment of the Property, with a mix of residential and commercial uses, capitalizes on the Property's strategy and transit-oriented location and is compatible with citywide and area plans of the District of Columbia.
6. The Applicant seeks a PUD-related zoning map amendment to the C-3-C Zone District as well as, for the consolidated portion of the PUD, flexibility from the rear yard, court, roof structure, parking, and loading requirements. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
7. The PUD complies with the applicable height and bulk standards of the Zoning Regulations and will not cause a significant adverse effect on any nearby properties. The residential and retail office uses for this PUD are appropriate for the Property's location. The PUD's height, bulk, and uses are consistent with the District's planning goals for the surrounding neighborhood.
8. The PUD provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe transportation features and measures, housing and affordable housing, ground-floor retail uses, and uses of special value are all significant public benefits. The impact of the PUD is acceptable given the quality of the public benefits of the PUD.
9. The impact of the PUD on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed PUD will not create adverse traffic, parking, or

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- pedestrian impacts on the surrounding community. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed PUD is consistent with the Property's Mixed-Use High-Density Residential, High-Density Commercial, and Production, Distribution, and Repair designation on the Future Land Use Map and furthers numerous goals and policies of the written elements of the Comprehensive Plan as well as other District planning goals for the immediate area.
  11. The Commission concludes that the proposed PUD-related Zoning Map amendment for the Property from the C-M-1 Zone District to the C-3-C Zone District is not inconsistent with the Comprehensive Plan, including the Property's land use designation on the Future Land Use map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives. 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.
  12. The PUD 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.
  13. 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.
  14. 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. The Commission was not required to give such "great weight" to the recommendations of ANC 6C, since the ANC was not an affected ANC nor was it a party to the proceeding. Nevertheless, the Commission carefully considered the issues and concerns raised by ANC 6C and concludes that the Applicant has satisfactorily addressed the ANC's conditions.
  15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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### 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

##### Consolidated PUD Conditions

1. The South Parcel shall be developed in accordance with the architectural drawings submitted into the record on March 6, 2015 as Exhibits 31A1-31A2, as modified by the drawings submitted on March 26, 2015 as Exhibits 40A1-40A4 and the drawings submitted on April 9, 2015 as Exhibits 46D and 46E, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans").
2. The South Parcel shall include a mixed-use building containing 384,351 square feet of gross floor area (5.68 FAR) consisting of 29,042 square feet of retail use, 355,309 of residential use with approximately 465 residential units, and a parking garage containing approximately 400-550 parking spaces for both commercial parking and accessory parking for the Project, as shown on the Plans.
3. The South Parcel shall be rezoned from the C-M-1 Zone District to the C-3-C Zone District. Pursuant to 11 DCMR § 3028.9, the change of zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.2.
4. The PUD shall be constructed as two buildings on a single record lot pursuant to § 2517 of the Zoning Regulations.
5. The Applicant shall have flexibility from the rear yard, court, roof structure, parking, and loading requirements as shown on the Plans.
6. The Applicant shall retain and incorporate portions of the existing building façade into the South Parcel building as shown on the Plans.
7. In the event that a retail tenant desires retail space at market rents with an entrance facing the alley, the Applicant shall modify the west façade to incorporate doors and windows to accommodate this tenant.
8. The Applicant shall have flexibility with the design of the PUD in the following areas:

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- a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
- b. To vary final selection of the exterior materials within the color ranges and materials types as proposed, based on availability at the time of construction;
- c. To make minor refinements to exterior details, dimensions, and locations, including belt courses, sills, bases, cornices, railings, balconies, trim, frames, mullions, spandrels, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
- d. To vary the residential unit count of the South Parcel building by up to 10%;
- e. To vary the size, location and design features of the retail component of the South Parcel Building, including the size, location, and design of windows, doors, awnings, canopies, signage, and similar features, to accommodate the needs of specific retail tenants and storefront design, provided, the storefront design is consistent with the guidelines included in Exhibit 31B of the record;
- f. To vary the size, location, type and other features of proposed building signage related to the proposed retail uses, provided, the signage is consistent with the guidelines included in Exhibit 31B of the record;
- g. In the event that a retail tenant desires retail space at market rents with an entrance facing the alley, flexibility to modify the west façade to incorporate doors and windows to accommodate this tenant;
- h. To vary the number, type, and location of doors related to the rooftop uses to accommodate changes in building operation and function;
- i. To vary the location of the green roof areas on the roofs, provided that the total green area is not decreased in size;
- j. To revise the design of the public space surrounding the South Parcel building to be consistent with the forthcoming streetscape design guidelines for the Union Market area, and to modify the exterior design of

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the South Parcel building to the extent necessary to obtain approvals from District agencies and/or service to the Property from utilities as would otherwise be in accordance with the pending streetscape design guidelines; and

- k. To vary the design of the parking garage, to permit the aisle width and parking space dimensions as shown on page A2 of the Plans, provided that the parking garage contain approximately 400-550 vehicular parking spaces.

**First Stage PUD Conditions**<sup>2</sup>

9. The North Parcel shall be developed in accordance with the architectural drawings submitted into the record on March 6, 2015 as Exhibits 31A1-31A2, as modified by the drawings submitted on March 26, 2015 as Exhibits 40A1-40A4 and the drawings submitted on April 9, 2015 as Exhibits 46D and 46E, and as modified by the guidelines, conditions, and standards herein (collectively, the "Plans") and the Commission's second-stage approval.
10. The North Parcel shall include a mixed-use building containing approximately 12,000 square feet of retail use, approximately 165 residential units (+/-20%), and a parking garage containing approximately 80-200 parking spaces for both commercial parking and accessory parking for the Project, as shown on the Plans; provided that the Applicant shall narrow the range of residential units and parking spaces prior to submitting a second-stage application for the North Parcel building.
11. The North Parcel shall be rezoned from the C-M-1 Zone District to the C-3-C Zone District. The change of zoning shall be effective upon the Commission's approval of second-stage PUD application for the North Parcel building and, pursuant to 11 DCMR § 3028.9, the recordation of the covenant discussed in Condition No. D.2.
12. The PUD shall be constructed as two buildings on a single record lot pursuant to § 2517 of the Zoning Regulations. The combined density of the North Parcel building and the South Parcel building shall not exceed 8.0 FAR.

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<sup>2</sup> Several of these conditions concern the provision of public benefits that are to occur prior to the issuance of a certificate of occupancy or for the life of the project. These conditions will become relevant only if a second-stage application is timely filed and that application is granted. By including these conditions, the Commission does not in any way suggest that it is pre-disposed to the grant of any such application.

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**B. PUBLIC BENEFITS**

**Consolidated PUD Conditions**

1. Prior to the issuance of the certificate of occupancy for the South Parcel, the Applicant shall provide the Zoning Administrator with access to the Project's Green Building Certification, Inc. website to demonstrate evidence that the South Parcel building has achieved a minimum of 53 points. Within 12 months after the issuance of the certificate of occupancy for the South Parcel building, the Applicant shall submit evidence that it has secured Silver certification or higher for the South Parcel building from the U.S. Green Building Council under the LEED-2009 rating system.
2. Prior to the issuance of the certificate of occupancy for the South Parcel building, the Applicant shall submit evidence that it has achieved a minimum green area ratio ("GAR") of 0.22.
3. For so long as the project exists, and as required by the Inclusionary Zoning ("IZ") Regulations (Chapter 26 of Title 11), the Applicant shall set aside a minimum of: (a) eight percent of the residential gross floor area of the South Parcel Building, i.e. 28,425 square feet ("South Parcel's Required Set Aside") for Inclusionary Units; and (b) the North Parcel 50% AMI Component (defined below) as Inclusionary Units in the South Parcel Building.
  - a. The South Parcel's Required Set-Aside shall be broken down as follows:
    - i. 20% of the South Parcel Inclusionary Set-Aside, i.e. 5,685 square feet shall be set aside for households earning up to 50% AMI; and
    - ii. 80% of the South Parcel's Inclusionary Set-Aside, i.e. 22,740 square feet shall be set aside for households earning up to 80% AMI; and
  - b. In addition to the South Parcel's Required IZ Set-Aside, and for so long as the project exists, the Applicant shall set aside an additional 2,260 square feet of residential gross floor area in the South Parcel Building for units reserved for households earning up to 50% AMI (the "North Parcel 50% AMI Component"). This amount represents 20% of the 11,300 square feet of gross floor area that the North Parcel is required to set aside as Inclusionary Units pursuant to 11 DCMR § 2603 based on the proposed residential gross floor area of the North Parcel Building (141,249 square feet x 8%). Because these units are in satisfaction of a portion of the North Parcel Building's IZ requirements, the units, although located in the

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South Parcel Building, shall be deemed “inclusionary units” required under Chapter 26 of title 11, and therefore subject to all statues and regulations regulating Inclusionary Units.

4. Neal Place extension:
  - a. Prior to the issuance of a certificate of occupancy (“C of O”) for the South Parcel building, the Applicant shall complete construction of the interim park over the Neal Place extension as shown on the Plans, and shall further demonstrate that the infrastructure of the road (as part of the parking garage) for the Neal Place extension has been constructed beneath the park to ensure that the majority of the investments into the permanent road is made at the outset;
  - b. Prior to the issuance of the C of O for the South Parcel building, the Applicant shall demonstrate that it has placed \$165,000 for the cost of construction of the final Neal Place extension into an interest-bearing escrow account (such escrowed funds to be invested by the Applicant at its discretion in investment-grade securities with interest to be paid to the Applicant on a regular basis);
  - c. Except as provided in subparagraph (d) below, prior to the issuance of the C of O for the North Parcel Building, the Applicant shall complete construction of the final Neal Place extension as shown on the Plans and open the roadway to vehicular traffic; and
  - d. Notwithstanding the foregoing and pursuant to DDOT’s request, the Applicant agrees to complete construction of the final Neal Place extension within 12 months after the earlier of any of the following events, if such event occurs earlier than the issuance of the C of O for the North Parcel building:
    - i. After the review of a Monitoring Study (defined below) that demonstrates queuing extending on 4<sup>th</sup> Street south from Morse Street toward Florida Avenue does not allow enough queuing space to accommodate two additional average size vehicles without blocking the crosswalk on more than two instances per peak period on more than one observation day, and DDOT concludes and communicates to the Applicant that the Neal Place Extension is needed to alleviate traffic queuing conditions at 4<sup>th</sup> and Morse Street. Each Monitoring Study should be the result of typical traffic patterns rather than the result of atypical traffic events (e.g. construction, holidays, or special events); or

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- ii. DDOT communicates to the Applicant that all required permits have been issued for the proposed 3<sup>rd</sup> Street, N.E. as a public or private street, alley, or driveway connection serving vehicular traffic and construction has commenced; or
- iii. DDOT communicates to the Applicant that all required permits have been issued for Neal Place to the immediate west as a public or private street, alley, or driveway connection serving public vehicular traffic and construction has commenced; or
- iv. The fifth anniversary of the issuance of the C of O for the South Building with an option to extend for another five years with DDOT approval.

For purposes of this condition, the Monitoring Study shall be as follows: Within 12 months after the issuance of the C of O for the South Parcel building, and on an annual basis thereafter (“Study Anniversary”) or within six weeks of DDOT requesting additional observation prior to a subsequent Study Anniversary (“Requested Study”), the Applicant shall initiate a performance monitoring study of the length of queues along the northbound 4<sup>th</sup> Street approach to Morse Street (“Monitoring Study”). DDOT requests for a Requested Study cannot be made more than one time per year and shall eliminate the requirement for an additional study to be performed at the subsequent Study Anniversary. Instead, the date upon which the Applicant initiates a Requested Study shall establish a new Study Anniversary such that the next Monitoring Study shall be due within 12 months after that date.

Each Monitoring Study shall be conducted by a professional transportation engineering or planning firm that regularly works in the District and consist of observations for two observation periods during a three- week timeframe. An observation period is defined as Wednesday-Thursday and Saturday peak periods. The weekday peak period is defined as between the hours of 4:00 p.m. to 7:00 p.m. when DC Public Schools and Congress are in session. The weekend peak period is defined as between 11:00 a.m. to 2:00 p.m. during a Saturday during a week when DC Public Schools and Congress are in session. The Applicant shall provide a copy of each Monitoring Study to DDOT.

5. Prior to the issuance of a C of O for the South Parcel building and provided that DDOT has granted final approval for the reconfiguration, the Applicant shall demonstrate that it has contributed 100% of the design, engineering, and construction costs to the reconfiguration of 4<sup>th</sup> Street, N.E. to eliminate head-in parking and convert the street to two-way traffic. The final design of such improvements shall be subject to approval of DDOT.



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6. Prior to the issuance of a C of O for the South Parcel building, the Applicant shall demonstrate that it has constructed streetscape improvements along the west side of 4<sup>th</sup> Street, N.E. between Neal Place and Morse Street, N.E. pursuant to streetscape design guidelines for the Union Market area as approved by DDOT.
7. Prior to the issuance of a C of O for the South Parcel Building, the Applicant shall demonstrate that it has reconstructed a 35-foot-wide segment of the private alley along the Property's west frontage and south to Morse Street and installed a planting strip and security lighting as shown on the Plans.
8. The South Parcel building shall provide a minimum of 147-179 bicycle parking spaces within the building and 20 bicycle parking spaces on racks outside the building. The final number and location of improvements in public space shall be subject to the discretion of DDOT.
9. Prior to the issuance of a building permit for the South Parcel building, the Applicant shall contribute \$10,000 to the NoMa Business Improvement District ("BID") toward the BID's proposed Metropolitan Branch Trail Study, and provide evidence that the study has commenced.
10. The Applicant shall provide each new resident for the first year after the issuance of the C of O for the South Building with an annual membership in a car-sharing or bike-sharing program, up to a maximum of \$35,000.
11. The Applicant shall provide parking within the South Parcel building as shown on the Plans. Prior to the issuance of a C of O for the South Parcel building, the Applicant shall demonstrate that it has created a parking management plan that includes the following measures:
  - a. Controlled access to the parking garage; and
  - b. For the residential portion of the garage, parking costs shall be unbundled from the cost of lease or sale of each residential unit.

The Applicant shall maintain the parking management plan for the life of the South Parcel building.

12. The Applicant shall provide loading facilities within the South Parcel building as shown on the Plans. Prior to the issuance of a C of O for the South Parcel building, the Applicant shall demonstrate that it has undertaken the following loading management measures:
  - a. Designate a loading facility manager, who shall coordinate with residents and retail vendors to schedule deliveries; and

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- b. Require all residential and retail tenants to schedule deliveries that utilize the loading dock.

The Applicant shall maintain the loading management plan for the life of the South Parcel building.

13. Prior to the issuance of a C of O for the South Parcel building, the Applicant shall demonstrate that it has developed a curbside management plan for 4<sup>th</sup> Street, N.E. to introduce striping and signage along 4<sup>th</sup> Street, N.E. The final details of the plan shall be subject to final discretion of DDOT.
14. Prior to the issuance of a C of O for the South Parcel building and for the life of the Project, the Applicant shall, at its own expense, clean up trash along 4<sup>th</sup> Street, N.E. no less than four times a week between Florida Avenue and Penn Street, N.E. (except that the Applicant is relieved of this condition if the South Parcel Building becomes part of a business improvement district that assumes responsibility for such duties).
15. Prior to the issuance of the first C of O for the South Parcel building, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services (“DOES”) in the form submitted into the record as Ex. 31F to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the project.
16. In accordance with the time frames set forth in the First Source Employment Agreement, the Applicant shall provide ANC 5D with notice of new job needs and job vacancies after providing DOES with notice of such opportunities under the First Source Employment Agreement. To the extent that the Applicant and DOES agree to develop skills or on-the-job training programs, the Applicant shall provide ANC 5D with notice of such training program. This requirement shall expire when the First Source Employment Agreement ends.

**First-Stage PUD Conditions**

17. Prior to the issuance of the C of O for the North Parcel building, the Applicant shall provide the Zoning Administrator with access to the Project’s Green Building Certification, Inc. website to demonstrate evidence that the North Parcel building has achieved a minimum of 53 points. Within 12 months after the issuance of the C of O for the North Parcel building, the Applicant shall provide evidence that it has secured Silver Certification or higher from the U.S. Green Building Council under the LEED-2009 rating system.

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18. Prior to the issuance of a C of O for the North Parcel Building, the Applicant shall provide evidence that it has designed the building to a minimum GAR of 0.22:
  - a. The Commission approves a maximum residential gross floor area for the North Parcel Building of approximately 141,249 square feet. The North Parcel Building shall comply with the Inclusionary Zoning set-aside requirement presently stated at 11 DCMR § 2603 (that is, eight percent of the residential gross floor area of the North Parcel Building), less 2,260 square feet, which represents the “North Parcel Building’s 50% AMI Component” that is being accounted for in the South Parcel Building. The actual affordable housing requirement associated with the North Parcel Building shall be determined and calculated based on the residential gross floor area for the North Parcel Building as approved in the second-stage PUD.
19. The North Parcel building shall provide a minimum of 48-71 bicycle parking spaces within the building.
20. Prior to the issuance of the first C of O for the North Parcel building, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services (“DOES”) in the form submitted into the record to achieve the goal of utilizing District of Columbia residents for at least 51% of the new construction jobs created by the project. (Ex. 31F.)
21. In accordance with the time frames set forth in the First Source Employment Agreement, the Applicant shall provide ANC 5D with notice of new job needs and job vacancies after providing DOES with notice of such opportunities under the First Source Employment Agreement. To the extent that the Applicant and DOES agree to develop skills or on-the-job training programs, the Applicant shall provide ANC 5D with notice of such training program. This requirement shall expire when the First Source Employment Agreement ends.

## C. TRAFFIC MITIGATION

### Consolidated PUD Condition

1. For the life of the Project, the Applicant shall provide the following transportation demand management (“TDM”) measures:
  - a. Designate a TDM coordinator responsible for organizing and marketing the TDM plan;

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- b. Provide information and website links to [commuterconnections.com](http://commuterconnections.com), [goDCgo.com](http://goDCgo.com), and other transportation services on developer and property management websites;
- c. Provide a transportation information screen within the South Parcel residential lobby;
- d. Reserve at least two car-sharing spaces within the South Parcel portion of the garage; provided, that upon the completion of the North Parcel portion of the garage, the car-sharing spaces may be located in either portion of the garage; and
- e. Install at least six electric car-charging stations within the South Parcel portion of the garage; provided, that upon the completion of the North Parcel portion of the garage, the car-sharing spaces may be located in either portion of the garage.

**First-Stage PUD Conditions**

2. For the life of the North Parcel building, the Applicant shall provide the following transportation demand management (“TDM”) measures:
  - a. Designate a TDM coordinator responsible for organizing and marketing the TDM plan;
  - b. Provide information and website links to [commuterconnections.com](http://commuterconnections.com), [goDCgo.com](http://goDCgo.com), and other transportation services on developer and property management websites; and
  - c. Provide a transportation information screen within the North Parcel residential lobby.
3. If requested by DDOT, the Applicant shall provide an additional Comprehensive Transportation Review (“CTR”) for the second-stage PUD application for the North Parcel that is consistent with the CTR analysis provided as Exhibit 24H of the record.
4. In connection with the second-stage PUD application, the Applicant shall provide a parking analysis of the proposed amount of parking in the North Parcel building.

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**D. Miscellaneous**

1. The first-stage approval shall be valid for a period of eight years from the effective date of this Order, within which time the Applicant must file an application for second-stage PUD approval of the North Parcel building.
2. 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 Commission.
3. The consolidated PUD approval for the South Parcel 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 Parcel building as specified 11 DCMR § 2409.1. Construction shall begin within three years after the effective date of this Order.
4. 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 shall not be tolerated. Violators shall be subject to disciplinary action.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the application be **GRANTED**.

On April 27, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application 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 approve).

On June 8, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0**

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(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 July 3, 2015.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FILING**

**Z.C. Case No. 15-15**

**(JBG/Boundary 1500 Harry Thomas Way, LLC and JBG/Boundary Eckington  
Place, LLC – Consolidated PUD & Related Map Amendment @ Square 3576)**

**June 18, 2015**

**THIS CASE IS OF INTEREST TO ANC 5E**

On June 17, 2015, the Office of Zoning received an application from JBG/Boundary 1500 Harry Thomas Way, LLC and JBG/Boundary Eckington Place, LLC (the “Applicant”) for approval of a consolidated planned unit development (“PUD”) and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 814 and Lots 2001-2008 in Square 3576 in northeast Washington, D.C. (Ward 5), also known as 1500 Harry Thomas Way, N.E. and 1611-1625 Eckington Place, N.E., respectively. The property is currently zoned M; the proposed PUD-related map amendment would rezone the property, for the purposes of this project, to CR.

The Applicant proposes to construct a mixed-use building with approximately 671,600 gross square feet that will be comprised of four interconnected structures containing approximately 691 residential units and approximately 49,400 gross square feet of retail and service uses. The maximum height of the building will be 110 feet and the total density will be approximately 5.0 floor area ratio (“FAR”). The project will contain approximately 292 underground automobile parking spaces and 230 bicycle parking spaces will be provided. The project will be designed to achieve the equivalent of LEED-Silver and will provide 20% of its affordable housing to those households earning 50% or less of the Washington Area Median Income (AMI).

This case was filed electronically through the Interactive Zoning Information System (“IZIS”), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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