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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council republishes Law 20-169, License to Carry a Pistol Temporary Amendment Act of 2014
- Office of the Attorney General passes regulations for enforcing child support orders by intercepting and seizing insurance settlements owed to obligors
- Department of Behavioral Health announces funding availability for the implementation of the Adult Substance Abuse Rehabilitative Services (ASARS) Program
- Office of the State Superintendent of Education announces funding availability for the Fiscal Year 2016 DC Community Schools Incentive Initiative Grants
- D.C. Public Library eliminates fines and penalties for students age 19 and under
- Department of Human Services announces funding availability for the Fiscal Year 2016, Interim Housing for Homeless Minor-Heads of Households Grant
- Office of the Secretary requests applications for the Grant to Promote District of Columbia Voting Rights and Statehood

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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DISTRICT OF COLUMBIA
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COUNCIL OF THE DISTRICT OF COLUMBIA

ERRATA NOTICE

The Council of the District of Columbia hereby gives notice of a correction to the effective law date of D.C. Law 20-169, the License to Carry a Pistol Temporary Amendment Act of 2014. The original notice issued by the Council of the District of Columbia and published in the D.C. Register on April 3, 2015, at 62 DCR 3798, incorrectly stated that D.C. Law 20-169 became effective on March 7, 2015, the day after the expiration of a 30-day Congressional review period. Section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), requires that any act transmitted to Congress with respect to any act codified in title 22, 23, or 24 of the District of Columbia Official Code shall take effect at the end of a 60-day Congressional review period. Section 3 of D.C. Law 20-169 amended An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, which act is codified in Chapter 45 of Title 22 of the District of Columbia Official Code. The required 60-day Congressional review period for D.C. Law 20-169 ended on May 4, 2015, making the law effective as of May 5, 2015. The revised notice, published with this Errata Notice, reflects the correct effective law date of May 5, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-169

"License to Carry a Pistol Temporary Amendment Act of 2014"

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-927 on first and second readings September 23, 2014, and October 7, 2014, respectively. Following the signature of the Mayor on October 31, 2014, as required by Section 404(e) of the Charter, the bill became Act 20-462 and was published in the November 14, 2014 edition of the D.C. Register (Vol. 61, page 11814). Act 20-462 was transmitted to Congress on January 23, 2015 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 20-462 is now D.C. Law 20-169, effective May 5, 2015.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

January	23, 26, 27, 28, 29, 30
February	2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 17, 18, 19, 20, 23, 24, 25, 26, 27
March	2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26
April	13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30
May	1, 4

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-24

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To honor the Gay and Lesbian Activists Alliance of Washington, DC on the occasion of its 44th anniversary and to recognize the distinguished citizens and organizations to which it will pay tribute at its anniversary reception.

WHEREAS, the Gay and Lesbian Activists Alliance of Washington, DC ("GLAA") was founded in April 1971 to advance the cause of equal rights for gay people in the District of Columbia through peaceful participation in the political process;

WHEREAS, GLAA ranks as the oldest continuously active gay, lesbian, bisexual, and transgender rights organization in the country;

WHEREAS, GLAA has long fought to improve District government services to LGBT people, from the police and fire departments to the Department of Health and the Office of Human Rights;

WHEREAS, GLAA played a key role in winning marriage equality in the District, working with coalition partners and District of Columbia officials to craft and implement a strategy for achieving a strong, sustainable victory;

WHEREAS, GLAA has participated in lobbying efforts to defeat undemocratic and discriminatory amendments to the District's budget;

WHEREAS, GLAA has been an advocate for a safe and affirming educational environment for sexual minority youth;

WHEREAS, GLAA has educated District voters by rating candidates for Mayor and Council;

WHEREAS, GLAA has provided leadership in coalition efforts on a wide range of public issues, from family rights to condom availability in prisons and public schools to police

ENROLLED ORIGINAL

accountability;

WHEREAS, GLAA maintains a comprehensive website of LGBT advocacy materials, as well as the GLAA Forum blog to enhance its outreach; and

WHEREAS, GLAA, at its 44th Anniversary Reception on April 23, 2015, will present its Distinguished Service Awards to individuals who have served the LGBT community in the District of Columbia.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia salutes GLAA on the occasion of its 44th Anniversary Reception on April 23, 2015, and thanks its members for their long record of dedicated service that has advanced the welfare not only of the lesbian, gay, bisexual, and transgender community but of the entire population of the District of Columbia.

Sec. 2. This resolution may be cited as the "Gay and Lesbian Activists Alliance 44th Anniversary Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-25

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To declare the month of April 2015 as "Sexual Assault Awareness Month" in the District of Columbia, to recognize and support healthy human development, and to prevent child and adult sexual abuse.

WHEREAS, women's organized protests against violence began in the late 1970s in England with 'Take Back the Night' marches;

WHEREAS, these women-only protests emerged in direct response to the violence that women encountered as they walked the streets at night;

WHEREAS, these activities became more coordinated and soon developed into a movement that extended to the United States and, in 1978, the first Take Back the Night events in the United States were held in San Francisco and New York City;

WHEREAS, sexual assault awareness activities expanded to include the issue of sexual violence against men and men's participation in ending sexual violence;

WHEREAS, in the late 1980s, the National Coalition Against Sexual Assault informally polled state sexual assault coalitions to determine when to have a national Sexual Assault Awareness Week, which preceded Sexual Assault Awareness Month;

WHEREAS, the month of April has been designated as Sexual Assault Awareness Month in the United States and first observed nationally in April 2001, after the alarming statistics of sexual assaults and underreporting became more prevalent;

WHEREAS, according to the Department of Justice's National Crime Victimization Survey, every 2 minutes, someone in the United States is sexually assaulted;

WHEREAS, one out of every 6 -- 17.7 million American women -- has been the victim of an attempted or completed rape in her lifetime;

ENROLLED ORIGINAL

WHEREAS, nearly 3 million men in the United States have been the victims of sexual assault or rape;

WHEREAS, girls 16 through 19 years of age are 4 times more likely than the general population to be victims of rape, attempted rape, or sexual assault;

WHEREAS, the rate of rape and sexual assault is 1.2 times higher for nonstudents than for students;

WHEREAS, victims of sexual assault are 3 times more likely to suffer from depression, 6 times more likely to suffer from post-traumatic stress disorder, 13 times more likely to abuse alcohol, 26 times more likely to abuse drugs, and 4 times more likely to contemplate suicide;

WHEREAS, according to the Centers for Disease Control and Prevention, among female victims of partner violence who filed a protective order, 68% reported they were raped by their intimate partner and 20% reported a rape-related pregnancy;

WHEREAS, approximately 80% of assaults are committed by someone known to the victim and 38% of rapists are a friend or acquaintance;

WHEREAS, despite the prevalence of sexual violence and its disproportionate effect on at-risk populations, such as the LGBT community, sexual violence remains the most underreported crime; and

WHEREAS, despite these harrowing statistics, sexual assault has decreased by 60% since 1993, thanks to the awareness campaigns by organizations like Break The Cycle, the D.C. Rape Crisis Center, Collective Action for Safe Spaces, Stop Street Harassment, and Men Can Stop Rape, and historic gains made by the Violence Against Women Act and other laws passed and being enforced around the country.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and supports Sexual Assault Awareness Month, urging citizens to show their support for all victims of sexual assault and the fight against violent crimes. By working together and pooling our resources during the month of April, District residents can highlight sexual violence as a major public-health, human-rights and social-justice issue and reinforce the need for prevention.

Sec. 2. This resolution may be cited as the “Sexual Assault Awareness Month Recognition Resolution of 2015”.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-26

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To posthumously honor the life of Simmeon Williams for his commitment to develop youth through athletics and dedication to promoting recreational programing throughout the District of Columbia.

WHEREAS, Simmeon Williams was born on January 27, 1956 in Washington, D.C. at the District of Columbia General Hospital;

WHEREAS, Simmeon Williams was a proud resident of Ward 5 and resided in the Woodridge neighborhood;

WHEREAS, Simmeon Williams attended McKinley Senior High School;

WHEREAS, Simmeon Williams began his coaching career in 1972 at 16 years of age with his lifetime friend Andre "Smokey" Lee and coached the 75-pound #12 Boys Club football team;

WHEREAS, Simmeon Williams coached basketball at McKinley Technology High School;

WHEREAS, Simmeon Williams worked diligently at the District of Columbia Department of Parks and Recreation administering several activities for District residents;

WHEREAS, Simmeon Williams' record in basketball, football, and baseball made him one of the winningest coaches in the District;

WHEREAS, Simmeon Williams, with the help of Michelle Lawrence, Simmeon "Little Simmeon" Williams, Sylvia Gwaltney, John Graham, John Douglas, Delonte "Peanut" Taylor, John Frye, and Mason Clarke created the "Legends League," better known as the "Fifty & Over League";

WHEREAS, Simmeon Williams coached National Basketball Association player John Battle and mentored Georgetown University player Gene Smith; and

ENROLLED ORIGINAL

WHEREAS, Simmeon Williams enriched the lives of District residents through coaching and recreational programing for over 40 years.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes Simmeon Williams for his dedication to the community through athletic coaching and community engagement

Sec. 2. This resolution may be cited as the "Simmeon Williams Posthumous Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-27

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To recognize and honor the Youth Pride Alliance for its commitment to the Gay, Lesbian, Bi-Sexual, Transgendered, and Questioning youth in the District of Columbia and surrounding areas and to declare May 2, 2015 as "Youth Pride Day" in the District of Columbia.

WHEREAS, Youth Pride Day was founded in 1996 as a day- long celebration for gay, lesbian, bisexual, transgender, and sexually questioning youth;

WHEREAS, Youth Pride Day has been held in the DuPont neighborhood area of Washington, D.C.;

WHEREAS, Youth Pride Day has provided gay, lesbian, bisexual, transgender, and sexually questioning youth a place where they can discover their identities and challenge society to stop the hate, the violence, the fear, the isolation, and the denial; and

WHEREAS, Youth Pride Day has brought over 2000 young adults from the surrounding District of Columbia metropolitan Area to its festival.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the Youth Pride Alliance for its commitment to the Gay, Lesbian, Bi-Sexual, Transgendered, and Questioning youth in the District of Columbia and surrounding areas and declares May 2, 2015, Youth Pride Day in the District of Columbia.

Sec. 2. This resolution may be cited as the "Youth Pride Day, Washington, DC Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-28

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To recognize and honor Kimberly "Ms. Kim" Graham for her illustrious 20-year career in go-go music.

WHEREAS, Ms. Kim was born on June 3, 1974 in Ward 7 in the District of Columbia and is a current Ward 5 resident;

WHEREAS, Ms. Kim is known as the "First Lady of Go-Go";

WHEREAS, Ms. Kim was heavily influenced by gospel, R&B, and go-go music and began her singing career at 11 years of age;

WHEREAS, Ms. Kim made her go-go debut in 1995 when she joined with noted go-go group Rare Essence and performed with itfor several years, leaving her footprint in the go-go scene;

WHEREAS, Ms. Kim raised the bar for women in go-go by recording Ashlee Simpson's "Pieces of Me";

WHEREAS, Ms. Kim later went on to perform with Backyard Band before venturing out to start her own band, The Kim Michelle Experience;

WHEREAS, Ms. Kim has performed with several famous recording artists, including Ludacris, Angie Stone, Paula Campbell, Doug E. Fresh, Biz Markie, Raheem DeVaughn, and the District's own Wale and Chuck Brown;

WHEREAS, Ms. Kim has won several awards over her career, including the "Leading Lady of Go-Go" award at the inaugural 93.9 WKYS Go-Go Awards in 2006 and later the "Best Female Vocalist" award and "Upcoming Band of the Year" award with The Kim Michelle Experience in 2010;

WHEREAS, Ms. Kim joined the renowned group Familiar Faces (now Team Familiar) in 2011, teaming up with Donnell "D. Floyd" Floyd, Milton "GoGo Mickey" Freeman, and others to create a special chemistry in the group;

ENROLLED ORIGINAL

WHEREAS, Ms. Kim helps shape young girls in the District by mentoring them in singing, music, and life skills; and

WHEREAS, Ms. Kim continues to wow her fans with her unique style and artistry as she celebrates 20 years in the go-go industry in 2015.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors Kimberly "Ms. Kim" Graham for her 20-year career in go-go music and extends its wishes for her continued success.

Sec. 2.. This resolution may be cited as the "Ms. Kim Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-29

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To acknowledge and honor the inaugural Dick Wolf Memorial Lecture on March 27, 2015, in the District of Columbia.

WHEREAS, Dick Wolf (1933-2012) was one of the District's most ardent and effective visionaries, working tirelessly and effectively on community planning (including the Comprehensive Plan), historic preservation, and sound neighborhood development;

WHEREAS, Dick served on the board of the Capitol Hill Restoration Society ("CHRS") for many years, most often as President, and also served on the Committee of 100 of the Federal City;

WHEREAS, Dick's vision for Washington was of a great, world-class city that houses both the nation's great institutions as well as families with young children; balances its appetite for growth with preservation of the character of its irreplaceable historic residential neighborhoods; and integrates sound, sustained planning principles, practices, and administrative processes into all of the business of the District;

WHEREAS, in its 60th anniversary year CHRS wishes to honor Dick and his legacy in a meaningful, ongoing way that benefits the entire District;

WHEREAS, CHRS has launched an annual lecture competition among students in the District's many universities and interns in the Office of Planning on topics relating to historic preservation and urban planning in the District; and

WHEREAS, the first Dick Wolf Memorial Lecture will take place on March 27, 2015, at the Hill Center on Capitol Hill.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council recognizes March 27, 2015, as the Dick Wolf Memorial Lecture Series inaugural event to celebrate his many accomplishments.

Sec. 2. This resolution may be cited as the "Dick Wolf Memorial Lecture Series Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-30

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To posthumously recognize Bishop C. L. Long, the Senior Pastor and founder of the Scripture Cathedral Church, located in Washington, D.C.

WHEREAS, Scripture Cathedral resides at 9th and Cathedral Way, N.W., Washington, D.C.;

WHEREAS, Scripture Cathedral was organized and founded by Bishop C.L. Long;

WHEREAS, Scripture Cathedral has a membership of over 10,000;

WHEREAS, Bishop C.L. Long was the Pastor and Spiritual Leader of this branch of Zion for 55 years;

WHEREAS, Under the Leadership of Bishop C.L. Long he launched his radio/television ministry and worked to have the radio station WUST, 1120 AM, converted to a full-time gospel music station;

WHEREAS, under the leadership of Bishop C.L. Long, the church became a center of community improvement and a catalyst for social action in Washington, D.C.;

WHEREAS, Bishop C.L. Long is hereby recognized as a humanitarian who produced a mass feeding of 5,200 men, women, and children;

WHEREAS, Bishop C.L. Long's ministry, both domestic and abroad, includes the continent of Africa, where there are 478 churches under the umbrella of Cathedral Ministries;

WHEREAS, Bishop C.L. Long spear-headed the "Amour House", which remains in operation today as a crisis-intervention program with substance abuse counseling, housing assistance, clothing for the needy, social service referrals, reading and literacy tutorials, computer training, job readiness, and child development;

ENROLLED ORIGINAL

WHEREAS, until his passing, Bishop C.L. Long was actively involved in issues and organizations that concerned him, and served the citizens of Washington, D.C. with great honor and distinction; and

WHEREAS, Bishop C.L. Long, after 40 years of traditional pasturing, dared to come forth to proclaim the truth of God's revelation concerning women's call to ministry;

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the many years of spiritual and political leadership extended to the citizens of Washington, D.C.by Bishop C.L. Long.

Sec. 2. This resolution may be cited as the "Bishop C.L. Long Posthumous Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-31

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To acknowledge and honor the 80th anniversary of the founding of New Hope Free Will Baptist Church in the District of Columbia.

WHEREAS, on Thanksgiving night, 1934, Mother Carrie Parker shared with other native North Carolinians, who had relocated to Washington, D.C., a vision to establish a Free Will Baptist Church in Washington, D.C.;

WHEREAS, in March of 1935, the Willing Workers Club held their first formal worship service at 1609 11th Street, N.W., under the name "New Hope Free Will Baptist Mission";

WHEREAS, in April 1935, the church was officially organized under the Northern Annual Conference of the United American Free Will Baptist Church, thereby making it the first Free Will Baptist church in Washington, D.C.;

WHEREAS, on Sunday, November 28, 1965, the New Hope Free Will Baptist Church moved to its current church home at 754 11th Street, S.E., which is recognized as an historical edifice, protected by the Historical Preservation Society;

WHEREAS, in 1972 Northern Annual Conference of the United American Free Will Baptist Church became the Northeast Free Will Baptist Conference;

WHEREAS, from 1935 until the present day, New Hope Free Will Baptist church has grown and prospered spiritually, financially, and physically from the inception of the election of its former pastors Rev. Wiley Miller (1937), Rev. T.T. Ferguson (1940), Rev. Arlester Bess (1944), Rev. T.C. Dixon (1949), Rev. Clifton Jones (1963), and Rev. Robert O. Freeman (1968), and the first female pastor in the church's history and the first elected female pastor in the Northeast Free Will Baptist Conference history, Rev. Dr. Ernestine Howell Battle (1999);

WHEREAS, in April 2015, New Hope Free Will Baptist Church celebrates and commemorates its 80th anniversary; and

ENROLLED ORIGINAL

WHEREAS, the New Hope Free Will Baptist Church family resolves to pass on the legacy received from those who ran before them to the present and future generations.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council acknowledges and recognizes the 80th anniversary of the founding of the New Hope Free Will Baptist Church.

Sec. 2. This resolution may be cited as the "New Hope Free Will Baptist Church 80th Anniversary Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-32

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To recognize and honor Angela M. Tilghman, a dedicated teacher and administrator for the District of Columbia Public Schools and a lifelong resident of Ward 6, on the occasion of her retirement.

WHEREAS, Angela M. Tilghman began her over 30-year career with the District of Columbia Public Schools in 1978;

WHEREAS, Angela M. Tilghman served as the principal for Myrtilla Miner Elementary School from 1992 to 2005;

WHEREAS, Angela M. Tilghman was named Head Start Principal of the Year from the District of Columbia Public Schools in the 1998-1999 school year;

WHEREAS, Angela M. Tilghman was named National Distinguished Principal from the National Association of Elementary School Principals in the 1999-2000 school year;

WHEREAS, Angela M. Tilghman was named Head Start Principal of the Year from the District of Columbia Public Schools in the 2003-2004 school year;

WHEREAS, Angela M. Tilghman was named the Washington Post Distinguished Educational Leadership Award in the school year of 2004-2005;

WHEREAS, Angela M. Tilghman served as the principal of James A. Garfield Elementary School from 2009 to 2012;

WHEREAS, Angela M. Tilghman believes in the power of public education to make a difference in the lives of individuals and in communities; and

ENROLLED ORIGINAL

WHEREAS, Angela M. Tilghman was an outstanding educator for the District of Columbia Public Schools and a proud pillar of the Ward 6 community.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council acknowledges and honors Angela M. Tilghman's commitment and service to the District of Columbia Public Schools and for being a lifelong resident of the Ward 6 community.

Sec. 2. This resolution may be cited as the "Angela M. Tilghman Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-33

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To acknowledge and honor the Blues Alley Jazz Society and its nonprofit mission to promote youth, jazz, and education here in our nation's capital on its 30th anniversary, and to declare April 10, 2015, as "Blues Alley Jazz Society Day" in the District of Columbia.

WHEREAS, the Blues Alley Jazz Society was founded in 1985 and named after its legendary nightclub namesake located in the northwest Washington, D.C., neighborhood of Georgetown;

WHEREAS, over the past 3 decades the nonprofit organization has been a pioneer in progressive jazz music programming for children;

WHEREAS, the organization's first president emeritus was famed trumpeter Dizzy Gillespie, who encouraged its mission by promoting jazz to future artists and audiences alike;

WHEREAS, its programming includes the award-winning Blues Alley Youth Orchestra, the annual Blues Alley summer camp for children, and the annual BIG BAND JAM! youth jazz festival on the National Mall every April during "Jazz Appreciation Month";

WHEREAS, the Blues Alley Jazz Society has forged significant alliances with internationally noted cultural leaders, including the Smithsonian Institution, the Voice of America, the National Park Service, and the DC Federation of Musicians;

WHEREAS, the Blues Alley Jazz Society also enjoys special partnerships with Washington Performing Arts, Military District of Washington, District of Columbia Public Schools, and Grace Episcopal Church in Georgetown;

WHEREAS, over the past 30 years the Blues Alley Jazz Society has graduated students through its programs from every major music conservatory in America; and

WHEREAS, April is the Smithsonian Institution's 12th annual "Jazz Appreciation Month", making it most fitting to collectively honor the Blues Alley Jazz Society's cultural

ENROLLED ORIGINAL

contribution to the District of Columbia community at The John F. Kennedy Center for the Performing Arts.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council acknowledges and recognizes the 30th anniversary of the Blues Alley Jazz Society, and declares April 10, 2015, as "Blues Alley Jazz Society Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Blues Alley Jazz Society Day Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-34

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To honor Saint Sophia Greek Orthodox Cathedral on the occasion of its Consecration and its 60th anniversary at 36th Street & Massachusetts Avenue, N.W., Washington, D.C. 20007, and to declare May 10, 2015, as "Saint Sophia Day" in the District of Columbia..

WHEREAS, The Community of Saint Sophia was established in 1904 by Greek immigrants and is the oldest Greek Orthodox Church Community in the District of Columbia area, the 7th oldest Greek Orthodox Church community in the United States, and elevated to the rank of cathedral on February 18, 1955;

WHEREAS, Saint Sophia Cathedral serves 800 stewards representing 1,200 adult parishioners, for a total of about 2,000 souls, including children;

WHEREAS, Saint Sophia Cathedral was the first Greek Orthodox Church community in the western hemisphere to be named Saint Sophia;

WHEREAS, Saint Sophia Cathedral is the episcopal throne in the nation's capital of the Greek Orthodox Archbishop of America exarch to the western hemisphere of the Ecumenical Patriarch of Constantinople, the spiritual head of 300 million world Orthodox; and

WHEREAS, during its 111-year history as a Greek Orthodox faith community, Saint Sophia Cathedral has helped transform the lives of many thousands of Greek Orthodox communicants throughout the Washington, D.C., metropolitan area, serving as the mother church of several other Greek Orthodox Church communities.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia salutes and congratulates Saint Sophia Cathedral on the occasion of its Consecration and its 111 continuous years of inspired service to the Greek Orthodox faithful of the Washington, D.C., metropolitan area, and declares May 10, 2015, as "Saint Sophia Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "The Saint Sophia Cathedral Consecration Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

12-35

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To recognize Comcast Cares Day and its valuable contributions to communities across the District over the past 14 years, and to declare April 25, 2015 as "Comcast Cares Day" in the District of Columbia.

WHEREAS, Comcast remains an active, committed, and engaged member of the Washington, D.C. community as demonstrated by 14 years of Comcast Cares Day service;

WHEREAS, Comcast supports the core American value of volunteerism through partnerships, grants, and volunteer activities that empowers individuals and organized communities;

WHEREAS, Comcast Cares Day is a celebration of service and has become the nation's largest single-day corporate volunteer effort that brings employees, families, friends, and community partners together for a common purpose and mission;

WHEREAS, Comcast is celebrating its 14th Comcast Cares Day, and has reached important milestones, including 3.7 million volunteer hours and 600,000 volunteers since Comcast Cares Day started in 2001; and

WHEREAS, Comcast Cares Day promotes a spirit of corporate responsibility thanks to the hard work, dedication, and service of over 500 Comcast volunteers that participate in Comcast Cares Day in the District of Columbia every year.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes Comcast's contributions to the District through community service and civic participation, and declares April 25, 2015, as "Comcast Cares Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Comcast Cares Day Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-36

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To recognize the many contributions of people with developmental disabilities and the importance of a fully inclusive community for people with differing abilities in the District of Columbia, and to declare the month of March 2015 as "Developmental Disabilities Awareness Month" in the District of Columbia.

WHEREAS, developmental disabilities affect more than 7 million Americans and their families;

WHEREAS, organizations including the District of Columbia Department on Disability Services; District of Columbia Developmental Disabilities Council; Georgetown University Center for Child and Human Development University Center for Excellence in Developmental Disabilities; Project ACTION!; Quality Trust for Individuals with Disabilities; and University Legal Services continue to participate in the national observance of Developmental Disabilities Awareness Month, and provide support to District residents with developmental disabilities so they may be welcomed into our community without prejudice;

WHEREAS, children and adults with developmental disabilities, their families, friends, neighbors, and co-workers encourage everyone to focus on the abilities of all people;

WHEREAS, the most effective way to increase this awareness is through everyone's full and active participation in the daily rhythm and life of our community;

WHEREAS, opportunities for children and adults with developmental disabilities to be included and contribute their talents and gifts in community must continually be fostered and expanded;

WHEREAS, we encourage all citizens to support opportunities for people with developmental disabilities to experience full access to education, housing, employment, recreational activities, and other community resources; and

ENROLLED ORIGINAL

WHEREAS, we encourage all citizens to take time to get to know someone with a disability, recognize ability, and discover what each person has to offer and can do.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the contributions of people with developmental disabilities, and declares the month of March 2015 as "Developmental Disabilities Awareness Month" as a confirmation of the District's continued support to our residents with developmental disabilities and those who help them achieve their goals.

Sec. 2. This resolution may be cited as the "Developmental Disabilities Awareness Month Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-37

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To recognize and honor Reverend Louis B. Jones, II on his 25th anniversary as pastor of Pilgrim Baptist Church, on the occasion of his celebration.

WHEREAS, April 2015 marks the 25th year for Reverend Louis B. Jones, II in his pastorate of the 103-year-old Pilgrim Baptist Church, located at 700 I Street N.E., Washington, D.C. 20002;

WHEREAS, Reverend Louis B. Jones, II is a second-generation Pastor, who is the son of Ms. Dollean Jones and the late Reverend Dr. Louis B. Jones, Sr.;

WHEREAS, Reverend Louis B. Jones, II has a Masters of Theology Degree from Eastern (Palmer) Theological Seminary in Wynnewood, Pennsylvania and also is the recipient of several honorary doctorates;

WHEREAS, Reverend Louis B. Jones, II has a heart for missions, and is a member of the Lott Carey Pastoral Excellence Team that has traveled to mission fields in Jamaica, Guyana, and South America;

WHEREAS, Reverend Louis B. Jones, II has a belief in entrepreneurship, and has exemplified this by being the catalyst that led his congregation to purchase commercial and residential property in the Capitol Hill area where his church is located;

WHEREAS, in October 2014, Reverend Louis B. Jones, II was able to complete payment on more than $1 million in mortgages, allowing the church to be debt free and the owners of 8 properties;

ENROLLED ORIGINAL

WHEREAS, Reverend Louis B. Jones, II has worked diligently to grow the church membership spiritually and numerically;

WHEREAS, Reverend Louis B. Jones, II has served in numerous leadership capacities and currently holds the following positions: President of the Ministerial Alliance, Inc., Chairman of Foreign Missions for the Baptist Convention of D.C. and Vicinity, Chairman of the Board – Nannie Helen Burroughs Scholarship Fund, Board of Directors of Nannie Helen Burroughs School, and Board of Directors of Eastern Theological Seminary in Lynchburg, Virginia;

WHEREAS, Reverend Louis B. Jones, II is married to Ms. Michelle Frances and is the father of 5 children, 11 grandchildren, and one great granddaughter; and

WHEREAS, Reverend Louis B. Jones, II primary focus is to take his church to a level of being pastor-led and leadership driven.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council acknowledges and honors Reverend Louis B. Jones, II for his commitment and service as Pastor of the Pilgrim Baptist Church on this recognition of his 25th anniversary.

Sec. 2. This resolution may be cited as the “Reverend Louis B. Jones, II Recognition Resolution of 2015”.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

12-38

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To posthumously recognize the contributions of Providencia F. Parades.

WHEREAS, Providencia F. Paredes was born on June 9, 1924, in San Pedro de Macoris in the Dominican Republic and died on March 18, 2015;

WHEREAS, Mrs. Paredes was best known as a longstanding personal aide to First Lady Jacqueline B. Kennedy;

WHEREAS, Mrs. Paredes, who first arrived in the United States in 1948 accompanying the Dominican Ambassador to the United States, began working for John F. Kennedy, the young Congressman from Massachusetts, in 1952, thus beginning a lifelong professional and personal relationship with the Kennedy family;

WHEREAS, Mrs. Paredes became a lifelong resident of Washington, D.C. and was among the first Dominicans to reside in Washington, D.C.;

WHEREAS, upon Senator Kennedy's election to the Presidency, Mrs. Paredes became an American citizen and accompanied the First Family to the White House and was employed as Mrs. Kennedy's personal assistant;

WHEREAS, Mrs. Paredes' role was noteworthy as she was the first White House staff member in history to be of Hispanic descent and the sole Hispanic in the inner circle of Camelot;

WHEREAS, during the Kennedy White House years, Mrs. Paredes traveled widely with both the President and Mrs. Kennedy, accompanying President Kennedy on official state visits to Colombia, the United Kingdom, Italy, Austria, France, Mexico and Venezuela;

WHEREAS, Mrs. Paredes also served as a companion to the First Lady on her visits to India, Pakistan, Greece, Turkey, Cambodia, Thailand, Mexico, and Switzerland;

ENROLLED ORIGINAL

WHEREAS, Mrs. Paredes, “Provi,” as she was affectionately known by the Kennedy family and friends, was a friend and trusted confidant for 2 generations of Kennedys, maintaining a close relationship with the First Lady throughout her life;

WHEREAS, after the assassination of President Kennedy, Mrs. Paredes would work for Senator Robert F. Kennedy and Senator Edward M. Kennedy, and was the only person to have such a distinction to work for all 3 brothers; and

WHEREAS, by 1969, Mrs. Pardes assumed a position at the United States Postal Service in its Library Division, from which she retired in 1992 after 31 years.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors Providencia F. Paredes for her historic commitment to public service.

Sec. 2. This resolution may be cited as the “Providencia F. Paredes Posthumous Recognition Resolution of 2015”.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-39

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2014

To recognize the accomplishments of native Washingtonian, professional football athlete, and Super Bowl champion Tavon Wilson.

WHEREAS, Tavon Wilson, born March 19, 1990, is the son of Undrell Wilson and Robin Williams and father of one son, Tavon, Jr.;

WHEREAS, Tavon Wilson was raised by his grandparents Darlene Williams and Freddie Simmons, after the untimely loss of his parents;

WHEREAS, Tavon Wilson had a passion for football since early childhood, which motivated him to start his football journey in the Marshall Heights community in Ward 7;

WHEREAS, Tavon Wilson expanded his talents at H.D. Woodson High School in Ward 7, where he earned several honors, being named First-Team Washington Post All-Met, Pigskins All-Met, All DCIAA East Defensive Back, and Eastern Board of Officials Defensive Player of the Year;

WHEREAS, Tavon Wilson received a full athletic scholarship to the University of Illinois, where his collegiate football career spanned his sophomore, junior, and senior seasons, ending with him starting for the last 38 games of his collegiate career;

WHEREAS, Tavon Wilson was named the University of Illinois football team's outstanding defensive back in 2011 at the annual postseason banquet;

WHEREAS, Tavon Wilson garnered additional honors and awards in his collegiate football career, including being named Honorable Mention All-Big Ten 2010 and 2011, Big Ten Defensive Player of the Week, and College Football Performance Awards National Defensive Performer and Defense Back of the Week;

WHEREAS, Tavon Wilson earned his degree in communication in 2012;

ENROLLED ORIGINAL

WHEREAS, Tavon Wilson, considered a versatile athlete who could play both cornerback and safety, was drafted in the second round by the New England Patriots in the 2012 National Football League ("NFL") draft;

WHEREAS, Tavon Wilson recorded his first interception, against Jake Locker of the Tennessee Titans, during the opening game of the 2012 NFL season and finished the 2012 season with 41 total tackles (28 solo, 13 assisted) and 4 interceptions for a total of 87 interception return yards;

WHEREAS, Tavon Wilson, in week 16 of the 2013 season, scored his first career touchdown off a 74-yard interception against Tyrod Taylor of the Baltimore Ravens and finished the 2013 season having played 13 games with 3 tackles, one interception, and one touchdown;

WHEREAS, Tavon Wilson capped the 2014 season by winning Super Bowl XLIX as a member of the New England Patriots; and

WHEREAS, Tavon Wilson, when not on the football field, shows his commitment to public service and bettering the lives of children by visiting patients and their families at Boston Children's Hospital, participating in Read Across America Day, and serving as the Grand Marshall for the DC Walk to End Lupus Now!

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia congratulates Tavon Wilson on his several accomplishments over the course of his football career, including a victory in Super Bowl XLIX.

Sec. 2. This resolution may be cited as the "Tavon Wilson Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-40

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To recognize, honor, and express our appreciation to the DS *Barry* for her historic contribution to the defense of the United States and for gracing the Anacostia River for the last 30 years.

WHEREAS, the *Barry* (DD-933) was launched on October 1, 1955, sponsored by Mrs. Francis Rogers, a great-grandniece of Commodore John Barry, the ship's namesake;

WHEREAS, the *Barry* was commissioned at the Boston Naval Shipyard, Charlestown, Massachusetts, on September 7, 1956;

WHEREAS, the *Barry* was one of 18 *Forrest Sherman*-class destroyers of the United States Navy and the 3rd U.S. destroyer to be named for Commodore Barry;

WHEREAS**,** the *Barry* supported the 1958 Marine and Army airborne unit landing in Beirut, Lebanon;

WHEREAS, the *Barry* was a member of the task force that quarantined Cuba in 1962, in response to evidence that Soviet missiles had been installed on the island;

WHEREAS**,** in 1965, during the Vietnam conflict, the *Barry* operated in the Mekong Delta and supported Operation Double Eagle, the largest amphibious operation since the landings in Korea, and earned 2 battle stars for her service in that conflict;

WHEREAS, during the Cold War, the *Barry's* home port was Athens, Greece;

WHEREAS, on September 1, 1982, the *Barry* was ordered to commence decommissioning stand down and on November 5 of the same year she was decommissioned;

WHEREAS, in 1984, the *Barry* was brought to the Washington Navy Yard, moored in the Anacostia River, and has served as a distinctive attraction for visitors;

ENROLLED ORIGINAL

WHEREAS, due to the reconstruction of the Frederick Douglas Memorial Bridge, before October 2015, the *Barry* will be towed from the Navy Yard to be dismantled and recycled; and

WHEREAS**,** the *Barry* has brought great joy and visual interest to the shores of the Anacostia in Washington, D.C., serving as an attraction to the area and a reminder of the triumphs and sacrifices made by members of our great American Navy.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council recognizes the DS *Barry* for her many contributions to the United States and to the District, and urges all District residents to visit the great destroyer before she leaves the Navy Yard later this year.

Sec. 2. This resolution may be cited as the "DS Barry Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-41

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To declare April 23, 2015, as "Turkish National Sovereignty and Children's Day" in the District of Columbia.

WHEREAS, on April 23, over half a million Turkish-Americans celebrate the Turkish National Sovereignty and Children's Day;

WHEREAS, on this day 95 years ago, the Grand National Assembly of Turkey was established, realizing the aspirations of the Turkish people for freedom, justice, and peace, leading to the 1923 founding of the Turkish Republic under the guidance of Mustafa Kemal Ataturk;

WHEREAS, marked as Turkish National Day since 1921, April 23 has also been celebrated as Children's Day since 1927, signifying the role of future generations in realization of the Turkish dream for peace, progress, and prosperity;

WHEREAS, within less than a century of immigration, Turkish-Americans have left a unique imprint on a diverse cultural spectrum of our nation, and contributed to the District's and America's advancement in the fields of business, science, medicine, technology, and arts, including Ahmet Ertegün, the son of the Turkish ambassador to the United States who, inspired by performances from Duke Ellington, Billie Holiday, Louis Armstrong, and other musicians in the District, went on to found Atlantic Records; and

WHEREAS, the District has a unique relationship with Turkey, sharing a Sister City relationship with Ankara, the capital of Turkey, and is home to a yearly Turkish Festival on Pennsylvania Avenue, showcasing Turkish culture, arts, cuisine, fashion, and connections with the District and American people.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the contributions Turkish-Americans have made to the District of Columbia and the United States of America and declares April 23, 2015, as "Turkish National Sovereignty and Children's Day" in the District of Columbia.

ENROLLED ORIGINAL

Sec. 2. This resolution may be cited as the "Turkish National Sovereignty and Children's Day Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-42

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To declare the month of May 2015, as "National Bike Month" in the District of Columbia to highlight the benefits of regularly commuting by bicycle, celebrate the success of the District's Capital Bikeshare program, and advocate for an expansion of bike infrastructure to encourage greater cycling levels throughout the District of Columbia.

WHEREAS, regular cycling has been shown to reduce an individual's annual health care costs, decrease absenteeism from work, and increase productivity during the day;

WHEREAS, since 2007, the number of everyday bike commuters in the District of Columbia has nearly doubled, totaling 3.5% of commuters;

WHEREAS, between February 2014 and January 2015, Capital Bikeshare saw significant increases in both annual and daily memberships; during that 12-month period, annual memberships increased by almost 10,000 — almost 25% — and daily memberships purchased each month increased from 106 to 738—almost 600%;

WHEREAS, in a 2012 survey of Capitol Bikeshare members, 58% of members use Capitol Bikeshare to go to or from work; of these members, 40% used Capitol Bikeshare "often" for this purpose;

WHEREAS, half of all surveyed Capitol Bikeshare members drove a car less often than they had before obtaining a membership;

WHEREAS, between 2004 and 2012, as the bike lane network increased in the District by 300%, the number of cyclists counted along prominent corridors during morning and evening rush hours increased by 175%;

WHEREAS, the District Department of Transportation will install 7 new miles of bikeways in 2015 to include cycle tracks, bike lanes, and climbing lanes across the District;

WHEREAS, 2014's Bike to Work Day garnered 16,800 participants, a 10% increase from 2013; and

ENROLLED ORIGINAL

WHEREAS, 2015's Bike to Work Day will be held on May 15.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia declares the month of May 2015 as "National Bike Month" in the District of Columbia.

Sec. 2. This resolution may be cited as the "National Bike Month Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-43

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

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

WHEREAS, on the occasion of the 14th anniversary of the September 11, 2001, terrorist attacks on the United States, the Council of the District of Columbia honors the memory of the 2,977 Americans who perished that day, including 11 victims from the District;

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

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

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

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

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

ENROLLED ORIGINAL

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

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

Sec. 2. This resolution be cited as the "September 11th Emergency and First Responders Remembrance and Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-44

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To declare June 20, 2015, as "American Eagle Day" in the District of Columbia, and celebrate the recovery and restoration of the bald eagle, the national symbol of the United States.

WHEREAS, on June 20, 1782, the bald eagle was officially designated as the national emblem of the United States by the founding fathers in the Congress of the Confederation;

WHEREAS, the bald eagle is unique to North America and represents, freedom, courage, strength, spirit, justice, quality, and excellence;

WHEREAS, the bald eagle is a central image used in the Great Seals of the United States and of the District of Columbia as well as the District of Columbia historic coat of arms;

WHEREAS, the bald eagle was federally classified as an endangered species in the lower 48 states under the Endangered Species Act in 1973, and was upgraded to less imperiled threatened status under the same act in 1995;

WHEREAS, the Department of the Interior and the United States Fish & Wildlife Service delisted the bald eagle from the Endangered Species Act protection in 2007, but it will continue to be protected under the Bald & Gold Eagle Act of 1940 and the Migratory Bird Treaty Act of 1918;

WHEREAS, the recovery of the North American bald eagle population was largely accomplished through the dedicated efforts of citizens, agencies, and organizations committed to preserving our wildlife, their natural habitats, and the symbolic presence of our national bird; and

WHEREAS, as a result of these efforts, in the District of Columbia, bald eagles have reappeared along the Anacostia River for the first time since 1947 and bald eagles have been found nesting around the Bald Eagle Recreation Center in Ward 8 and the National Arboretum.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia declares June 20, 2015, as "American Eagle Day" in the District of Columbia.

ENROLLED ORIGINAL

Sec. 2. This resolution may be cited as the "American Eagle Day Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

12-45

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To declare the 2nd full week in May to be "Women's Lung Health Week" in the District of Columbia and to urge all citizens to recognize the importance of women's lung health.

WHEREAS, every 5 minutes, a woman in the United States is told she has lung cancer;

WHEREAS, over 100,000 women are diagnosed with lung cancer each year;

WHEREAS, lung cancer is the No. 1 cancer killer of women in the United States;

WHEREAS, over half of women diagnosed with lung cancer will survive one year, and only one in 5 will survive 5 years;

WHEREAS, the rate of new lung cancer cases has dropped by 35% in men and doubled in women over the past 35 years;

WHEREAS, smoking is not the only cause of lung cancer, with other known causes including air pollution, radon, asbestos, and genetic disorders;

WHEREAS, advocacy and increased awareness will result in more and better treatment for women with lung cancer and other lung diseases and will ultimately save lives; and

WHEREAS, LUNG FORCE is the national movement led by the American Lung Association, with the mission of making lung cancer history — uniting women to stand together with a collective strength and determination to lead the fight against lung cancer and for lung health.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and supports women's lung health, declares the 2nd full week of May as "Women's Lung Health Week" in the District of Columbia, and urges citizens to learn more about the detection and treatment of lung cancer.

ENROLLED ORIGINAL

Sec. 2. This resolution may be cited as the “Women’s Lung Health Week Recognition Resolution of 2015”.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

12-46

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To declare March 30, 2015, as "National Doctors' Day" in the District of Columbia to honor the medical staff at United Medical Center.

WHEREAS, the Doctors' Day appreciation ceremony at United Medical Center ("UMC") will honor approximately 180 providers for their dedication to the medical profession and for caring for the medical needs of UMC's community;

WHEREAS, Doctors' Day was established in 1958 by act of the United States Congress to nationally commemorate the medical profession;

WHEREAS, on March 30, 1842, Dr. Crawford W. Long of Jefferson, Georgia discovered the use of ether as an anesthetic agent for surgery;

WHEREAS, Dr. Long's contribution to the medical profession has made the date of his medical discovery an appropriate day to salute doctors nationwide;

WHEREAS, the doctors of UMC have been providing, and continue to provide, services in one of the most medically underserved areas of the District of Columbia;

WHEREAS, the medical staff of UMC has demonstrated its commitment and dedication to UMC's mission and vision, encompassed by the Strategic Plan approved by the UMC Board of Directors and supported by the Mayor and Council; and

WHEREAS, the District of Columbia recognizes and salutes the efforts of UMC and the many physicians who provide medical care to the residents of Ward 8 and surrounding areas of the District of Columbia.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia congratulates the staff at UMC on the occasion of National Doctor's Day, commends the staff for their extraordinary commitment to the patients and residents in the District of Columbia, and declares March 30, 2015, as "National Doctors' Day" in the District of Columbia

ENROLLED ORIGINAL

Sec. 2. This resolution may be cited as the "United Medical Center Doctors' Appreciation Day Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-47

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 14, 2015

To recognize and preserve the cultural history and heritage of the District of Columbia and to formally recognize the 153rd anniversary of District of Columbia Emancipation Day on April 16, 2015 as an important day in the history of the District of Columbia and the United States.

WHEREAS, on April 16, 1862, President Abraham Lincoln signed the District of Columbia Compensated Emancipation Act during the Civil War;

WHEREAS, the District of Columbia Compensated Emancipation Act provided for immediate emancipation of 3,100 enslaved men, women, and children of African descent held in bondage in the District of Columbia;

WHEREAS, the District of Columbia Compensated Emancipation Act authorized compensation of up to $300 for each of the 3,100 enslaved men, women, and children held in bondage by those loyal to the Union, voluntary colonization of the formerly enslaved to colonies outside of America, and payments of up to $100 to each formerly enslaved person who agreed to leave America;

WHEREAS, the District of Columbia Compensated Emancipation Act authorized the federal government to pay approximately $1 million, in 1862 funds, for the freedom of 3,100 enslaved men, women, and children of African descent in the District of Columbia;

WHEREAS, the District of Columbia Compensated Emancipation Act ended the bondage of 3,100 enslaved men, women, and children of African descent in the District of Columbia, and made them the "first freed" by the federal government during the Civil War;

WHEREAS, nine months after the signing of the District of Columbia Compensated Emancipation Act, on January 1, 1863, President Lincoln signed the Emancipation Proclamation

ENROLLED ORIGINAL

of 1863, to begin to end institutionalized enslavement of people of African descent in Confederate states;

WHEREAS, on April 9, 1865, the Confederacy surrendered, marking the beginning of the end of the Civil War, and on August 20, 1866, President Andrew Johnson signed a Proclamation—Declaring that Peace, Order, Tranquility and Civil Authority Now Exists in and Throughout the Whole of the United States of America;

WHEREAS, in December 1865, the 13th Amendment to the United States Constitution was ratified establishing that " Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction";

WHEREAS, in April 1866, to commemorate the signing of the District of Columbia Compensated Emancipation Act of 1862, the formerly enslaved people and others, in festive attire with music and marching bands, started an annual tradition of parading down Pennsylvania Avenue, proclaiming and celebrating the anniversary of their freedom;

WHEREAS, the District of Columbia Emancipation Day Parade was received by every sitting President of the United States from 1866 to 1901;

WHEREAS, on March 7, 2000 at the Twenty Seventh Legislative Session of the Council of the District of Columbia, Councilmember Vincent B. Orange, Sr. (D-Ward 5) authored and introduced, with Carol Schwartz (R-At large), the historic District of Columbia Emancipation Day Amendment Act of 2000, effective April 3, 2001 D.C. Law 13-237; D.C. Official Code §§ 1-612.02a, 32-1201);

WHEREAS, the District of Columbia Emancipation Day Emergency Amendment Act of 2000 was passed unanimously by the Council, and signed into law on March 23, 2000 by Mayor Anthony A. Williams to establish April 16th as a legal private holiday;

WHEREAS, on April 16, 2000, to properly preserve the historical and cultural significance of the District of Columbia Emancipation Day, Councilmember Orange hosted a celebration program in the historic 15th Street Presbyterian Church, founded in 1841 as the First Colored Presbyterian Church;

WHEREAS, on April 16, 2002, after a 100-year absence, the District of Columbia, spearheaded by Councilmember Orange with the support of Mayor Anthony Williams, returned the Emancipation Day Parade to Pennsylvania Avenue, N.W., along with public activities on Freedom Plaza and evening fireworks (D.C. Official Code § 1 -182);

ENROLLED ORIGINAL

WHEREAS, the District of Columbia Emancipation Day Parade and Fund Act of 2004, effective March 17, 2005 (D.C. Law 15-240; D.C. Official Code § 1-181 *et seq*.), established the Emancipation Day Fund to receive and disburse monies for the Emancipation Day Parade and activities associated with the celebration and commemoration of the District of Columbia Emancipation Day;

WHEREAS, on May 4, 2004, Councilmember Orange introduced the District of Columbia Emancipation Day Amendment Act of 2004, effective April 5, 2005 (D.C. Law 15-288; D.C. Official Code § 1-612.02(a)(11)), which established April 16th as a legal public holiday;

WHEREAS, on April 16, 2005, District of Columbia Emancipation Day was observed for the first time as a legal public holiday, for the purpose of pay and leave of employees scheduled to work on that day (D.C. Official Code § 1-612.02(c)(2));

WHEREAS, April 16, 2015, is the 153rd anniversary of District of Columbia Emancipation Day which symbolizes the triumph of people of African descent over the cruelty of institutionalized slavery and the goodwill of people opposed to the injustice of slavery in a democracy;

WHEREAS, the Council of the District of Columbia remembers and pays homage to the 23 million people of African descent enslaved for more than 2 centuries in America for their courage and determination;

WHEREAS, the Council of the District of Columbia remembers and pays homage to President Abraham Lincoln for his courage and determination to begin to end the inhumanity and injustice of institutionalized slavery by signing the District of Columbia Compensated Emancipation Act on April 16, 1862;

WHEREAS, the 153rd anniversary of District of Columbia Emancipation Day is a singularly important occasion that links the historic Presidency of Abraham Lincoln with the equally historic Presidency of Barack H. Obama, as the first President of the United States of African descent;

WHEREAS, the 153rd anniversary of District of Columbia Emancipation Day accords with the 150th anniversary of the assassination of the 16th President of the United States, Abraham Lincoln, who was shot on April 14, 1865 and died on April 15, 1865;

ENROLLED ORIGINAL

WHEREAS, the 153rd anniversary of District of Columbia Emancipation Day marks the 15th anniversary of legislation introduced by Councilmember Vincent B. Orange and Councilmember Carol Schwartz establishing April 16, District of Columbia Emancipation Day, as a private legal holiday; and

WHEREAS, the 153rd anniversary of District of Columbia Emancipation Day marks the 10th anniversary of legislation introduced by Councilmember Vincent B. Orange establishing April 16, District of Columbia Emancipation Day, as an annual public legal holiday requiring the closing of the Government of the District of Columbia, including the schools and the courts.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia finds the 153rd anniversary of District of Columbia Emancipation Day is an important, historic occasion for the District of Columbia and the nation and serves as an appropriate time to reflect on how far the District of Columbia and the United States have progressed since institutionalized enslavement of people of African descent; and, most importantly, the 153rd anniversary reminds us to reaffirm our commitment to forge a more just and united country that truly reflects the ideals of its founders and instills in its people a broad sense of duty to be responsible and conscientious stewards of freedom and democracy. .

Sec. 2. This resolution may be cited as the "District of Columbia Emancipation Day 153rd Anniversary Recognition Resolution of 2015".

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

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

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

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

Announces a Public Hearing

on

- **B21-069, the "Construction Codes Harmonization Amendment Act of 2015"**
- **B21-070, the "Nuisance Abatement Notice Amendment Act of 2015"**
- **B21-113, the "Vending Regulations Amendment Act of 2015"**

Wednesday, September 23, 2015, 10:00 A.M.
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Councilmember Vincent B. Orange, Sr., announces the scheduling of a public hearing by the Committee on Business, Consumer, and Regulatory Affairs, on B21-069, the "Construction Codes Harmonization Amendment Act of 2015", B21-070, the "Nuisance Abatement Notice Amendment Act of 2015", and B21-113, the "Vending Regulations Amendment Act of 2015". The public hearing is scheduled for Wednesday, September 23, 2015 at 10:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

B21-069, the "Construction Codes Harmonization Amendment Act of 2015", would align the District of Columbia Code with the District's new Construction Codes, which are based on national model codes developed by the International Code Council. The bill authorizes the Mayor to adopt fire safety standards, to abate unsafe conditions, to recover abatement costs through tax liens, and to take summary action where there is an imminent danger. In addition, the bill creates a board for the condemnation of insanitary buildings in the District of Columbia.

B21-070, the "Nuisance Abatement Notice Amendment Act of 2015", would clarify the posting requirements for an initial vacant or blighted property determination.

B21-113, the "Vending Regulations Amendment Act of 2015", would amend the Vending Regulation Act of 2009 to maintain the criminal penalties provisions.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Monday, September 21, 2015. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Wednesday, October 7, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

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

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

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

Announces a Public Hearing

on

- **B21-137, the "Workforce Job Development Grant-Making Reauthorization Act of 2015"**
- **B21-206, the "Film DC Economic Incentive Amendment Act of 2015"**

Thursday, September 24, 2015, 10:00 A.M.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Councilmember Vincent B. Orange, Sr., announces the scheduling of a public hearing by the Committee on Business, Consumer, and Regulatory Affairs, on B21-137, the "Workforce Job Development Grant-Making Reauthorization Act of 2015" and B21-206, the "Film DC Economic Incentive Amendment Act of 2015". The public hearing is scheduled for Thursday, September 24, 2015 at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

B21-137, the "Workforce Job Development Grant-Making Reauthorization Act of 2015", would enable the Department of Employment Services to continue to issue grants from funds appropriated to or received by the agency for workforce job development purposes.

B21-206, the "Film DC Economic Incentive Amendment Act of 2015", would amend the Film DC Economic Incentive Act of 2006 to modify the incentives provided to qualified film, television, and entertainment work in the District of Columbia.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Monday, September 21, 2015. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Thursday, October 8, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: August 7, 2015
Petition Date: September 21, 2015
Hearing Date: October 5, 2015

License No.: ABRA-095251
Licensee: 10th Street Market DC, Inc.
Trade Name: 10th Street Market
License Class: Retailer's Class "B" Grocery
Address: 1000 S Street, N.W.
Contact: Desta Enkenyelesh: 202-234-7601

WARD 6 ANC 6E SMD 6E01

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 Class Change from Class B retailer to Class A retailer.

CURRENT HOURS OF OPERATION & ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 9 am – 9 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	August 7, 2015
Petition Date:	September 21, 2015
Hearing Date:	October 5, 2015
License No.:	ABRA-092663
Licensee:	Bacio, LLC
Trade Name:	Bacio Pizzeria
License Class:	Retailer's Class "C" Tavern
Address:	81 Seaton Place, N.W.
Contact:	Paul Pascal: 202-544-2200

WARD 5 ANC 5E SMD 5E07

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

NATURE OF SUBSTANTIAL CHANGE
Request is to increase the number of seats for the Sidewalk Café from 10 to 28. The current Sidewalk Cafe capacity is 10.

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

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

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFE
Sunday through Saturday 11am- 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 31, 2015
Petition Date: September 14, 2015
Hearing Date: September 28, 2015
Protest Date: December 9, 2015

License No.: ABRA-098818
Licensee: Desta Ethiopian Restaurant, LLC
Trade Name: Desta Ethiopian Restaurant
License Class: Retailer's Class "C" Restaurant
Address: 6128 Georgia Ave., N.W.
Contact: Desta Araya: 202-279-1626

WARD 4 ANC 4A SMD 4A06

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 4:30 pm on December 9, 2015.

NATURE OF OPERATION
Restaurant serving Ethiopian food with Entertainment Endorsement to include dancing and a cover charge. Total Occupancy Load of 30.

HOURS OF OPERATION
Sunday through Thursday 10 am – 3 am, Friday & Saturday 10 am – 4 am

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

HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday 6 pm – 2 am, Friday & Sunday 6 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date: July 31, 2015
Petition Date: September 14, 2015
Hearing Date: September 28, 2015
Protest Date: December 9, 2015

License No.: ABRA-098818
**Licensee: Desta Hagos-Araya, LLC
**Trade Name: Family Ethiopian Restaurant
License Class: Retailer's Class "C" Restaurant
Address: 6128 Georgia Ave., N.W.
Contact: Desta Araya: 202-279-1626

WARD 4 ANC 4A SMD 4A06

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 4:30 pm on December 9, 2015.

NATURE OF OPERATION
Restaurant serving Ethiopian food with Entertainment Endorsement to include dancing and a cover charge. Total Occupancy Load of 30.

HOURS OF OPERATION
Sunday through Thursday 10 am – 3 am, Friday & Saturday 10 am – 4 am

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

HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday 6 pm – 2 am, Friday & Sunday 6 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: August 7, 2015
Petition Date: September 21, 2015
Hearing Date: October 5, 2015
Protest Date: December 9, 2015

License No.: ABRA-099738
Licensee: La Jambe, LLC
Trade Name: La Jambe
License Class: Retailer's Class "C" Tavern
Address: 1550 7th Street, N.W.
Contact: Andrew Kline: 202-686-7600

WARD 6 ANC 6E SMD 6E01

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 December 9, 2015.

NATURE OF OPERATION
Restaurant serving American cuisine, specializing in cured meats and cheeses. No entertainment. No dancing. No nude performances. Seating for 80, Total Occupancy Load of 99. Sidewalk Café with 15 seats.

HOURS OF OPERATION INSIDE PREMISES & SIDEWALK CAFE
Sunday through Thursday 7 am – 2 am, Friday & Saturday 7 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES & SIDEWALK CAFÉ
Sunday through Thursday 8 am – 2 am, Friday & Saturday 8 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	August 7, 2015
Petition Date:	September 21, 2015
Hearing Date:	October 5, 2015
Protest Date:	December 9, 2015

License No.:	ABRA-099684
Licensee:	TDJ, LLC
Trade Name:	Left Door
License Class:	Retailer's Class "C" Tavern
Address:	1345 S Street, N.W.
Contact:	Andrew Kline: 202-686-7600

WARD 1 ANC 1B SMD 1B12

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 4:30 pm on December 9, 2015.

NATURE OF OPERATION
Tavern with 35 seats and a Total Occupancy Load of 49.

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

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date:	July 24, 2015
Petition Date:	September 8, 2015
Hearing Date:	September 21, 2015
Protest Hearing Date:	December 2, 2015
License No.:	ABRA-099707
Licensee:	Watergate Liquors, LLC
Trade Name:	Watergate Vintners & Spirits
License Class:	Retailer's Class "A" Liquor Store
Address:	2544 Virginia Avenue, N.W.
Contact:	Bernard Dietz: 202-548-8000

WARD 2 ANC 2A SMD 2A04

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for December 2, 2015 at 1:30 pm.

NATURE OF OPERATION
Class A Retailer with a Tasting Endorsement.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 9 am – 12 am

HOURS OF TASTING
Sunday through Saturday 9 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: August 7, 2015
Petition Date: September 21, 2015
Hearing Date: October 5, 2015

License No.: ABRA-085946
Licensee: Jema Corp
Trade Name: Zenebech Restaurant
License Class: Retailer's Class "C" Restaurant
Address: 608 T Street, N.W.
Contact: Zenebech Dessi: 202-667-4700

WARD 6 ANC 6E SMD 6E02

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 Sidewalk Café with seating for 16.

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

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUPMTION FOR SIDEWALK CAFE
Sunday through Saturday 9 am – 11 pm

BOARD OF ZONING ADJUSTMENT
ADDED CASE - PUBLIC HEARING NOTICE
TUESDAY, SEPTEMBER 22, 2015
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

Case added: 19091

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 TWO

19091 ANC-2D **Application of the Embassy of the Kyrgyz Republic**, pursuant to 11 DCMR § 1002 of the Foreign Missions Act, to allow the construction of a rear deck at an existing embassy in the D/R-3 District at premises 2360 Massachusetts Avenue N.W. (Square 2507, Lot 50).

PLEASE NOTE:

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

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

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

Revised on July 10, 2015

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

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

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, OCTOBER 20, 2015
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD ONE

19081 ANC-1C — **Appeal of ANC 1C, et al.**, pursuant to 11 DCMR §§ 3100 and 3101, from a May 13, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1412288, to allow the conversion of a one-family dwelling into a four-unit apartment house in the R-5-B District at premises 1828 Ontario Place N.W. (Square 2583, Lot 438).

WARD FOUR

19082 ANC-4B — **Application of Chichest LLC**, pursuant to 11 DCMR § 3104.1, for a special exception under § 353 for the construction of a new 16-unit apartment house on vacant lots in the R-5-A District at premises 37-39 Missouri Avenue N.W. (Square 3393, Lots 39 and 40).

WARD SIX

19084 ANC-6A — **Application of Tito Construction Company LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101, to allow the construction of a new one-family dwelling in the R-4 District at premises 1028 D Street N.E. (Square 962, Lot 801).

WARD SIX

19086 ANC-6C — **Application of Gail and Lindsay Slater**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.1, and the nonconforming structure requirements under § 2001.3, to construct a three-story addition to an existing one-family dwelling in the CAP/R-4 District at premises 215 A Street N.E. (Square 759, Lot 27).

WARD EIGHT

19083
ANC-8A

Application of Simone Management, LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the off-street parking requirements under § 2101.1, and the parking access requirements under § 2117.5, and a special exception from the new residential developments requirements under § 353.1, to construct a new four-unit apartment house in the R-5-A District at premises 2205 16th Street S.E. (Square 5795, Lot 27).

WARD SIX

19085
ANC-6A

Application of Hiroshi and Anna Jacobs, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot area and width requirements under § 401, the lot occupancy requirements under § 403, the rear yard requirements under § 404, the court requirements under § 406, and the nonconforming structure requirements under § 2001.3, to construct a third-story addition to an existing two-story, one-family dwelling, and a new shed in the R-4 District at premises 1336 Emerald Street N.E. (Square 1029, Lot 132).

WARD SIX

19087
ANC-6C

Application of Andrew Weinschenk and Rachel Cononi, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, and the nonconforming structure requirements under § 2001.3, to construct a second-story rear addition to an existing two-story, one-family dwelling in the R-4 District at premises 602 A Street N.E. (Square 867, Lot 124).

PLEASE NOTE:

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

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

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than**

14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form. This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

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

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, OCTOBER 6, 2015
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD SIX

19076 ANC-6E **Application of Kelly Gorsuch**, pursuant to 11 DCMR § 3103.2, for a variance from the use requirements under § 330.5, to allow the conversion of a one-family dwelling into a restaurant in the R-4 District at premises 1544 9th Street N.W. (Square 365, Lot 813).

WARD THREE

19077 ANC-3C **Appeal of Massachusetts Avenue Heights Citizens Association, et al.**, pursuant to 11 DCMR §§ 3100 and 3101, from a May 7, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1404954, to allow the renovation of an existing hotel to include a recreation area with 136 seats and five staff in the NO/R-1-B District at premises 2505 Wisconsin Avenue N.W. (Square 1935, Lot 45).

WARD THREE

19078 ANC-3E **Application of Andrew and Hope McCallum**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the side yard requirements under § 405, and the nonconforming structure requirements under § 2001.3, to construct a rear addition to an existing one-family dwelling in the R-2 District at premises 4108 Garrison Street N.W. (Square 1738, Lot 44).

WARD ONE

19079 ANC-1B **Application of 2002 11th Street LLC and Industrial Bank**, pursuant to 11 DCMR § 3103.2, for variances from the public space at ground level requirements under § 633, the rear yard requirements under § 636.3, and the off-street parking requirements under § 2101.1, to allow the construction of a new mixed-use building with 33 residential units and ground floor retail in the CR/ARTS District at premises 2000-2002 11th Street N.W. (Square 304, Lots 27, 30, and 31).

WARD ONE

19080
ANC-1C

Appeal of Adams Morgan Neighbors for Action, pursuant to 11 DCMR §§ 3100 and 3101, from a June 5, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1410380, to allow the construction of a hotel in the RC/C-2-B, R-5-B District at premises 1770 Euclid Street N.W. (Square 2560, Lots 127, 872, and 875).

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

WARD TWO

19056
ANC-2E

Application of Margaret Cheney, pursuant to 11 DCMR § 3103.2, for variances from the minimum lot width requirements under § 401, and the off-street parking requirements under § 2101.1, to allow the construction of two new one-family dwellings in the R-3 District at premises 3324 Dent Place N.W. (Square 1278, Lot 251).

PLEASE NOTE:

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

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

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

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

LLOYD J. JORDAN, CHAIRMAN, MARNIQUE Y. HEATH, VICE CHAIRPERSON, JEFFREY L. HINKLE, FREDERICK L. HILL, 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 24, 2015, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-33C (Conference Center Associates I, LLC – Modification to PUD @ Parcel 121/31)

THIS CASE IS OF INTEREST TO ANC 5A

On June 29, 2015, the Office of Zoning received an application from Conference Center Associates I, LLC (the "Applicant") seeking minor modification approval of the consolidated planned unit development ("PUD") project approved in Z.C. Case No. 08-33. The Office of Planning provided its report on July 17, 2015, and recommended that the case be set down for a public hearing, rather than be reviewed on the Zoning Commission's Consent Calendar. At the July 27, 2015 public meeting, the Zoning Commission removed this application from the Consent Calendar and set down the application for a public hearing**.**

The consolidated PUD project approved in Z.C. Order No. 08-33, which became final and effective on December 25, 2009, authorized the construction of a hotel, conference center, parking structure, and retail space on the eastern half of the property. The 314 room hotel (which includes a restaurant) and conference center has frontage along Michigan Avenue, N.E. and Irving Street, N.E. and a four-story above-grade structure along Michigan Avenue that will include retail uses at grade and in a basement level and 400 parking spaces. The approved measured height of the hotel building was 94.5 feet. A 200 space surface parking lot on the northern portion of the property was also approved in the consolidated PUD application. Z.C. Order No. 08-33 also authorized the rezoning of the Property from unzoned (designated as GOV) to the C-3-A Zone District.

The Applicant requests the following modifications of the plans that were originally approved by the Zoning Commission:

- Change in hotel brand from SpringHill Suites by Marriott to a combined Residence Inn/Courtyard by Marriott. The proposed plan includes 336 hotel rooms (168 for the Residence Inn and 168 for the Courtyard by Marriott). The gross floor area of the hotel has increased by 26,194 square feet. The Conference Center ballroom also increased in size to better accommodate anticipated uses and a roof terrace level was added. The gross floor area of the conference center has increased by 14,743 square feet. The total

increase in gross floor area for the consolidated PUD is 40,980 square feet, resulting in a floor area ratio ("FAR") of 1.63 (rather than the previous 1.46).

- The height of the four story above-grade parking structure/conference center has increased from 49 feet, 9 inches to 58 feet, 2 inches. The additional building height allows for retail space that has a floor to ceiling height of 14 feet, and additional height at the ballroom level which provides support space for ballroom functions and the opportunity to create an outdoor terrace.

- The location of the "white table cloth" restaurant has not changed, but the entrance to the restaurant has been relocated so that it is adjacent to the hotel entrance on Michigan Avenue, N.E.

- The hotel building has been extended to the property line on Irving Street. The approved project was previously set-back from the property line along Irving Street a distance of 19 feet, 9¼ inches. This created a non-conforming side yard which required flexibility from the Zoning Commission. The Applicant is no longer requesting side yard flexibility along the Irving Street façade as the structure is now located on the property line.

- The basement level of the parking structure has been modified to include parking spaces. This allows for a reduction in the number of surface parking spaces on the Property, while still maintaining the previously approved count of 600 parking spaces in the project.

- The Zoning Commission previously granted flexibility from the roof structure requirements regarding setbacks and the requirement to have a single enclosure. Due to programmatic changes in the hotel, the shape of the roof structure has changed and the amended roof structure still requires flexibility from the setback requirements and from the requirement to be included in a single enclosure.

Otherwise, the proposed Consolidated PUD project remains the same as the project that was approved in Z.C. Case No. 08-33, a hotel and conference center with an above-grade parking structure, and ground-floor retail uses.

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

How to participate as a witness.

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

statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

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

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

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

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 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include 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 THE ATTORNEY GENERAL

NOTICE OF FINAL RULEMAKING

The Attorney General for the District of Columbia, pursuant to Sections 27c(a)(7)(A)(ii), (c), and (i) and 28 of the District of Columbia Child Support Enforcement Amendment Act of 1985 (Act), effective April 3, 2001 (D.C. Law 13-269; D.C. Official Code §§ 46-226.03(a)(7)(A)(ii), (c), and (i) and 46-227 (2012 Repl.)), and Mayor's Order 2007-42, (dated January 19, 2007), hereby gives notice of his intent to adopt the following new Chapter 122 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Child Support Lien Program."

The final rulemaking will implement the authority of the Office of the Attorney General under Section 27c of the Act, to enforce child support orders by intercepting and seizing insurance settlements owed to obligors.

These rules were originally published in the *D.C. Register* on March 27, 2015 at 62 DCR 3681 and were amended to incorporate comments received after publication. They were republished in a Notice of Second Proposed Rulemaking on June 19, 2015 at 62 DCR 8603. No substantive changes have been made to the final rulemaking.

The rules were adopted as final on August 3, 2015, will become effective upon publication in the *D.C. Register*.

Title 29 DCMR, PUBLIC WELFARE, is amended by adding a new Chapter 122 to read as follows:

CHAPTER 122 CHILD SUPPORT LIEN PROGRAM

Secs.

12201 SCOPE

12201.01 The purpose of this chapter is to regulate the Child Support Lien Program (CSLP). The program will identify and levy settlement funds belonging to child support obligors to satisfy their support arrearages.

The Child Support Services Division (CSSD) of the Office of the Attorney General for the District of Columbia (OAG) shall be responsible for the implementation of this chapter, which shall apply to obligors and insurers.

12202 SETTLEMENT FUNDS SUBJECT TO LIEN

12202.01 CSSD shall submit District of Columbia Child Support Enforcement System (DCCSES) files to the Child Support Lien Network (CSLN) to identify obligors with overdue support who are entitled to settlement funds from insurers and meet the criteria for a lien stated in § 12203.

12203 LIEN CRITERIA

12203.1 Settlement funds identified through a CSSD data match with CSLN shall be subject to the filing of a lien when:

(a) There is an active child support case;

(b) The child support order has accumulated arrears greater than or equal to five hundred dollars ($500); and

(c) The child support obligor resides or owns property in the District at the time the funds are identified.

12204 FILING THE LIEN

12204.1 If a CSLN data match establishes that an obligor is entitled to settlement funds on a personal injury or workers' compensation claim and CSSD determines that these funds are subject to a lien under § 12203, CSSD shall file the lien with the Recorder of Deeds in the District of Columbia.

12205 LEVY PROCESS

12205.1 Once CSSD has filed the Lien with the Recorder of Deeds, CSSD shall:

(a) Serve the insurer with a Notice of Lien, which shall indicate the amount of arrears owed by the obligor and direct the insurer to:

(1) Levy the funds in the amount of arrears owed by the obligor as

stated in the Notice of Lien; and

(2) Remit the levied funds to CSSD's Child Support Clearinghouse; and

(b) Send by first class mail to the obligor's last known address of record a copy of the Notice of Lien and a letter informing the obligor of the right to object to the Notice of Lien by requesting an agency review with CSSD or an administrative hearing with the Office of Administrative Hearings (OAH).

12205.2 Upon receipt of the levied funds, CSSD shall retain the funds for sixty-five (65) days from the date of the Notice of Lien to provide the obligor with an opportunity to request either an agency review or an administrative hearing before OAH, or both.

12205.3 If the obligor does not request an agency review or an administrative hearing before OAH, CSSD shall remit the levied funds to the obligee at the conclusion of the sixty-five (65) day period.

12206 AGENCY REVIEW

12206.1 An obligor whose funds are subject to a lien may request an agency review within fifteen (15) days from the date of the Notice of Lien. The obligor may request the agency review by informing CSSD of his or her objections to the Notice of Lien by phone, in person, or in writing. The obligor shall not use e-mail to transmit written objections.

12206.2 Grounds for contesting the Notice of Lien include:

(a) The Notice of Lien was issued to the wrong person;

(b) The obligor did not reside or own property in the District of Columbia at the time that the funds were identified;

(c) The arrears are incorrect because of a failure to account for all child support payments, an incorrect computation of the balance due, or a failure to give effect to a prior suspension or modification of the support obligation; or

(d) The existence of an affirmative defense to enforcement of the judgment authorized by applicable law.

12206.3 Neither the support order nor the underlying money judgment may be modified in response to an obligor's contest of the Notice of Lien.

12206.4 Upon receipt of a request for an agency review from an obligor, CSSD shall review the case and notify the obligor in writing of the agency's decision within ten (10) days of the date the request for review was received by CSSD.

12206.5 At the conclusion of the agency review, CSSD shall:

(a) Release the Notice of Lien, notify the insurer and obligor that the lien has been released, and return the funds to the obligor; or

(b) Adjust arrears and return any overpayment to the obligor if the obligor demonstrates that the arrears are incorrect because of a failure to account for all child support payments, an incorrect computation of the balance due, or a failure to give effect to a prior suspension or modification of the support obligation. After the adjustment, CSSD shall file with the Recorder of Deeds a new Notice of Lien reflecting the updated arrearage balance and send a copy of the new Notice of Lien to the obligor and the insurer; or

(c) Inform the obligor of CSSD's intent to retain levied funds and the obligor's right to request an administrative hearing with OAH.

12207 ADMINISTRATIVE HEARING

12207.1 Regardless of whether the obligor has sought agency review of the Notice of Lien, the obligor may seek legal review of the agency's action by requesting an administrative hearing with OAH within sixty-five (65) days from the date of the Notice of Lien.

12207.2 Grounds for contesting the Notice of Lien before OAH shall be the same as the grounds stated in § 12206.02.

12207.3 Notice of the right to an administrative hearing shall be included with the Notice of Lien.

12207.4 The request for administrative hearing shall be made in accordance with OAH Rules, Title 1 DCMR, Chapter 28. The hearing request must be received by OAH within sixty-five (65) days after the date of the Notice of Lien.

12207.5 If the obligor requests an administrative hearing, CSSD shall retain the levied funds until a decision is rendered by the administrative law judge. After the decision is rendered, CSSD shall either disburse the levied funds to the obligor or the obligee in accordance with the final order issued by OAH.

12207.6 After all arrears owed by obligor are satisfied, or the OAH finds that the Notice of

Lien is inappropriate, CSSD shall file a Release of Lien with the Recorder of Deeds for the District of Columbia, and notify CSLN and the obligor that the lien has been released.

12208 APPEAL PROCEDURE

12208.1 The obligor may seek judicial review of the administrative hearing decision at the D.C. Court of Appeals in accordance with section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510) and Section 19 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.16).

12208.2 If the Court of Appeals reverses OAH's order denying the obligor's objections to the Notice of Lien, CSSD shall credit the obligor's child support obligation for the amount that was distributed, or send payment to the obligor in accordance with the final order issued by the Court of Appeals.

12209 CONFIDENTIALITY

CSSD shall maintain the confidentiality of information and records concerning an obligor's financial information and shall only release information or records as permitted by applicable provisions of District or federal law.

12299 DEFINITIONS

The following terms and phrases shall have the meanings ascribed here:

Arrears – past due child support payments.

Child Support Lien Network (CSLN) – a national database that is matched daily with personal injury and workers' compensation claims registered by insurers with the ISO ClaimSearch database to identify obligors with child support arrears who are awaiting settlement of personal injury and workers' compensation claims.

Data match – the process of comparing customers with insurance claims in the Child Support Lien Network against CSSD's caseload consisting of obligors who have a child support case and owe arrears.

District of Columbia Child Support Enforcement System (**DCCSES**) – the automated system used by CSSD to manage child support cases.

Levy – the seizure of a debtor's specific asset or property to satisfy a judgment, debt, or claim.

Lien – a qualified right to property which a creditor has in or over specific real or personal property of a debtor as security for the debt.

Notice of Lien -- a document that states the CSSD's secured interest in the obligor's settlement funds after the lien has been filed with the Recorder of Deeds.

Obligee – the person or entity that is entitled to receive child support pursuant to a court or administrative order.

Obligor – a person who is required pay child support pursuant to a court or administrative order.

Release of Lien – a document that relinquishes the encumbrance of the obligor's property or settlement funds created by the Notice of Lien.

Settlement funds – an award of money damages paid by an insurer to a claimant to indemnify or make claimant whole after injury.

Workers' Compensation – benefit paid to employee who is injured or killed as a result of or in the course of employment.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in Sections 2 and 3 of the Streamlining Regulation Act of 2003, effective October 28, 2003 (D.C. Law 15-38; D.C. Official Code §§ 47-2851.20 and 47-2836(b) (2012 Repl.)), hereby gives notice of the adoption of amendments to Chapter 12 (Sightseeing Tour Companies and Guides) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking is necessary to formally eliminate content-based testing requirements for tour guides and to amend the definition of tour guide in light of the United States Court of Appeals' decision in *Edwards v. District of Columbia*, *755 F.3d 996* (D.C. Cir. 2014).

The rules were adopted on an emergency basis on April 21, 2015 and became effective on that date. A Notice of Proposed Rulemaking was published on May 15, 2015 at 62 DCR 6087. No comments were submitted and no substantive changes were made.

The rules were adopted as final on July 16, 2015 and will become effective upon publication in the *D.C. Register*.

Chapter 12, SIGHTSEEING TOUR COMPANIES AND GUIDES, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended as follows:

Section 1200 is amended to read as follows:

1200 GENERAL DEFINITIONS

1200.1 Whenever used in this chapter, the term "tour guide" or "sightseeing tour guide" shall mean any person who engages primarily in the business of guiding or directing people to any place or point of interest in the District.

1200.2 Whenever used in this chapter, the term "sightseeing tour company" shall mean a business that employs a sightseeing tour guide.

Section 1203 is amended by repealing Subsection 1203.3.

Section 1204 is amended to read as follows:

1204 REQUIREMENTS FOR SIGHTSEEING TOUR COMPANIES

1204.1 A sightseeing tour company licensee engaged in the operation of sightseeing tour vehicles in the District shall obtain the necessary approvals of the District Department of Transportation, the District Department of Motor Vehicles, and the Washington Metropolitan Area Transit Commission.

1204.2 The approval of sightseeing tour vehicles required by § 1204.1 shall be evidenced by the display on each vehicle of the applicable license(s) or certificate(s) issued by the relevant government agencies.

1204.3 A vehicle operated by a licensed sightseeing tour company shall have at least one (1) licensed sightseeing tour guide on board the vehicle during its sightseeing tours in the District.

1204.4 Each sightseeing tour company shall ensure that its sightseeing tour vehicles comply with all District parking and traffic regulations.

1204.5 A sightseeing tour company licensee shall notify the Department within thirty (30) days after any change to the information provided on the application required by § 1202, including a change to the business address or telephone number of the licensee.

1204.6 The Director may, in connection with the consideration of a sightseeing tour company license application and from time to time during the license term, during regular business hours, require an applicant or licensee to make available to the Director, or the Director's agent, such information as the Director considers necessary to determine or verify whether the applicant or licensee has or retains the qualifications necessary for obtaining or retaining a license, or has violated or failed to comply with an applicable statute or regulation.

1204.7 Failure to make information available to the Director, failure to furnish to the Director information the Director is authorized to request by this chapter, or failure to furnish to the Director or to permit the Director to make copies of such records maintained by the applicant or licensee as the Director may specify, shall be grounds for denial, suspension, or revocation of a license.

DISTRICT OF COLUMBIA PUBLIC LIBRARY

NOTICE OF FINAL RULEMAKING

The District of Columbia Public Library Board of Trustees, pursuant to the authority set forth in An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896, as amended (29 Stat. 244, ch. 315, § 5; D.C. Official Code § 39-105 (2012 Supp.)); Section 3205 (jjj) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 39-105 (2012 Supp.)); Section 2 of the District of Columbia Public Library Board of Trustees Appointment Amendment Act of 1985, effective September 5, 1985 (D.C. Law 6-17; D.C. Official Code § 39-105 (2012 Supp.)); the Procurement Reform Amendment Act of 1996, effective April 12, 1997, as amended (D.C. Law 11-259; 44 DCR 1423 (March 14, 1997)); and Section 156 of An Act Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, approved October 21, 1998 (112 Stat. 2681, Pub. L. 105-277; codified at D.C. Official Code § 39-105 (2012 Repl.)); hereby gives notice of its intent to amend Section 803 of Chapter 8 (Public Library) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR).

The Board of Trustees has appointed the Chief Librarian/Executive Director, through D.C. Official Code § 39-105(a)(10) (2012 Repl.), to establish rules and manage the day-to-day operations of the library. On May 27, 2015, the Board of Library Trustees of the District of Columbia Public Library (DCPL) approved to adopt the proposed new amendment(s) to the District of Columbia Public Library Regulations regarding Fines and Penalties in §§ 803.1, 803.2, 803.3, 803.4, and 803.6 to Chapter 8. The proposed amendments will provide the DCPL the ability to eliminate fines and penalties for students age nineteen (19) and under.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 26, 2015 at 62 DCR 9004 to amend the rules to reflect the current policies at the DCPL. No comments were received and no substantive changes were made. These rules were adopted as final May 27, 2015 and shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 8, PUBLIC LIBRARY, of Title 19 DCMR, AMUSEMENTS, PARKS AND RECREATION, is amended as follows:

Section 803, FINES AND PENALTIES, Subsections 803.1 through 803.4 and Subsection 803.6, are amended so that the section reads as follows:

803.1 Adult borrowers, twenty (20) years of age and older, shall be charged a long overdue fee of five dollars ($ 5) for each item overdue thirty (30) days or more.

803.2 All borrowers, twenty (20) years of age and older, shall be assessed lost and damaged fees on all material types including children's materials and books that are overdue sixty (60) days or more, as follows:

(a) Hardcover Books; $ 20.00

	(b)	Paperback Books, CDs, DVDs, and Audiobooks; and	$ 15.00
	(c)	Magazines.	$ 8.00

803.3 Adult borrowers, twenty (20) years of age and older, of materials and books are responsible for the payment of both lost and damaged fees and the long overdue fee, if applicable.

803.4 Adult borrowers twenty (20) years of age and older who incur outstanding fees totaling forty dollars ($ 40.00) or more on their library account will be blocked from checking-out or renewing books and other library materials, until the account is in good standing.

803.5 When library materials are ten days overdue the Library shall send a notice to the borrower.

803.6 [RESERVED]

803.7 The librarian or designee can at his/her discretion forgive fines for library materials. This option can be utilized when the borrower provides reasons such as: hospitalization, death in family, incarceration, fire, flood, or other catastrophic personal hardship.

803.8 The librarian or designee is authorized to cancel fines when the borrower claims that the library material was returned and it is found in the library or the library was closed due to an emergency.

D.C. DEPARTMENT OF HUMAN RESOURCES

NOTICE OF PROPOSED RULEMAKING

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-609.01, 1-609.02(c), and 1-609.03(a) *et seq*. (2014 Repl.)), hereby gives notice of the intent to adopt the following amendments to Chapter 9 (Excepted Service) of Title 6, Subtitle B (Government Personnel) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the publication of this notice in the *D.C. Register*.

These rules would: (1) amend Section 902, Excepted Service Qualifications and Other Appointment Requirements, to require that all persons appointed to the Excepted Service be subject to a credit check and criminal background check; (2) amend Section 911**,** Pre-Employment Travel, Relocation, and Temporary Housing Allowance, to limit the amount of pre-employment travel expenses, relocation expenses, and temporary housing allowance that can be provided to an Excepted Service employee in accordance with the section; and (3) add a new Section 921, Appointment to Inspector, Commander and Assistant Chief of Police in the Excepted Service, to the chapter. Additionally, further amendments are made to Sections 905, 908, and 999.

Upon adoption, these rules will amend Chapter 9, Excepted Service, of the DCMR, published at 32 DCR 2271 (April 26, 1985) and amended at 36 DCR 7931 (November 17, 1989), 39 DCR 6171 (August 21, 1992), 47 DCR 8093 (October 6, 2000), 50 DCR 4743 (June 13, 2003), 50 DCR 11076 (December 26, 2003), 51 DCR 10416 (November 12, 2004), 51 DCR 10934 (November 26, 2004) – Errata Notice, 53 DCR 5495 (July 7, 2006), 55 DCR 7953 (July 25, 2008), 56 DCR 002223 (April 10, 2009), and 61 DCR 007849 (August 1, 2014).

D.C. PERSONNEL REGULATIONS

Chapter 9, Excepted Service, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended to read as follows:

900 APPLICABILITY

900.1 This chapter applies to all appointments in the Excepted Service under the authority of Title IX of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-609.01 *et seq*. (2012 Repl.)).

900.2 All Excepted Service appointees shall serve at the pleasure of the appointing personnel authority, except those appointed under special appointments under the authority of Section 904 of the CMPA ((D.C. Official Code § 1-609.04 (2012 Repl.)).

901 EXCEPTED SERVICE CLASSIFICATION SYSTEM AND STANDARDS

901.1 Notwithstanding the provisions in Section 903 of this chapter on the establishment of the new Excepted Service Pay Schedule, the classification system or systems in effect on December 31, 1979 shall remain in effect until the adoption of a new classification system or systems pursuant to Section 1102 of the CMPA (D.C. Official Code § 1-611.02 (2012 Repl.)), and shall be the system utilized to classify Excepted Service positions.

901.2 Each Excepted Service position shall be classified as prescribed in Chapter 11 of these regulations, except that:

(a) Statutory positions shall be classified in a manner consistent with their governing statutes, as appropriate; and

(b) The personnel authority may adjust the grade, pay level, or salary, as applicable, of a position, to reflect the professional, scientific, or technical stature of an individual appointed as an expert or consultant.

902 EXCEPTED SERVICE QUALIFICATIONS AND OTHER APPOINTMENT REQUIREMENTS

902.1 Except for statutory office holders, as defined by D.C. Official Code § 1-609.08, an individual may only be appointed to an Excepted Service position if he or she is well qualified to fill that position.

902.2 All Excepted Service appointees shall be subject to credit and criminal background checks. Credit and criminal background checks shall be carried out in the manner prescribed by applicable sections in Chapter 4 of these regulations.

902.3 An appointee's suitability shall be determined by the appointing personnel authority in accordance with Chapter 4 of these regulations.

902.4 Employment in the Excepted Service shall comply with the Immigration Reform and Control Act of 1986, approved November 6, 1986 (Pub.L. 99–603, 100 Stat. 3445), as amended, which requires that employers hire only citizens and nationals of the United States and aliens authorized to work and verify the identity and employment eligibility of all employees hired after November 6, 1986.

902.5 The minimum age for employment in the Excepted Service, unless a different age requirement is specifically provided by law for a particular appointment or position, is sixteen (16) years old.

902.6 Except as provided in Subsection 902.5 of this section, the minimum age for any junior youth aide in the Department of Parks and Recreation and for summer employment is fourteen (14) years old for a person appointed to an Excepted Service transitional position.

903 PAY PLAN AND PAY-FOR-PERFORMANCE SYSTEM FOR THE EXCEPTED SERVICE

903.1 An Excepted Service Pay Schedule ("ES Schedule") is the basic pay schedule for all Excepted Service positions. The ES Schedule, which was approved on July 6, 2005 by Council Resolution No. 16-219, is a merit-based pay plan that provides for market competitive open-salary ranges with progression based on performance, and replaced the salary schedule structure for Excepted Service positions consisting of pay levels and ten (10) steps.

903.2 The structure and application of the ES Schedule provides flexibility in hiring and compensation for Excepted Service positions. Some of the features of a merit-based pay plan such as the ES Schedule are:

(a) Merit pay or pay for performance systems providing the flexibility to:

(1) Combine merit or performance-based increases with what is commonly known as "cost-of-living-adjustments" or "market adjustments;" or

(2) Base the total salary increase the employee receives solely on merit (performance);

(b) Base-pay increases vary in direct relationship to each employee's performance level;

(c) The system differentiates between various levels of performance and rewards employees through additional compensation accordingly;

(d) Success of the system depends on accurate and realistic performance evaluations by supervisors; and

(e) The system provides flexibility for varying budget constraints and revenues.

903.3 The ES Schedule is divided into eleven (11) pay levels (ES 1 through ES 11). Each pay level has an open range with a "minimum," "midpoint," and "maximum" as reference points of the range.

903.4 Application of the ES Schedule shall ensure compliance with the principle of equal pay for substantially equal work contained in Section 1103(a)(2) of the CMPA (D.C. Official § 1-611.03(a)(2) (2012 Repl.)).

903.5 As appropriate, the compensation provisions contained in Chapter 11 of these regulations shall apply to Excepted Service employees.

903.6 Eligible employees paid under the ES Schedule shall not receive more than one (1) salary increase in a calendar year (annual salary increase).

903.7 Except as otherwise determined by the Mayor (or designee), or personnel authority, an annual salary increase for an employee paid under the ES Schedule shall become effective on the last full biweekly pay period in the calendar year

(pay period number twenty-six (26)), or pay period number twenty-seven (27), as may occur from time to time).

903.8 An employee paid under the ES Schedule shall be eligible for an annual salary increase if:

(a) The employee received a Performance Plan for the year; and

(b) The employee's level of competence and job performance is determined to be acceptable or better, as evidenced by a performance rating of *"Meets Expectations"* (its equivalent) or higher, for Excepted Service employees whose performance is rated using the Performance Management Plan in Chapter 14 of these regulations.

903.9 Whether an employee who is eligible to receive an annual salary increase under Subsection 903.8 of this section is actually awarded an annual salary increase, and the type and size of an annual salary increase awarded, shall be determined in accordance with the provisions of Chapter 11 of these regulations.

903.10 An annual salary increase may consist of:

(a) A market adjustment;

(b) A merit-pay increase based on performance as specified in Subsection 903.7(a) of this section; or

(c) A market adjustment, plus a merit-pay increase based on performance as specified in Subsections 903.8(a) and (b) of this section combined.

903.11 Each personnel authority, in consultation with the Office of the Chief Financial Officer, shall:

(a) Plan for and determine the payroll cost of annual salary increases every year for agency Excepted Service employees who meet the requirements in Subsections 903.7(a) and (b) of this section;

(b) Determine the total percentage of the annual salary increases for these employees; and

(c) Communicate the plan to agency heads every year.

903.12 An eligible Excepted Service employee whose salary is at the top of the range for the pay level of the position he or she occupies and who meets the requirements in Subsections 903.8(a) and (b) of this section, shall receive a one-time (1-time) lump sum payment for the calendar year in question, the amount of which shall not exceed the total percentage afforded to other eligible agency employees with the same performance rating.

903.13 The Director, D.C. Department of Human Resources (Director of the DCHR), shall determine the salary levels for Capital City Fellows assigned to subordinate agencies.

903.14 The salary of an employee paid under the ES Schedule may be reduced in accordance with Chapter 11 of these regulations.

903.15 Nothing in this section shall prevent Excepted Service employees paid under the ES Schedule from receiving performance incentives and incentives awards in accordance with Section 912 of this chapter and Chapter 19 of these regulations.

904 EXCEPTED SERVICE POSITIONS

904.1 The following types of positions are considered Excepted Service positions:

(a) Excepted Service statutory positions include positions occupied by employees who, pursuant to Section 908 of the CMPA (D.C. Official Code § 1-609.08 (2012 Repl.)), serve at the pleasure of the appointing authority; or who, as provided by other statute, serve for a term of years subject to removal for cause as may be provided in the appointing statute. Among the Excepted Service statutory positions listed in Section 908 of the CMPA are the following:

(1) The City Administrator;

(2) The Director of Campaign Finance, District of Columbia Board of Elections;

(3) The Auditor of the District of Columbia;

(4) The Chairman and members of the Public Service Commission;

(5) The Chairman and members of the Board of Parole;

(6) The Executive Director of the Public Employee Relations Board;

(7) The Secretary to the Council of the District of Columbia;

(8) The Executive Director of the Office of Employee Appeals;

(9) The Executive Director and Deputy Director of the D.C. Lottery and Charitable Games Control Board;

(10) The Budget Director of the Council of the District of Columbia;

(11) The Chief Administrative Law Judge, Administrative Law Judges, and Executive Director of the Office of Administrative Hearings; and

(12) The Chief Tenant Advocate of the Office of the Tenant Advocate.

(b) Positions created under public employment programs established by law, pursuant to Section 904(1) of the CMPA (D.C. Official Code § 1-609.04(1) (2012 Repl.)).

(c) Positions established under special employment programs of a transitional nature designed to provide training or job opportunities for rehabilitation purposes, including persons with disabilities, returning citizen or other disadvantaged groups, pursuant to Section 904(2) of the CMPA (D.C. Official Code § 1-609.04(2) (2012 Repl.)).

(d) Special category positions established pursuant to Section 904(3), (4), and (5) of the CMPA (D.C. Official Code § 1-609.04(3), (4), and (5) (2012 Repl.)), specifically:

(1) Positions filled by the appointment of a federal employee under the mobility provisions of the Intergovernmental Personnel Act of 1970, approved January 5, 1971 (Pub.L. 91-648; 84 Stat. 1909; 5 U.S.C. §§ 3301 *et seq*.);

(2) Positions established under federal grant-funded programs that have a limited or indefinite duration and are not subject to state merit requirements by personnel authorities; excluding employees of the State Board of Education or of the Trustees of the University of the District of Columbia; and

(3) Positions established to employ professional, scientific, or technical experts or consultants.

(e) Positions established under cooperative educational and study programs pursuant to Section 904(6) of the CMPA (D.C. Official Code § 1-609.04(6) (2012 Repl.)), including but not limited to positions established under a pre-doctoral or post-doctoral training program under which employees receive a stipend; positions occupied by persons who are graduate students under temporary appointments when the work performed is the basis for completing certain academic requirements for advanced degrees; and positions established under the Capital City Fellows program administered by the D.C. Department of Human Resources.

(f) Excepted Service policy positions pursuant to Section 903(a) of the CMPA (D.C. Official Code § 1-609.03(a) (2012 Repl.)) are positions reporting directly to the head of the agency or placed in the Executive Office of the Mayor or the Office of the City Administrator, in which the position holder's primary duties are of a policy determining, confidential, or policy advocacy character. These positions shall consist of the following:

(1) No more than one hundred and sixty (160) positions appointed by the Mayor;

(2) Staff positions at the Council of the District of Columbia, the occupants of which are appointed by Members of the Council of the District of Columbia, provided that this does not include positions occupied by those permanent technical and clerical employees appointed by the Secretary or General Counsel, and those in the Legal Service;

(3) No more than fifteen (15) positions, the occupants of which shall be appointed by the Inspector General;

(4) No more than four (4) positions, the occupants of which shall be appointed by the District of Columbia Auditor;

(5) No more than twenty (20) positions, the occupants of which shall be appointed by the Board of Trustees of the University of the District of Columbia, to serve as officers of the University, persons who report directly to the President, persons who head major units of the University, academic administrators, and persons in a confidential relationship to the foregoing, exclusive of those listed in the definition of the Educational Service.

(6) No more than six (6) positions, the occupants of which shall be appointed by the Chief of Police;

(7) No more than six (6) positions, the occupants of which shall be appointed by the Chief of the Fire and Emergency Medical Services Department;

(8) No more than nine (9) positions, the occupants of which shall be appointed by the Criminal Justice Coordinating Council;

(9) No more than ten (10) positions, the occupants of which shall be appointed by the District of Columbia Sentencing and Criminal Code Revision Commission;

(10) The State Board of Education may appoint staff to serve an administrative role for the elected members of the Board; provided, that funding is available and that at least three (3) full-time equivalent employees are appointed to the Office of Ombudsman for Public Education; and

(11) Not more than two (2) positions in each other personnel authority not expressly designated in this subsection, provided that the

occupants of each of these positions shall be appointed by the appropriate personnel authority.

904.2 The following shall apply to professional, scientific, or technical expert and consultant positions listed in Subsection 904.1(d)(3) of this section:

(a) Persons serving in expert or consultant positions may be offered paid or unpaid employment; shall be qualified to perform the duties of the position and the positions shall be bona-fide expert or consultant positions, as these terms are defined in Section 999 of this chapter;

(b) Experts and consultants may be employed under intermittent or temporary appointments not-to-exceed one (1) year; except that appointments may be renewed from year to year without limit on the number of reappointments, provided there is continued need for the services;

(c) Hiring an expert or consultant to do a job that can be performed as well by regular employees, to avoid competitive employment procedures or District Service pay limits, shall be considered improper uses of experts and consultants; and

(d) Persons employed as experts and consultants shall be subject to the domicile requirements specified in Section 909 of this chapter and Chapter 3 of these regulations.

904.3 A statutory or policy position as described in Subsection 904.1(a) or Subsection 904.1(f)(1) through (10) of this section occupied by a person holding an appointment to an attorney position shall be treated solely as a statutory or policy position.

905 METHOD OF MAKING EXCEPTED SERVICE APPOINTMENTS

905.1 A person may be appointed to any position in the Excepted Service by the appropriate personnel authority non-competitively, provided that the individual appointed is well qualified for the position.

905.2 An appointment to a statutory position will be made as specified in the law authorizing the position.

905.3 An appointment to a special category position under a federal grant-funded program shall be either for an indefinite period, or a time-limited appointment reflecting the duration of the grant.

905.4 An appointment to a policy position is subject to the following provisions:

(a) Each person appointed to a policy position shall perform duties that include policy determination, or that are of a confidential or policy advisory character;

(b) Each personnel authority authorized to make appointments to policy positions shall designate policy positions and shall cause such designations, together with the position qualifications, standards, and salary range, to be published in the *D.C. Register*;

(c) The position shall become a policy position in the Excepted Service automatically upon being filled by a policy appointment, and shall remain an Excepted Service position only for so long as filled by a policy appointment. If a Career or Educational Service employee holds a position converted to an Excepted Service position, and the employee is not afforded or does not accept a policy appointment to that position, the employee shall have all rights and remedies available under Chapter 24 of these regulations;

(d) When a position ceases to be authorized as a policy position, by reason of a notice to that effect in the *D.C. Register*, the existing Excepted Service position shall be effectively abolished thirty (30) days later. If the incumbent is to be separated as a result of the abolishment, he or she shall be afforded the rights outlined in Section 907.

(e) An appointment to a policy position may be either for an indefinite or time-limited period;

(f) Each personnel authority, shall within forty-five (45) days of the actual appointment and within forty-five (45) days of any change in such appointment, publish in the *D.C. Register* and post online for public access the names, position titles, and agency placements of all persons appointed to Excepted Service positions; and

(g) The authority to make policy appointments may be delegated or redelegated in whole or in part by the Mayor or designated personnel authority.

906 EXCEPTED SERVICE APPOINTMENTS OF CAREER SERVICE OR EDUCATIONAL SERVICE EMPLOYEES

906.1 Any person holding a position in the Career or Educational Services may be detailed, temporarily promoted, temporarily transferred, or temporarily reassigned, without a break in service, to a position that would otherwise be in the Excepted Service without losing his or her existing status in the Career or Educational Service.

906.2 Before making an appointment to a position in the Excepted Service as specified in Subsection 906.1 of this section, the appointing personnel authority shall first inform the appointee, in writing, of the conditions of employment under the appointment, and that the appointee will not lose his or her existing status in the

Career Service or Educational Service, as applicable. The appointee must accept or decline the appointment in writing.

906.3 Any person tendered (offered) an appointment to a position in the Excepted Service under this section who declines or refuses to accept such appointment shall continue to be subject to the rules applicable to the service in which he or she has existing status as provided in subsection 906.1 of this section.

906.4 The temporary nature of an appointment under this section shall be clearly stated and recorded on the appointing personnel action or actions. This requirement may be met by specifying the anticipated duration of the appointment by including a not-to-exceed (NTE) date in the appointing personnel action(s). Additionally, the appointing personnel action(s) shall include remarks specifying all of the following:

(a) The temporary nature of the appointment to the Excepted Service position;

(b) That the appointee was informed in writing of the conditions of employment under the new appointment, and accepted the appointment;

(c) That the appointee will not lose his or her existing status in the Career or Educational Service by accepting the temporary appointment to the Excepted Service position; and

(d) That, upon termination of the temporary appointment to the Excepted Service position, the appointee is entitled to be returned to the Career or Educational Service position he or she occupied prior to the temporary assignment, or to an equivalent position.

907 EMPLOYEE RIGHTS

907.1 Appointment to the Excepted Service does not create a permanent career status.

907.2 Except as otherwise provide in this section, a person appointed to the Excepted Service shall serve at the pleasure of the appointing personnel authority; may be terminated at any time, with or without a stated reason; and does not have any right to appeal the termination.

907.3 A person serving in an Excepted Service statutory position who is appointed in accordance with a statute that provides for a term of years and is subject to removal for cause may be removed only as provided for in the applicable statute.

907.4 If the statute that provides for a term of years does not specify the removal procedure of the incumbent, the appointing authority shall satisfy the incumbent's minimal due process rights by affording the incumbent an opportunity to present objections to the proposed action to a fair, neutral decision-maker.

907.5 Except as provided in Subsection 907.3, when contemplating termination, the appointing personnel authority shall give the incumbent at least fifteen (15) days advance written notice of the proposed action. Though not required, the notice may explain the reason for the termination.

907.6 The fifteen (15) day (15-day) notice is not required for termination on the date previously anticipated for termination, such as in the case of an employee serving under an Excepted Service appointment with a not-to-exceed (NTE) date or other date of anticipated termination included on the appointing personnel action.

908 RESTRICTIONS ON SUBSEQUENT APPOINTMENT TO THE CAREER, MANAGEMENT SUPERVISORY OR EDUCATIONAL SERVICES

908.1 In accordance with Section 902 of the CMPA (D.C. Official Code § 1-609.02(b) (2012 Repl.)), and except as provided in Subsection 908.2 of this section, an employee appointed to the Excepted Service may not be appointed to a position in the Career, Management Supervisory, or Educational Services during the period that begins six (6) months prior to a Mayoral primary election and ends three (3) months after the Mayoral general election. An Excepted Service appointee may compete for a position in the Career, Management Supervisory, or Educational Services during this time period.

908.2 Upon termination, a person holding an Excepted Service appointment pursuant to Subsections 904.1(a) or 904.1(f)(1) through (10) of this chapter who has Career Service or Educational Service status may retreat, at the discretion of the terminating personnel authority, within three (3) months of the effective date of the termination, to a vacant position in such service for which he or she is qualified.

908.3 The provisions of Subsections 908.1 and 908.2 of this section shall not apply to employees of the Council of the District of Columbia.

909 RESIDENCY AND DOMICILE REQUIREMENTS

909.1 The statutory residency and domicile requirements for the Excepted Service, and the provisions of Chapter 3 of these regulations, are applicable to all persons appointed to positions in the Excepted Service

910 SPECIAL CONSIDERATION FOR PLACEMENT AND ADVANCEMENT

910.1 The following employees shall be referred to selecting officials in subordinate agencies for interview by management and special consideration for placement and advancement for Excepted Service positions they apply for:

(a) Graduates of the District government's Certified Public Manager Program; and

(b) Persons appointed as Capital City Fellows.

910.2 As applicable, if appointed, any employee as described in Subsection 910.1 above shall be required to comply with the residency and domicile requirements for the Excepted Service pursuant to Section 906 of the CMPA (D.C. Official Code § 1-609.06 (2012 Repl.)).

911 PRE-EMPLOYMENT TRAVEL, RELOCATION, AND TEMPORARY HOUSING ALLOWANCE

911.1 In accordance with Section 903 (g)(1)(A), (B), and (C) of the CMPA (D.C. Official Code § 1-609.03(g)(1)(A), (B), and (C) (2012 Repl.)), an agency may pay to an individual being interviewed for, or an appointee to, a hard-to-fill Excepted Service position, reasonable pre-employment travel expenses, relocation expenses, and a temporary housing allowance at grade level 11 or pay level ES-5, as applicable, or above. In no event shall the maximum pre-employment travel expenses, relocation expenses, and temporary housing allowance exceed $10,000 or ten percent (10%) of the individual's or appointee's salary, whichever is less.

911.2 In accordance with Section 903(g)(1)(B) of the CMPA (D.C. Official Code § 1-609.03(g)(1)(B) (2012 Repl.)), an agency may pay reasonable relocation expenses for an individual and his or her immediate family when that individual is selected for or appointed to a hard-to-fill policy position in the Excepted Service at grade level 11 or pay level ES-5, as applicable, or above, if relocation is to the District of Columbia from outside the Greater Washington Metropolitan Area, as defined in Section 999 of the chapter.

911.3 In the case of an individual eligible for relocation expenses pursuant to Subsection 911.2 of this section, an agency may pay a reasonable temporary housing allowance for a period not to exceed sixty (60) days for the individual and his or her immediate family.

911.4 The personnel authority may designate a position as a hard-to-fill position on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.

911.5 Payment of expenses under Subsections 911.2 and 911.3 of this section may only be made after the selectee or appointee signs a notarized agreement to remain in the District government service for twelve (12) months after his or her appointment unless separated for reasons beyond his or her control which are acceptable to the agency head concerned.

911.6 Any expense incurred for which reimbursement is sought pursuant to this section must be supported by valid receipts or invoices, the originals of which must be submitted to the Director of the DCHR or the personnel authority with the request for reimbursement.

911.7 If an individual violates an agreement under Subsection 911.5 of this section, the money paid by the District government for expenses will become a debt due to the

District government and will be recovered by set-off against accrued pay or any other amount due the individual, in accordance with Chapter 29 of these regulations, and by other lawful collection actions.

912 PERFORMANCE INCENTIVES AND INCENTIVE AWARDS FOR EXCEPTED SERVICE EMPLOYEES

912.1 In accordance with Section 903(e) of the CMPA (D.C. Official Code § 1-609.03(e) (2012 Repl.)), a personnel authority may authorize performance incentives for exceptional service by an employee appointed to an Excepted Service policy position under Section 903(a) of the CMPA (D.C. Official Code § 1-609.03(a) (2012 Repl.)).

912.2 Any performance incentive awarded under this section will be paid only once in a fiscal year, and only when the employee is subject to an annual performance contract that clearly identifies measurable goals and outcomes and the employee has exceeded contractual expectations in the year for which the incentive is to be paid.

912.3 For Excepted Service employees in agencies under the personnel authority of the Mayor, when there is no annual performance contract as described in Subsection 912.2 of this section, the employee's annual individual performance plan pursuant to Chapter 14 of these regulations will be considered the annual performance contract.

912.4 A performance incentive shall not exceed ten percent (10%) of the employee's rate of basic pay. For the purposes of determining the percentage of a performance incentive, the amount of the incentive will be calculated based on the employee's scheduled rate of basic pay during the performance rating period in which the exceptional service occurred, pursuant to Chapter 19 of these regulations. The percentage scale provided in Chapter 19, and the documentation required therein, will also apply to performance incentives pursuant to this section.

912.5 In addition to performance incentives, Excepted Service employees are eligible for incentive awards pursuant to Chapter 19 of these regulations, including Retirement Awards, but excluding the other categories of monetary awards in that chapter.

912.6 Performance incentives for Excepted Service employees shall be submitted, processed, and approved in accordance with Chapter 19 of these regulations.

912.7 A performance incentive awarded under this section will not be considered base pay for any purpose, and will be subject to the withholding of federal, District of Columbia and state income taxes, and social security taxes, if applicable. The amount of a performance incentive cannot be adjusted upward to cover these taxes.

913 SEVERANCE PAY

913.1 In accordance with Section 903(f) of the CMPA (D.C. Official Code § 1-609.03(f) (2012 Repl.)), and subject to the provisions of this section, the appointing personnel authority may, in his or her discretion, provide an individual appointed to an Excepted Service policy position or an Excepted Service statutory position up to ten (10) weeks of severance pay at his or her rate of basic pay upon separation for non-disciplinary reasons, as follows:

Length of Employment	**Maximum Severance**
Up to 6 months	2 weeks of the employee's basic pay
6 months to 1 year	4 weeks of the employee's basic pay
1 to 3 years	8 weeks of the employee's basic pay
More than 3 years	10 weeks of the employee's basic pay

913.2 The number of weeks of severance pay authorized pursuant to this section shall not exceed the number of weeks between the individual's separation and the individual's appointment to another position in the District government.

913.3 Severance pay shall be provided at the time of separation as a lump-sum, one-time payment, subject only to the withholdings of federal, District of Columbia and State income taxes, social security taxes, and other lawful deductions, if applicable.

913.4 Severance pay is not payable to any individual who either:

(a) Has accepted an appointment to another position in the District government without a break in service; or

(b) Is eligible to receive an annuity under any retirement program for employees of the District government, excluding the District retirement benefit program under Section 2605 of the CMPA (D.C. Official Code § 1-626.05 (2012 Repl.)).

913.5 An individual who receives severance pay pursuant to this section, but who is subsequently appointed to any position in the District government during the period of weeks represented by that payment, will be required to repay the amount of severance pay attributable to the period covered by such appointment. The pro-rated amount to be repaid will be based on the entire amount of the severance pay, including all required deductions, and is payable to the General Fund of the District of Columbia.

914 PERFORMANCE EVALUATION SYSTEM FOR EXCEPTED SERVICE EMPLOYEES

914.1 The performance of employees in the Excepted Service shall be evaluated utilizing the performance management system found in Chapter 14 of these regulations.

916 – 919 [RESERVED]

920 PROMOTION TO BATTALION FIRE CHIEF AND DEPUTY FIRE CHIEF POSITIONS – FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT

920.1 Section 2(b) of the Omnibus Public Safety Agency Reform Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-402 (b) (2012) Repl.)), provides that the Fire Chief shall recommend criteria for Excepted Service appointments to Battalion Fire Chief and Deputy Fire Chief that addresses the areas of education, experience, physical fitness, and psychological fitness. The criteria established, which became effective on October 1, 2007, are specified in Subsections 920.2 through 920.4 of this section.

920.2 Promotion to Battalion Fire Chief will be accomplished in accordance with the following:

(a) A Captain will be eligible for consideration for promotion to the rank of Battalion Fire Chief after having served as Captain for at least one (1) year;

(b) Each candidate must be certified to the Fire Officer II level in accordance with the standards of the National Fire Protection Association (NFPA), or equivalent, and must meet at least one (1) of the following three (3) educational and training requirements:

(1) Certification to Fire Officer III level in accordance with NFPA standards, or equivalent;

(2) A minimum of forty-five (45) semester hours of college level course work, with at least fifteen (15) semester hours in core subjects such as English composition, mathematics, and science, and the remainder in fire science or administration courses, or the equivalent of fire science or administration courses; or

(3) A minimum of thirty (30) hours toward certification as Fire Officer III in accordance with NFPA standards, or equivalent, with an additional fifteen (15) semester hours of college level course work in core subjects such as English composition, mathematics, and science.

(c) A candidate hired after December 31, 1980 will be ineligible for promotion to the rank of Battalion Fire Chief if his or her record includes a suspension action for a period of fourteen (14) days or more within the three (3) years prior to submission of his or her application for promotion.

(d) Each candidate will be required to successfully complete a promotional physical at the time of selection.

920.3 Promotion to Deputy Fire Chief will be accomplished in accordance with the following:

(a) A Battalion Fire Chief will be eligible for consideration for promotion to the rank of Deputy Fire Chief after having served as Battalion Fire Chief for at least two (2) years.

(b) Each candidate must be certified to Fire Officer II level in accordance with the standards of the National Fire Protection Association (NFPA), or equivalent, and must meet at least one (1) of the following three (3) educational and training requirements:

(1) Certification to Fire Officer III level in accordance with NFPA Standards, or equivalent;

(2) A minimum of forty-five (45) semester hours of college level course work, with at least fifteen (15) semester hours in core subjects such as English composition, mathematics, and science, and the remainder in fire science or administration courses, or the equivalent of fire science or administration courses; or

(3) A minimum of thirty (30) hours toward certification as Fire Officer III in accordance with NFPA standards, or equivalent, with an additional fifteen (15) semester hours of college level course work in core subjects such as English composition, mathematics, and science.

(c) A candidate hired after December 31, 1980 will be ineligible for promotion to the rank of Deputy Fire Chief if his or her record includes a suspension action for a period of fourteen (14) days or more within the three (3) years prior to submission of his or her application for promotion.

(d) Each candidate will be required to successfully complete a promotional physical at the time of selection.

920.4 The selection process for the Battalion Fire Chief and Deputy Fire Chief is as follows:

(a) The Fire Chief is authorized to select for promotion any of the members who meet the minimum qualification standards listed in Subsections 920.2 and 920.3 of this section.

(b) The Fire Chief will submit the final nomination of names to the Mayor, together with any other information as the Mayor may require.

921 APPOINTMENT TO INSPECTOR, COMMANDER AND ASSISTANT CHIEF OF POLICE IN THE EXCEPTED SERVICE

921.1 D.C. Official Code 5-105.01(b)(1)(2) (2012 Repl.), provides that the Chief of Police is vested with the authority to assign to duty and to appoint all officers and

members of the Metropolitan Police Department (Department) in accordance with the following.

(a) Consistent with the duty to maintain a force of the highest possible quality, the Chief of Police may appoint qualified candidates from within the Department, as well as seek and appoint qualified candidates from outside the Department, to the positions of Inspector, Commander and Assistant Chief of Police.

(b) The Chief of Police must consider a candidate's broad knowledge of law enforcement techniques and principles, including his or her knowledge of management principles and employee development in a law enforcement setting.

(c) The Chief of Police shall consider the disciplinary record of all candidates for appointment under this section.

921.2 Appointment to Inspector shall be in accordance with the following:

(a) Whenever one or more appointments are to be made to the rank of Inspector, the Chief of Police may make such selection(s) from a register containing the names of all eligible candidates.

(b) Prior to appointment to the position of Inspector, each candidate shall be required to pass a medical examination, including a psychological examination in accordance with the procedures outlined in the pre-promotional physical examination in Department General Orders (GO) 100.21, Physical Examinations.

921.3 Appointment to Commander shall be in accordance with the following:

(a) The position of Commander connotes a candidate who meets the qualifications outlined in Subsection 921.1(b).

(b) A Commander is vested with authority to establish a command system which most effectively utilizes the human and material resources available to him or her and best fulfills the mission of the Department.

(c) Prior to appointment to the position of Commander, each candidate shall be required to pass a medical examination, including a psychological examination in accordance with the procedures outlined in the pre-promotional physical examination in Department General Orders (GO) 100.21, Physical Examinations.

921.4 Appointment to Assistant Chief of Police shall be in accordance with the following:

(a) Whenever one or more appointments are to be made to the rank of Assistant Chief, the Chief of Police may make selection(s) from a register containing the names of all eligible candidates.

(b) Prior to appointment to the position of Assistant Chief, each candidate shall be required to pass a medical examination, including a psychological examination in accordance with the procedures outlined in the pre-promotional physical examination in Department General Orders (GO) 100.21, Physical Examinations.

921.5 Inspectors, Commanders, and Assistant Chiefs of Police, appointed by the Chief of Police pursuant to D.C. Official Code § 1-609.03 are Excepted Service employees. Inspectors, Commanders, and Assistant Chiefs of Police, selected by the Chief of Police from the force pursuant to D.C. Official Code §§ 5-105.01 and 1-608.01, are Career Service employees, who serve in such positions at the pleasure of the Chief of Police, and may be returned to their previous rank/position at the discretion of the Chief of Police.

999 DEFINITIONS

999.1 The following definitions apply to this chapter:

Administrative hearing officer – A person whose duties, in whole or substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged in adjudicatory functions, including, but not limited to any person who bears the title Hearing Officer, Hearing Examiner, Attorney Examiner, Administrative Law Judge, Administrative Judge, or Adjudication Specialist.

Administrative law judge – A person whose duties, in whole or substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged primarily in adjudicatory functions on behalf of an agency, rather than investigative, prosecutory or advisory functions, including, but not limited to any person who bears the title Hearing Officer, Hearing Examiner, Attorney Examiner, Administrative Law Judge, Administrative Judge, or Adjudication Specialist.

Attorney – a position that is classified as part of Series 905, except for a position in the Legal Service.

Biweekly pay period – the two-week (2-week) period for which an employee is scheduled to perform work.

Break in service – a period of one (1) workday or more between separation and reemployment.

Consultant – for the purposes of Subsection 904.2 of this chapter, the term "consultant" means a person who serves as an advisor to an officer or instrumentality of the District government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. A consultant gives views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions. The person is an expert in the field in which he or she advises, but need not be a specialist. A person's expertness may consist of a high order of broad administrative, professional, or technical experience indicating that his or her ability and knowledge make his or her advice distinctively valuable to the agency.

Consultant position – for the purposes of Subsection 904.2 of this chapter, the term "consultant position" means a position requiring the performance of purely advisory or consultant services, not including performance of operating functions.

Days – calendar days, unless otherwise specified.

Excepted Service – positions identified as being statutory, transitional, public employment, special category, training, or policy positions, and authorized by Sections 901 through 908 of the CMPA (D.C. Official Code §§ 1-609.01 through 1-609.08 (2012 Repl.)). These positions are not in the Career, Educational, Management Supervisory, Legal or Executive Service.

Expert – for the purposes of Subsection 904.2 of this chapter, the term "expert" means a person who performs or supervises regular duties and operating functions and shall include the following:

(a) A person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field; and

(b) Certain members of boards or commissions.

Expert position – for the purposes of Subsection 904.4 (c) of this chapter, the term "expert position" means: (a) a position that, for satisfactory performance, requires the services of an expert in the particular field, as defined above, and with duties that cannot be performed satisfactorily by someone not an expert in that field; or (b) a position that is occupied by members of certain boards and commissions.

Greater Washington Metropolitan Area – the Consolidated Metropolitan Statistical Area, which includes Washington, D.C. (the "Washington-Baltimore, DC-MD-VA-WV CMSA"), as defined by the Office of Management and Budget June 30, 1998 (revised November 3, 1998), and which consists of the following:

(a) The Baltimore, MD Primary Metropolitan Statistical Area (PMSA), consisting of Anne Arundel County, Baltimore County, Carroll

County, Harford County, Howard County, Queen Anne's County, and Baltimore City;

(b) The Hagerstown, MD PMSA, consisting of Washington County; and

(c) The Washington, DC-MD-VA-WV PMSA, consisting of the District of Columbia; Calvert County, MD; Charles County, MD; Frederick County, MD; Montgomery County, MD; Prince George's County, MD; Arlington County, VA; Clarke County, VA; Culpeper County, VA; Fairfax County, VA; Fauquier County, VA; King George County, VA; Loudoun County, VA; Prince William County, VA; Spotsylvania County, VA; Stafford County, VA; Warren County, VA; Alexandria City, VA; Fairfax City VA; Falls Church City, VA; Fredericksburg City, VA; Manassas City, VA; Manassas Park City, VA; Berkeley County, WV; and Jefferson County, WV.

Hard-to-fill position – a position designated as a hard-to-fill position pursuant to Subsection 911.4 of this chapter on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.

Intermittent employment – for the purposes of Subsection 904.2 of this chapter, the term "intermittent employment" means occasional or irregular employment on programs, projects, problems, or phases thereof, requiring intermittent services. If at any time it is determined that the employee's work is no longer intermittent in nature, the person's employment must be changed immediately.

Performance contract – an agreement between an employee in an Excepted Service policy position under Section 903(a) of the CMPA (D.C. Official Code § 1-609.03 (a) (2012 Repl.)) and the personnel authority that may be entered into and that clearly identifies measurable goals and outcomes.

Personnel authority – an individual or entity with the authority to administer all or part of a personnel management program as provided in Section 401 of the CMPA (D.C. Official Code § 1-604.01 *et seq*. (2012 Repl.)).

Rate of basic pay – except as otherwise provided, the pay rate fixed by law, Wage Order, or Mayor's Order for the position held by an employee before any deductions and exclusive of additional pay of any kind, except as otherwise provided.

Time-limited appointment – an appointment with a specific time limitation consistent with the anticipated duration of the programs, projects, problems, or phases thereof, requires such service.

Comments on these proposed regulations should be submitted, in writing, within thirty (30) days of the date of the publication of this notice to Mr. Justin Zimmerman, Associate Director, Policy and Compliance Administration, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 340 North, Washington, D.C. 20001, or via email at justin.zimmerman@dc.gov. Additional copies of these proposed rules are available from the above address.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

RM29-2015-01, IN THE MATTER OF 15 DCMR CHAPTER 29-RENEWABLE ENERGY PORTFOLIO STANDARD-FISCAL YEAR 2015 BUDGET SUPPORT ACT OF 2014

1. The Public Service Commission of the District of Columbia ("Commission"), pursuant to its authority under D.C. Official Code §§ 2-505 and 34-802 (2012 Repl.), hereby gives notice of its intent to amend Chapter 29 of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations, Renewable Energy Portfolio Standard ("REPS" or "Standard"), in accordance with the "Fiscal Year 2015 Budget Support Act of 2014"[1] (the "2015 Budget Support Act") in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

2. Under the District of Columbia's REPS, specific percentages of electricity sales must be from tier one, tier two, and solar energy sources.[2] Solar energy is defined as a tier one source.[3] To meet the District of Columbia's Standard, each electricity supplier must obtain tier one and tier two renewable energy credits ("RECs") and solar renewable energy credits ("SRECs"), or pay a compliance fee for any shortfall, commensurate with a certain percentage of the number of kilowatt hours of electricity sold by the supplier per year.[4] A REC is a credit representing one megawatt-hour of energy produced by a tier one or tier two renewable source.[5] In satisfying the statutory tier one, tier two, and solar requirements, District of Columbia electricity suppliers can only use tier one and tier two RECs and SRECs obtained from tier one, tier two, and solar generating facilities that have been certified by the Commission.[6]

3. Prior to the 2015 Budget Support Act, the Commission could only certify solar energy facilities no larger than 5MW located within the District or in locations served by a distribution feeder serving the District, except that SRECs derived from solar energy systems not located within the District or not in locations served by a distribution feeder serving the District which had been certified prior to February 1, 2011 could still be used.[7] Pursuant to this legislation, the Commission can now certify solar energy facilities which are not located within

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1 D.C. Law 20-155 (Feb. 26, 2015).

2 D.C. Official Code § 34-1432 (2015 Supp.).

3 D.C. Official Code § 34-1431(15)(A) (2015 Supp.).

4 D.C. Official Code §§ 34-1432 and 1434(c) (2015 Supp.).

5 D.C. Official Code § 34-1431(10) (2015 Supp.).

6 *See generally*, D.C. Official Code §§ 34-1431-1439 (2012 Repl. & 2015 Supp.); 15 DCMR § 2902 (2015).

7 *See* D.C. Official Code §§ 34-1432(e)(1) and (2) (2012 Repl. & 2015 Supp.)

the District or in locations served by a distribution feeder serving the District but which are located within the PJM Interconnection region or within a state that is adjacent to the PJM Interconnection region.[8] These solar energy systems can, however, only be used to meet the non-solar tier one renewable source requirement of the standard.[9] Commission rules §§ 2901.2 and 2902.1, as revised in this Notice of Proposed Rulemaking ("NOPR"), allow the Commission to certify these outside-the District solar energy facilities, subject to this limitation.

4. Subsection 2901.2 is amended in its entirety to read as follows:

2901.2 An Electricity Supplier shall meet the solar portion of the Tier One requirement by obtaining the equivalent amount of RECs from solar energy systems no larger than five megawatts (5 MW) in capacity that are located within the District of Columbia or in locations served by a distribution feeder serving the District of Columbia, except that RECs generated by solar energy facilities that are not located within the District of Columbia nor in locations served by a distribution feeder serving the District of Columbia that the Commission certified prior to February 1, 2011, may be used to meet the solar requirement. However, an Electricity Supplier may also meet the solar requirement by obtaining RECs from solar energy systems larger than five megawatts (5 MW) in capacity, provided that these solar energy systems are located on property owned by the Government of the District of Columbia or by any agency or independent authority of the Government of the District of Columbia. In addition, electricity suppliers may meet the non-solar portion of the Tier One renewable source requirement of the renewable energy portfolio standard by obtaining renewable energy credits from solar energy systems that are not located within the District of Columbia or in locations served by a distribution feeder serving the District of Columbia, regardless of capacity.

5. Subsection 2902.1 is amended in its entirety to read as follows:

2902.1 Renewable generators, including behind-the-meter (BTM) generators, must be certified as a qualified resource by the Commission. The Commission shall not certify any Tier One solar energy system larger than five megawatts (5 MW) in capacity – except for solar energy systems larger than five megawatts in capacity that are located on property owned by the Government of the District of Columbia or by any agency or independent authority of the Government of the District of Columbia – or any Tier One solar energy system not located within the District of Columbia or in locations served by a distribution feeder serving the District of Columbia. In addition, solar energy systems that are not located within the District of Columbia or in locations served by a distribution feeder serving the District of Columbia, regardless of capacity may be certified as a qualified

[8] D.C. Official Code §§ 34-1431(10) and 1432(e)(2) (2015 Supp.).

[9] D.C. Official Code § 34-1432(e)(2) (2015 Supp.).

resource to meet the non-solar portion of the Tier One renewable source requirement of the renewable energy portfolio standard.

6. All persons interested in commenting on the subject matter of this NOPR may submit written comments and reply comments no later than thirty (30) and forty-five (45) days, respectively, after the publication of this Notice in the *D.C. Register*. Comments may be filed with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, DC 20005 or at the Commission's website at www.dcpsc.org. Persons with questions concerning this Notice should call 202-626-5150.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

The Director of the District Department of Transportation (DDOT), pursuant to the authority set forth in Sections 5(3)(D) (allocating and regulating on-street parking and curb regulations) and 6(c) (transferring to the Department the authority and function to make traffic rules and regulations previously delegated to the Department of Public Works under Section IV(A) of the Reorganization Plan No. 4 of 1983, the Department of Transportation under Section IV(G) of Reorganization Plan No. 2 of 1975, and the Director of Highways and Traffic under Commissioner Order No. 68-554) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.04(3)(D) and 50-921.05(c) (2014 Repl.)), hereby gives notice of this proposed action to adopt the following rule to amend Chapter 26 (Civil Fines for Moving and Non-Moving Infractions), of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

The proposed regulation will clarify the summary description in Chapter 26 of the types of parking that are prohibited, to make clear that there is no general prohibition against parking a vehicle under a bridge.

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

Chapter 26, CIVIL FINES FOR MOVING AND NON-MOVING INFRACTIONS is amended as follows:

Section 2601, PARKING AND OTHER NON-MOVING INFRACTIONS, is amended as follows:

The infraction labeled "Bridge, tunnel, freeway, viaduct or other elevated structure or ramps, on or under (§ 2405.1(d))" is amended to read as follows:

Bridge, viaduct, or other elevated structure, freeway, or ramp (on) or highway tunnel (within) [§ 2405.1(d)] $ 50.00

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

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act), effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.0l(a); 38-1202.06)(3),(13) (2012 Repl.)) hereby gives notice of its intent to amend Chapter 1 (Board of Trustees) of Subtitle B (University of the District of Columbia) of Title 8 (Higher Education) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register.*

The purpose of the proposed rule is to adjust the minimum number of Regular Meetings which must be held annually, consistent with D.C. Official Code § 38-1204.01(a)(1).

The Board of Trustees will take final action to adopt these amendments to the University Rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Chapter 1, BOARD OF TRUSTEES, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended as follows:

Section 105, MEETINGS OF THE BOARD OF TRUSTEES, Subsection 105.4 is amended as follows:

105.4 Meetings of the Board of Trustees shall be held in the District of Columbia in accordance with D.C. Official Code § 38-1204.01 (2012 Repl.) and shall be called or scheduled as follows:

(a) Regular Meetings. In accordance with D.C. Official Code § 38-1204.01 (2012 Repl.) the Chairperson or a majority of the members of the Trustees may convene a meeting. Regular meetings of the Board shall be based upon a schedule established by the Chairperson or majority of the members of the Board in consultation with the President. The Board shall conduct at least four (4) regular meetings each year.

(b) Special Meetings. Special meetings of the Board shall be called by the Chairperson, or by a majority of the members of the Board. In the case of a meeting called by the Chairperson or a majority of the members of the Board, the Chairperson or majority shall notify the President in writing not less than forty-eight (48) hours prior to the meeting of the time and place of the meeting.

(c) Emergency Meetings. The Chairperson may call an emergency meeting of the Board by notifying the President as promptly as possible of the nature of the emergency, and the purpose, time, and place of the meeting.

All persons desiring to comment on the subject matter of the proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of General Counsel, Building 39- Room 301-Q, University of the District of Columbia, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Comments may also be submitted by email to smills@udc.edu. Individuals wishing to comment by email must include the phrase "Comment to Proposed Rulemaking: Board Meetings" in the subject line.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 14-13
(Text Amendment – 11 DCMR)
(Text Amendment to Chapters 1, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 18, 19, 24, 26, 27, 28, 29, 31, and 33, Penthouse Regulations)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its intent to amend Chapters 1, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 18, 19, 24, 26, 27, 28, 29, 31, and 33 of Title 11 (Zoning) of the District of Columbia Municipal Regulations (DCMR). The proposed rules would re-define most roof structures as "penthouses" and provide regulation for penthouse height, design, and uses. The proposed rules in part provide complimentary regulations needed to effectuate an amendment to the Height Act that for the first time permitted penthouses to be occupied by humans.

Final rulemaking action shall be taken no earlier than October 9, 2015, which is at least thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 11 DCMR, ZONING, is amended as follows:

Chapter 1, THE ZONING REGULATIONS, § 199 DEFINITIONS, § 199.1 is amended as follows:

By inserting the following new definitions for "The Height Act" and "Penthouse" in alphabetical order:

> **Penthouse –** A structure on or above the roof of any part of a building. The term includes all structures previously regulated as "roof structures" by § 411 prior to [THE EFFECTIVE DATE OF THIS AMENDMENT] including roof decks and mechanical equipment.
>
> **The Height Act** - Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09).

By amending the definition of "Story" to delete the phrases "stairway or elevator" and "other roof structures; provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area"; and by amending the definition of "Story, top" to delete the phrase "housing for mechanical equipment or stairway or elevator" so that the definitions will read as follows:

> **Story -** the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The

number of stories shall be counted at the point from which the height of the building is measured.

For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars or penthouses.

Story, top - the uppermost portion of any building or structure that is used for purposes other than penthouses. The term "top story" shall exclude architectural embellishments.

Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, is amended as follows:

Section 400, HEIGHT OF BUILDINGS OR STRUCTURES (R), is amended as follows:

By amending § 400.1 to add the phrase ", not including the penthouse," so that the entire subsection reads as follows:

400.1 Except as specified in this chapter and in Chapters 20 through 25 of this title, the height of buildings or structures**,** not including the penthouse**,** in a Residence District shall not exceed that given in the following table:

By adding new §§ 400.5 and 400.6 to read as follows:

400.5 The height of a rooftop penthouse, except as restricted in § 400.6, as measured from the surface of the roof upon which the penthouse is located, shall not exceed that given in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
R-1-A, R-1-B, R-2, R-3, R-4, R-5-A	10 ft.	1
R-5-B	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
R-5-C	10ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
R-5-D	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment
R-5-E	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

400.6 A non-residential building constructed pursuant to §§ 400.7 through 412 shall be permitted a penthouse of eighteen feet six inches (18 ft. 6 in.) in height maximum.

Subsection 400.7 is repealed.

Section 411, ROOF STRUCTURES (R), is retitled PENTHOUSES (R) and is amended to read as follows:

411.1 A penthouse permitted in this title shall comply with the conditions specified in this section.

411.2 For the purposes of this section, the term "mechanical space" refers to any enclosed penthouse space used for mechanical equipment, elevator over-run, or stairway; and the term "habitable space" refers to any enclosed penthouse space used for any purpose other than mechanical space as defined above.

411.3 [RESERVED]

411.4 A penthouse may house mechanical space or any use permitted within the zone, except as follows:

(a) Habitable space within a penthouse on a detached dwelling, semi-detached dwelling, rowhouse or flat shall be limited pursuant to § 411.5 below;

(b) Within residential zones and the Capitol Interest Overlay in which the building is limited to forty feet (40 ft.) maximum penthouse use shall be limited to mechanical space and ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop unenclosed and uncovered deck, terrace, or recreation space;

(c) A nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104; and

(d) Habitable space within the penthouse is not permitted on any building within an area bound by I Street, N.W. to the north; Constitution Avenue, N.W. to the south; 19th Street, N.W. to the west, and 13th Street, N.W. to the east.

411.5 Notwithstanding § 411.4, a penthouse, other than screening for rooftop mechanical equipment or a guard-rail for a roof deck required by the Building Code, shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse or flat in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under § 3104, provided the penthouse:

(a) Is no more than ten feet (10 ft.) in height and contains no more than one (1) story; and

(b) Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.

411.6 All penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color; except that a rooftop egress stairwell enclosure not containing any other form of habitable or mechanical space may be contained within a separate enclosure.

411.7 Mechanical equipment shall be enclosed fully, except that louvers for the enclosing walls may be provided. A roof over a cooling tower need not be provided when the tower is located at or totally below the top of enclosing walls.

411.8 When roof levels vary by one (1) floor or more or when separate elevator cores are required, there may be one (1) enclosure for each elevator core at each roof level.

411.9 Enclosing walls of habitable space within the penthouse shall be of equal, uniform height as measured from roof level. Enclosing walls of mechanical space within the penthouse may of the same height as the enclosing walls of habitable space, or may be of a single, different uniform height, and required screening walls around uncovered mechanical equipment may be of a single, different uniform height. The diagram that follows depicts a penthouse compliant with the requirements of this subsection.

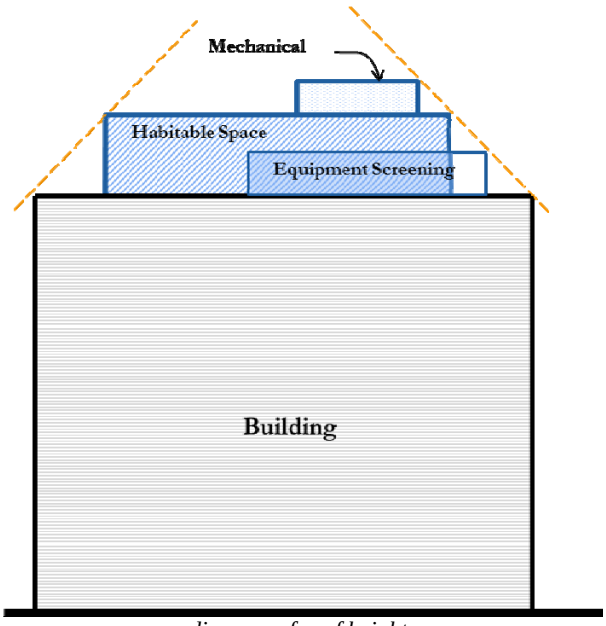

diagram of roof heights

411.10 Enclosing walls of a penthouse from roof level shall rise vertically to a roof, with a slope not exceeding twenty percent (20%) from vertical.

411.11 The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10, even if such structures do not meet the normal setback requirements of § 411.18, upon a showing that:

(a) Operating difficulties such as meeting Building Code requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable;

(b) The intent and purpose of this chapter and this title will not be materially impaired by the structure; and

(c) The light and air of adjacent buildings will not be affected adversely.

411.12 Penthouses shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits in the following areas:

(a) Zones where there is a limitation on the number of stories other than the C-3-B zone; and

(b) Any property fronting directly onto Independence Avenue, S.W. between 12th Street, S.W. and Second Street, S.W.

411.13 For the purposes of calculating floor area ratio for the building, the aggregate square footage of all space on all penthouse levels or stories measuring six and one-half feet (6.5 ft.) or more in height shall be included in the total floor area ratio permitted for the building, with the following exceptions:

(a) Mechanical space;

(b) Habitable space devoted exclusively to communal rooftop recreation;

(c) Habitable space within a penthouse with a floor area ratio of less than four-tenths (0.4); and

(d) Mechanical equipment owned and operated as a roof structure by a fixed right-of-way public mass transit system.

411.14 Areas within curtain walls or screening without a roof, used where needed to give the appearance of one (1) structure, shall not be counted in floor area ratio, but shall be computed as a penthouse to determine if they comply with § 411.12.

411.15 The gross floor area of habitable space within a penthouses shall be included in calculations to determine the amount of off-street vehicle parking, bicycle parking, and loading as required elsewhere in this title; except that communal

recreation space or other ancillary space associated with a rooftop deck shall not be included.

411.16 For residential buildings, the construction of penthouse GFA, including all forms of habitable space, is subject to the Inclusionary Zoning set-aside provisions of Chapter 26.

411.17 For non-residential buildings, the construction of habitable penthouse GFA, including all forms of habitable space, shall trigger the affordable housing requirement as set forth in § 414.

411.18 Penthouses for mechanical or habitable space, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, and any guard rail on a roof shall be setback from the edge of the roof upon which it is located as follows:

(a) A distance equal to its height from the following:

(1) Front building wall of the roof upon which it is located;

(2) Rear building wall of the roof upon which it is located;

(3) Side building walls of the roof upon which it is located in the R-1 through R-4 zones that are adjacent to a property that has a lower or equal permitted matter of right building height;

(4) Side building walls of the roof upon which it is located in other than the R-1 through R-4 zones that are adjacent to a property that has a lower permitted matter-of-right building height; and

(5) Adjacent property that is improved with a designated landmark or contributing structure to a historic district that is built to a lower height regardless of the permitted matter-of-right building height;

(b) A distance equal to one-half (0.5) of its height from any side building wall of the roof upon which it is located that is not adjoining another building wall and not meeting the conditions of (a)(3) through (5); and

(c) A distance equal to two (2) times its height from any building wall of the roof upon which it is located which fronts onto Independence Avenue, S.W. between 12th Street, S.W. and 2nd Street, S.W., or fronting onto Pennsylvania Avenue, N.W. between 3rd Street ,N.W and 15th Street, N.W.

411.19 Except as required in § 411.12 above, no setback is required from any side building wall that is adjoining another building wall with an equal or greater matter of right height.

411.20 For purposes of applying penthouse setbacks:

(a) Walls of buildings that border any courtyard other than closed courtyards shall be deemed to be exterior walls;

(b) Setbacks shall be applied to adjoining walls when the adjacent property has a lower matter-of-right height; and

(c) Setbacks shall be applied when the adjacent property is improved with a designated landmark or contributing structure to a historic district.

411.21 For the administration of this section, mechanical equipment shall not include telephone equipment, radio, television, or electronic equipment of a type not necessary to the operation of the building or structure. Antenna equipment cabinets and antenna equipment shelters shall be regulated by Chapter 27 of this title.

411.22 For purposes of this section, skylights, gooseneck exhaust ducts serving kitchen and toilet ventilating systems, and plumbing vent stacks shall not be considered as penthouse structures.

411.23 Except as otherwise noted in this section, penthouse structures less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section.

411.24 A request to add penthouse space to a building approved by the Zoning Commission as a planned unit development or through the design review requirements of Chapters 16, 18, 28, or 29 prior to (EFFECTIVE DATE OF THIS AMENDMENT) may be filed as a minor modification for placement on the Zoning Commission consent calendar, pursuant to § 3030 provided:

(a) The item shall not be placed on a consent calendar for a period of thirty (30) days minimum following the filing of the application; and

(b) The Office of Planning shall submit a report with recommendation a minimum of seven (7) days in advance of the meeting.

411.25 In addition to meeting the requirements of § 3030, an application made pursuant to § 411.24 shall include:

(a) A fully dimensioned copy of the approved and proposed roof-plan and elevations as necessary to show the changes;

(b) A written comparison of the proposal to the Zoning Regulations; and

(c) Verification that the affected ANC has been notified of the request.

411.25 Pursuant to § 5 of the Height Act, D.C. Official Code § 601.05(h), a penthouse may be erected to a height in excess of that permitted therein if authorized by the Mayor or his or her designee and subject to the setback back and other restrictions stated in the Act.

By adding a new § 414, AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION ON A NON-RESIDENTIAL BUILDING OF HABITABLE PENTHOUSE GROSS FLOOR AREA, to read as follows:

414 AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION ON A NON-RESIDENTIAL BUILDING OF HABITABLE PENTHOUSE GROSS FLOOR AREA

414.1 The owner of a non-residential building proposing to construct habitable penthouse gross floor area (GFA) shall produce or financially assist in the production of residential uses that are affordable to low-income households, as those households are defined by § 2601.1, in accordance with this section.

414.2 The requirements of this provision shall be triggered by the filing of a building permit application that, if granted, would result in the amount of habitable penthouse gross floor area exceeding one thousand square feet (1,000 sq.ft.).

414.3 The requirements of this section shall not apply to properties owned by the District government or the Washington Metropolitan Area Transit Authority and used for government or public transportation purposes.

414.4 Qualifying residential uses include one-family dwellings, flats, multiple-family dwellings, including apartment houses, rooming houses, and boarding houses, but shall not include transient accommodations, all as defined in § 199.1.

414.5 If the owner constructs or rehabilitates the required housing, the provisions of §§ 414.7 through 414.11 shall apply,

414.6 The gross square footage of new or rehabilitated housing shall equal:

(a) Not less than one-fourth (1/4) of the proposed habitable penthouse gross square footage if the required housing is situated on an adjacent property;

(b) Not less than one-third (1/3) of the proposed habitable penthouse gross square footage if the location of the required housing does not comply with paragraph (a) of this subsection, but is nonetheless within the same Advisory Neighborhood Commission area as the property, or if it is located within a Housing Opportunity Area as designated in the Comprehensive Plan; and

(c) Not less than one-half (1/2) of the proposed habitable penthouse gross square footage if the location of the required housing is other than as approved in paragraphs (a) and (b) above.

414.7 If the housing is provided as new construction, the average square feet of gross floor area per dwelling or per apartment unit shall be not less than eight hundred and fifty square feet (850 sq. ft.); provided, that no average size limit shall apply to rooming houses, boarding houses, or units that are deemed single-room occupancy housing.

414.8 For purposes of this section, the word "rehabilitation" means the substantial renovation of housing for sale or rental that is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations of the District of Columbia (14 DCMR).

414.9 In the case of rental housing, the required housing shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a one (1)-family dwelling, the effective date of the first lease agreement.

414.10 If the required housing is provided for home ownership, it shall be maintained as affordable dwelling units for not less than twenty (20) years beginning on the issuance date of the first certificate of occupancy for the residential development, or if for a one-family dwelling, the effective date of the first sales agreement.

414.11 No certificate of occupancy shall be issued for the owner’s building to permit the occupancy of habitable penthouse gross floor area until a certificate of occupancy has been issued for the housing required pursuant to this section.

414.12 If the owner instead chooses to contribute funds to a housing trust fund, as defined in § 2499.1, the provisions of §§ 414.13 through 414.16 shall apply.

414.13 The contribution shall be equal to one-half (1/2) of the assessed value of the proposed habitable penthouse gross floor area for office use.

414.14 The assessed value shall be the fair market value of the property as indicated in the property tax assessment records of the Office of Tax and Revenue no earlier than thirty (30) days prior to the date of the building permit application to construct the habitable penthouse gross floor area.

414.15 The contribution shall be determined by dividing the assessed value per square foot of land that comprises the lot upon which the building is or will be located by the maximum permitted non-residential FAR and multiplying that amount times the penthouse non-residential gross square feet to be constructed.

414.16 Not less than one-half (1/2) of the required total financial contribution shall be made prior to the issuance of a building permit for construction of the habitable

penthouse gross floor area, and the balance of the total financial contribution shall be made prior to the issuance of a certificate of occupancy for any or all of the building's habitable penthouse gross floor area.

Chapter 5, SPECIAL PURPOSE DISTRICTS, is amended as follows:

Section 530, HEIGHT (SP), is amended as follows:

By amending § 530.1 to add the phrase ", not including a penthouse," so that the entire subsection reads as follows:

530.1 Except as specified in §§ 530 through 537 and in Chapters 20 through 25 of this title, the height of buildings or structures**,** not including a penthouse**,** in an SP District shall not exceed the height set forth in the following table:

By amending § 530.4 to delete the phrase "over elevator shafts" so that the entire subsection reads as follows:

530.4 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.

By amending § 530.5 to read as follows:

530.5 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
SP-1	10 ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
SP-2	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsections 530.5 and 530.6 are repealed.

Section 537, ROOF STRUCTURES (SP) is renamed PENTHOUSES (SP), and is amended as follows:

By amending § 537.1 to replace the phrase "roof structures" with "penthouses" so that the subsection reads as follows:

537.1 The provisions of § 411 shall also regulate penthouses in SP Districts.

Subsection 537.2 is repealed.

Chapter 6, MIXED USE, COMMERCIAL RESIDENTIAL) DISTRICTS, is amended as follows:

Section 630, HEIGHT (CR), is amended as follows:

By amending § 630.1 to add the phrase ", not including a penthouse," so that the entire subsection reads as follows:

630.1 Except as provided in this section, the height of buildings and structures, not including a penthouse, shall not exceed ninety feet (90 ft.).

Subsection § 630.4 is amended to read as follows:

630.4 A penthouse may be erected to a height in excess of that which this section otherwise authorizes, but shall not exceed a height of twenty feet (20 ft.) or one (1) story, as measured from the surface of the roof upon which the penthouse sits. A mezzanine for habitable or mechanical space is permitted; and a second story is permitted for mechanical equipment only.

Subsection 630.5 is repealed.

Section 639, ROOF STRUCTURES (CR) is renamed PENTHOUSES (CR), and is amended as follows:

By amending § 639.1 to replace the phrase "roof structures" with "penthouses" to read as follows:

639.1 The provisions of § 411 shall also regulate penthouses in CR Districts.

Subsection 639.2 is repealed,

Chapter 7, COMMERCIAL DISTRICTS, is amended as follows:

Section 770, HEIGHT OF BUILDINGS AND STRUCTURES (C), is amended as follows:

By amending § 770.1 to add the phrase ", not including a penthouse," so that the entire subsection reads as follows:

770.1 Except as provided in this section and in chapters 17 and 20 through 25 of this title, the height of a building or structure, not including a penthouse, in a Commercial District shall not exceed that set forth in the following table:

Subsection § 770.3 is amended by deleting the phrase "over elevator shafts" so that the entire subsection reads as follows:

770.3 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.

Subsection 770.6 is amended to read as follows:

770.6 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
C-1, C-2-A	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
C-2-B, C-3-A	10 ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
C-2-B-1, C-3-B	20 ft.	1; second story permitted for mechanical equipment
C-2-C; C-3-C; C-4; C-5	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsections 770.7 and 770.8 are repealed.

Section 777, ROOF STRUCTURES (C) is renamed PENTHOUSES (C), and is amended as follows:

By amending § 777.1 to replace the phrase "roof structures" with "penthouses" to read as follows:

777.1 The provisions of § 411 shall also regulate penthouses in the Commercial Districts.

Subsection 777.2 is repealed.

Chapter 8, INDUSTRIAL DISTRICTS, is amended as follows:

Section 840, HEIGHT OF BUILDINGS AND STRUCTURES (C-M, M), is amended as follows:

By amending § 840.1 to add the phrase ", not including a penthouse," so that the entire subsection reads as follows:

840.1 Except as provided in § 840.2 and in Chapters 20 through 25 of this title, the height of buildings or structures**,** not including a penthouse**,** in an Industrial District shall not exceed that given in the following table:

By amending § 840.2 to delete the phrase "over elevator shafts" so that the entire subsection reads as follows:

840.2 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.

Subsection 840.3 is amended to read as follows:

840.3 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
CM-1	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
CM-2	10 ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
CM-3, M	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsections 840.4 and 840.5 are repealed.

Section 845, ROOF STRUCTURES (C-M, M) is renamed PENTHOUSES (C-M, M), and is amended as follows:

By amending § 845.1 to replace the phrase "roof structures" with "penthouses" to read as follows:

845.1 Section 411 shall be applicable to penthouses in the Industrial Districts.

Subsection 845.2 is repealed.

Chapter 9, WATERFRONT DISTRICTS, is amended as follows:

Section 930, HEIGHT OF BUILDINGS AND STRUCTURES (W), is amended as follows:

By amending § 930.1 to add the phrase ", not including a penthouse," so that the entire subsection reads as follows:

930.1 Except as provided in this section, the height of buildings and structures, not including a penthouse, shall not exceed the maximum height in the following table:

By amending § 930.2.3 to delete the phrase "over elevator shafts" so that the entire subsection reads as follows:

930.2 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews or mayoral approvals.

Subsection 930.3 is amended to read as follows:

930.3 A penthouse may be erected to a height in excess of that which this section otherwise authorizes but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
W-0; W-1	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
W-2	10 ft., except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
W-3	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsection 930.4 is repealed.

Section 936, ROOF STRUCTURES (W) is renamed PENTHOUSES (W), and is amended as follows:

By amending § 936.1 to replace the phrase "roof structures" with "penthouses" to read as follows:

936.1 The provisions of § 411 shall apply to penthouses in the Waterfront Districts.

Subsection 936.2 is repealed.

Chapter 12, CAPITOL INTEREST OVERLAY DISTRICT, is amended as follows:

Section 1203, HEIGHT, AREA, AND BULK REGULATIONS, is amended as follows:

By amending § 1203.2(a) to delete the phrase "over elevator shaft", and to replace § 1203.2(b) in its entirety so that the entire subsection reads as follows:

1203.2 The height of buildings or structures as specified in § 1203.1 may be exceeded in the following instances:

(a) A spire, tower, dome, minaret, pinnacle, or penthouse may be erected to a height in excess of that authorized in § 1203.1; and

(b) If erected or enlarged, a penthouse may be erected to a height in excess of that authorized in the zone district in which located; provided that:

(1) It meets the requirements of § 411; and

(2) It does not exceed ten feet (10 ft.) or one (1) story in height above the roof upon which it is located.

Subsection 1203.4 is repealed.

Chapter 13, NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended as follows:

Section 1305, PLANNED UNIT DEVELOPMENT GUIDELINES, is amended as follows:

By amending § 1305.1 to add the word "penthouse" to reads as follows:

1305.1 In the NC Overlay District, the matter-of-right height**,** penthouse**,** and floor area ratio limits shall serve as the guidelines for planned unit developments.

Section 1307, WOODLEY PARK NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended as follows:

The existing §§ 1306.7 and 1307.8 are renumbered 1307.8 and 1306.9, respectively.

A new § 1307.7 is added to read as follows:

1307.7 A penthouse within the WP/C-2-A or WP/C-2-B Overlay Districts may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

(a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.); and

(b) The maximum permitted number of stories within the penthouse shall be one (1) except that a second story for mechanical equipment only shall be permitted.

Section 1309, EIGHTH STREET SOUTHEAST NEIGHBORHOOD COMMERCIAL OVERLAY DISTRICT, is amended by adding a new § 1309.8 to read as follows:

1309.8 A penthouse within the ES Overlay District may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

(a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.); and

(b) The maximum permitted number of stories within the penthouse shall be one (1).

Chapter 14, REED-COOKE OVERLAY DISTRICT, is amended as follows:

Section 1402, HEIGHT AND BULK PROVISIONS, is amended as follows:

Subsection 1402.2 is amended to read as follows:

1402.2 For the purpose of this chapter, no planned unit development shall exceed the matter-of-right building height, bulk, and area requirements or penthouse provisions of the underlying district.

By adding new §§ 1402.4 and 1402.5 to read as follows:

1402.4 If erected or enlarged as provided in § 411, a penthouse within the RC/C-2-A or RC/R-5-B Overlay Districts may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

(a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.);

(b) The maximum permitted number of stories within the penthouse shall be one (1); and

(c) It shall contain no form of habitable space, other than ancillary space associated with a rooftop deck, to a maximum area of twenty percent (20%) of the building roof area dedicated to rooftop deck, terrace, or recreation space.

1402.5 A penthouse within the RC/C-2-B Overlay District may be erected to a height in excess of that authorized in the zone district in which located; provided, that:

(a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.); and

(b) The maximum permitted number of stories within the penthouse shall be one (1), except that a second story for mechanical equipment only shall be permitted.

Chapter 15, MISCELLANEOUS OVERLAY DISTRICTS, is amended as follows:

Section 1503, PLANNED UNIT DEVELOPMENT (DC), § 1503.1 is amended read as follows:

1503.1 In the DC Overlay District, the matter-of-right building height, penthouse height, and floor area ratio limits shall serve as the maximum permitted building height, penthouse height, and floor area ratio for a planned unit development.

Section 1524, PLANNED UNIT DEVELOPMENT (FB), § 1524.1 is amended to read as follows:

1524.1 In the FB Overlay District, the matter-of-right building height, penthouse height, and floor area ratio limits shall serve as the maximum permitted building height, penthouse height, and floor area ratio for planned unit developments.

Section 1534, HEIGHT, AREA, AND BULK REGULATIONS (NO), § 1524.4 is amended to read as follows:

1534.4 Except as limited in § 411.5, a penthouse within the NO Overlay District may be erected to a height in excess of that authorized in the zone district in which located; provided, that

(a) The maximum permitted height shall be ten feet (10 ft.) above the roof upon which it is located, except that the maximum permitted height for a penthouse for mechanical equipment, stairway, and elevator overrides shall be fifteen feet (15 ft.);

(b) The maximum permitted number of stories within the penthouse shall be one (1); and

(c) It shall contain no form of habitable space, other than ancillary space associated with a rooftop deck, to a maximum area of twenty percent

(20%) of the building roof area dedicated to rooftop deck, terrace, or recreation space.

Section 1563, HEIGHT, BULK, AND USE PROVISIONS (FT), § 1563.4 is amended to read as follows:

1563.4 The maximum bulk and height of a new building for a newly established use in the underlying CR District shall be 5.0 FAR and eighty-feet (80 ft.) in height, inclusive of a penthouse, which shall be limited to one (1) story maximum.

Section 1572, HEIGHT AND FLOOR AREA RATIO RESTRICTIONS (CHC), is amended by adding a new § 1572.5 to read as follows:

1572.5 A penthouse within the CHC Overlay District shall conform to the height and use provisions in the underlying Commercial District.

Chapter 16, CAPITOL GATEWAY OVERLAY DISTRICT, is amended as follows:

Section 1601, BONUS DENSITY AND HEIGHT (CG), is amended by adding a new § 1601.7 to read as follows:

1601.7 The provisions of § 411 shall apply to penthouses in the CG Overlay.

Chapter 18, SOUTHEAST FEDERAL CENTER OVERLAY DISTRICT, is amended as follows:

Section 1806, PLANNED UNIT DEVELOPMENT, is amended as follows:

By amending § 1806.1 to add the words "penthouse height" to read as follows:

1806.1 The matter-of-right height, penthouse height, and floor area ratio limits shall serve as the maximums permitted building height, penthouse height, and floor area ratio for a planned unit development (PUD) in the SEFC Overlay District.

By adding a new § 1811, PENTHOUSES, to read as follows:

1811 PENTHOUSES

1811.1 The provisions of § 411 shall apply to penthouses in the SEFC Overlay.

Chapter 19, UPTOWN ARTS-MIXED USE (ARTS) OVERLAY DISTRICT, § 1902, HEIGHT AND BULK, § 1902.1(a) is amended to add the phrase "or exceed one (1) story" to reads as follows:

1902.1 …

(a) No penthouse permitted by this title shall exceed a height of eighty-three and one-half feet (83.5 ft.) above the measuring point used for the building, or exceed one (1) story; and

Chapter 24, PLANNED UNIT DEVELOPMENT PROCEDURES, is amended as follows:

Section 2405, PUD STANDARDS, is amended as follows:

Subsection 2405.1 is amended to read as follows:

2405.1 Except as limited by an overlay, no building or structure shall exceed the maximum height permitted in the least restrictive zone district within the project area as indicated in the following table; and no penthouse shall exceed the maximum height permitted; provided, that the Commission may authorize minor deviations for good cause pursuant to § 2405.3:

ZONE DISTRICT	MAXIMUM HEIGHT	MAXIMUM PENTHOUSE HEIGHT
R-1-A, R-1-B, R-2, R-3, C-1, W-0	40 ft.	10 ft. /1 story
R-4, R-5-A, R-5-B, W-1, C-M-1	60 ft.	15 ft./1 story; second story permitted for mechanical equipment
W-2	60 ft.	18 ft. 6 in./1 story; second story permitted for mechanical equipment
C-2-A	65 ft.	18 ft. 6 in./1 story; second story permitted for mechanical equipment
R-5-C, SP-1	75 ft.	20 ft./1 story; second story permitted for mechanical equipment
R-5-D, R-5-E, SP-2, C-2-B, C-2-B-1, C-2-C, C-3-A, C-3-B, W-3, C-M-2, C-M-3, M	90 ft.	20 ft. /1 story plus mezzanine; second story permitted for mechanical equipment
CR	110 ft.	20 ft./1 story plus mezzanine; second story permitted for mechanical equipment
C-3-C, C4, C-5 (PAD)	130 ft.	20 ft. /1 story plus mezzanine; second story permitted for mechanical equipment
C-5 (PAD) (Where permitted by the Building Height Act of 1910, D.C. Official Code § 6-601.05(b) (formerly codified at D.C. Code §5-405(b) (1994 Repl.)), along the north side of Pennsylvania Avenue)	160 ft.	20 ft./1 story plus mezzanine; second story permitted for mechanical equipment

By amending § 2405.3 (a) to add the word "building" so that the entire subsection reads as follows:

2405.3 The Commission may authorize the following increases; provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of this chapter, or with respect to FAR, is for the purpose of a convention headquarters hotel on Square 370:

(a) Not more than five percent (5%) in the maximum building height but not the maximum penthouse height; or

(b) Not more than five percent (5%) in the maximum floor area ratio.

Chapter 26, INCLUSIONARY ZONING, is amended as follows:

Section 2602, APPLICABILITY, is amended as follows:

By amending § 2602.1 to add a new subsection (d) so that the entire subsection reads as follows:

2602.1 Except as provided in § 2602.3, the requirements and incentives of this chapter shall apply to developments that:

(a) Are mapped within the R-2 through R-5-D, C-1 through C-3-C, USN, CR, SP, StE, and W-1 through W-3 Zone Districts, unless exempted pursuant to § 2602.3;

(b) Have ten (10) or more dwelling units (including off-site inclusionary units);

(c) Are either:

(1) New multiple-dwellings;

(2) New one (1)-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction;

(3) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more; and

(d) Is a residential building, other than a one (1)-family dwelling or flat, that has habitable penthouse gross floor area pursuant to § 411.

By amending § 2602.3(a) and (e) to add the phrase "Except for new habitable penthouse gross floor area as described in § 2602.1(d)" so that the entire subsection reads as follows:

2602.3 This chapter shall not apply to:

(a) Hotels, motels, or inns, except for new habitable penthouse gross floor area as described in § 2602.1(d);

(b) Dormitories or housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff;

(c) Housing that is owned or leased by foreign missions exclusively for diplomatic staff;

(d) Rooming houses, boarding houses, community-based residential facilities, single room occupancy developments; or

(e) Except for new habitable penthouse gross floor area as described in § 2602.1(d), properties located in any of the following areas:

(1) The Downtown Development or Southeast Federal Center Overlay Districts;

(2) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones on February 12, 2007;

(3) The W-2 zoned portions of the Georgetown Historic District;

(4) The R-3 zoned portions of the Anacostia Historic District;

(5) The C-2-A zoned portion of the Naval Observatory Precinct District; and

(6) The Eighth Street Overlay.

Section 2603, SET-ASIDE REQUIREMENTS, is amended as follows:

By amending § 2603.1 to add the phrase "including habitable penthouse gross floor areas as described in § 2602.1(d)," to read as follows:

2603.1 Except as provided in § 2603.8, an inclusionary development for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District shall devote the greater of ten percent (10%) of the gross floor area being devoted to residential use including habitable penthouse gross floor area as described in § 2602.1(d), or seventy-five percent (75%) of the bonus density being utilized for inclusionary units.

By amending § 2603.2 to add the phrase "including habitable penthouse gross floor area as described in § 2602.1(d)," to read as follows:

2603.2 An inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B,

C-2-B-1, C-2-C, C-3, CR, R-5-C, R-5-D, R-5-E, SP, USN, W-2 or W-3 District shall devote the greater of eight percent (8%) of the gross floor area being devoted to residential use including floor area devoted to habitable penthouse gross floor area as described in § 2602.1(d), or fifty percent (50%) of the bonus density being utilized for inclusionary units.

By adding a new § 2603.5 to read as follows:

2603.5 Notwithstanding §§ 2603.3 and 2603.4, one hundred percent (100%) of inclusionary units resulting from the set aside required for habitable penthouse gross floor area shall set aside for eligible low income households.

Section 2607, OFF-SITE COMPLIANCE, is amended by adding a new § 2607.9 to read as follows:

2607.9 Inclusionary Units resulting from the set-aside required for habitable penthouse gross floor area as described in o § 2602.1(d) shall be provided within the building, except that the affordable housing requirement may be achieved by providing a contribution to a housing trust fund, consistent with the provisions of §§ 414.13 through 414.16 when:

(a) The new habitable penthouse gross floor area is being provided as an addition to an existing building which is not otherwise undergoing renovations or additions that would result in a new or expanded Inclusionary Zoning requirement within the building;

(b) The habitable penthouse gross floor area is being provided on an existing or new building not otherwise subject to Inclusionary Zoning requirements; or

(c) The building is not otherwise required to provide inclusionary units for low income households and the amount of habitable penthouse gross floor area would result in a gross floor area set-aside less than the gross floor area of the smallest dwelling unit within the building.

Section 2608, APPLICABILITY DATE, is amended as follows:

By amending § 2608.2 to add the phrase "With the exception of habitable penthouse gross floor area approved by the Zoning Commission pursuant to § 411.20", to read as follows:

2608.2 With the exception of habitable penthouse gross floor area approved by the Zoning Commission pursuant to § 411.24 the provisions of this chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.

Chapter 27, REGULATIONS OF ANTENNAS, ANTENNA TOWERS, AND MONOPOLES, Section 2707, EXEMPTED ANTENNAS, § 2707.1(b) is amended to remove all references to roof structures so that the entire subsection reads as follows:.

2707.1 The requirements of §§ 2703 through 2706 shall not apply to any antenna that is:

(a) Entirely enclosed within a building but is not the primary use within the building;

(b) Entirely enclosed on all sides by a penthouse, or an extension of penthouse walls; this subsection shall not be interpreted to permit penthouses in excess of the permitted height above the roof upon which it is located;

(c) Located entirely behind and no taller than the parapet walls; or

(d) No taller than eighteen inches (18 in.) in height and necessary for the implementation of expanded 911 or emergency communications.

Chapter 28, HILL EAST (HE) DISTRICT, is amended as follows:

Section 2809 is renamed "PENTHOUSES (HE)" and is amended as follows:

By amending § 2809.1 to delete the phrase "and 400.7" so that the subsection reads as follows:

2809.1 The provisions of § 411 shall apply to penthouses in the HE District.

Subsection 2809.2 is amended to read as follows:

2809.2 The height of a rooftop penthouse as measured from the surface of the roof upon which the penthouse is located shall not exceed that given in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
HE-1	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
HE-2	20 ft.	1; second story permitted for mechanical equipment
HE-3, HE-4	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Chapter 29, UNION STATION NORTH (USN) DISTRICT, is amended as follows:

Section 2906 is renamed "PENTHOUSES" is amended as follows:

Subsections 2906.1 and 2906.2 are amended to read as follows:

2906.1 The provisions of § 411 shall apply to penthouses in the USN District.

2906.2 A penthouse may be erected to a height in excess of that permitted in § 2905 but shall not exceed the height, as measured from the surface of the roof upon which the penthouse is located, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
USN	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

Subsections 2906.3 and 2906.4 are repealed.

Chapter 31, BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE, is amended as follows:

Section 3104 SPECIAL EXCEPTIONS, is amended as follows:

By amending the table in § 3104.1 to add special exception provisions for "Nightclub, bar, cocktail lounge or restaurant within a penthouse" and "Penthouses above a single family dwelling or flat" and by changing the title of the amending the special exception provisions for "Roof structures - location, design, number, and all other regulated aspects" by replacing the phrase "Roof structures" with "Penthouses" so that the new and amended to read as follows:

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Nightclub, bar, cocktail lounge or restaurant within a penthouse	Any District where use permitted within a building.	411.4
Penthouses - above a single family dwelling or flat	Any District	411.5
Penthouses - location, design, number, and all other regulated aspects	Any District	§§ 411.11

Chapter 33, SAINT ELIZABETHS EAST CAMPUS (StE) DISTRICT, is amended as follows:

Section 3301 FLOOR-AREA-RATIO (FAR), HEIGHT, LOT OCCUPANCY, REAR YARD SETBACK, MINIMUM LOT AREA, AND SETBACKS, and § 3301.2 is amended to add the phrase ", **not including a penthouse" so that the subsection reads as follows:**

3301.1 Except as provided in this section, the FAR, height of a building or structure, not including a penthouse, lot occupancy and rear yard in a StE District shall not exceed or be less than that set forth in the following table:

Section 3312, ROOF STRUCTURES is renamed "PENTHOUSES" and is amended as follows:

By replacing § 3312.1 to read as follows:

3312.1 The provisions of §§ 411 shall apply to penthouses in the StE Districts.

By adding a new § 3312.2 to read as follows:

3312.2 A penthouse may be erected to a height in excess of that permitted in § 3301 but shall not exceed the height, as measured from the surface of the roof upon which the penthouse sits, in the following table:

ZONE DISTRICT	Maximum Penthouse Height	Maximum Penthouse Stories
StE-1, StE-4, StE-8, StE-10, StE-11, StE-14, StE-7 pursuant to § 3301.4(b)	10 ft. except 15 ft. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
StE-2, StE-5, StE-9	10 ft. except 18 ft. 6 in. for mechanical equipment, stairway, and elevator overrides	1; second story permitted for mechanical equipment
StE-3, StE-12, StE-15,StE-17 StE-7 pursuant to § 3301.4(a)	20 ft.	1; second story permitted for mechanical equipment
StE-6, StE-13, StE-18	20 ft.	1 plus mezzanine; second story permitted for mechanical equipment

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or electronic submissions may be submitted in PDF format to zcsubmissions@dc.gov. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Procurement Officer 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 following emergency rules and of the intent to adopt final rulemaking to add a new Section 1616 and amend Section 1699, of Chapter 16 (Procurement by Competitive 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. This rulemaking establishes standards for the use of Alternative Technical Concepts (ATCs) and provides a definition of ATCs. DDOT intends to use this method in the request for proposals process for the South Capitol Street Corridor project.

The emergency rulemaking is necessary to promote the public health, safety and welfare, as it will facilitate a major infrastructure project that will include replacing the Frederick Douglass Memorial Bridge and transforming related sections of urban freeway into a scenic boulevard in order to increase pedestrian and vehicular safety, improve multi-modal transportation options, increase community accessibility and support economic development.

The emergency rules will remain in effect for up to one hundred twenty (120) days from June 10, 2015, the date of their adoption; thus, expiring on October 8, 2015, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

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

A new Section 1616 is added to read as follows:

1616 ALTERNATIVE TECHNICAL CONCEPTS

1616.1 An RFP for the construction of a road, bridge or other transportation system, or a facility or structure appurtenant to a road, bridge, or other transportation system, may allow prospective contractors to submit alternative technical concepts (ATCs) for preapproval by the date specified within the RFP.

1616.2 An RFP allowing prospective contractors to submit ATCs must specifically state the requirements for ATC content, submission, review, and pre-approval; and procedures for confidential meetings (if used); and methods for evaluating ATCs in the proposal review process.

1616.3 An ATC shall be eligible for pre-approval only if it would result in performance and quality of the end product that are equal or better than the performance and

quality that would result from the agency-supplied base design configuration, project scope, design criterion, or construction criterion, as determined by the contracting officer, and if they have been used successfully elsewhere under comparable circumstances as determined by the contracting officer.

1616.4 A proposed ATC shall not be eligible for pre-approval if it is premised upon or would require:

(a) A reduction in the project scope, performance or reliability;

(b) The addition of a separate project to the RFP;

(c) An increase in the amount of time required for substantial completion of the work under the RFP; or

(d) Any other requirements that the contracting officer does not deem necessary for a particular project.

1616.5 In addition, a proposed ATC is not eligible for pre-approval if it would conflict with criteria agreed upon in the environmental decision-making process, as incorporated in the RFP.

1616.6 An ATC that, if implemented, would require further environmental evaluation of the project, may be allowed, provided that the prospective contractor will bear the schedule and cost risk associated with such additional environmental evaluation. If the prospective contractor is not able to obtain the approvals necessary to implement the ATC, it will be obligated to develop the project in accordance with existing approvals without additional cost or extension of time.

1616.7 To be authorized for inclusion with a prospective contractor's proposal, an ATC must be submitted by the prospective contractor for pre-approval pursuant to the terms of the RFP and pre-approved in writing by the contracting officer. All technical proposals must include the contracting officer's pre-approval letters for consideration of the ATCs.

1616.8 The prospective contractor's price proposal shall reflect any incorporated ATCs.

1616.9 Except for incorporating approved ATCs, the proposal may not contain exceptions to or deviations from the requirements of the RFP.

1616.7 The RFP shall not distinguish between a proposal that does not include any ATCs and proposals that include ATCs. Both types of proposals shall be evaluated against the same technical evaluation factors, and an award determination shall be made in the same manner.

1616.8 Each submittal of an ATC for pre-approval shall include the following:

(a) A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information, including necessary design exceptions and an operational analysis, if applicable;

(b) Where and how the ATC would be used on the project;

(c) References to requirements of the RFP documents that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;

(d) An analysis justifying use of the ATC and why the deviation(s) from the requirements of the RFP documents should be allowed;

(e) A discussion of potential impacts on vehicular traffic, environmental impacts identified on appropriate environmental documents, community impact, safety and life-cycle project impacts, and infrastructure costs (including impacts on the cost of repair and maintenance);

(f) A description of other projects where the ATC has been used, the success of such usage, and names and contact information for project owner representatives that can confirm such statements;

(g) A description of added or reduced risks to the District or third parties associated with implementing the ATC; and

(h) Estimated price and cost impacts.

1616.9 A prospective contractor may incorporate one or more pre-approved ATCs into its technical and price proposal. However, each prospective contractor may submit only one technical and price proposal.

1616.10 An approved ATC that is incorporated into a prospective contractor's proposal will become part of the contract upon award of the contract.

1616.11 To the extent authorized by law, ATCs properly submitted by the prospective contractor and all subsequent communications regarding its ATCs will be considered confidential prior to the award of the contract.

Section 1699 is amended by adding the following definition before the definition of Base Compensation:

1699 DEFINITIONS

1699.1 When used in this chapter, the following words have the meanings ascribed:

Alternate technical concept: A proposed change to a District-supplied base design configuration, project scope, design criterion, or construction criterion that the District determines is equal to or better than a requirement in a request for proposals.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Chief Procurement Officer, 441 4th Street, 700 South, Washington, D.C. 20001. Comments may be sent by email to OCPRulemaking@dc.gov or may be submitted by postal mail or hand delivery to the address above. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health ("DOH"), pursuant to the authority set forth in Section 5(a) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 ("Act"), effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-504(a) (2014 Supp.)), and in accordance with Mayor's Order 98-137, dated August 20, 1998, hereby gives notice of the adoption, on an emergency basis, of an amendment that adds a new Section 2039 to Chapter 20 (Hospitals) of Title 22 (Health), Subtitle B (Public Health and Medicine), of the District of Columbia Municipal Regulations ("DCMR").

The emergency rulemaking (1) requires hospitals to collect urine samples from patients who present and have symptoms consistent with having taken a synthetic cannabinoid; (2) recommends that hospitals collect blood samples from patients who present and have symptoms consistent with having taken a synthetic cannabinoid; (3) requires that the urine and blood samples be stored in accordance with protocols provided by the Department of Health; and, (4) requires that the hospitals turn over the urine and blood samples for testing by the Office of the Chief Medical Examiner.

This emergency rulemaking action is necessary for the Department to immediately improve tracking the upward spike in the use of the illegal synthetic cannabinoid products commonly known as K-2, Spice, ScoobySnax, Bizarro, Synthetic Marijuana, and other names, which are readily available in District stores and on the District's streets. K-2 is a mixture of herbs, spices or shredded plant material that is typically sprayed with a synthetic compound chemically similar to tetrahydrocannabinol, the psychoactive ingredient in marijuana, but with the potential for a much more powerful and unpredictable effect. The Partnership for Drug-Free Kids lists the effects of using K-2 as increased agitation, pale skin, seizures, vomiting, profuse sweating, uncontrolled/spastic body movements, elevated blood pressure, heart rate and palpitations. The National Institute on Drug Abuse reports that Spice abusers who have been taken to Poison Control Centers report symptoms that include rapid heart rate, vomiting, agitation, confusion, and hallucinations. Spice can also raise blood pressure and cause reduced blood supply to the heart (myocardial ischemia), and in a few cases it has been associated with heart attacks.

Regular users of synthetic cannabinoids may experience withdrawal and addiction symptoms.and often graduate to other, more powerful substances, such as MDMA (3, 4-methylenedioxy-methamphetamine), popularly known as Ecstasy or, more recently, as Molly, with potentially deadly consequences. Multiple incidents linked to use of a synthetic cannabinoids have been reported the District. The District needs determine the level of synthetic marijuana use in the District and how to best educate the community of the inherent dangers of synthetic marijuana and implement appropriate measures to treat those who have become habitual users. Enactment of these regulations will immediately allow the Department to better determine the level of use of synthetic marijuana in the District and to determine the locations where use is especially prevalent, in order to better protect the health, welfare and safety of residents of and visitors to the District.

DOH intends for the testing of the urine samples and the blood samples to be conducted by the Office of the Chief Medical Examiner ("OCME") or its contractor. Because this is only a surveillance program, DOH does not want to receive any individually identifying information. For this reason, it is intended that the OCME will, upon receipt of the samples from the hospitals, assign a unique identifier to each sample to remove individually identifying information from test results that are shared with DOH. Therefore, under this surveillance program, DOH will not have access to any individually identifying information for the tested samples and will only receive de-identified information, which DOH will use solely for surveillance purposes.

This emergency rulemaking was adopted on July 10, 2015 and became effective on that date. The emergency rulemaking will remain in effect for up to one hundred twenty (120) days after the date of adoption, expiring on November 7, 2015, or upon earlier amendment or repeal by the Director or publication of a final rulemaking in the *D.C. Register*, whichever occurs first.

The Director also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register* and after approval by the Council of the District of Columbia, as specified in Section 5(j) of the Act (D.C. Official Code § 44-504(j)).

Chapter 20, HOSPITALS, of Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended by adding the following new Section 2039 as follows:

2039 TESTING FOR SYNTHETIC CANNABINOID SURVEILLANCE

2039.1 When a patient presents to a hospital with a reported or witnessed use of a synthetic cannabinoid and with signs and symptoms of overdose for which the treating clinician would otherwise order a standard urine drug screen, the hospital shall require the treating clinician to order a urine sample to be taken from the patient at or near the time of arrival at the emergency room.

2039.2 When a patient presents to a hospital with a reported or witnessed use of a synthetic cannabinoid and with signs and symptoms of overdose for which the treating clinician would otherwise order a standard urine drug screen, the hospital may require the treating clinician to order a blood sample taken from the patient at or near the time of arrival at the emergency room.

2039.3 The hospital shall label each urine sample or blood sample collected pursuant to Subsection 2039.1 or 2039.2 with the following patient identifying information:

(a) Name;

(b) Date of birth;

(c) Observed race and gender;

(d) Hospital name or hospital number; and

(e) Medical record number.

2039.4 The hospital shall complete a Public Health Sample Submission Form created by the Office of the Chief Medical Officer for each urine sample or blood sample collected pursuant to Subsection 2039.1 or 2039.2.

2039.5 The hospital shall keep the Public Health Sample Submission Form with the urine sample or blood sample collected pursuant to Subsection 2039.1 or 2039.2.

2039.6 The hospital shall store each urine sample or blood sample arising from Subsection 2039.1 or 2039.2 according to protocols provided to the hospitals by the Department.

2093.7 The hospital shall be make each urine sample or blood sample collected pursuant to Subsection 2039.1 or 2039.2 available for pickup by an employee or authorized agent of the District who presents proper credentials or authorization from an appropriate District of Columbia official.

2039.8 The hospital providing the patient's urine sample or blood sample arising from Subsection 2039.1 or 2039.2 shall have no responsibility for testing the sample or for advising the patient of the results of the test of the sample that was provided to the District.

2039.9 The hospital providing the patient's urine sample or blood sample may request from the District the test results for a patient treated by the hospital.

2039.10 Nothing in this rule restrict the ability of the hospital to conduct other testing on the patient.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Phillip Husband, General Counsel of the District of Columbia Department of Health, 899 North Capitol Street, NE, 5th Floor, Washington, D.C. 20002. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to Angli.Black@dc.gov or by mail to the District of Columbia Department of Health, Attn: Phillip Husband, General Counsel, no later than thirty (30) days after the publication of this notice in the *D.C Register*.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act) effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.0l(a); 38-1202.06)(3),(13) (2012 Repl.)) hereby gives notice of its adoption on an emergency basis, and intent to amend Chapter 2 (Administration and Management) of Subtitle B (University of the District of Columbia) of Title 8 (Higher Education) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*

The purpose of the proposed rule is to eliminate the one-year limit on acting appointments and to provide continuation of Academic services until such time that a permanent replacement is hired. The Board of Trustees will take final action to adopt these amendments to the University Rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The Board of Trustees hereby declares the existence of an emergency so that the University may continue Academic operations at the University. These emergency rules expire one hundred twenty (120) days after adoption by the Board of Trustees, or upon adoption of a final regulation, whichever shall first occur.

Chapter 2, ADMINISTRATION AND MANAGEMENT, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended as follows:

Section 210, EXECUTIVE APPOINTMENTS: GENERAL PROVISIONS, Subsection 210.4 is amended as follows:

210.4 The President may appoint a current employee to serve in an "acting" status in a position designated to be filled by executive appointment without requiring that employee to resign from his or her current position. Compensation of appointees with "acting" status shall be determined in accordance with the provisions of § 210.6 and other applicable subsections of this chapter. Service in an "acting" status in a position designated to be filled by executive appointment shall be limited to one (1) year. The President shall seek Board approval for an extension forty five (45) days prior to the year ending if he/she determines and can demonstrate that additional time is needed. Should an extension be approved by the Board, the President shall provide the Board immediately with a plan and time line for making the permanent appointment within ninety (90) days of the end of the one (1) year period should the appointment be necessary. The Board may annually approve an extension of an acting appointment for no more than one year at a time, due to extenuating circumstances as determined by the Board.

All persons desiring to comment on the subject matter of the proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of General Counsel, Building 39- Room 301-Q, University of the District of Columbia, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Comments may also be submitted by email to smills@udc.edu. Individuals wishing to comment by email must include the phrase "Comment to Proposed Rulemaking: Executive Appointments" in the subject line.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, AUGUST 12, 2015
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

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

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00056; DK, Corporation, t/a Joe Caplan Liquors, 1913 7th Street NW, License #60351, Retailer A, ANC 1B
Application to Renew the License

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00063; All Souls, LLC, t/a All Souls, 725 T Street NW, License #88179, Retailer CT, ANC 1B
Substantial Change (Change of Hours and to Add a Sidewalk Café Endorsement)

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CC-00007; H&Y Chun Corporation, t/a Michigan Liquors, 3934 12th Street NE, License #23640, Retailer A, ANC 5B
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age, No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 15-AUD-00012; Big Bucks, LLC, t/a Buck's Fishing & Camping, 5031 Connecticut Ave NW, License #60769, Retailer CR, ANC 3F
Failed to File Quarterly Statements (3rd Quarter 2014)

Show Cause Hearing (Status) **9:30 AM**
Case # 15-AUD-00009; La Trattoria, LLC, t/a Siroc, 915 15th Street NW License #80975, Retailer CR, ANC 2F
Failed to File Quarterly Statements (3rd Quarter 2014)

Board's Calendar
August 12, 2015

Show Cause Hearing (Status) **9:30 AM**
Case # 15-AUD-00064; Fetlework Wolde t/a Ethiopia Restaurant & Market 4630 14th Street NW, License #91373, Retailer CR, ANC 4C
Failed to File Quarterly Statements (4th Quarter 2014)

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CMP-00073; AAK Investments, Inc., t/a Pasta Italiana, 2623 Connecticut Ave NW, License #60483, Retailer CR, ANC 3C
Failed to File Quarterly Statements (3rd Quarter 2014), Failed to Post License Conspicuously in the Establishment

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CMP-00062; DC Irish, LLC, t/a Sign of the Whale, 1825 M Street NW, License #85120, Retailer CT, ANC 2B
Failed to Take Steps Necessary to Ensure Property is Free of Litter

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CMP-00281; Shake Shack 18th Street NW Washington, DC, LLC, t/a Shake Shack, 1216 18th Street NW, License #86070, Retailer DR, ANC 2B
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CC-00013; Shake Shack 18th Street NW Washington, DC, LLC, t/a Shake Shack, 1216 18th Street NW, License #86070, Retailer DR, ANC 2B
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 15-251-00078; Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge 1242 H Street NE, License #87780, Retailer CR, ANC 6A
Operating After Hours, No ABC Manager on Duty, Interfered with an Investigation, Violation of Settlement Agreement

Show Cause Hearing* **10:00 AM**
Case # 14-251-00309; Howard Theatre Entertainment, LLC, t/a Howard Theatre 620 T Street NW, License #88646, Retailer CX, ANC 1B
Allowed the Establishment to be Used for an Unlawful or Disorderly Purpose

Show Cause Hearing* **11:00 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
August 12, 2015

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

Fact Finding Hearing* **1:30 PM**
Dcenter, Inc., t/a Dupont Underground, 1900 Massachusetts Ave NW, License #99436, Retailer CX, ANC 2B
Application for a New License

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA

WEDNESDAY, AUGUST 12, 2015
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

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

[Safekeeping] ABRA-079657 – **G3 Holdings, LLC –** Retailer – B – Grocery – 6211 DIX STREET NE
[The Licensee did not renew.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, AUGUST 12, 2015
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On August 12, 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-CMP-00413 1 West Dupont Circle Wine & Liquors, 2012 P ST NW Retailer A Retail - Liquor Store, License#: ABRA-074429

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2. Case#15-CMP-00355 Stoney's, 1433 P ST NW Retailer C Restaurant, License#: ABRA-075613

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3. Case#15-CC-00073 Nottie Bianche, 824 NEW HAMPSHIRE AVE NW Retailer C Restaurant, License#:ABRA-060556

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4. Case#15-CMP-00414 Yetenbi Restaurant, 1915 9TH ST NW Retailer C Tavern, License#: ABRA-085258

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5. Case#15-CMP-00354 Pearl Dive Oyster Palace/BlackJack, 1612 14TH ST NW Retailer C Restaurant, License#:ABRA-085382

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6. Case#15-CC-00060 Cafe AKA, 1710 H ST NW Retailer C Tavern, License#: ABRA-087668

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7. Case#15-CMP-00422 Irish Whiskey, 1207 19TH ST NW Retailer C Tavern, License#: ABRA-087685

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8. Case#15-CC-00074 Brookland Supermarket & Deli, 2815 7TH ST NE Retailer B Retail - Grocery, License#:ABRA-096663

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9. Case#15-CC-00072 Metro Supermarket, 2130 P ST NW Retailer B Retail - Grocery, License#: ABRA-097960

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, AUGUST 12, 2015 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request to increase Sidewalk Café seating from 10 to 28 seats. ANC 5E. SMD 5E07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No with Settlement Agreement. ***Bacio Pizzeria***, 81 Seaton Place NW, Retailer CT, License No. 092663.

***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.**

APPLETREE EARLY LEARNING PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Physical Therapist

AppleTree PCS is seeking a Physical Therapist to service students with special needs in the early childhood school setting. Essential functions and requirements are outlined in the Scope of Work section of the Request for Proposal. AppleTree is offering a one-year agreement for services commencing August 17, 2015 to July 30, 2016. The deadline for responding to the RFP is August 14, 2015 at 5pm. Contact - Anne Zumo Malone, Chief of Schools, 415 Michigan Avenue NE, Washington, DC 20017, (202) 526-1503, amalone@appletreeinstitute.org

School Psychological Services

AppleTree PCS is seeking School Psychological Services to serve our population of students in the early childhood school setting. Essential functions and requirements are outlined in the Scope Work section of the Request for Proposal. AppleTree is offering a one-year agreement for services commencing August 17, 2015 to July 30, 2016. The deadline for responding to the RFP is August 14, 2015 at 5pm. Contact - Anne Zumo Malone, Chief of Schools, 415 Michigan Avenue NE, Washington, DC 20017, (202) 526-1503, amalone@appletreeinstitute.org

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF FUNDING AVAILABILITY

RFA: #RM0 SUD081415

Implementation of the Adult Substance Abuse Rehabilitative Services (ASARS) Program

Purpose/Description of Project

The District of Columbia Department of Behavioral Health (DBH) is soliciting applications for substance use provider grants to support the implementation of the Adult Substance Abuse Rehabilitative Services (ASARS) Program. The purpose of this funding is to provide infrastructure development assistance to DBH-certified substance use disorder providers. Available funds will be used to hire additional licensed professionals to provide clinical coordination as required in the new regulations and purchase equipment. The grant awards are intended to benefit consumers who need substance use disorder and recovery services.

Eligibility

Applicants must:

1. Be a DBH-certified program providing substance use disorder treatment and recovery services.
2. Agree to hire at least one qualified practitioner to provide clinical care coordination services by November 15, 2015.
3. Agree to participate in DBH-mandated ASARS training.
4. Enter into a Grant Agreement with DBH and comply with Agreement requirements and conditions including, but not limited to: the timetable for hiring at least one additional qualified practitioner; participation in required training; and submission of a certification application under Chapter 63 for the Level of Care(s) to be delivered by your agency/organization within 60 days of receipt of grant funds.
5. Have a Human Care Agreement with DBH for the provision of substance use treatment and recovery services.

Length of Award

Grant awards will be made for a period of one (1) year from the date of award. Grant recipients will be expected to begin start-up activities by November 15, 2015.

Available Funding

Approximately $1,350,000 is available to fund grants a maximum of twenty-seven (27) SUD providers, not to exceed $50,000 per agency. Grants will be awarded utilizing funds provided through Department of Behavioral Health's local funding allocation.

Anticipated Number of Awards

Total funds available for this grant opportunity shall not exceed twenty-seven (27) grant awards in amounts not to exceed $50,000 each.

Request for Application (RFA) Release

The RFA will be released August 14, 2015. The RFA will be posted on the DBH website, www.dbh.gov under Opportunities, on the website of the Office of Partnerships and Grants, www.opgs.dc.gov under the District Grants Clearinghouse, and sent directly to all certified Substance Use Disorder Treatment and Recovery providers by confirmed e-mail or confirmed fax. A copy of the RFA may be obtained at the DBH, Substance Use Disorder office located at 64 New York Avenue, NE, Washington, DC 20002, 3rd Floor, from Dr. Marquitta Duvernay during the hours of 8:15 a.m. – 4:45 p.m. beginning August 14, 2015.

Pre-Application Conference

A pre-application conference will be held at the DBH, 64 New York Avenue, NE, 2nd Floor, Room 242 on August 17, 2015 at 2:00 p.m. For more information, please contact Dr. Marquita Duvernay at marquitta.duvernay@dc.gov.

Deadline for Applications

The deadline for submission is August 28, 2015 at 4:45 p.m. ET.

DC BILINGUAL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

SCHOOL TECHNOLOGY

DC Bilingual PCS is advertising the opportunity to bid on the provision of the following technology items to 33 Riggs Rd NW 20011.

- Lenovo M73z all in one core i5 processor 3.3GHz-4GB-500GB
- Windows 7 Pro
- Microsoft Office Pro 2013 licenses
- ThinkPadT450s laptops
- Acer Chrome Book 15s
- Epson DC-06 wireless document cameras
- Technology carts

For more information, please contact Hannah Buie, Operations Manager hbuie@dcbilingual.org.

Proposals will be accepted by email until **8/14/15.**

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY

FISCAL YEAR 2016

DC COMMUNITY SCHOOLS INCENTIVE INITIATIVE GRANTS (DC CSII2016-1: COMMUNITY SCHOOL INCENTIVE INITIATIVE GRANT & DC CSII2016-2: COMMUNITY SCHOOLS INCENTIVE INITIATIVE GRANT- SPECIAL FOCUS: SUPPORTING HOMELESS STUDENT POPULATION)

Request for Application (RFA) Release Date: August 21, 2015 (12:00 noon)

Grant Application Submission Deadline: September 4, 2015 (no later than 4:00pm EST)

The Office of the State Superintendent of Education (OSSE) - Elementary, Secondary and Specialized Education Division (ESSE) is soliciting grant applications for the District of Columbia Community Schools Incentive Initiative. The purpose of this grant is to establish two (2) community schools in the District of Columbia, as defined by the Community Schools Incentive Act of 2012.[1] The overall goal of the Community Schools Incentive Initiative Grants is to provide resources that will enable eligible consortia to create and enhance community-based partnerships and develop a framework for continued funding as well as ongoing evaluation of program success.

(**NOTE:** CSII2016-2: Community Schools Incentive Initiative Grant – Special focus: Supporting homeless student population. The purpose of the grant is also to enhance community-based partnerships to support the District of Columbia homeless student population.)

Eligibility: The Office of the State Superintendent will make these grants available through a competitive process to eligible consortia. As defined by the Community Schools Incentive Act of 2012, an "eligible consortium" is a partnership established between a local education agency (LEA) in DC and one or more community partners for the purposes of establishing, operating, and sustaining a community school. *See* D.C. Official Code § 38-754.02(3). An eligible consortium must demonstrate the ability to provide additional eligible services that did not exist before the establishment of the eligible consortium. *See* D.C. Official Code § 38-754.03.

Length of Award: This is a multiyear grant program. Successful applicants shall be eligible for three years of grant funding subject to available appropriations.

Available Funding for Award: The total funding available for Fiscal Year 2016 is $350,000. An eligible consortium may apply for an award amount up to $175,000 and shall be eligible to receive up to an additional $175,000 for two additional years, subject to available appropriations.

[1] As defined by the Community Schools Incentive Act of 2012, a "community school" is a public and private partnership to coordinate educational, developmental, family, health, and after-school-care programs during school and non-school hours for students, families, and local communities at a public school or public charter school with the objectives of improving academic achievement, reducing absenteeism, building stronger relationships between students, parents, and communities, and improving the skills, capacity, and well-being of the surrounding community residents. D.C. Official Code § 38-754.02(2).

Anticipated Number of Awards: OSSE has funding available for a maximum of (2) awards. One grant will be awarded to a successful applicant for the CSII2016-1 Community School Incentive Initiative Grant and one grant will be awarded to a successful applicant for the CSII2016-2 Community School Incentive Initiative Grant – Special Focus: Supporting Homeless Student Population.

An external review panel or panels will be convened to review, score, and rank each application. The review panel(s) will be composed of neutral, qualified, professional individuals selected for their expertise, knowledge or related experiences. The application will be scored against a rubric and application will have multiple reviewers to ensure accurate scoring. Upon completion of its review, the panel(s) shall make recommendations for awards based on the scoring rubric(s). OSSE's Division of Elementary, Secondary, and Specialized Education will make all final award decisions.

For additional information regarding this grant competition, please contact:

Yuliana Del Arroyo,
Director of Special Programs
Office of the State Superintendent of Education
Elementary, Secondary, and Specialized Education Division
Phone: (202) 741-0478
E-mail: yuliana.delarroyo@dc.gov

The RFA and applications will be available on www.osse.dc.gov, or by contacting Yuliana Del Arroyo at Yuliana.Delarroyo@dc.gov.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY

FISCAL YEAR 2016

DC EARLY LITERACY INTERVENTION GRANTS

Request for Application (RFA) Release Date: August 21, 2015 (12:00 noon EST)

Grant Application Submission Deadline: September 4, 2015 (no later than 4:00pm EST)

The Office of the State Superintendent of Education (OSSE) - Elementary, Secondary and Specialized Education Division (ESSE) is soliciting grant applications for the District of Columbia Early Literacy Intervention Grant, as defined by the "Early Literacy Grant Program Amendment Act of 2015." The purpose of this grant is to increase the percentage of third graders who are proficient or advanced in reading to 75% by 2016-2017 through implementation of an early literacy grant program targeting third grade reading success.

Eligibility: The Office of the State Superintendent will make these grants available through a competitive process. Eligible applicants must be able to provide a full continuum of early literacy intervention services, through professionally coached interventionists, for all grades Pre-K through 3rd grade consisting of developmentally appropriate components for each grade. Eligible applicants must also use a comprehensive evidence-based intervention model and must provide a rationale for the intervention based on data that demonstrates need. This funding is intended to build capacity and may not be used to supplant existing services. In addition, eligible applicants will be expected to demonstrate prior effectiveness through a rigorous program evaluation and will be expected to include an evaluation plan as a component of its application. Finally, eligible applicant will be expected to provide direct services each day that school is in session and collect data on student progress monthly.

Local Educational Agencies (LEA) are not eligible for this funding, however eligible applicants must secure partnerships with the LEAs with which they intend to work and will be required to verify these partnerships.

Length of Award: The grant award period is one year.

Available Funding for Award: The total funding available for this award period is $1,600,000. Each applicant may apply for up to $1,600,000.

An external review panel or panels will be convened to review, score, and rank each application. The review panel(s) will be composed of neutral, qualified, professional individuals selected for their expertise, knowledge or related experiences. The application will be scored against a rubric and application will have multiple reviewers to ensure accurate scoring. Upon completion of its review, the panel(s) shall make recommendations for awards based on the scoring rubric(s).

OSSE's Division of Elementary, Secondary, and Specialized Education will make all final award decisions.

For additional information regarding this grant competition, please contact:

Dr. La' Shawndra Scroggins
Director of Teaching and Learning
Office of the State Superintendent of Education
Division of Elementary, Secondary, and Specialized Education
Phone: (202) 741-0264
E-mail: LaShawndra.Scroggins@dc.gov

The RFA and applications will be available on www.osse.dc.gov.

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, August 10, 2015 thru Monday, August 31, 2015**
Petition Challenge Period: **Thursday, Sept. 3, 2015 thru Thursday Sept. 10, 2015**

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 - 4th Street, NW, Room 250N
Washington, DC 20001

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

ELSIE WHITLOW STOKES COMMUNITY FREEDOM PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

The Elsie Whitlow Stokes Community Freedom Public Charter School solicits expressions of interest in the form of proposals with references from qualified vendors, payment and fee schedule, and experience of key personnel for the following services:

1. HVAC
2. Roofing repair
3. Teacher fellows and recruitment
4. Technology equipment.

To obtain an electronic copy of the full Request for Proposal (RFP), send an email to ewsprocurement@gmail.com, specifying the RFP service request type in the subject heading.

Please e-mail proposals and supporting documents to ewsprocurement@gmail.com, specifying the RFP service request type in the subject heading. Deadline for submissions is **12pm EST August 18, 2015**. No phone calls please.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PUBLICATION FOR PUBLIC COMMENT

District of Columbia Wildlife Action Plan

Notice is hereby given that the District Department of the Environment (the Department) is soliciting comments from the public on the District of Columbia Wildlife Action Plan. The Department of the Interior and Related Agencies Appropriations Act of 2002 (Title I, Public Law 107-63) directs all States and the District of Columbia to update its Wildlife Action Plan every 10 years and to make this plan available for public review and comment. In accordance with this requirement, the Department has developed a draft District of Columbia Wildlife Acton Plan.

A person may obtain a copy of the Plan by any of the following means:

Download from the Department's website, http://ddoe.dc.gov/SWAP2015;

Email a request to SWAP.Comments@dc.gov with "Request copy of 2015 WAP" in the subject line;

Pick up a copy in person from the Department reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call Damien Ossi at (202) 535-2600 to make an appointment and mention this Plan by name; or

Write the Department at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Wildlife Action Plan" on the outside of the letter.

The Department is committed to considering the public's comments while finalizing this Plan. Interested persons may submit written comments on the draft Plan, which must include the person's name; telephone number; affiliation, if any; mailing address; a statement outlining their concerns; and any facts underscoring those concerns. All comments must be submitted **within thirty (30) days after the date of publication of this notice in the DC Register**.

Comments should be clearly marked "Wildlife Action Plan" and either:

1) Mailed or hand-delivered to the District Department of the Environment, Fisheries and Wildlife Division, 1200 First Street, NE, 5th Floor, Washington, DC 20002, Attention: Wildlife Action Plan, or
2) E-mailed to SWAP.Comments@dc.gov.

The Department will consider all timely received comments before finalizing the Plan. All comments will be treated as public documents and will be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. If a comment is sent by e-mail, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Department's website. If the Department cannot read a comment due to technical difficulties, and the email address contains an error, the Department may not be able to contact the commenter for clarification and may not be able to consider the comment.

DISTRICT DEPARTMENT OF THE ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

GRANTS FOR THE

RiverSmart Homes Rain Barrel Installation and Rebate Program

The District Department of the Environment ("DDOE") is seeking eligible entities, as defined below, to encourage installation of rain barrels on private residential property in the District and strengthen District residents' understanding of stormwater issues and management. The amount available for the project in this RFA is approximately $215,000.00. This amount is subject to continuing availability of funding and approval by the appropriate agencies.

Beginning 8/7/2015, the full text of the Request for Applications ("RFA") will be available online at DDOE's website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

Download from DDOE's website, www.ddoe.dc.gov. Select "Resources" tab. Cursor over the pull-down list; select "Grants and Funding;" then, on the new page, cursor down to the announcement for this RFA. Click on "Read More," then download and related information from the "attachments" section.

Email a request to WPD.RainBarrels@dc.gov with "Request copy of RFA 2015-1514-WPD" in the subject line;

Pick up a copy in person from the DDOE reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call Lauren Linville at (202) 535-2252 to make an appointment and mention this RFA by name; or

Write DDOE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Lauren Linville RE:2015-1514-WPD" on the outside of the letter.

The deadline for application submissions is 9/7/2015, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to WPD.RainBarrels@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;

☒-Faith-based organizations;

☐-Government agencies

☒-Universities/educational institutions; and

☐-Private Enterprises.

For additional information regarding this RFA, please contact DDOE as instructed in the RFA document, at WPD.RainBarrels@dc.gov.

DEPARTMENT OF HEALTH CARE FINANCE

PUBLIC NOTICE

PROPOSED MEDICAID WAIVER GOVERNING THE DISTRIBUTION AND DISPENSING OF ANTI-RETROVIRAL AND OTHER HIV-RELATED MEDICATIONS

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 (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02 (2012 Repl. & 2014 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.), hereby gives notice of DHCF's intent to submit a Section 1915 (b)(4) waiver for the Distribution and Dispensing of Anti-Retroviral and other HIV-related Medications to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for review and approval.

The Medicaid 1915(b) (4) Distribution and Dispensing of Anti-Retroviral and other HIV-related Medications Program Waiver (HIV Waiver program) allows the Medicaid program to reimburse selected pharmacies contracted through the District Department of Health (DOH) for dispensing anti-retroviral and HIV-related medications. DOH currently purchases these medications directly via a contract with the United States Department of Defense (DOD). The HIV Waiver program will enable all Medicaid beneficiaries, both Fee-for-Service (FFS) and Managed Care (MCO), to access their anti-retroviral and HIV related medications. DHCF estimates at least 5,000 beneficiaries will be served under the HIV Waiver Program.

Medicaid program beneficiaries enrolled in the HIV Waiver program will be limited to a single provider network, the District of Columbia Pharmacy Provider Network (DCPPN). The DCPPN features a minimum of fifteen (15) pharmacies located throughout the eight (8) wards in the District, with one (1) pharmacy in each ward and at least two (2) pharmacies in wards with the highest prevalence of HIV/AIDS (wards 7 and 8). There are currently twenty-two (22) participating DCPPN pharmacies.

All pharmacies must maintain provider agreements, licenses, and insurance and required federal and District approvals to dispense approved medications to eligible beneficiaries. The required licenses and certifications shall include, at a minimum, the following: a current District pharmacy and controlled substance registration; a United States Drug Enforcement Administration (DEA) controlled substance registration; and pharmacy malpractice insurance. Additionally all pharmacies must enroll as a pharmacy provider in the District Medicaid program; complete and sign the Medicaid provider agreement; and enter into a Human Care

Agreement with the DOH. The selected pharmacies are reimbursed through an inventory replenishment model for dispensing these medications plus an enhanced dispensing fee of ten dollars and fifty cents ($10.50).

The projected budget for this program is approximately $80 million in FY 2016. Thirty percent (30%) of this amount—approximately $24 million—will be paid using local District funds. The remaining funds will be covered through a federal budget match.

For further information or questions regarding the Medicaid 1915(b)(4)Distribution and Dispensing of Anti-Retroviral and other HIV-related Medications Program Waiver, please contact Charlene Fairfax, Senior Pharmacist, Department of Health Care Finance, at charlene.fairfax@dc.gov, or via telephone on (202) 442-9076.

Comments on the proposed waiver shall be submitted, in writing, to Claudia Schlosberg, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed waiver may be obtained by contacting Marie Dorelus at (202) 724-5382 or marie.dorelus@dc.gov.

DEPARTMENT OF HEALTH
COMMUNITY HEALTH ADMINISTRATION
NOTICE OF FUNDING AVAILABILITY
CANCELED
RFA # CHA.SBHC071715

School-Based Health Center

This notice supersedes the notice published in DC Register on July 3, 2015 volume 62/28

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 9th thru 12th 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 3rd 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, 3rd 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 or by phone at (202) 442-9154.

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

HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

DISTRICT OF COLUMBIA HOMELAND SECURITY COMMISSION

NOTICE OF CLOSED MEETING

Pursuant to DC Code § 2-575(b)(8), § 7-2271.04(a)(2), and § 7-2271.05, the Homeland Security Commission hereby provides notice that it will hold a **CLOSED MEETING** on the date, time and place noted below for the purposes of discussing its Annual Report to the Mayor.

August 11, 2015
2121 Eye Street, N.W.
Suite 701
Washington DC 20052
3:00 pm to 5:00 pm

For more information, please contact: Nicole Chapple, Assistant Director, External Affairs and Policy, District of Columbia Homeland Security and Emergency Management Agency, 2720 Martin Luther King Jr. Avenue, SE, Washington, DC. Telephone: (202) 481-3049. Email: Nicole.Chapple@dc.gov.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF FUNDING AVAILABILITY (NOFA)

FISCAL YEAR 2016
Interim Housing for Homeless Minor-Heads of Households Grant

Funding Opportunity Number: **JA-FSA-OD-004-15**

Announcement Date: **8/17/15**

RFA Release Date**: 8/17/15**

Pre-application Conference Date**: 8/26/15**

Application Submission Deadline: **9/7/15**

The District of Columbia, Department of Human Services (DHS) invites the submission of applications for funding through the Interim Housing for Minor-Head of Households Amendment Act of 2015 to establish interim housing and homeless services to minor heads of households in the District.

Target Population: Runaway, homeless, and at-risk parents under 18 years of age.

Eligible Organizations/Entities: Local private or non-profit organizations based in and serving the target communities in the District of Columbia.

Award Period: From date awardee(s) receive Notice of Grant Agreement through September 30, 2016.

Grant Amount: Up to five hundred thousand dollars and zero cents ($500,000.00)

Deadline for submission of applications is Monday, September 7, 2015. Late or incomplete applications will not be forwarded for review.

The RFA and applications will be posted at**: http://opgs.dc.gov/page/opgs-district-grants-clearinghouse**

For further information, please contact:

Randy Hull, Policy Analyst
DC Department of Human Services
Office of Program Integration
Office of the Director
64 New York Avenue, N E, 6th Floor
Washington, DC 20002
202-698-4143

IDEA PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

MULTIPLE SERVICES

The IDEA Public Charter School solicits proposals for the following:

- Bread Distributor – distribute bread to school for breakfast and lunch purposes.
- Milk Distributor – distribute to school for breakfast and lunch purposes.
- Building Painting – provide painting services for selected school areas
- Student Transportation – To provide student transportation for field trips and sporting events
- Legal services – attorney services for legal services focusing on all non-children/students issues as well as all legal matters relating to school property.
- Legal services – special education legal services
- Security Systems – provide security systems for school property.
- IT Services – provide IT

Please go to www.ideapcs.org/requests-for-proposals to view a full RFP offering.
Please direct any questions to bids@ideapcs.org.

Proposals shall be received no later than 5:00 P.M., Friday, August 21, 2015.

KIPP DC PUBLIC CHARTER SCHOOLS

NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACTS

Instructional Software Licenses

KIPP DC intends to enter into a sole source contract with Houghton Mifflin Harcourt/Scholastic for instructional technology licenses and printed materials for Read 180 and System 44 reading programs. The cost of this contract will be approximately $71,000. The decision to sole source is due to the fact that this vendor is the exclusive provider of these licenses.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-61

May 15, 2015

Richard B. Martin

RE: FOIA Appeal 2015-61

Dear Mr. Martin:

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 April 25, 2015, you submitted a request under the DC FOIA to the MPD for several records related to your arrest on September 26, 2013, including internal police communications and the names of responding officers. On April 29, 2015, the MPD responded by granting your request in part and denying it in part. MPD provided you with a copy of your arrest report but redacted the address and telephone numbers of the complainant, contending that this information is exempt from disclosure pursuant to D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C), which exempt from disclosure information that would constitute a clearly unwarranted invasion of personal privacy and information that was gathered for law enforcement purposes.

On appeal, you challenge the MPD's decision, alleging that you were not provided with the names of all the responding officers, as only one appears in the document provided. You also challenge MPD's redaction of the complainant's address, which you state is required for you to pursue legal action.

The MPD sent this office a response to your appeal on May 12, 2015. Therein, MPD reasserted its position, maintaining that disclosing the redacted information would constitute an unwarranted invasion of personal privacy. MPD further argued that you have not asserted a public interest in the release of the information that would override the complainant's privacy interest.

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 a public record, however, is subject to exemptions. *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, 312 (D.C. 1987). Accordingly, decisions construing the federal stature 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).

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). Here, the challenged redaction is contained in an arrest report, which is a record compiled for law enforcement purposes. As such, we analyze the withheld information under the broader framework of Exemption (3)(C).

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of this individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present. Based on decades of precedent, we find that there is a sufficient privacy interest in the complainant's personally identifiable information, including the complainant's address and phone number. *See*, e.g., *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 500 (1994) ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

With regard to the second part of the privacy analysis under Exemption (3)(C), we examine whether the public interest in disclosure is outweighed by the individual privacy interest at issue. On appeal, you conclude that you are entitled to the information because "this information will benefit the general public." The Supreme Court has held that the public interest in a record must be analyzed in the context of the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.' *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong.,

> 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-73 (1989).

In the instant matter, we find that releasing the complainant's address and phone number would not shed light on MPD's performance of its statutory duties, which is the standard applied here.

Although you indicate that you seek the records to identify the individuals who allegedly perpetrated the crimes against you and pursue legal action, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *National Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004). In the instant matter, we find that the public interest in disclosing the address of the complainant listed on the arrest report you have received does not outweigh the individual privacy interest of the complainant under Exemptions (3)(C) and (2) of the DC FOIA.

Lastly, in your appeal you stated that you were not provided with the names of all of the responding officers pertaining to your arrest. The MPD has informed this office that the responding officers associated with your arrest are Christopher Beyer and Franklyn Then.

Conclusion

Based on the forgoing we affirm the MPD's decision and dismiss your appeal.

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'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-62

May 14, 2015

Marcus K. Winstead

RE: FOIA Appeal 2015-62

Dear Mr. Winstead:

This letter responds to the administrative appeal you filed with 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.

On February 4, 2015, you sent the MPD a request for any statements made to detectives in criminal case # 97-004943, Form PD-252 dated June 15, 1997, an investigative report dated June 16, 1997, and any media articles concerning criminal case # 97-004943.

The MPD responded to your request on April 13, 2015, stating that it conducted a search for responsive documents but was unable to locate any pertaining to your request.

You appealed the MPD's decision claiming that you were made aware by the MPD that your requested information was in in its possession when you were sent a list of the information titled "Privilege Log #101227-004." The privilege log, which you attached to your appeal, lists certain documents and describes them but does not contain information about why the log was prepared. You maintain that the MPD's decision conflicts with the privilege log, which indicates that certain information exists but is being withheld.

The MPD provided this office with a response to your appeal on May 13, 2015, stating that upon receipt of your appeal it conducted another search and located responsive documents. MPD further indicated that it will now process your request and apologizes for any inconvenience caused by the late discovery of the documents.

Based on the MPD's representation that it is processing your request and will provide you with a response, 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'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-63

June 19, 2015

Mr. David Wilson

RE: FOIA Appeal 2015-63

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 as part of a homicide investigation operation conducted by Detective Michael J. Will.

The MPD denied that request on January 6, 2015, stating that the information sought was exempt from disclosure pursuant to D.C. Official Code §§ 2-534 (a)(2), (a)(3)(C), and (a)(3)(D). You appealed MPD's decision, and this office issued FOIA Appeal 2015-36 on Mach 23, 2015, in which we remanded the matter to MPD to conduct another search. Accordingly, MPD conducted an additional search of all repositories likely to contain a responsive document but did not find any additional documents. On April 20, 2015, you submitted a subsequent appeal challenging the second search the MPD conducted for the documents you are seeking. In specific, you contend that: (1) a reasonable search of the requested records would have involved the MPD contacting the detective who led the operation that created the recording at issue; and (2) MPD's failure to retain the records is in violation of D.C. Official Code § 5-113.32(g)[1].

The MPD responded to your appeal in a June 18, 2015 letter to this office reiterating the search process outlined in its April 3, 2015, declaration[2]. MPD explained that there is a centralized filing system for all homicide files older than four years. Other than these files, the custodian of the homicide files is not aware of any paper file system that would contain a copy of the recording or transcript. The custodian personally searched the electronic system that would contain responsive documents and did not find any. The detective custodian further advised that

[1] You also cite to D.C. Official Code § 5-113.32(a), but this statute appears to be inapplicable because it concerns open investigations, and the double homicide investigation at issue here is closed.
[2] A copy of this letter is attached.

he is not aware of any files on the confidential informant, the "I-5 Mob," or the "Congress Park Crew."

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. *See* D.C. Official Code § 2-534. 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).

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 your most recent appeal, you cite D.C. Official Code § 5-113.32(g), which prohibits the destruction or disposal of evidence in a homicide investigation under any circumstances without written approval from the Chief or the Property Clerk of the MPD and the United States Attorney for the District of Columbia or the Office of the Attorney General of the District of Columbia,[3] depending on which entity prosecuted the matter. In previous filings related to your FOIA request, MPD has stated that it searched the homicide file but has not located the recording or transcript you are seeking.

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).

[3] The statute refers to the Corporation Counsel for the District of Columbia, but this office is now referred to as the Office of the Attorney General of the District of Columbia.

Accordingly, to conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) 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). This first step 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 that 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.* 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 by declaration that it conducted an adequate search and that no responsive records were found. In specific, the April 3, 2015, declaration of Detective Daniel Whalen states, "The Homicide File contains no audio and/or video recordings, nor transcripts of any such recordings." Further, the declaration states both that "[a]ll files likely to contain the requested recording/transcript were searched," and that "[n]o other record system and/or office are likely to produce the requested recording/transcript." Although you contend that "[T]here are many files and many places where this requested record could be," that is not the applicable legal standard, and we conclude that MPD's search was reasonable.

With regard to your claim that MPD violated D.C. Official Code § 5-113.32(g) in failing to retain certain evidence, this office's jurisdiction is limited to adjudicating appeals of DC FOIA decisions issued by District agencies.[4] As a result, the propriety of MPD's chain of custody and evidence retention is not properly before us. Because the MPD has attested in a declaration that it does not possess the record you seek, we are obligated to accept that representation and must limit our analysis to whether the MPD's search was reasonable. Here, based on the provided declaration, we conclude that the second search conducted by MPD was reasonable pursuant to MPD's obligations under DC FOIA.

Conclusion

Based on the foregoing, we affirm 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,

[4] If you believe that MPD has violated the law by not retaining this record, you may contact the Office of the Inspector General to investigate the matter. The DC Office of the Inspector General's contact information is as follows: 717 14th Street, NW, 5th Floor, Washington, DC 20005;Email:oig@dc.gov

/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'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-64

May 14, 2015

VIA ELECTRONIC MAIL

Courtney French
Counsel
Gannett Co., Inc.

RE: FOIA Appeal 2015-64

Dear Ms. French:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA") on behalf of your client, WUSA. In your appeal, you assert that the Department of Corrections ("DOC") improperly withheld records your client requested under DC FOIA.

Background

WUSA sent a FOIA request to the DOC on April 8, 2015, seeking a copy of the report solicited by the DOC's former deputy director in May 2012 from Public Consulting Group, Inc. ("PCG"), which provides an assessment of DOC's correctional healthcare services. The DOC denied WUSA's appeal on April 22, 2015, on the grounds that the document is an inter-agency, pre-decisional evaluative report produced by a consultant to guide the DOC in making decisions on the delivery of healthcare services to inmates in its custody. According to the DOC, the report is exempt from disclosure by the deliberative process privilege and D.C. Official Code § 2-534(a)(4).

On appeal, WUSA contends that the report does not constitute an inter- or intra-agency document under DC FOIA because it was created by a private, non-governmental agency and does not fall under the exemption set forth in D.C. Official Code § 2-534(a)(4). WUSA further argues that even if the report is an inter- or intra-agency record, the DOC is required to release a redacted version that discloses any factual content.

The DOC provided this office with a formal response to your appeal on May 12, 2015, stating that the requested report is an intra-agency record protected by the deliberative process privilege. According to the DOC, it solicited and contracted with PCG, a management consulting firm, to: (1) evaluate DOC's current inmate health services delivery system; (2) compare DOC's system with other jurisdictions in terms of scope and cost of services; and (3) develop new requests for proposals and make recommendations for re-engineering the system where appropriate. To support its position, the DOC also provided this office with a declaration from Deborah J. White,

the supervisory contracting officer at the DOC. Ms. White stated that in 2011, the District's Office of Contracting and Procurement published a solicitation for a contractor to evaluate inmate health services and subsequently awarded the contract to PCG. Ms. White further indicated that "at no time was PCG an interested party seeking benefit relating to health care services to DOC's inmates, or to any other D.C. government benefit, which is adverse to others seeking that benefit."

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 a public record, however, is subject to exemptions. *Id*. at § 2-534.

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

D.C. Official Code § 2-534(a)(4) exempts from disclosure "inter-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." This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Privileges in the civil discovery context include the deliberative process privilege. *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it "reflects the give-and-take of the consultative process." *Id*.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

In the context of the deliberative process privilege, the D.C. Circuit Court of Appeals has consistently interpreted "intra-agency" as including "agency records containing comments solicited from non-governmental parties." *Nat'l Inst. of Military Justice v. U.S. Dep't of Defense*, 512 F.3d 677, 680 (D.C. Cir. 2008) ("NIMJ"). As the court held in *Ryan v. Dep't of Justice*, 617 F.2d 781, 790 (D.C. Cir. 1980), "When an agency record is submitted by outside consultants as part of the deliberative process, and it was solicited by the agency, we find it entirely reasonable to deem the resulting document to be an 'intra-agency' memorandum for purposes of determining the applicability of Exemption 5."[1]

The reason courts have found communications with parties outside of the government to qualify as intra-agency communications under the deliberative process privilege is because

> [i]n the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.

NIMJ, 512 F.3d at 680 (quoting *Ryan*, 617 F.2d at 789-90).

Communications from consultants are not considered intra-agency communications when they are made by an interested party seeking a government benefit. *Department of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 12 (2001). Here, the DOC has represented that the PCG contracted with the DOC to advise the agency on providing healthcare services for inmates in its custody and that PCG was not an interested party or seeking any D.C. government benefit. Accordingly, we find that the report is an intra-agency record under the DC FOIA.

Having determined that the report at issue is an intra-agency record, we consider whether it is predecisional and deliberative. The DOC provided this office with a copy of the report, which we reviewed *in camera*. Based on the DOC's representations, as well as language in the report, we conclude that the report was predecisional in that it was issued as a result of a contract with PCG to evaluate inmate health services. Significant portions of the report are also clearly deliberative, such as the "Findings and Conclusions" and "Recommendations" sections. Other portions of the report appear to be strictly factual.

Under the FOIA, even when an agency establishes that it has properly withheld a document under an exemption, it must disclose all reasonably segregable, nonexempt portions of the requested documents. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). "To demonstrate that it has disclosed all reasonably segregable material, 'the withholding

[1] Exemption 5 is the exemption in the federal Freedom of Information Act that covers documents privileged in the civil discovery context, including those protected by the deliberative process privilege.

agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F .Supp. 2d 106, 120 (D.D.C. 2010)). In *Judicial Watch*, the court held that "[a]lthough purely factual information is generally not protected under the deliberative process privilege, such information can be withheld when 'the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations.'" *Id*. at 28. (quoting *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997)). In these instances, factual information is protected when disclosing the information would reveal an agency's decision-making process in a way that would have a chilling effect on discussion within the agency and inhibit the agency's ability to perform its functions. *Id*.

Here, the DOC has not demonstrated that it considered whether the factual portions of the PCG report are reasonably segregable or whether they are inextricably intertwined with the deliberative portions. Instead, the DOC appears to claim that the entire report is exempt from disclosure. In accordance with DC FOIA, we direct the DOC to review the report to determine whether portions are segregable.

Conclusion

Based on the foregoing, we affirm the DOC's decision in part, and remand it in part. We affirm the DOC's position that the report is a predecisional, intra-agency report protected by the deliberative process privilege. We remand this matter to the DOC in part to disclose, within 5 business days of this decision, nonexempt portions of the report or provide a detailed explanation for non-segregability.

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: Oluwasegun Obebe, Records, Information & Privacy Officer, DOC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-65

March 15, 2015

VIA ELECTRONIC MAIL

RE: FOIA Appeal 2015-65

Dear Ms. Young:

This letter responds to the administrative appeal you submitted to the Mayor on behalf of Katie Kronick 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

Under the DC FOIA you submitted a request to the MPD for any and all civilian complaints filed against four named officers. On April 30, 2015, the MPD denied your request stating that without admitting or denying the existence of the requested records, the disclosure would constitute an unwarranted invasion of personal privacy. In its denial, the MPD cited D.C. Official Code § 2-534(a)(2) ("Exemption 2") as the authority to exempt the records from disclosure.

On appeal, you challenge the MPD's decision, asserting that the requested information is necessary for Ms. Kronick to preserve her client's Sixth Amendment right to present a complete and adequate defense in a criminal case. You state that the credibility of the arresting officers will be a central issue at the criminal trial. You cite *Martinez v. United States*, 982 A.2d 789 (D.C. 2009) and *Longus v. United States*, 52 A.3d 836, 850 (D.C. 2012) as holding that sustained and pending complaints are relevant in criminal prosecutions, therefore the requested information is necessary to present a complete and adequate defense.

The MPD sent this office a response to your appeal on May 6, 2015, in which it reaffirmed its earlier response and asserted the additional protection of privacy interests under D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)"). The MPD cited *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993) in support of its position that privacy interests can exclude complaints against officers from disclosure under DC FOIA. Finally, the MPD asserts that its response, neither confirming nor denying the existence of the records sought, is an appropriate "Glomar" response, citing Freedom of Information Act Appeal 2013-58.

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 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). Accordingly, decisions construing the federal stature 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).

As the MPD stated, Exemption 2 and Exemption 3(C) of DC FOIA relate to personal privacy. Exemption 2 applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." 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." 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 the MPD fall within Exemption 3(C) if these investigations focus on acts that could, if proven, 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 Reporters Comm. for Freedom of Press*, 489 U.S. at 756. 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)[1].'The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.'

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

[1] Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC FOIA.

Here, we find that there is a sufficient privacy interest for a person who is simply being investigated for wrongdoing based on allegations. "[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, an appropriate subject for exemption under 7(C) [Exemption (3)(C) under DC FOIA]." *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 the 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*, 665 F.2d at 1254.

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 officer of the MPD. 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 maintained that it will neither confirm nor deny, whether complaint records exist relating to the named MPD officers. 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 the officers you have named exists, identifying the written record may result in the harm that the DC FOIA exemptions were intended to protect.

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the public interest in disclosure is outweighed by the individual privacy interest at issue. On appeal, you argue that nondisclosure of the records would infringe upon the Sixth Amendment rights of Ms. Kronick's client. The 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, we find that disclosing the records at issue would not shed light on MPD's performance of its statutory duties and would constitute an invasion of the individual police officers' privacy interests under Exemptions 3(C) and (2) of the DC FOIA.[2]

Conclusion

Based on the forgoing we affirm the MPD's decision and dismiss your appeal.

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

/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

[2] We also note that any public interest that would be served by disclosing the wrongdoings of police officers might be served by the Office of Police Complaints' ("OPC") annual, redacted, online report of all sustained findings of misconducts, along with extensive data regarding the type of allegations made and the demographics of complainants. *See Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). OPC's annual reports may be found at http://policecomplaints.dc.gov/page/annual-reports-for-OPC

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-66

May 18, 2015

VIA ELECTRONIC MAIL

Ms. Jessica Campbell

RE: FOIA Appeal 2015-66

Dear Ms. Campbell:

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 Office of the State Superintendent of Education ("OSSE") failed to respond to a FOIA request that you submitted to OSSE.

Background

On March 10, 2015, you submitted a request under the DC FOIA to OSSE seeking all records related to the licensing and inspection of Love and Care Day Care, which is located at 330 Rhode Island Avenue, N.E., from January 1, 2013, to March 10, 2015.

On May 4, 2015, this office received the appeal that you filed with the Mayor contending that OSSE did not respond to your FOIA request.

It is our understanding that OSSE responded to your request on May 15, 2015, by uploading responsive documents to the FOIAxpress system.

Conclusion

Based on the fact that OSSE has now responded to your request, 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 OSSE'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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-67
Mayor's Office of Legal Counsel

June 15, 2015

VIA ELECTRONIC MAIL

Nabiha Syed
Assistant General Counsel
Buzzfeed

RE: FOIA Appeal 2015-67

Dear Ms. Syed:

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 Public Charter School Board ("PCSB") improperly withheld records your client requested under the DC FOIA.

Background

On April 23, 2015, your client submitted a request under the DC FOIA to the PCSB seeking records that list student suspensions and expulsions for each D.C. public charter school for the 2011-12, 2012-13, and 2013-14 school years. Your client also requested that the records indicate whether a student who was disciplined was receiving special education or had an individualized education program ("IEP").

On May 7, 2015, the PCSB responded to your client's request, providing one document in a PDF format and two links to online spreadsheets that contained some of the information sought. The PCSB stated that it was withholding responsive documents that contained personally identifying information in accordance with D.C. Official Code §§ 2-534(a)(2)[1] and 2-534(a)(6)[2] ("Exemption 2" and "Exemption 6" respectively).

On May 14, 2015, you filed an appeal with the Mayor asserting that the PCSB's response was inadequate because it did not contain: (1) data about students with special needs for the 2011-12

[1] Section 2-534(a)(2) protects records containing "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."
[2] Section 2-534(a)(6) allows for the protection of information specifically exempt from disclosure under other law and was asserted in conjunction with the Family Educational Rights and Privacy Act ("FERPA") 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

school year; and (2) data about the expulsion of students with special needs by charter schools for any school year. Further, you argue that the privacy exemptions invoked by the PCSB are not valid because the request did not seek any personally identifying information of students. You cite cases supporting the assertion that FERPA does not justify withholding education records entirely when the records can be disclosed with personally identifiable information redacted. Additionally, you argue that the requested data will provide oversight of a public agency providing education services and disclosure of the records would serve the public interest by demonstrating how charter schools are using discipline as part of their education policies.

On June 2, 2015, the PCSB provided your client with an "Amended Final Response Letter," in which it disclosed two additional PDF files containing expulsion data for the 2012-13 and 2013-14 school years categorized by IEP status. Some of the entries pertaining to whether or not an expelled student had an IEP were redacted. The PCSB stated that it redacted information pursuant to Exemptions 2, 6, and FERPA when there were fewer than ten total expulsions per school to prevent disclosing personally identifying information of students.

The PCSB responded to your FOIA appeal in a letter to this office dated June 5, 2015.[3] In its response, the PCSB reaffirmed its invocation of exemptions under the DC FOIA and clarified its reliance on FERPA in making further redactions, citing data and privacy policies from the Office of the State Superintendent of Education ("OSSE"),[4] DC Public Schools ("DCPS"),[5] and the PCSB.[6] All of these policies prohibit reporting or disclosing student data involving ten or fewer students to protect the privacy of individual students. The PCSB argues that the rationale for these policies is that the risk of individual student identification increases as the size of a subgroup size shrinks. FERPA prohibits the disclosure of student "information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." 34 C.F.R. § 99.3. The PCSB asserts that due to the relatively small number of expulsions from public charter schools, it is likely that subcategorized expulsion data could be linked with particular students, especially by those familiar with the schools. The PCSB argues that release of such data would be a violation of FERPA protections of student privacy.

In addition to FERPA protections incorporated into DC FOIA through Exemption 6, the PCSB argues that identification of individual students would be exempt from disclosure under Exemption 2 as an unwarranted invasion of personal privacy. Regarding the lack of suspension and expulsion data for students with special needs for the 2011-12 school year, the PCSB

[3] PCSB's letter is attached hereto.
[4] District of Columbia Consolidated State Application Accountability Workbook, pages 28-29, available at http://www2.ed.gov/admins/lead/account/stateplans03/dccsa.pdf
[5] DCPS Process and Requirements to Conduct Research or Obtain Confidential Data, page 3, available at http://dcps.dc.gov/DCPS/Files/downloads/ABOUT% 20DCPS/Strategic%20 Documents/DCPS%20Process%20Requirements%20obtain%20Confidential%20Data.pdf
[6] Amendment to Existing FERPA Policy – Clarifying PCSB's Practices on Anonymized Aggregate Data, pages 1-2, available at http://bit.ly/1MsFX3E

represents that it has conducted an adequate search for the data but has not located the information in its possession.

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. *See* D.C. Official Code § 2-534.

DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Decisions construing the federal stature are instructive and may be examined to construe local law. *See Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The first issue you raised on appeal, that PCSB did not address the request for suspension and expulsion data for students with special needs for the 2011-12 school year, relates to the adequacy of the search for requested records. DC FOIA requires that a search be 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).

To establish the adequacy of a search,

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

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

In conducting an adequate search, an agency must make reasonable determinations as to the location of records requested and conduct a 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). The determination as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Generalized and conclusory allegations do not establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, the PCSB's response to your appeal is general and conclusory, stating only that "PCSB has conducted an adequate search for suspension and expulsion data subcategorized by special education status for the 2011-12 school year, but has not located this information in its possession." The PCSB did not describe with specificity the search it conducted. To determine that an adequate search was performed, the PCSB must state: (1) where responsive records in this matter would be stored; and (2) that it conducted searches of these locations. To date, the PCSB has not sufficiently described its search in a manner that would allow us to evaluate the adequacy of the search.

The PCSB addressed the second issue you raised on appeal – the lack of requested data on special needs status of expelled students – in the amended response it sent to you on June 2, 2015. The amended response contains data of special needs status of expelled students; however, the subcategorized data is redacted for schools with fewer than 10 expelled students. Since these disclosures were made subsequent to the filing of your appeal, we recognize that you have not had an opportunity to challenge these redactions. Therefore, we consider the appropriateness of these redactions.

The PCSB relies on FERPA, incorporated in DC FOIA through Exemption 6, to redact information in the supplemental disclosures. FERPA prohibits the disclosure of student "information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." 34 C.F.R. § 99.3. The PCSB asserts that due to the small number of expulsions from some public charter schools, it is likely that the subcategorized expulsion data pertaining to a student's special needs status could be linked with particular students, especially by those familiar with the school's population.

For example, if a school expelled only one student, and the PCSB disclosed that the expelled student had an IEP, someone familiar with that school's student population could know with absolute certainty that the student had an IEP. If a school expelled two students and the PCSB disclosed that one student had an IEP and the other did not, someone familiar with that school's students could determine with reasonable certainty which student had an IEP. As the denominator increases – here the number of students expelled at a school – the possibility of identifying an individual student's IEP status decreases. It is the policy of OSSE, DCPS, and PCSB to require that the denominator be at least ten to protect students from potential identification.[7] Therefore, the PCSB's redactions of this type of subcategorized data are necessary to comply with FERPA's requirements to protect student information.

The PCSB argues that the identification of an individual student's IEP status would also be exempt from disclosure under Exemption 2. Exemption 2 requires that the information at issue apply to a particular individual[8] and that there is a significant privacy interest in the requested

[7] Given the privacy concerns, setting the minimum denominator at ten is not a clear violation of the DC FOIA; we consider it beyond the scope of our authority to determine the appropriateness of the numerical value of this policy. *See* D.C. Official Code § 2-537.
[8] *See* 456 U.S. 595, 599-603 (1982).

information.[9] Exemption 2 does not apply when the information cannot be linked to a particular individual.[10] Further, Exemption 2 can be overcome if a FOIA requester asserts a public interest in disclosure.[11] If there is a privacy interest in non-disclosure and a public interest in disclosure, the competing interests must be balanced to determine whether disclosure "would constitute a clearly unwarranted invasion of personal privacy."[12]

Here, as discussed above, the subcategorized data requested would likely reveal the IEP status of individual students at certain schools. An invasion of privacy need not occur immediately upon disclosure.[13] The PCSB cannot control how the requester disseminates the data it receives pursuant to this request; therefore, it must redact information it discloses that would constitute an invasion of personal privacy. IEP status is not a public student record, and disclosure of a student's IEP status would constitute an unwarranted invasion of personal privacy.

Regarding the balancing of privacy interests against public interest, you assert that the information is fundamental to oversight of the PCSB and would illuminate how charter schools discipline students. In the instant matter, we find that disclosing the redacted records at issue would not shed light on the PCSB's performance of its statutory duties and would constitute an invasion of students' privacy interests under Exemption 2 of the DC FOIA. Consequently, the redactions here of subcategorized data for individual schools are proper under Exemption 2.

The PCSB acknowledges that the FOIA request seeks "generalized details about how frequently charter schools suspend and expel students." Due to the redactions the PCSB made to the documents it produced in its amended response, it is not possible to deduce generalized information about expulsions. Accordingly, we direct the PCSB to disclose the total number of charter school students with an IEP who were expelled during the 2012-2013 and 2013-2014 school years and the total number of charter school students without an IEP who were expelled during these years. The disclosure of this data will serve the public interest of the FOIA request while minimizing the potential of individual identification.

Conclusion

Based on foregoing we affirm in part and remand in part the PCSB's decisions with respect to your client's DC FOIA request. For suspension and expulsion data subcategorized by special education status for the 2011-12 school year, we direct the PCSB to describe the search it conducted for these records, stating: (1) where responsive records would be stored; and (2)

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[9] *See Multi Ag Media LLC v. USDA*, 515 F.3d 1224, 1229 (D.C. Cir. 2008).
[10] *See, e.g., Arieff v. U.S. Dep't of the Navy*, 712 F.2d 1462, 1467-68 (D.C. Cir. 1983) (holding that defendant must establish "more than a 'mere possibility' that the medical condition of a particular individual might be disclosed" in order to protect a list of drugs ordered for use by some members of large group).
[11] *See NARA v. Favish*, 541 U.S. 157, 172 (2004).
[12] *See Wash. Post Co. v. HHS*, 690 F.2d 252, 261 (D.C. Cir. 1982).
[13] *See National Ass'n of Retired Federal Employees v. Horner*, 879 F.2d 873, 878 (D.C. Cir. 1989) ("In virtually every case in which a privacy concern is implicated, someone must take steps after the initial disclosure in order to bring about the untoward effect.").

whether it conducted searches of these locations. If the PCSB locates data for the 2011-12 school year, it shall review, redact, and disclose the data in accordance with the guidance or this determination. In addition, the PCSB shall, within 7 business days of the date of this decision, disclose the total number of charter school students with an IEP and without an IEP who were expelled during the 2012-13 and 2013-14 school years.

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

/s John A. Marsh*

John A. Marsh
Legal Fellow
Mayor's Office of Legal Counsel

cc: Nicole Streeter, General Counsel, PCSB (via email)

*Admitted in Maryland; license pending in the Distinct of Columbia; practicing under the supervision of members of the D.C. Bar

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

TT00-5, IN THE MATTER OF VERIZON WASHINGTON DC, INC.'S PUBLIC OCCUPANCY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 201

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 34-802 of the District of Columbia Code and in accordance with Section 2-505 of the District of Columbia Code,[1] of its final action taken in the above-captioned proceeding.

2. On May 1, 2015, Verizon Washington, DC Inc. ("Verizon" or "the Company") filed its ROW Compliance Filing for 2015,[2] in accordance with D.C. Code § 10-1141.06.[3] The ROW Compliance Filing describes the process Verizon uses to recover from its customers the District of Columbia Public ROW fees it pays to the District of Columbia Government. Moreover, Verizon's ROW Compliance Filing contains the most recent calculations and updated rates for the Company's ROW surcharges, in accordance with the following tariff page:[4]

GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 201
Section 1A
Original Page 2

3. In the ROW Compliance Filing, Verizon compares the current ROW surcharges and the updated ROW surcharges for the ROW Surcharge Rider.[5] Specifically, the ROW Compliance Filing indicates that the ROW Surcharge Rider will increase by $0.04, from $3.95 to the updated rate of $3.99, for Non-Centrex lines and increase by $0.01, from $0.49 to the updated rate of $0.50 for Centrex lines.[6] According to Verizon, the increase in the 2015 true-up rates is a result of the estimated net under recovery of payments during the period from July

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1 D.C. Code § 2-505 (2015) and D.C. Code § 34-802 (2015).

2 *TT00-5*, *In the Matter of Verizon Washington, DC Inc.'s Public Occupancy Surcharge General Regulations Tariff, P.S.C.-D.C. No. 201 ("TT00-5")*, Letter to Brinda Westbrook-Sedgwick, Commission Secretary, from Kathy L. Buckley, Vice President for State Government Affairs – Mid-Atlantic Region, RE: Case No. TT00-5, In the Matter of Verizon Washington, DC Inc.'s Public Occupancy Surcharge General Regulations Tariff, P.S.C. – D.C. No. 201 ("ROW Compliance Filing"), filed May 1, 2015.

3 *See* D.C. Code, § 10-1141.06 (2015).

4 *TT00-5*, ROW Compliance Filing at 2.

5 *TT00-5*, ROW Compliance Filing at 2.

6 *TT00-5*, ROW Compliance Filing at 2.

2014 to June 2015, plus the forecasted loss in assessed lines during the coming year, based on the loss experienced in past years.[7] Verizon adds that the 2015 true-up rates continue to reflect the change in methodology discussed in Verizon's 2014 letters to the District Department of Transportation ("DDOT").[8] Verizon states that DDOT and Verizon have been in discussions regarding this change in methodology, but DDOT has not yet issued a response to Verizon's analysis. Verizon states that, in the event that its payments made to DDOT during this coming year (July 2015-June 2016) vary enough from its forecast to result in a material difference to the surcharge amounts requested in this 2015 ROW Compliance Filing, Verizon will file an update prior to the 2016 annual true-up.[9]

4. According to the ROW Compliance Filing, Verizon seeks to implement the updated surcharge rates on August 1, 2015, in order to maintain the timing of past annual true-up filings for the ROW Surcharge Rider.[10]

5. On June 12, 2015, the Commission published a Notice of Proposed Tariff ("NOPT") in the *D.C. Register* inviting public comment regarding Verizon's ROW Compliance Filing.[11] In the NOPT, the Commission states that Verizon has a statutory right to implement its filed surcharges but, if the Commission discovers any inaccuracies in the calculation of the proposed surcharge rate, Verizon could be subject to reconciliation of the surcharge. No Comments were filed in response to the NOPT and the Commission is satisfied that the surcharges proposed by Verizon in the ROW Compliance Filing comply with D.C. Code §10-1141.06.

6. Accordingly, the Commission voted to approve Verizon's ROW Compliance Filing by official action taken at the July 22, 2015 open meeting.

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7 *TT00-5*, ROW Compliance Filing at 3.

8 *TT00-5*, ROW Compliance Filing at 3; *See also* fn. 8 citing to Verizon's March 27, 2014 and July 16, 2014 letters to DDOT detailed Verizon's change in methodology for calculating the estimated facilities in the public ROW.

9 *TT00-5*, ROW Compliance Filing at 3.

10 *TT00-5*, ROW Compliance Filing at 3.

11 *62 D.C. Reg.* 8407-8409 (2015).

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

REQUEST FOR APPLICATIONS

Grant to Promote District of Columbia Voting Rights and Statehood

Release Date: Friday, August 7, 2015
Application Due Date: Friday, August 21, 2015 at Noon

SECTION 1: FUNDING OPPORTUNITY

Effective August 7, 2015, the Office of the Secretary, pursuant to the City-Wide Grants Manual and Sourcebook (Section 7.2) reissues the Request For Application (RFA) entitled *Grant to Promote District of Columbia Voting Rights and Statehood* to provide all eligible applicants the opportunity to submit specific program activities that provide support for Mayor Muriel E. Bowser's initiatives to achieve full voting rights in the United States Congress, and, ultimately, statehood for the District of Columbia. This RFA will be open on August 7, 2015 and will close on August 21, 2015 at Noon.

Background
The residents of the District of Columbia serve in the military and pay federal taxes but continue to lack full democracy and the rights that residents of other states and municipalities enjoy, including autonomy from congressional oversight, voting representation in Congress and statehood.

The District of Columbia Home Rule Act of 1973 provided limited "Home Rule" for the District by allowing election of a Mayor and Council of the District of Columbia. Since the inception of Home Rule, the District's elected officials and various groups have pursued strategies to raise awareness and work towards achieving voting representation in the U.S. House of Representatives and U.S. Senate and statehood. Yet democracy for the District has been derailed by the Charter itself, the courts, non-germane proposals restricting the District on must-pass Congressional legislation, riders on appropriations bills, and insufficient support for enactment of various budget autonomy and statehood proposals in the United States Congress.

For over a decade, the District has allocated funds to nonprofit organizations for educating citizens around the nation and pursuing strategies that highlight the continued lack of full democracy in the nation's capital. In addition, since 1990, District residents have elected a "shadow" delegation to Congress in order to promote statehood, and District residents have voted for, and the Mayor has supported, amending the Charter to allow for budget autonomy.

The Office of the Secretary is charged with responsibility for managing the funds allocated for voting rights and statehood initiatives for DC residents. The Fiscal Year 2015 Budget authorized $200,000 for the Office of the Secretary to issue competitive grants to promote voting rights and statehood. The Office of the Secretary has already awarded $65,100 to

other organizations and as such, $134,900 is still available to be awarded during FY 2015.

Purpose of Program
The objective of this grant is to strengthen support for District representation in Congress and statehood for the District of Columbia. This effort will require outreach, canvassing, and measurement of support of elected officials and residents across the country and visitors to the nation's capital. The ultimate goal of this program is that the grantee(s) increase congressional and nationwide support for self-determination for the District of Columbia including, but not limited to, voting rights in Congress and statehood.

This program is funded with FY2015 funds, which must be expended by September 30, 2015, with a full accounting provided to the Office of the Secretary no later than December 31, 2015.

SECTION II: AWARD INFORMATION

$134,900 in District funds will be available on a competitive basis as follows:

A. 50% of the funds will be awarded on a competitive basis to an organization or organizations dedicated specifically to engaging youth (high school, college students and/or graduate students or other young adults) in civics, government, and/or voting rights in innovative ways by raising awareness through campaigns that include a branding and messaging strategy that include new media, social media and other fresh ideas. Such dedication can be evidenced by the organization's purpose, or through dedicated programming within the organization aimed at youth engagement.

B. 50% of the funds will be awarded to a non-profit organization or organizations that engage in general or targeted public education, organizing, or legal strategy to advance District of Columbia voting rights and statehood.

The release date of this Request for Applications (RFA) is August 7, 2015. This grant process conforms to the guidelines established in the District's City-Wide Grants Manual and Sourcebook (which is available at http://opgs.dc.gov).

All funds will be disbursed upon award of the grant, with a report and budget accounting required September 30, 2015, and a final report due no later than December 31, 2015. All proposals must include a detailed description of how the funds will be spent, as well as a project plan. Creative proposals (which include fresh ideas) that specifically address the requirements for an award are required to ensure success.

SECTION III: ELIGIBILITY INFORMATION

Eligibility for this grant is restricted to:

A. Non-profit (with or without a 501(c) (3) certification) and community-

based organizations with, a current District of Columbia business license, a "Clean Hands" certification that the organization does not owe any money to the District or Federal government, and no outstanding or overdue final reports for grants received from the District government for similar purposes.

B. Organizations with a history of advocating for democracy and self-determination for the District of Columbia including, but not limited to, District voting rights and statehood.

C. Organizations must have a financial track record and cannot be reliant on another organization under a fiscal agent arrangement.

SECTION IV: APPLICATION & SUBMISSION INFORMATION

This Request for Applications is posted at http://os.dc.gov and http://opgs.dc.gov. Requests for copies of this RFA and inquiries may be submitted to: Office of the Secretary of the District of Columbia, 1350 Pennsylvania Avenue, NW, Suite 419, Washington, DC 20004 or secretary@dc.gov, or 202-727-6306.

Application Forms and Content
All applications will be judged against the following requirements:

1. All proposals must be written in clear, concise and grammatically correct language. Narratives shall not exceed 2,500 words and must include answers to all the requirements specified in this Request for Applications.

2. There is no set form on which applications must be written, but please be clear and brief.

3. The grant applicant shall focus efforts on education and outreach to residents of the states, not just members of Congress, and funds shall not be used to lobby, directly or through grassroots advocacy, for or against particular pieces of legislation.

4. Grant applicants' efforts shall not significantly consist of paid media advertisements.

5. Proposal must be specific as to how funds will be expended including:
   a. Names of all staff or consultants proposed to work on the program;
   b. Justification of the need for grant funds.
   c. Specific activities for which funds will be used.
   d. Proposed line item budget.
   e. Agreement to submit all deliverables listed in section VI.
   f. Specific performance measures and evaluation plans.

6. All certifications listed in the Application Process section **must** be included or the application will be disqualified.

Application Process & Requirements

Responses to this Request for Application shall be submitted via email to secretary@dc.gov or hard copy delivered to the Office of the Secretary, 1350 Pennsylvania Avenue, NW, Suite 419, Washington, DC 20004. Applications delivered to the Office of the Secretary must be date stamped no later than Noon on Friday, August 21, 2015.

The following criteria for an application must be met. Applications that do not meet the requirements specified below will be disqualified from consideration:

1. All proposals shall include only written narrative with no additional input (such as DVDs, videos, etc.).

2. All files submitted shall be in any of the following formats: MS Word 2003 or 2007, PDF, MS Excel, HTML, MS Publisher or any format compatible with those formats.

3. The following is required, but are not included in the 2,500 word narrative:
   a. the EIN, also called Federal Tax ID number of the organization;
   b. the website and main contact information for the organization;
   c. a list of the Board of Directors of the organization (if not listed on the website);
   d. one-paragraph bios of all proposed project staff; and
   e. web address or copy of the organization's most recent Form 990 submission to the Internal Revenue Service.

4. Copies (or web links thereto) of its most recent and complete set of audited financial statements available for the organization. If audited financial statements have never been prepared due to the size or newness of an organization, the applicant must provide an organizational budget, an income statement (or profit and loss statement), and a balance sheet certified by an authorized representative of the organization, and any letters, filings, etc. submitted to the IRS within the three (3) years before the date of the grant application.

5. If a 501(c) (3), evidence of 501(c) (3) status, a current business license, and copies of any correspondence received from the IRS within the three (3) years preceding the grant application that relates to the organization's tax status (e.g. suspension, revocation, recertification, etc.).

6. Application narrative shall be accompanied by a "Statement of Certification," the Truth of which is attested to by the Executive Director or the Chair of the Board of Directors of the applicant organization, which states:

   a. The individuals, by name, title, address, email, and phone number who are authorized to negotiate with the Office of the Secretary on behalf of the organization;

   b. That the applicant is able to maintain adequate files, records, and can meet all reporting requirements;

c. That all fiscal records are kept in accordance with Generally Accepted Accounting Principles (GAAP) and account for all funds, tangible assets, revenue, and expenditure; that all fiscal records are accurate, complete and current at all times; and that these records will be made available for audit and inspection as required;

d. That the applicant is current on payment of all federal and District taxes, including Unemployment Insurance taxes and Workers' Compensation premiums. This statement of certification shall be accompanied by a certificate from the District of Columbia Office of Tax and Revenue (OTR) stating that the entity has complied with the filing requirements of District of Columbia tax laws and has paid taxes due to the District of Columbia or is in compliance with any payment agreement with OTR;

e. That the applicant has the demonstrated administrative and financial capability to provide and manage the proposed services and ensure an adequate administrative, performance and audit trail;

f. That the applicant is not proposed for debarment or presently debarred, suspended, or declared ineligible, as required by Executive Order 12549, "Debarment and Suspension," and implemented by 2 CFR 180, for prospective participants in primary covered transactions and is not proposed debarment or presently debarred as a result of any actions by the District of Columbia Contract Appeals Board, the Office of Contracting and Procurement, or any other District contract regulating Agency;

g. That the applicant has the necessary organization, experience, accounting and operational controls, and technical skills to implement the program, or the ability to obtain them;

h. That the applicant has the ability to comply with the required performance schedule, taking into consideration all existing and reasonably expected commercial and governmental business commitments;

i. That the applicant has a satisfactory record performing similar activities as detailed in the award;

j. That the applicant has a satisfactory record of integrity and business ethics (Clean Hands Certificate);

k. That the applicant is in compliance with the applicable District licensing and tax laws and regulations (Clean Hands Certificate);

l. That, if the applicant has previously won a similar award from the District of Columbia government, it has submitted all reports due and owing;

m. That the applicant complies with provisions of the Drug-Free Workplace Act;

n. That the applicant meets all other qualifications and eligibility criteria

necessary to receive an award under applicable laws and regulations;

o. The applicant agrees to indemnify, defend, and hold harmless the Government of the District of Columbia and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/ or liability arising out of this grant from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the District on account of any claim therefore, except where such indemnification is prohibited by law; and

p. If any of the organization's officers, partners, principals, members, associates or key employees, within the last three (3) years prior to the date of the application, has:

i. been indicted or had charges brought against them (if still pending) and/or been convicted of (a) any crime or offense arising directly or indirectly from the conduct of the applicant's organization or (b) any crime or offense involving financial misconduct or fraud, or

ii. been the subject of legal proceedings arising directly from the provision of services by the organization. If the response is in the affirmative, the applicant shall fully describe any such indictments, charges, convictions, or legal proceedings (and the status and disposition thereof) and surrounding circumstances in writing and provide documentation of the circumstances.

Timeline

All applications shall be submitted by email to secretary@dc.gov or delivered to the Office of the Secretary, 1350 Pennsylvania Avenue, NW, Suite 419, Washington, DC 20004 no later than Noon on Friday, August 21, 2015. The Office of the Secretary is not responsible for misdirected email or late deliveries.

Terms and Conditions

1. Funding for this award is contingent on the continued funding from the grantor, including possible funding restrictions pursuant to the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341,1342,1349-51, and 1511-1519 (2004); the District Anti-Deficiency Act, D.C. Official Code §§ 1-206.03(e), 47-105, and 47-355.01-355.08 (2001); and Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2014 Repl.). Nothing in this Request for Applications shall create an obligation of the District in anticipation of an appropriation by Congress and/or the Council of the District of Columbia (the "Council") for such purpose as described herein. The District's legal liability for any payment pursuant to this RFA shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and/or the Council, and shall become null and void upon the lawful unavailability of such funds under these or other applicable statutes and regulations.

2. The Office of the Secretary reserves the right to accept or deny any or all applications if the Secretary determines it is in the best interest of the

government to do so. The Secretary shall notify the applicant if it rejects an applicant's proposal. The Secretary may suspend or terminate an outstanding RFA pursuant to the policies set forth in the City-Wide Grants Manual and Sourcebook.

3. The Office of the Secretary reserves the right to issue addenda and/or amendments subsequent to the issuance of the RFA, or to rescind the RFA.

4. The Office of the Secretary shall not be liable for any costs incurred in the preparation of applications in response to the RFA. Applicant agrees that all costs incurred in developing the application are the applicant's sole responsibility.

5. The Office of the Secretary may conduct pre-award on-site visits to verify information submitted in the application and to determine if the applicant's facilities are appropriate for the services intended.

6. The Office of the Secretary may enter into negotiations with an applicant and adopt a firm funding amount or other revision of the applicant's proposal that may result from negotiations.

7. To receive an award, the selected grantee shall provide in writing the name of all of its insurance carriers and the type of insurance provided (e.g., its general liability insurance carrier and automobile insurance carrier, workers' compensation insurance carrier, fidelity bond holder (if applicable)), and, before execution of the award, a copy of the binder or cover sheet of their current policy for any policy that covers activities that might be undertaken in connection with performance of the grant, showing the limits of coverage and endorsements. All policies (except the workers' compensation, errors and omissions, and professional liability policies) that cover activities that might be undertaken in connection with the performance of the grant, shall contain additional endorsements naming the Government of the District of Columbia and its officers, employees, agents and volunteers as additional named insured with respect to liability abilities arising out of the performance of services under the award. The grantee shall require their insurance carrier of the required coverage to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors, and subcontractors.

8. To receive an award, the selected grantee must submit a completed IRS Form W-9 and a banking ACH form from the District of Columbia with the signed Notice of Grant Agreement (NOGA).

9. If there are any conflicts between the terms and conditions of the RFA and any applicable federal or local law or regulation, or any ambiguity related thereto, then the provisions of the applicable law or regulation shall control and it shall be the responsibility of the applicant to ensure compliance.

SECTION V: APPLICATION REVIEW INFORMATION

All proposals will be reviewed by a panel selected by the Secretary of the District of Columbia and may include reviewers from the Executive Office of the Mayor as well as outside reviewers. The ratings awarded each applicant shall be public information and shall be made based on the following criteria:

1. Demonstrated ability to make progress toward increasing nationwide support for DC voting rights and statehood for the District during the grant period: 50%;
2. Specificity and feasibility of proposed activities: 25%;
3. History of effectively supporting democracy and statehood efforts:10%; and
4. Specificity of performance measures:15%.

SECTION VI: AWARD ADMINISTRATION INFORMATION

Grant award(s) will be announced on the Office of the Secretary website no later than 5:00 p.m. on Monday, August 31, 2015. Unsuccessful applicants will be notified by email at the address from which the application was sent (unless otherwise specified) prior to the announcement of the winners. Disbursement of grant funds will occur as soon as practicable following the announcement of the selection of the awardee(s).

Deliverables

Project requirements that must be submitted on or before due dates are:

1. A project plan with detailed expense projections for the amount requested. (Due within 15 calendar days of grant award.)

2. Progress report detailing expenditures to date and summary of work completed shall be included with the final report due December 31, 2015.

3. Expenditure of grant funds before September 30, 2015.

4. A final report provided by the grant recipient(s) no later than December 31, 2015. The close out or final report shall include detailed accounting of all expenditures for each project and summary of work completed under the grant.

SECTION VII: AGENCY CONTACT

All inquiries regarding this Request for Applications should be directed to:

Lauren C. Vaughan
Secretary of the District of Columbia
Office of the Secretary of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 419
Washington, DC 20004
secretary@dc.gov
202-727-6306

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION

NOTICE OF SPECIAL COMMISSION MEETING

The District of Columbia Taxicab Commission will hold a Special Commission Meeting on Wednesday, August 12, 2015 at 10:00 am. The meeting will be held at our new office location: 2235 Shannon Place, SE, Washington, DC 20020, inside the Hearing Room, Suite 2023. Visitors to the building must show identification and pass through the metal detector. Allow ample time to find street parking or to use the pay-to-park lot adjacent to the building.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Commission on any issue of concern; the Commission generally does not answer questions. Statements are limited to five (5) minutes for registered speakers and two (2) minutes for non-registered speakers. To register, please call 202-645-6002 no later than 3:30 pm on August 11, 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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18685 of Polinger, Shannon & Luchs pursuant to 11 DCMR § 3104 for a special exception under § 411.11 of the Zoning Regulations to the requirements of § 411.6, and for a variance under § 3103 from the requirements of § 770.6(d) to permit the installation of solar panels on a commercial office building in the C-3-C District at premises 1200 First Street, N.E. (Square 672, Lot 856).

HEARING DATES: April 8, 2014; May 20, 2014
DECISION DATES: September 9, 2014, November 5, 2014, and December 16, 2014

DECISION AND ORDER

This self-certified application was submitted on October 16, 2013, by Horace Willis, the engineer for the proposed project, on behalf of Polinger, Shannon & Luchs (the "Applicant"), the owner of the property that is the subject of the application. The application requests a special exception under § 411.11 of the Zoning Regulations and a variance from § 770.6(d) to allow the addition of solar panels on the rooftop of a commercial office building in the C-3-C District at 1200 First Street, N.E. (Square 672, Lot 856) (the "Subject Property"). Following a public hearing, the Board of Zoning Adjustment ("Board") voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 17, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 6; Advisory Neighborhood Commission ("ANC") 6C, the ANC in which the subject property is located; and Single Member District/ANC 6C06. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters on October 28, 2013, providing notice of the hearing to the Applicant, ANC 6C, and the owners of all property within 200 feet of the subject property. Notice of the hearing was published in the *D.C. Register* on November 1, 2013 (60 DCR 15221).

Party Status. The Applicant and ANC 6C were automatically parties to this proceeding. No other persons requested party status.

Applicant's Case. The Applicant provided evidence and testimony describing the proposed project - to install solar panels on the rooftop of the commercial office building located on the Subject Property. (Ex. 28.) The Applicant asserted that the application satisfied all the requirements for special exception and variance relief. The Applicant stated that the District Department of the Environment ("DDOE") desired to install the solar panels to demonstrate leadership in energy and environmental design, contribute to the District's renewable portfolio

standard, and support the local clean energy economy. Following the Board's April 8, 2014, hearing on the application, the Applicant submitted revised plans for the installation which decreased the height of the plans originally submitted from 18 feet, six inches to four feet. (Ex. 31.)

OP Report. By memorandum dated December 31, 2013, OP stated that, while supportive of the proposed solar panels in concept, there was insufficient information for OP to address how the panels would meet the criteria for special exception. (Ex. 22.) OP also expressed concern that the panels might not comply with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (26 Stat. 452, D.C. Official Code § 6-601.01 *et seq.*) ("Act"). On March 25, 2014, OP submitted a second report in which it stated that it had consulted with the Zoning Administrator to ensure that the solar panels would comply with the Act and concluded that this would not be an issue. (Ex. 29.) OP recommended approval of the requested special exception and variance relief. With respect to the Applicant's request for relief from enclosure requirements, OP stated that the proposed solar panels must be exposed to sunlight in order to properly function. With respect to the request for a variance from height requirements, OP stated that the size of the mechanical penthouse leaves the minimum required setback from the edges of the building, which are not wide enough to accommodate the proposed solar panels. Further, OP stated that the narrow shape of the building and the resulting narrow penthouse limit the possible locations of the solar panels. Thus, OP stated, the most viable options for positioning the panels is either on top of the penthouse or to the south of it. Therefore, OP found an exceptional situation prohibiting DDOE from complying with its mission and Sustainable DC Plan and exhibiting leadership by demonstrating the use of solar technology in a commercial setting. Further, OP stated that, because the panels would meet setback requirements, they would not be visible from the street and would cause neither substantial detriment to the public good nor substantial harm to the Zoning Regulations.

DDOT Report. By memorandum dated December 11, 2013, DDOT indicated no objection to approval of the special exception and variance. (Ex. 21.)

ANC Report. By letter dated May 20, 2014, ANC 6C indicated that it discussed the application at its regularly scheduled, properly noticed meeting on May 14, 2014, and with a quorum present, voted 6-0-0 to place the application on the consent calendar. (Ex. 32.) The ANC stated that this indicated full support for the application.

Persons in support. A representative of DDOE, a tenant of the Subject Property, testified in support of the application at the April 8, 2014, hearing.

FINDINGS OF FACT

1. The Subject Property is a rectangular lot located on the west side of the street at 1200 First

Street, N.E., between Patterson Street, N.E. and M Street, N.E. (Square 672, Lot 856).[1]

2. The Subject Property is zoned C-3-C. The surrounding area contains a mix of office, residential, hotel, and retail uses.

3. The Subject Property is improved with a 12-story commercial office building ("Subject Building"). The Subject Building is 130 feet in height and has a mechanical penthouse that is an additional 18 feet in height.

4. The Subject Property is relatively long and narrow and therefore the office building improvement is similarly long and narrow.

5. The size and shape of the lot results in a mechanical penthouse that occupies much of the roof area of the building.

6. DDOE, which is a tenant of the Subject Building, desires to install two solar panels on top of the Subject Building's mechanical penthouse and a third, smaller panel on the roof to the south of the penthouse.

7. The Applicant initially proposed to install the solar panels to stand at a height of approximately 18 feet, six inches above the penthouse roof. In its Prehearing Statement, the Applicant proposed a plan for panels with a reduced height ranging from seven to eight feet. Following the Board's April 8, 2014 hearing on the application, the Applicant submitted a Supplemental Filing, offering to further reduce the height of the panels to four feet by reducing the degree of tilt at which the panels would stand.

8. Reducing the panels' height from seven feet to four feet requires adjusting the degree of the panels' tilt from 15 percent to five percent. This reduces the energy generated by the panels by 4,263 kilowatt hours ("kWh") annually, from 67,880 kWh to 63,617 kWh.

9. The panels are to be mounted on an aluminum space frame lattice structure anchored to the concrete penthouse roof. The alternative mounting structure — a ballasted panel array system — would not be as tall as the space frame structure, but its weight would compromise the penthouse roof's structural integrity.

10. Under § 411.6 of the Zoning Regulations, rooftop mechanical equipment must be fully enclosed. Because the solar panels would be installed on top of and to the south of the penthouse, relief under § 411.11 is required.

11. Solar panels must be exposed in order to properly function. Enclosing the panels would block sunlight exposure and render the panels inoperative.

[1] The initial application identified the Subject Property as Lot 849. However, in its Supplemental Filing, the Applicant stated that the Subject Property is actually Lot 856. (Exhibit 28 at 1, n.1.)

12. Subsection 770.6(d) limits the height of mechanical equipment penthouses to 18 feet, six inches above the roof upon which it is located and, further, prohibits mechanical equipment from extending above this height. Because the solar panels would exceed the permitted height, a variance is required.

13. DDOE desires to install the solar panels to further its mission to promote environmental sustainability in the District. The installed panels would demonstrate its leadership in energy and Environmental design, contribute to the District of Columbia's Renewable Portfolio Standard solar carve-out, and support DC-based green jobs in the local clean energy economy.

14. The solar panel installation is a pilot program for the retrofit of a commercial green roof with solar panels as well as a pilot program for the permitting, interconnection, and installation of solar panels on a building of this size and height. The panels also will serve as a practical and interactive educational tool.

15. The Subject Building's mechanical penthouse occupies much of the roof. Because of the height of the penthouse, the available open areas to the north, west, and east of it have limited sun exposure, thus inhibiting the functionality of any solar panels installed in those areas. The only remaining workable space to locate solar panels would be either in the limited area to the south of the penthouse or on top of it.

16. Pursuant to § 400.7 (b), the penthouse including the panels would be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located and therefore the panels would have a minimal visual impact.

17. This neighborhood is densely developed with distinctively designed taller structures, ensuring that the proposed solar panels are not a feature of the building.

18. The C-3 District is designed to accommodate major business and employment centers supplementary to the Central Business (C-4) District. (11 DCMR § 740.1.) C-3 Districts provide substantial amounts of employment, housing, and mixed uses and permit medium-high density development, including office, retail housing, and mixed-use development, and they shall be compact in area. (*Id.* § 740.2, § 740.8.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests a special exception under § 411.11 of the Zoning Regulations and an area variance under § 3103 to mount solar panels on the roof of a penthouse roof structure on the Subject Building. The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, where it will be in harmony with the general purpose and intent of the Zoning

Regulations and Map and will not tend to affect adversely the use of neighboring property, subject to specific conditions. (D.C. Official Code § 6-641.07(g)(2); *see also* 11 DCMR § 3104.1.) Section 8 of the Zoning Act also authorizes the Board to grant variances from the Zoning Regulations in the following circumstances:

> where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any [zoning] regulation . . . would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property . . . provided [variance] 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 . . . .

(11 DCMR § 3103.2; *see also* D.C. Official Code § 6-641.07(g)(3).)

Variances are classified as area variances or use variances. (11 DCMR § 3103.3.) An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located. (*Id.* § 3103.4.) The Applicant seeks an area variance because it requests a deviation from the "[r]equirements that affect the size, location, and placement of buildings and other structures such as height . . . ." (*Id.* § 3103.5(a).)

The proposed solar panel installation does not meet § 411.6 of the Zoning Regulations, which requires that rooftop mechanical equipment be fully enclosed. Accordingly, the Applicant seeks a special exception under § 411.11. The proposed installation also exceeds the height permitted for mechanical equipment under § 770.6(d). Thus, the Applicant seeks an area variance from this requirement. The Board addresses each form of relief in turn and finds that the Applicant has met its burden under both standards.

Special Exception Under § 411.11.

Section 411 of the Zoning Regulations provides regulations governing roof structures. Pursuant to § 411.11 the Board may grant special exception relief from several of the requirements including the requirement of § 411.6 that rooftop mechanical equipment be fully enclosed. Subsection 411.11 allows the Board to grant such special exception relief when compliance would be "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable . . . ." In granting relief under § 411.11, the Board must ensure that the intent and purpose of the Zoning Regulations are not materially impaired by the structure and that the light and air of adjacent buildings are not adversely affected. (11 DCMR § 411.11.)

The Board finds that requiring full compliance with § 411.6 would be unduly restrictive and unreasonable. Solar panels require exposure to sunlight in order to function. Enclosing the proposed solar panels would block sunlight exposure and render the panels inoperable, thus defeating the purpose of the installation.

Granting the relief will not materially impair the intent and purpose of Zoning Regulations or adversely affect the light and air of adjacent buildings. The penthouse and the panels meet the 1:1 setback requirement of 400.7 (b) thereby reducing the visual impact of the structure. The neighborhood is densely developed with distinctively designed taller structures, ensuring that the proposed solar panels are not a feature of the building. Finally, the solar panels on top of the mechanical penthouse would only be slightly taller than adjacent buildings and therefore would have negligible impact on light and air.

Area Variance.

The District of Columbia Court of Appeals has read the Zoning Act and Regulations to impose a three-part test for granting an area variance. The Applicant "must show that (1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan." *Fleischman v. D.C. Bd. of Zoning Adjustment*, 27 A.3d 554, 560 (D.C. 2011) (quoting *Wash. Canoe Club v. D.C. Zoning Comm'n*, 779 A.2d 995, 1000 (D.C. 2005)).

A. Exceptional Situation or Condition.

The Board finds that the installation of the solar panels is needed to permit DDOE to carry out its mission to promote environmental sustainability in the District. As noted in the findings of facts, the installation of the solar panels is a pilot program for the retrofit of a commercial green roof with solar panels as well as a pilot program for the permitting, interconnection, and installation of solar panels on a building of this size and height. The panels also will serve as a practical and interactive educational tool.

The District of Columbia Court of Appeals has recognized that the needs of a public service use can constitute an exceptional situation.

> [W]hen a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same site, then the Board of Zoning Adjustment does not err in considering the needs of the organization as possible "other extraordinary and exceptional situation or condition of a particular piece of property."

Monaco v. District of Columbia Board of Zoning Adjustment, 407 A.2d 1091, 1099 (D.C. 1979).

The Court of Appeals later noted that:

> The need to expand does not, however, automatically exempt a public service organization from all zoning requirements. Where a public service organization applies for an area variance in accordance with *Monaco*, it must show (1) that the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options, and (2) precisely how the needed design features require the specific variance sought.

*Draude v. District of Columbia Bd. of Zoning Adjustmen*t, 527 A.2d 1242, 1256 (D.C. 1987).

This principle logically extends to the circumstance here, where DDOE happens to be the tenant of a building that because of its size, height, and green roof is particularly suitable to serve as a test case for the installation of solar panels on an existing building. Further, it will allow DDOE to use the solar as an educational tool. There are no other DDOE facilities that allow for this unique opportunity. The fact that DDOE is a tenant, and not the owner, of the Subject Property does not alter this analysis.

B. Practical Difficulties.

Compliance with the height limitation would result in a practical difficulty. Due to the size and height of the mechanical penthouse, the only workable space for a solar installation around the penthouse is to the south of it, where there is only room for a smaller panel. The only place left to install the two larger panels proposed by the Applicant is on top of the penthouse. Absent variance relief, the Applicant would be restricted to installing only one smaller solar panel to the south of the mechanical penthouse. The Board finds this restriction to be unnecessarily burdensome in this case.

Further, the Applicant has made a concerted effort to lower the height of the proposed installation by reducing the tilt of the panels, thereby reducing the severity of the variance requested. The Applicant originally proposed to install panels with a height of 18 feet, six inches, but revised its plan to install the panels at a height of four feet, which reduced the amount of energy the panels will generate. Requiring a further reduction in height would be unnecessarily burdensome in this case and would further reduce the amount of energy the panels would generate. The Board does not believe further height reduction is possible through the use of a ballasted panel array system. The Board accepts the conclusion of the project's engineer that the weight of the ballasted system would compromise the structural integrity of the penthouse roof.

C. Effect on the Public Good and the Zone Plan.

Lastly, the proposed project will have no substantial detrimental effect on the public good, nor will it substantially impair the intent, purpose, and integrity of the zone plan. As stated above, the proposed solar panels will comply with setback requirements and are only slightly higher

than the existing penthouse, thereby resulting in minimal impact on adjacent properties. Further, the installation will not impair the purpose of the C-3-C District to accommodate major business and employment centers in a medium-high density context.

Great Weight.

In deciding to grant or deny an application for zoning relief, the Board must give "great weight" to the issues and concerns that the affected ANC raises in its written report, as required by § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)). Here, ANC 6C indicated full support for the proposed solar panel installation and the Board finds that advice to be persuasive under the circumstances.

The Board is also required to give "great weight" to OP's recommendation regarding the application. (D.C. Official Code § 6-623.04.) The Board must demonstrate in its findings that it considered OP's views and must provide a reasoned basis for any disagreement with it. *Glenbrook Rd. Ass'n v. D.C. Bd. of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992) (internal citation omitted). In this case, OP recommended approval of the requested special exception and variance relief in its Second Report. For the reasons stated above, the Board agrees with OP's recommendation.

For all these reasons, the Board finds that the Applicant has satisfied the requirements for a special exception under § 411.11 and a variance from § 770.6(d) of the Zoning Regulations.

Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 28, AS MODIFIED BY EXHIBIT 31**.

VOTE: **3-0-2** (Lloyd J. Jordan, S. Kathryn Allen, Marnique Y. Heath to Approve; Peter G. May, Jeffrey L. Hinkle to Deny.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: July 23, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE

WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18790 of Jefferson - 11th Street LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under § 401, and a variance from the off-street parking requirements under § 2101.1, to add eight apartment units to an existing 25-unit apartment house in the R-4 District at premises 2724 11th Street, N.W. (Square 2859, Lot 89).[1]

HEARING DATES: July 8, 2014, July 22, 2014, October 21, 2014, and November 18, 2014
DECISION DATE: January 13, 2015

DECISION AND ORDER

This self-certified application was submitted on April 24, 2014 by Jefferson-11th Street LLC (the "Applicant"), the owner of the property that is the subject of the application. The application requested variances from the minimum lot area requirement under § 401.11 and the parking requirements of § 2101.1 of the Zoning Regulations to allow the addition of eight dwelling units to an existing 25-unit apartment house, with no enlargement of the building, in the R-4 District at 2724 11th Street, N.W. (Square 2859, Lot 89).[2] Following a public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 25, 2014, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 1; Advisory Neighborhood Commission ("ANC") 1B, the ANC in which the subject property is located; and Single Member District/ANC 1B09. Pursuant to 11 DCMR § 3112.14, the Office of Zoning

[1] This caption has been revised to reflect the Applicant's amended request for relief. The application originally indicated that the building currently contains 24 apartments and sought a variance from the lot area requirements under § 401 to add 11 new apartment units to the basement level of the building, for a total of 35 apartments. The application was subsequently revised to indicate that the building now contains 25 apartments, and to reduce the proposed number of new apartments in the basement level to eight, for a total of 33 apartments. Finally, the Applicant proposed to add nine units to the basement level and to combine two existing units into one, for a net increase of eight units from the current number of 25 units, for a total of 33 apartments. The lower number of dwelling units also reduced the minimum parking requirement to three spaces, instead of four as initially proposed.

[2] The Applicant initially sought variance relief from § 401.3, which requires at least 900 square feet of lot area per apartment in the case of the conversion of a building in an R-4 zone to an apartment house. The Applicant subsequently clarified that the applicable provision in this case is § 401.11, which provides that an apartment house in an R-4 district, whether created through conversion or existing before May 12, 1958, "may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each new dwelling, both existing and new."

published notice of the hearing on the application in the *District of Columbia Register*,[3] and on May 2, 2014 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 1B, and the owners of all property within 200 feet of the subject property.

Party Status. The Applicant and ANC 1B were automatically parties in this proceeding. There were no requests for party status in this proceeding.

Applicant's Case. The Applicant provided evidence and testimony from Jennifer Parker, representing the owner of the subject property; Stanley Ford, an agent for the Applicant; and Michael Alan Finn, an architect. The Applicant described plans to add additional dwelling units in the lower level of the existing building, and asserted that the new market-rate apartments were necessary to finance the renovation of the building and would subsidize the sustainability of the affordable units on the upper floors.

OP Report. By memorandum dated November 10, 2014, the Office of Planning recommended approval of the application.[4] (Exhibit 28.)

DDOT. By memorandum dated July 1, 2014, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 24.)

ANC Report. ANC 1B did not submit a report in this proceeding.

Person in support. James Turner, the chairman of ANC 1B and commissioner for 1B09 (the single-member district where the subject property is located), testified that the Applicant's building is old and has not been adequately maintained. He stressed the need for renovation of the property, preferably with an increase in the number of affordable units. Mark Ranslem, also a member of ANC 1B as commissioner for 1B08, the abutting single-member district, testified about concern for the well-being of the tenants currently living at the subject property and described the Applicant's proposal as the best solution to renovate the building. The Board also received a letter in support of the application from the owner and resident of a property in the 1100 block of Girard Street that abuts the subject property. The letter stated that the addition of apartments in the building's lower level would assist in the renovation and maintenance of the building while improving living conditions for the current tenants, without creating "any significant negative impacts" for the surrounding neighborhood. (Exhibit 27.)

Persons in opposition. The Board heard testimony in opposition to the application from persons, including some current residents of the building, who cited poor conditions in and around the building presently and challenged whether the additional units were needed to pay for the planned renovation. The Board also received letters in opposition to the application, which

[3] The public hearing was initially scheduled on July 8, 2014 but was postponed, first to July 22, 2014, then to October 21, 2014, and finally to November 18, 2014 at the Applicant's request.

[4] The Office of Planning report describes the application as a request to increase the number of units from 25 to 33; i.e. the Applicant's proposal as finally amended.

generally cited the poor condition of the building for tenants as well as concerns about density, access to a public alley, trash, and vermin affecting neighboring residents, and stated that the addition of dwelling units at the subject property, and the related parking variance relief, would not be in the best interests of the community.

FINDINGS OF FACT

The Subject Property

1. The subject property is located at the southwest corner of 11th Street and Girard Street, N.W. (Square 2859, Lot 89). The rectangular lot has approximately 142 feet of frontage on 11th Street (on the east) and approximately 86 feet on Girard Street (on the north), providing a lot area of 12,209 square feet. A public alley 16 feet wide abuts the south property line.

2. The subject property is improved with a two-story building that has been devoted to apartment house use since it was built in 1923. The building entrance is on 11th Street. Its existing configuration provides 25 dwelling units, 12 on the first floor and 13 on the second floor. The basement level has been used for mechanical equipment, and for a time contained a small caretaker's unit.[5]

3. The Applicant has owned the subject property since 2006. The Applicant is owned and managed by a family-owned company, Hartford E. Bealer Development Company, which has owned the subject property for more than 50 years.

4. The building is currently in poor condition and in need of renovation, although the Applicant disputed allegations of housing code violations and submitted an inspection certificate, issued on May 29, 2014 by the Department of Consumer and Regulatory Affairs, in support of its contention that the building complies with applicable building code requirements.

5. The neighborhood in the vicinity of the subject property is moderate-density residential in character. Much of Square 2859 and the area across 11th Street from the subject property are improved with row dwellings, with some small commercial uses also located there. A public school is located on a large lot on Girard Street directly north of the subject property.

The Applicant's Project

6. The Applicant proposed to increase the number of apartments in the building at the subject property by converting the basement into nine new residential units similar in

[5] The application designates the lower level of the building variously as a basement or a cellar. This Order refers to the space as a "basement," consistent with the initial application (Exhibit 1) and the surveyor's plat (Exhibit 3) submitted into the record by the Applicant.

configuration to the existing layout of apartments on the first and second floors, and to combine two of the existing units into one apartment, for a net increase of eight dwelling units. The conversion project would not enlarge the building but would increase the total number of units to 33.

7. The Applicant planned a new curb cut on Girard Street to provide access to five new parking spaces that would be located on the northern portion of the property between the building and Girard Street. Alternatively, in the event that the curb cut application was not approved, the Applicant requested variance relief from the off-street parking requirement. A minimum of three spaces would be required for the addition of eight apartments at the subject property.

8. The Applicant's renovation project would include work "necessary or recommended for the structural maintenance" of the building as well as measures to provide direct access from the street for five of the new basement units, with patio spaces in front of those entrances; the relocation of trash storage from an outdoor spot at the rear of the property into the building in a sealed room on the basement level; and changes to the exterior appearance of the building. (Exhibit 26.)

9. At present the subject property provides 488 square feet per dwelling unit (the lot area of 12,209 square feet divided by 25 apartments). The Applicant's proposal to create eight additional apartments would reduce the lot area per unit to 370 square feet (lot area divided by 33 existing and new apartments). Pursuant to § 401.11, renovation or expansion of the Applicant's building so as to increase the number of dwelling units would require at least 900 square feet of lot area for each dwelling, both existing and new. Accordingly, use of the building as an apartment house with 33 dwelling units would require a lot area of at least 29,700 square feet. The Applicant's proposal to increase the number of dwelling units to 33 on the existing lot area of 12,209 square feet creates the need for a variance of 17,491 square feet, approximately 59%, from the minimum requirement of 900 square feet per unit.

Harmony with Zoning

10. The subject property is located in the R-4 District, which is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) Because its "primary purpose" is "the stabilization of remaining one-family dwellings," the R-4 zone is not intended to become an apartment house district as contemplated in the General Residence (R-5) zones.

11. In the R-4 zone, the conversion of existing structures into multi-family housing is "controlled by a minimum lot area per family requirement." (11 DCMR §§ 330.2, 330.3.) The same minimum lot area requirement also restricts the renovation or enlargement of any apartment house, including those predating the Zoning Regulations,

in a manner that would "increase the number of dwelling units unless there are 900 square feet of lot area for each new dwelling, both existing and new." (11 DCMR § 401.11.)

12. Properties in the vicinity of the subject property are also zoned R-4.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a parking variance and an area variance from the minimum lot area requirement under § 401.11 of the Zoning Regulations to allow the renovation of an apartment house so as to increase the number of dwelling units from 25 to 33, with less than 900 square feet of lot area for each dwelling unit, both existing and new, in the R-4 District at 2724 11th Street, N.W. (Square 2859, Lot 89). The Board is authorized under § 8 of the Zoning Act to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. (*See* 11 DCMR § 3103.2.)

Based on the findings of fact, the Board concludes that the application does not satisfy the requirements for variance relief from the minimum lot area requirement of § 401.11 in accordance with § 3103.2. The Board does not find that the subject property is faced with an exceptional situation or condition, or that the strict application of the Zoning Regulations would create a practical difficulty to the Applicant as the owner of the property. The subject property is rectangular in shape, without significant changes in grade. The lot is significantly larger than most nearby lots, with the exception of the parcel directly to the north that is improved with a school, but its size reflects its use as an apartment house since before the Zoning Regulations went into effect. The Board does not find that the age of the building in itself creates an exceptional situation that would warrant variance relief, nor does its dilapidated condition, especially considering that the Applicant has owned the property for almost a decade.

The Applicant contended that the building was "at the end of its useful life in its current state" (Tr. of Nov. 18, 2014 at 96) and that the strict application of the Zoning Regulations would create practical difficulties in limiting the options for redevelopment of the property. The Office of Planning agreed, and also cited the underutilized nature of the basement at present. The Board makes no findings with respect to the Applicant's perceived lack of redevelopment options, but notes that the Zoning Regulations do not preclude the continued use of the subject property as an apartment house with 25 units, a legal nonconforming use. Nor did the Applicant demonstrate that the basement level could not be utilized in any manner consistent with the existing apartment house use.

As the Applicant noted, the building has been used as an apartment house since its construction and was not originally subject to the minimum lot area requirement. However, the Zoning Regulations now require at least 900 square feet of lot area per unit when, as here, an apartment house in the R-4 District would be renovated in a manner that would increase the number of dwelling units, and that minimum applies to all units, both existing and new. Apartment house use is discouraged in the R-4 zone, and the Zoning Regulations limit both conversions of buildings to apartment house use and increases in the number of units in older apartment houses. The Applicant's property already contains more units than would be permitted under the current regulations through a conversion of the building from some other use. Especially considering the financial data submitted by the Applicant, the Board was not persuaded by the Applicant's contention that the net increase of eight additional dwelling units in the building is necessary to finance the renovation of the structure and to subsidize the existing units on the upper floors. The Board does not credit the Applicant's assertions that rent control has created the need for a variance from the minimum lot area requirement of the Zoning Regulations in order to pay for the renovation of the building and to create a subsidy to maintain the existing units. The financial information submitted by the Applicant did not demonstrate the Applicant's assertion that "any comprehensive renovation is simply not economically feasible" without the "market-based revenue stream" from the additional units. (Exhibit 26.)

The Applicant and the Office of Planning both asserted that the requested variance relief could be granted without substantial detriment to the public good. The Board notes that the Applicant's proposal would not increase the size of the existing building but was intended to enhance the property through measures such as the planned renovation of existing apartments, creation of an interior room to store trash inside the building, and landscaping improvements. However, the Applicant could undertake all the projected improvements without variance relief, since the Zoning Regulations would not prevent any of the measures described by the Applicant to improve the existing building. The proposed increase in the number of apartments could diminish the public good, however, as the Board heard testimony from persons in opposition to the application who stated concerns about density, access to the public alley adjoining the subject property, trash, and vermin affecting neighboring residents. The Applicant acknowledged that most properties in the vicinity of the subject property are much smaller lots, while the Office of Planning described the surrounding neighborhood character as moderate density residential. The Applicant's proposal would add eight new apartments to an already anomalous apartment house with more than 20 units already, furthering its distinction as a multi-family building in a neighborhood of lower density residential uses.

The Applicant and the Office of Planning also asserted that the requested variance relief could be granted without substantially impairing the intent, purpose, and integrity of the zone plan. The Board does not agree, especially considering the significant degree of variance relief requested by the Applicant. New apartment houses are not permitted as a matter of right in the R-4 District, and limits on the renovation or expansion of existing apartment houses, in a manner that would increase the number of units, were implemented in the R-4 District as a means of regulating the proliferation of large multi-family dwellings in a district whose purpose is the stabilization of remaining one-family dwellings. The Applicant has not demonstrated the need

for variance relief sufficient to allow such a substantial decrease in the minimum lot area requirement as would be necessary to create any additional units in an apartment house that presently contains many more units than would be permitted by strict compliance with the minimum lot area requirement. Approval of a variance from the minimum lot area requirement, without a showing of an exceptional situation of a specific property and practical difficulty upon the owner as the result of the strict application of the Zoning Regulations, would substantially impair the purpose and intent of the R-4 Zone District.

In light of the Board's decision to deny the requested variance from the minimum lot area requirement, the Board dismisses the Applicant's request for a parking variance as moot. The parking variance was necessary only in conjunction with an increase in the number of apartments at the subject property, which would have created a need for off-street parking in accordance with chapter 21 of the Zoning Regulations

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board does not find OP's recommendation persuasive.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)). The affected ANC did not participate in this proceeding, and thus did not raise any issues or concerns.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for a parking variance and an area variance from the minimum lot area requirement under § 401.11 of the Zoning Regulations to allow the addition of eight dwelling units to a 25-unit apartment house in the R-4 District at 2724 11th Street, N.W. (Square 2859, Lot 89). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: **4-0-1** (Anthony J. Hood, Lloyd J. Jordan, S. Kathryn Allen, and Marnique Y. Heath to Deny; Jeffrey L. Hinkle not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved the issuance of this order.

FINAL DATE OF ORDER: July 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18987 of Pierce Investments LLC, as amended,[1] pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio requirements under § 771 and the rear yard requirements under § 774, to allow the construction of a five-story multi-family building containing 46 units in the C-2-A District at premises 1124 Florida Avenue N.E. (Square 4070, Lot 808).

HEARING DATE: June 9, 2015[2]
DECISION DATES: June 16 and July 14, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.) The zoning relief requested was subsequently amended, based on revised plans filed by the Applicant. (Exhibits 32 and 38A.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5D, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. On July 7, 2015, four ANC 5D Commissioners submitted a letter indicating that, on July 2, 2015, the ANC held a special meeting at which the Applicant presented revised plans and the four Commissioners voted to support the project, as revised. The letter also indicated that the Commissioners submitted this confirmation of their vote in an abundance of caution and based on the understanding that the ANC 5D Chair had not submitted the official ANC resolution to the Board.[3] (Exhibit 38C.)

[1] In addition to the relief captioned above, the Applicant's original application requested a variance from the height requirements of § 770 and the loading requirements on § 2201. The Applicant removed the request for a loading variance in Exhibit 32 by reducing the number of units from 52 to 44. The Applicant further amended the application in Exhibit 38 to remove height variance request, based on the revised plans. The revised plans in Exhibits 38A and 38B also reduce the amount of rear yard and FAR relief requested. At the public hearing on June 9, 2015, the Applicant's testimony indicated that there are 46 units. The caption has been revised accordingly.

[2] The hearing was originally scheduled for April 28, 2015, and postponed to June 9, 2015 at the Applicant's request.

[3] Because this filing did not meet several of the regulatory requirements of 11 DCMR § 3115.1, it did not constitute a formal ANC report to which the Board would give "great weight." Nonetheless, the Board considered the ANC's support in its deliberations and in its decision to approve the relief requested.

The Office of Planning ("OP") submitted a timely report on June 2, 2015, recommending denial of the variances for height and floor area ratio ("FAR"), but expressed no opposition to the rear yard variance. (Exhibit 33.) OP testified at the public hearing, reiterating its support of the rear yard variance, but noting that it does not find a uniqueness that creates a practical difficulty as it related to the height and FAR variances. The District Department of Transportation ("DDOT") submitted a timely report on June 2, 2015, indicating that it had no objection to the Applicant's requests for variance relief. (Exhibit 34.) DDOT also testified in support at the public hearing.

At the public hearing, a nearby resident, Karen Ramsey, testified in opposition, noting that community members raised concerns regarding parking, remediation, and lack of notice for the community meetings. Ms. Ramsey also noted that, at prior community meetings, there was strong opposition to granting height and FAR variances. One nearby resident submitted a letter in opposition. (Exhibit 30.) The homeowner to the east of the property submitted a letter in support. (Exhibit 37.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the floor area ratio requirements under § 771 and the rear yard requirements under § 774. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from floor area ratio requirements under § 771 and the rear yard requirements under § 774, the Applicant has met the burden of proving under § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 38A AND 38B.**

BZA APPLICATION NO. 18987
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VOTE: **3-1-1** (Jeffrey L. Hinkle, Marnique Y. Heath (by absentee ballot), and Robert E. Miller (by absentee ballot) to Approve; Lloyd J. Jordan to Deny;[4] one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: July 23, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL

[4] At the public meeting on July 14, 2015, Member Hinkle made a motion to approve the application, which Chairman Jordan seconded in order to move the motion forward, as no other members participating on the case were present at the public meeting. For once the motion was seconded and a vote was taken, Chairman Jordan voted to oppose the application.

APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19026 of 1300 H Street NE LLC, as amended,[1] pursuant to 11 DCMR §§ 3103.2 and 3104.1 for a variance from the off-street parking requirements under § 2101.1 and special exceptions from the H Street Neighborhood Commercial Overlay requirements under 11 DCMR §§ 1320.4(f), 1324.1 and 1325.1, to construct a new four-story mixed-use building with ground floor retail containing 36 residential dwelling units in the HS-A/C-2-A District at premises 1300 H Street, N.E. (Square 1026, Lots 97 - 103).

HEARING DATE: July 7, 2015
DECISION DATE: July 7, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 14.) The zoning relief requested was subsequently amended, based on revised plans filed by the Applicant. (Exhibit 29.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC submitted a report indicating that at its regularly scheduled and properly noticed public meeting of June 11, 2015, at which a quorum was in attendance, ANC 6A voted 6-0 to support the application, with two conditions. (Exhibit 29J.) The ANC's letter noted that the ANC supports the off-street parking variance only on the condition that: (i) a covenant be recorded in the Land Records of the District of Columbia requiring that each lease or contract for sale of a residential unit prohibit the tenant or owner of the unit from obtaining a residential parking permit ("RPP"), and (ii) the Applicant for all purposes treat the building as fronting on H Street, N.E., including assigning or causing the District to assign an H Street, N.E.

[1] The Applicant's original application requested a special exception from the roof structure requirements of 11 DCMR §§ 411.5 and 770.6 to provide a roof structure with enclosing walls of unequal heights. In its prehearing statement (Exhibit 29), the Applicant withdrew the special exception request for the roof structure relief and provided revised architectural drawings (Exhibit 29C) that show roof structure that does not require zoning relief. The caption has been revised accordingly.

address to the building and each of its units. The Board accepted the first condition, requiring the Applicant to record the RPP restriction as a covenant against the property in the Land Records of the District of Columbia. The Board did not adopt the second proffered condition, opining that it was outside of the Board's jurisdiction.

The Office of Planning ("OP") submitted a timely report on June 29, 2015, recommending approval of the application, (Exhibit 30,) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report on June 30, 2015, indicating that it had no objection to the Applicant's requests for variance and special exception relief, provided that the Applicant modify its transportation demand management ("TDM") proffer regarding non-auto transportation incentives. (Exhibit 31.) The Board adopted the recommendation made by DDOT, as reflected in Condition No. 2 of this order.

At the public hearing, a nearby resident, Claude Labbe, testified in opposition, raising concerns about off-street parking in the neighborhood. Mr. Labbe also expressed general support of the development of the property. The Board acknowledged the validity of these parking concerns, but noted that the TDM measures adopted as conditions are intended to address and mitigate potential impacts.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the off-street parking requirements under § 2101.1. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 2101.1, the Applicant has met the burden of proving under § 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.

Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions from 1320.4(f), 1324.1 and 1325.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 1320.4(f), 1324.1 and 1325.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 29C, AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide 27 long-term bicycle parking spaces and provide a bicycle repair facility in the secure long-term bicycle parking storage room.

2. The Applicant shall provide one of the following non-auto transportation incentives annually for the first five years that the building is open to each new resident and each new retail employee. If the building is developed as a rental building, the incentive shall be provided to all lessees. If the building is developed as a condominium, the Applicant or homeowners' association shall offer to each new purchaser of a unit the incentive annually:

    a. $100.00 SmarTrip card,
    b. Annual Capital Bikeshare membership, or
    c. Annual car-share membership.

3. The Applicant shall provide information on carpool matching services.

4. The Applicant shall provide a non-auto transportation guide that will include comprehensive transportation information promoting walking, cycling, and transit, and links to CommuterConnections.com and goDCgo.com.

5. The Applicant shall prohibit owners and/or tenants from obtaining a Residential Parking Pass ("RPP") or a Visitor Parking Pass ("VPP") from the District Department of Motor Vehicles. If the units are offered for-sale, a provision in the condominium declaration and a non-amendable provision of the bylaws shall include consent and authorization to the Condominium Board to police and enforce this prohibition for the life of the project. If the units are offered for lease, a provision in the lease of each residential unit shall be included. The restriction will be recorded as a covenant against the property in the Land Records of the District of Columbia prohibiting any owner or lessee of the property from obtaining an RPP or VPP for the life of the project.

VOTE: 4-0-1 (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: July 15, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

BZA APPLICATION NO. 19026
PAGE NO. 5

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19030 of Raul Falconi , as amended[1], pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the minimum lot area and width requirements under § 401, the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, to allow the expansion of a third-story to convert an existing three-story, one-family dwelling into a flat in the R-4 District at premises 1826 12th Street, N.W. (Square 275, Lot 51).

HEARING DATE: Applicant waived right to a public hearing
DECISION DATE: July 21, 2015 (Expedited Review Calendar).

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 6 (original) and 26 (revised).)

Pursuant to 11 DCMR § 3118, this application was tentatively placed on the Board of Zoning Adjustment ("Board") expedited review calendar for decision without hearing as a result of the applicant's waiver of its right to a hearing. (Exhibit 2.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC did not submit a report

[1]The Applicant initially filed for a special exception relief under § 223, not meeting the minimum lot area and width requirements under § 401, the rear yard requirements under § 404.1, and the open court requirements under § 406.1. (Exhibit 1.) At the hearing, based on a recommendation by the Office of Planning, the Board amended the application by adding relief from the lot occupancy requirements under § 403.2 and the nonconforming structure requirements under § 2001.3. On July 20, 2015, the Applicant filed a revised Self-Certification form to reflect OP's recommendation. (Exhibit 26.) The caption has been changed accordingly.

to this application; however, the Applicant submitted the minutes from the ANC's meeting of March 10, 2015, indicating that the ANC voted unanimously to support the application (Exhibit 23D.) A letter was filed by an adjacent neighbor in support of the application. (Exhibit 23A.)

The Office of Planning ("OP") submitted a timely report in support of the application. OP's report indicated that it recommended approval of special exception relief pursuant to § 223 for § 403, Lot Occupancy (60% maximum, 89% existing, 67% proposed) and § 2001.3, Additions to Non-conforming Structures (Must conform to lot occupancy; does not conform to lot occupancy).[2] (Exhibit 25.) The District Department of Transportation ("DDOT") submitted a report expressing no objection to the approval of the application. (Exhibit 24.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by §§ 2118.6 and 2118.7. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223, 401, 403.2, 404.1, 406.1, and 2001.3. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 401, 403.2, 404.1, 406.1, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 11.**

VOTE: **4-0-1** (Lloyd J. Jordan**,** Marnique Y. Heath, Jeffrey L. Hinkle**,** and Robert E. Miller to APPROVE; Frederick L. Hill not present, not voting).

[2] The application was amended to incorporate these areas of relief based on OP's recommendation.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: July 24, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC

INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION

WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19036 of Jeanette M. Corley, as amended,[1] pursuant to 11 DCMR § 3104.1, for a special exception from the accessory use requirements under § 202.10,[2] to allow an accessory apartment in the R-3 District at premises 17 Franklin Street, N.E. (Square 3501, Lot 103).

HEARING DATE: July 14, 2015
DECISION DATE: July 14, 2015

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR[3]

The application was accompanied by a memorandum from the Zoning Administrator ("ZA") certifying the required relief, as amended. (Revised ZA's Memo at Exhibit 30.)[4]

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 5E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. ANC 5E submitted a report noting that on June 16, 2015, at a duly noticed meeting with a quorum present, it voted 9 to 0 in support of the application. (Exhibit 17.) The Office of Planning ("OP") also submitted a report in support of the application. (Exhibit 27.) The D.C. Department of Transportation submitted a report expressing no objection to the applicant's proposal. (Exhibit 20.) Five letters from nearby neighbors in support of the application were submitted to the record. (Exhibit 21.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 202.10. The only parties to the application were the Applicant and the ANC which expressed support for the application. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

[1] The Applicant originally sought a use variance from § 201.1(k). The application was amended on June 29, 2015 to seek special exception relief for an accessory apartment. (See Applicant's letter at Exhibit 22.)

[2] The two provisions under § 202.10 that were waived in this application are as follows: 1) the single-family residence requirement (§ 202.10) and 2) the minimum lot area requirement (§ 202.10(a)(2)).

[3] The zoning relief requested in this case also was self-certified, pursuant to 11 DCMR § 3113.2. (See, Exhibits 7 and 26 (original form) and Exhibit 29 (revised form).)

[4] The first memorandum from the ZA, dated April 14, 2015, cited use variance relief from § 201.1(k). (Exhibit 10.)

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 202.10, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 4, AS REVISED BY EXHIBIT 24.**

VOTE: 3-0-2 (Lloyd J. Jordan, Jeffrey L. Hinkle, and Peter G. May to Approve; Marnique Y. Heath and Frederick L. Hill not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: July 23, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-28(3)
Z.C. Case No. 10-28
901 Monroe Street, LLC
(Consolidated Approval for a Planned Unit Development and Zoning Map Amendment)
Order on Second Remand
June 29, 2015

This proceeding concerns an application submitted by 901 Monroe Street, LLC ("Applicant") for review and consolidated approval of a planned unit development ("PUD") and related amendments to the Zoning Map of the District of Columbia. Parties to this proceeding, in addition to the Applicant, are Advisory Neighborhood Commission ("ANC") 5A, a group of residents residing within 200 feet of the subject property ("200-Footers"), and the Brookland Neighborhood Civic Association ("BNCA").

By order effective June 15, 2012, the Zoning Commission for the District of Columbia ("Commission") approved the applications subject to conditions (Z.C. Order No. 10-28). The 200-Footers appealed the Commission's decision to the District of Columbia Court of Appeals ("Court of Appeals" or "Court"). By decision dated May 16, 2013, the Court of Appeals remanded the case back to the Commission "for appropriate supplemental findings and related conclusions of law" on four specific issues. (*Guy Durant v. D.C. Zoning Commission*, 65 A.3d 1161 (D.C. 2013) ("*Durant I*").) On November 8, 2013, the Commission issued an order responding to the Court's remand charge. (*See* Z.C. Order No. 10-28(1).) The 200-Footers appealed that decision to the Court of Appeals. By decision dated September 11, 2014, the Court of Appeals vacated Z.C. Order No. 10-28(1)[1] and again remanded the case back to the Commission:

> (1) to address whether the project should properly be characterized as a moderate-density use or a medium-density use; (2) to address more fully the Upper Northeast Area Element policy that special care should be taken to protect the houses along 10th Street; (3) to determine whether, in light of the Commission's conclusions on these issues, the Commission should grant or deny approval of the project; and (4) to explain the Commission's reasoning in granting or denying approval.

(*Durant v. D.C. Zoning Comm'n*, 99 A.3d 253, 262 (D.C. 2014) ("*Durant II*").)

On December 23, 2014, the Applicant submitted a letter requesting an additional public hearing in order to submit additional testimony and evidence addressing the Court's decision in *Durant II*. On December 26, 2014, the 200-Footers submitted a letter in response stating that the group believed that an additional hearing to submit evidence was unnecessary, and instead suggested that the Commission allow the parties to present oral arguments on the points stated in the Court of Appeals' Opinion ("Opinion").

[1] The Court of Appeals did not vacate Z.C. Order No. 10-28 and, therefore, the approval made by that order remained in place.

At its January 12, 2015 public meeting, the Commission considered these letters and decided to hold an oral argument, as suggested by the 200-Footers.

The oral argument was held on February 26, 2015. The participants were counsel for the Applicant and the 200-Footers. No additional evidence was permitted to be introduced into the record, although the Commission accepted hard copies of the PowerPoint presentations made by each attorney.

The Commission deliberated upon the remand issues at its March 9, 2015 public meeting and voted 4-0-1 to once again grant the application. The Office of the Attorney General for the District of Columbia thereafter prepared a draft order for the Commission's consideration, which the Commission adopted at its regularly scheduled public meeting of June 29, 2015. [2]

FINDINGS OF FACT[3]

1. The project site consists of Lots 3, 4, 11, 22, and 820 in Square 3829.

2. The project will be a mixed-use project with ground-floor retail, residential apartments in the floors above, and underground parking.

3. The total gross floor area will be approximately 198,480 square feet, for a total density of 3.31 floor area ratio ("FAR").

4. The height of the building at its tallest point is 60 feet, eight inches. However, the top floor of the building is set back from the edge of the building by five to seven feet, reducing its visual impact. The height of the building at this edge is 50 feet.

5. The residential component of the project will include 205-220 residential units located on the second through fifth levels of the structure along Monroe and 10th Streets and on the garden through sixth levels along 9th and Lawrence Streets. The main entrance to the residential units is on 9th Street.

6. The entire structure will be set back approximately 15 feet from the property line.

7. The façade materials of the building will include brick, stone, pre-cast elements, and pressed metal accents. All elevations of the building will include the same architectural materials.

[2] The Commission, in a lawfully called and noticed closed meeting held immediately prior to the public meeting, provided the Office of the Attorney General with editorial comments. The Office of the Attorney General then provided a final version of the order to the Office of Zoning with the changes from its submitted draft order shown. The Commission's Chair reviewed the final version of the order for consistency with the Commission's comments.

[3] These Findings of Fact are not intended to displace the findings made in Z.C. Order No. 10-28, but to highlight the principal facts upon which the Commission decided this remand.

8. The project includes several features intended to reduce its impact to the one-family homes adjacent to or opposite the project as follows:

   a. Along Lawrence Street, the project will include bays of approximately 14 feet in width, and the upper levels will be pulled further back from the street edge along Lawrence Street and the alley in the square in a series of setbacks;

   b. The areaways along Lawrence Street will range from a depth of six feet at the intersection of 9th and Lawrence Street to 13 feet at the alley on the eastern edge of the property;

   c. At the eastern edge of the property along Lawrence Street, adjacent to the north south public alley in the square, the project will include a series of setbacks from the property line. These setbacks will allow for the planting of trees on the property that will help soften the visual impact of the project on the other properties located along 10th Street in this square;

   d. The project's design will include a series of setbacks from both the street and side lot to mediate the height differential between the adjacent townhouses on 10th Street and the project. At their lowest points, these setbacks will be nearly the same height as the nearest townhouses; and

   e. The project will incorporate architectural features that recall elements found in the adjoining townhouses, such as chimney masses and small mansard roofs. The overall effect is one that will result in a compatible scale relationship between the existing and proposed buildings.

9. Three one-family dwellings on 10th Street, N.E. were demolished to make way for the project. None of these dwellings were designated as Historic Landmarks nor included within an Historic District pursuant to the Historic Landmark and Historic District Protection Act of 1978, D.C. Law 2-144; D.C. Official Code §§ 6-1101 *et seq*. (2012 Repl.) ("The Historic Preservation Act.").

CONCLUSIONS OF LAW

The PUD Project is Properly Characterized as Moderate-Density

The PUD regulations provide that the Commission must find "that the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site." (11 DCMR § 2403.4.)

The Future Land Use Map ("FLUM" or "Map") "is part of the adopted Comprehensive Plan and carries the same legal weight as the Plan document itself. The Map uses colorcoded categories to

express public policy on future land uses across the city." (10 DCMR A § 225.1, as codified at www.dcregs.dc.gov.[4])

The Comprehensive Plan offers guidance about the use and interpretation of the FLUM in 10 DCMR A § 226. In relevant part, the Comprehensive Plan states that the FLUM is not a zoning map and therefore is neither parcel specific nor does it establish detailed requirements for setbacks, height, use, parking, and other attributes. (10 DCMR A § 226.1(a).) The Comprehensive Plan further provides that "by definition, the Map is to be interpreted broadly." (10 DCMR A § 226.1(a).) The Comprehensive Plan further states that a PUD, such as this, "may result in heights that exceed the typical ranges" cited in the FLUM. (10 DCMR A § 226.1(c).)

More than half of the project's square footage is classified under the FLUM as Low-Density Residential. The balance of the project is classified as Moderate-Density Mixed-Use and Low-Density Mixed-Use. The Commission, in Z.C. Order No. 10-28(1), considered the project to be moderate-density. As noted in *Durant II*, this characterization was relied upon by the Commission with respect to its determinations that the project would not be inconsistent with the FLUM, the Upper Northeast Area Element, and the General Policy Map. (99 A.3d at 260.)

On appeal, the 200-Footers challenged the Commission's characterization, believing instead that the project was a medium-density residential development based upon the FLUM's definition of that term as applying to "neighborhoods or areas where mid-rise (four to seven stories) apartment buildings are the predominant use." (10 DCMR A § 225.5.) Although the Court did not resolve the issue, it suggested that "the project would appear to be a medium-density residential use, because it would stand six stories high and offer over two hundred apartment units." (99 A.3d at 259.) The Court of Appeals disagreed with the 200-Footers that the Commission should be reversed, because it was "not in a position at this juncture to rule as a matter of law that the project is invalid on its face as irreconcilable with the Comprehensive Plan." (99 A.3d at 259 (internal quotation marks omitted).) Rather, the Opinion remanded the matter for the Commission to address the arguments raised by the 200-Footers.

The FLUM's definition of moderate-density and medium-density residential are as follows:

> 225.4 **Moderate Density Residential**: This designation is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, R-5-A

[4] As noted by www.dcregs.dc.gov, the version of the District Elements of the Comprehensive Plan codified on that website is not the official version of the plan. The official version, as enacted by the Council of the District of Columbia, is published in an entirely different format as a hard copy version of Title 10-A. All references to 10 DCMR, Subtitle A, made herein are to the web codification.

> Zone districts are generally consistent with the Moderate Density Residential category; *the R-5-B district and other zones may also apply in some locations.*
>
> 225.5 **Medium Density Residential**: This designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. *The R-5-B and R-5-C Zone districts are generally consistent with the Medium Density designation, although other zones may apply.*

(Emphasis added).

The definition of Moderate-Density Residential thus presumptively includes the R-4 through R-5-A zones and includes the R-5-B zone "in some locations". A planned unit development in an R-4 through R-5-B zone is permitted a height of 60 feet, and an R-5-B PUD is permitted a density of 3.0 FAR. Both this maximum height and FAR may be increased by five percent to 63 feet and 3.15 FAR, respectively, "provided, that the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of" the PUD regulations. (11 DCMR § 2405.3.)[5] This PUD has an approved height of 60 feet, eight inches and a density of 3.31 FAR, which the Commission concludes to be within the range of moderate-density developments contemplated by the FLUM definition of Moderate-Density Residential.

The Commission therefore rejects the position of the 200-Footers that moderate-density precludes more than four stories in height. (Transcript of Oral Argument of February 26, 2015 ["OA Tr."] at 42.) Under such a restriction, a 60-foot building permitted in an R-5-A PUD would be limited to four stories, which is an absurd result. Reading the FLUM as placing an absolute limit on stories would turn that map into precisely the type of "straitjacket" that the 200-Footers claim they wish to avoid. (OA Tr. at 27.)

The Commission also notes that the FLUM definitions describe neighborhoods, not buildings. Further, as noted, the FLUM is not parcel specific, but recognizes that the grant of a PUD might result in the construction of a building that might not fit squarely within a particular label. The Commission does not believe therefore that a FLUM definition absolutely prohibits a PUD of any particular height or massing, provided that the approved building is compatible with the neighborhood as described in the applicable FLUM definition. This diversity of building type is important. As noted by Vice Chairperson Marcie Cohen during the deliberations, there are "many streets in Washington, D.C. that have buildings that are comprised of size, height, and mass, that live harmoniously side by side. These blocks contain some of the most desirable

[5] Because the Applicant requested C-2-B zoning, it did not need to make this showing because both its proposed height and density are within the matter of right permitted in that zone district.

properties in the city." (Transcript of Commission Meeting of March 9, 2015 ["Meeting Tr."] at 10-11.)

The Commission concludes, as it has concluded before, that this particular building presents itself as a structure with much less height and density than it actually uses. Though technically a building with a height of 60 feet, eight inches, the top floor of the building is set back from the edge of the building by five to seven feet, reducing its visual impact. The height of the building at this edge is 50 feet. In addition, the entire building is set back 15 feet from the property line. Further design features and the provision of open spaces allow the building to seamlessly integrate into the neighborhood. As stated by Commissioner Michael Turnbull during the deliberations, "I think that when you look at this project as a totality, your feeling is that it is not a dense complex." (Meeting at Tr. at 14.) Mr. Turnbull and the other Commissioners did not come to this conclusion based upon technical drawings alone, but insisted that the project's architect presented renderings of how this building would actually be viewed by its neighbors.

The 200-Hundred Footers' analysis fails because it focusses solely upon the building's measurement (height, number of stories, and FAR) rather than how the building will actually present itself to its neighbors. And by doing so, the 200-Footers would have the Commission treat the FLUM as the zoning map it was never intended to be. The Commission agrees with the observation made by the Applicant's counsel during oral argument that "it's not just the massing, but is the treatment of that massing" (OA Tr. at 17.) and further agrees with his observation that this PUD exemplifies what the PUD regulations intend by "superior architecture." (OA Tr. at 14.) It is the sum total of that superior and thoughtful architecture that results in a project that squarely fits within the meaning of a moderate-density residential development.

Special Care was Taken to Protect the Existing Low-Scale Residential Uses along 10th Street, N.E.

Subsection 2.6.1 of the Upper Northeast Area Element (UNE) of the Comprehensive Plan, provides in part that "special care should be taken to protect the existing low-scale residential uses along and east of 10th Street NE." (10 DCMR § A 2416.3.) The Court of Appeals in *Durant II* indicated that "at first blush it is difficult to see how approval of a project that requires the tearing down of five residences along 10th Street and the erection of a six-story building next to six other residences is consistent with taking special care to protect those residences." (99 A.3d at 261.) The decision suggested that the Commission could not balance the loss of these residences against the furtherance of other Comprehensive Plan policies unless the Commission also concluded that "the only feasible way to advance other important policies would be to tear down five residences along 10th Street and build a six-story building next to six of the remaining residences." (*Id.*)

As noted, the actual number of residence demolished along 10th Street was three. But numbers aside, the Commission does not interpret UNE § 2.6.1 as a mandate to preserve any of these one-family dwellings. The policy refers to existing residential uses without identifying any particular

address. Nor does the policy use the word "preserve." Further, the Council of the District of Columbia could not, through adoption of the Comprehensive Plan, impose a historic preservation mandate. The affirmative adoption of a law would be required. And such a law would be far more stringent than the Historic Preservation Act, which permit the demolition of recognized historic resources to make for projects of special merit. (*See* D.C. Official Code § 6-1104 (e).) As noted, none of the demolished dwellings were landmarked or included within a historic district.

The Commission thus does not read UNE § 2.6.1 as precluding the owner of any dwelling along 10th Street, N.E., such as the Applicant, from demolishing their property. The fact that the Applicant demolished the structures to make way for this project, as opposed to rebuilding the structures, does not alter the analysis. Rather, the Commission reads the provision as requiring that the project, as designed, protect those residential uses as will remain after its construction.[6] Thus, to answer the question posed by the Court of Appeals, since UNE § 2.6.1 does not in any way prevent the demolition of any dwelling on 10th Street, N.E there is no "conflict" between the destruction of such dwellings and the furtherance of the many Comprehensive Plan policies accomplished by the project "so as to require a trade-off among them." (*Durant II*, 99 A.3d at 262.)

Under this interpretation, the guidance of UNE § 2.6.1 that "special care should be taken to protect the existing low-scale residential uses along … 10th Street NE" has been adhered to. As noted in the above Findings of Fact, the project's design will include a series of setbacks from both the street and side lot to mediate the height differential between the adjacent townhouses on the 10th Street and the project. At their lowest points, these setbacks will be nearly the same height as the nearest townhouses. Further, the project will incorporate architectural features that recall elements found in the adjoining townhouses, such as chimney masses and small mansard roofs. The overall effect is one that will result in a compatible scale relationship between the existing and proposed buildings. As stated by Commissioner Peter May during the deliberations, the "project evolved to a place where it steps down appropriately and meets those smaller homes in an appropriate manner, and it works well." (Meeting Tr. at 19.)

The Application Should Again be Granted

In its final two remand instructions, the Court of Appeals in *Durant II* instructed the Commission:

> (3) to determine whether, in light of the Commission's conclusions on these issues, the Commission should grant or deny approval of the project; and (4) to explain the Commission's reasoning in granting or denying approval.

[6] During the oral argument, counsel for the 200-Footers appears to have conceded this point by indicating that his client would support the project as a C-2-A project "assuming that appropriate adjustments were made to ameliorate immediate impacts right next to the particular homes that *are still standing on the block*." (OA Tr. at 38.) (Emphasis added.) Thus, the 200-Footers apparently consider the three dwelling expendable under one zoning category, but not another.

(99 A.3d at 262.)

The Commission, in this order, has re-affirmed its earlier determination that the project is properly characterized as moderate-density residential and that special care has been taken to protect the existing low-scale residential uses along of 10th Street, N.E. Since there has been no change in the Commission's position, it again approves the application.

As noted in *Durant II*, *t*he Commission previously concluded that the project would not be inconsistent with the FLUM because it would "extend a Moderate–Density Mixed–Use into areas that are designated Low-Density Residential and Low-Density Mixed-Use on the FLUM." The Commission also previously concluded that the project would not be inconsistent with the Upper Northeast Area Element because the project would be "a Moderate-Density Mixed-Use development of the type encouraged by the policies applicable to the neighborhood." Finally, the Commission previously concluded that the project would not be inconsistent with the General Policy Map, it "is compatible with the existing scale ... of the area," and because "applicable written policies ... encourage moderate-density mixed-use transit-oriented development.... (99 A.3d at 259-60, *quoting*, Z.C. Order No.10-28 (1) (internal quotation marks omitted).) These conclusions, and all other related findings made in Z. C. Order Nos. 10-28 and 10-28(1)[7] remain those of the Commission.

The *Durant II* remand did not extend to the other issues addressed in Z.C. Order No. 10-28 and, therefore, the findings and legal conclusions relevant to those issues will not be repeated here.

DECISION

Based upon the above Findings of Fact and Conclusions of Law, as well as those Findings of Fact and Conclusions of Law stated in Z.C. Order No. 10-28, the Zoning Commission for the District of Columbia hereby again **APPROVES** Zoning Commission Case No. 10-28**.**

On March 9, 2015, upon the motion of Chairman Hood, as seconded by Vice Chairperson Cohen the Zoning Commission **REAPPROVED** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve; Robert E. Miller, not having participated, not voting).

On June 29, 2015, upon the motion of Chairman Hood, as seconded by Vice Chairperson Cohen, the Zoning Commission **ADOPTED** this Order by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; Robert E. Miller, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 7, 2015.

[7] Although vacated, Z.C. Order No. 10-28(1) remains part of the record of this case and, to the extent relevant, its findings and conclusions are incorporated herein.

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