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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council schedules a public hearing on Bill 21-299, Fiscal Year 2016 Tax Revenue Anticipation Notes Act of 2015
- D.C. Council schedules a public hearing on Public School Food and Nutrition Services Programs
- Child and Family Services Agency supplements the rights of foster children
- Department of Health announces funding availability for the Healthful Food Access Initiatives Program
- Department of Motor Vehicles sets the annual safe operating condition and compliance inspection fee to seventy dollars
- Department of Public Works proposes guidelines for maintaining winter sidewalk safety
- Office of the State Superintendent of Education announces funding availability for the Fiscal Year 2016 SAT Preparation Expansion Grant
- District Department of Transportation prohibits the operation of multi-seat pedal cycles on public roadways

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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ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-149

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 11, 2015

To approve, on an emergency basis, an agreement to enter into a long-term subsidy contract for 15 years in support of the District's Local Rent Supplement Program to fund housing costs associated with affordable housing units for Contract No. 2014-LRSP-02 with Square 50 Affordable Housing, LLC, for Local Rent Supplement Program units located at 1211 23rd Street, N.W., and to authorize payment for housing services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Local Rent Supplement Program Contract No. 2014-LRSP-02 Approval and Payment Authorization Emergency Act of 2015".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves the agreement to enter into a long-term subsidy contract with Square 50 Affordable Housing, LLC, for an annual subsidy amount of $55,908, and authorizes payment for services received and to be received under the contract.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

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section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)) .

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
August 11, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-150

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 11, 2015

To order, on an emergency basis, the closing of Potomac Avenue, S.W., between 2nd Street, S.W., and R Street, S.W.; R Street, S.W., between Potomac Avenue, S.W., and Half Street, S.W.; 1st Street, S.W., between T Street, S.W., and Potomac Avenue, S.W.; and S Street, S.W., between 2nd Street, S.W., and approximately 230 feet west of Half Street, S.W.; all adjacent to Squares 603S, 605, 607, 661, 661N, and 665, and in Reservations 243 and 244, in Ward 6.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of Public Streets adjacent to Squares 603S, 605, 607, 661, 661N, and 665, and in U.S. Reservations 243 and 244, S.O. 13-14605, Emergency Act of 2015".

Sec. 2. Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and notwithstanding section 209(b)(5)(B) of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-202.09(b)(5)(B)), the Council of the District of Columbia finds that the public streets adjacent to Squares 603S, 605, 607, 661, 661N, and 665, and in Reservations 243 and 244, as shown by the hatch-marks on the Surveyor's plat in the official file for S.O. 13-14605, are unnecessary for street purposes and orders them closed, with the title to the land to vest in the District of Columbia.

Sec. 3. Notwithstanding section 202(c) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02(c)), and An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801 *et. seq.*), the Mayor is authorized to enter into easement agreements or covenants with the Potomac Electric Power Company, Verizon, the District of Columbia Water and Sewer Authority, Washington Gas Light Company, and the National Capital Planning Commission necessary to accomplish the street and alley closings set forth in section 2, as well as the utility relocations required by the Amended and Restated Development Agreement between the District and DC

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Stadium, LLC, approved by the Council of the District of Columbia on June 30, 2015, for the development of a soccer stadium at Buzzard Point.

Sec. 4. Transmittal.

The Council shall transmit a copy of this act, upon its effective date, to the Office of the Surveyor of the District of Columbia and the Office of the Recorder of Deeds.

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Closing of Public Streets adjacent to Squares 603S, 605, 607, 661, 661N, and 665, and in U.S. Reservations 243 and 244, S.O. 13-14605, Act of 2015, passed on 2nd reading on July 14, 2015 (Enrolled version of Bill 21-200), as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
August 11, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-151

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 11, 2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(a-3) Notwithstanding subsections (a-1) and (a-2) of this section, for a tenant organization that before the effective date of the TOPA Bona Fide Offer of Sale Clarification Emergency Amendment Act of 2015, effective June 25, 2015 (D.C. Act 21-95; 62 DCR 9225), has registered the tenant organization with the Mayor according to section 411(1), and has requested an appraisal of the housing accommodation by delivering the request to the Mayor and the owner by hand or by certified mail, the following shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

ENROLLED ORIGINAL

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
August 11, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-152

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 11, 2015

To approve, on an emergency basis, the disposition by lease of District-owned real property located at 4095 Minnesota Avenue, N.E., commonly known as the Woodson School and designated for tax and assessment purposes as Lot 0813 in Square 5078.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "4095 Minnesota Avenue, N.E., Woodson School Lease Amendment Emergency Act of 2015".

Sec. 2. Notwithstanding An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code §10-801 *et seq.*), and the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1800.01 *et seq.*), the Council authorizes the Mayor:

(1) To amend the existing lease agreement between the District of Columbia and Friendship Public Charter School, Inc. (the "Lease"), dated May 1, 2008, for the real property located at 4095 Minnesota Avenue, N.E., commonly known as the Woodson School and designated for tax and assessment purposes as Lot 0813 in Square 5078 (the "Property"), to:

(A) Extend the term of the Lease for a period of greater than 20 years; and

(B) Provide such other terms related to the extension of the Lease and transfer of the Property as are consistent with the letter of intent approved by both parties to the Lease; and

(2) To execute any associated transactional documents.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than

ENROLLED ORIGINAL

90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
August 11, 2015

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-61

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To honor Tudor Place Historic House & Garden Executive Director Leslie Buhler on the occasion of her retirement.

WHEREAS, as executive director since 2000, Leslie Buhler has established Tudor Place, a National Historic Landmark in Georgetown built by Martha Washington's granddaughter and home to 5 generations of her descendants, as a meaningful cultural asset for the District of Columbia and the nation and helped secure it into its third century, commencing in 2016;

WHEREAS, on becoming executive director, Leslie Buhler brought to bear experience in outreach, programming, member development, and education at (successively) the Metropolitan Museum of Art, the Smithsonian Institution's Resident Associate Program, and the National Archives and Records Service, which granted her a Distinguished Service Award for her work on national Bicentennial observances, and experience in management that followed in 19 years leading and significantly expanding The Alban Institute, which advises religious congregations on financial and organizational management;

WHEREAS, Tudor Place became a museum only in 1988 and faced monumental financial and management challenges by 2000, when Leslie Buhler took charge; only clear leadership could have transformed it into the thriving modern museum it is today, where "America's story lives," with a full-and part-time staff of 18 credentialed and dedicated professionals, recognized for its leadership in education, collections and archive stewardship, and horticulture;

WHEREAS, at the start of Leslie Buhler's tenure, much of the museum collection was in questionable condition, largely uncatalogued and stored in makeshift spaces, while its buildings were prone to leakage and other weakness;

WHEREAS, Leslie Buhler bolstered the museum's physical structure, stabilized the collection, and established their wider significance by: completing a major restoration of the National Historic Landmark House and numerous conservation projects to protect the collection, archive, and landscape; undertaking documentation projects, including Historic Structures and Cultural Landscape reports, a comprehensive archaeological site survey; and created a comprehensive Master Preservation Plan to guide the museum's coming decades;

ENROLLED ORIGINAL

WHEREAS, Leslie Buhler hired the site's first full-time curator, engaged an archivist, and expanded its collections, preservation, horticulture, visitor services and education, and administrative staff; unstintingly pursued the digital inventory and (still ongoing) assessment and rehousing of its collection of its more than 15,000 objects and books, including more than 200 objects that belonged to Martha and George Washington and hundreds of artworks, such as 2 recently identified prints by James McNeill Whistler; supervised and cataloguing and rehousing of 300 linear feet of manuscripts, personal correspondence and other valuable archival materials; authorized accessioning of the site's plants and trees into the collection; and beginning with a comprehensive "Phase 1" archaeological survey in 2010, commissioned ongoing investigations into the uniquely intact site's unexplored underground riches, yielding insights into the early history of Georgetown and the capital city;

WHEREAS, Leslie Buhler has throughout her tenure solicited guidance from specialists, academics, and like experts, museum staff and trustees, and other informed constituents on all projects undertaken at the museum, and has applied this expertise and sought supporting funding and *pro bono* consultation to ensure that investigation and documentation would accompany every improvement and structures, landscape and objects at Tudor Place, and that such projects would expand understanding in relevant fields, as for example, in the archaeological investigation that preceded the Box Knot Garden's restoration; the dendrochronology tests dating the 1794 Smokehouse, undertaken during its conservation; and the research and testing that accompanied conservation of Washington Collection objects such as Martha Washington's leather trunk, a Revolutionary War camp stool, and the rare wax-and-shellwork tableau from the Washington's bedroom at Mount Vernon;

WHEREAS, in keeping with Tudor Place's national status as a heritage site, Leslie Buhler's stewardship and research focus, as in the extensive archival study that became the "Slavery Map of Georgetown," earned praise from academics and museum professionals and recognition, including: the *2014 Ross Merrill Award* for Outstanding Commitment to the Preservation and Care of Collections from Heritage Preservation and the American Institution for Conservation of Historic and Artistic Works, a *2012 D.C. Office of Historic Preservation Award* for Excellence in Historic Preservation for its intensive site-wide archaeological survey; and for Leslie Buhler herself from the Citizens Association of Georgetown, the *2013 William A. Cochran Award* for "exceptional efforts to protect and enhance the community's parkland and architectural resources;"

WHEREAS, Leslie Buhler developed comprehensive public education programs for Tudor Place, reaching nearly 3,000 schoolchildren a year and thousands more via teacher development workshops and the Internet; developed its popular guided tour and attracted, trained, and retained dozens of well- informed volunteer docents to deliver it; expanded museum education to include educator workshops on teaching with primary sources, summer camps,

ENROLLED ORIGINAL

scouting activities, and for schoolchildren, creative field trips (subsidized for low-income students) and in-class workshops meeting national curricular standards;

WHEREAS, to expand Tudor Place visitation to the 18,000-plus it is today, Leslie Buhler researched the interests, identities, and needs of site visitors; developed a well- managed rentals program responsive community needs; developed a full calendar year of lively public programming addressed to varied interests, ages, and constituencies, educating while also supporting the museum; and oversaw creation of a vibrant and flexible website that expands the museum's digital reach internationally;

WHEREAS, Leslie Buhler formalized membership and established programs to inform and delight a loyal and growing cadre of members and donors, including Landmark Society Lectures, author talks and luncheons, a New Year's Member Welcome Breakfast, quarterly Tudor Nights evenings, and the gala Spring Garden Party that constitutes the site's most significant annual fundraiser;

WHEREAS, in an era when many public historic sites struggle against waning public interest, Tudor Place is growing, helping to connect people's own stories and America's story;

WHEREAS, Leslie Buhler personally shares her knowledge and demonstrates her encyclopedic grasp of Georgetown and District of Columbia history with members, donors, and the public, in numerous articles and a forthcoming book on the estate; in informative talks, such as her 2013 lecture on The Civil War in Georgetown delivered to a packed meeting of the Georgetown Citizens Association, and in 2012, "Tudor Place: Estate of the Nation," delivered to the Colonial Daughters of the 17th century, and through scintillation private and small-group tours of Tudor Place and its collections, in which she discourses *ex tempore* from her vast knowledge of their provenance, attributes, inhabitants, significance, and, occasionally, still unplumbed mysteries;

WHEREAS, Leslie Buhler has built on the philanthropy and good governance by which Armistead Peter 3d established Tudor Place as a museum, by: cultivating a devoted and judicious Board of Trustees; building a funding base through ties to individuals and foundations who share her devotion to material culture, architecture, and landscape history, a capital campaign in 2009, and the Bicentennial Capital Campaign now underway to effectuate the Master Preservation Plan; securing material support and collaboration from government bodies including the Federal Save America's Treasures Foundation, National Park Service and National Endowment for the Humanities, and in the District, this Council, Advisory Neighborhood Commission 2E, the Fine Arts Commission, Office of Preservation, and the Commission on the Arts and Humanities; Forum Cultural Tourism D.C., of which she was a founding member, and the Historic House Museum Consortium, in which she also took an early active role; and building bonds of mutual support with Georgetown organizations including the Business Association (on whose board she

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served), Citizens Association, Old Georgetown Board, Garden Club, Business Improvement District and local Kiwanis chapter;

WHEREAS, Leslie Buhler, for her hard-working professionalism, geniality, and wise guidance, has cultivated and earned the deep respect of dozens of talented Tudor Place employees and volunteers, past and present;

WHEREAS, Leslie Buhler is the devoted wife of Robert Berendt, proud mother of Christopher and Ashley Berendt and their respective spouses, and attentive grandmother to Annika, Violet, and Edward Berendt, and Max Racanelli; and

WHEREAS, Leslie Buhler will retire in the summer of 2015, having prepared Tudor Place to celebrate its bicentennial.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes, honors, and salutes Leslie Buhler for her 15 years of transformational leadership and her assiduous stewardship of a treasure of national and local culture; thanks her for her work on behalf of the museum, its constituents, the museum profession, and the public; and extends sincerest best wishes.

Sec. 2. This resolution may be cited as the “Leslie Buhler – Tudor Place 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

21-62

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To recognize the Alpha Kappa Alpha Sorority, Xi Omega Chapter, and the Pearl and Ivy Educational Foundation for 91 years of providing scholarships to students in the District of Columbia.

WHEREAS, Alpha Kappa Alpha Sorority ("AKA") is an international service organization founded on the campus of Howard University in Washington, D.C. in 1901;

WHEREAS, AKA, Xi Omega Chapter, was established in 1923 in commitment to education, health, and human rights;

WHEREAS, AKA, Xi Omega Chapter, is the oldest and largest graduate chapter of Alpha Kappa Alpha in Washington, D.C.;

WHEREAS, the Pearl and Ivy Educational Foundation ("PIEF") was founded in 1988 as the charitable arm of AKA, Xi Omega Chapter, as the charitable arm of the sorority;

WHEREAS, a founder and the first president of AKA, Xi Omega Chapter, brought together a coalition of educators and District residents behind a shared commitment to service as scholarship;

WHEREAS, the AKA, Xi Omega Chapter, established its scholarship fund in 1924 to provide scholarships to Alpha Chapter members at Howard University;

WHEREAS, PIEF works with its members, donors, and strategic partners to promote academic excellence and pursuits, awarding nearly $250,000 in scholarships since its founding in 1988;

WHEREAS, PIEF awarded more than $44,000 in scholarships to high school students and recent graduates in the Washington, D.C. metropolitan area;

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WHEREAS, PIEF, in partnership with AKA, Xi Omega Chapter, will award nearly $50,000 in college scholarships to District of Columbia public and charter high school students and past scholarship recipients who are currently enrolled in college; and

WHEREAS, AKA, Xi Omega Chapter, and PIEF continue to provide exemplary services to youth adults and seniors throughout the Washington, D.C. metropolitan area.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the outstanding contributions and the valued accomplishments of Alpha Kappa Alpha Sorority, Xi Omega Chapter, and Pearl and Ivy Educational Foundation and congratulates the organization for 91 years of commitment to service and scholarship.

Sec. 2. This resolution may be cited as the "Alpha Kappa Alpha Sorority, Xi Omega Chapter, and Pearl and Ivy Educational Foundation 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

21-63

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To recognize the significance of National Tap Dance Day, celebrated annually on May 25, and the cultural significance of tap dancing in the District of Columbia.

WHEREAS, National Tap Dance Day commemorates the birthday of Bill "Bojangles" Robinson, an outstanding contributor to the art of tap dancing on stage and film through the unification of diverse stylistic and cultural elements;

WHEREAS, National Tap Dance Day was established in the District of Columbia by the United States Congress and President of the United States on November 8, 1989, designating March 25 of that year as National Tap Dance Day as a one-time official observance;

WHEREAS, tap dancing reflects the fusion of African and European cultures into an exemplification of the diversity cherished by the District of Columbia;

WHEREAS, National Tap Dance Day continues to be celebrated annually in the District of Columbia and across the world; and

WHEREAS, tap dancing remains a celebrated art form in the District of Columbia, imparted to each new generation through dance instruction and arts education in facilities such as the Davis Center.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the outstanding contributions and the valued accomplishments of National Tap Dance Day and the continuing cultural significance of tap dance in the District of Columbia.

Sec. 2. This resolution may be cited as the "National Tap Dance 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.

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A CEREMONIAL RESOLUTION

21-64

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To celebrate the service and career of Alan C. Korz, who has dedicated 53 years of his life to the well-being of special needs youth in the District of Columbia and the greater Washington, D.C. metropolitan area.

WHEREAS, the Episcopal Center for Children is a private, nonprofit, non-denominational treatment center for emotionally troubled children from the Washington, D.C. metropolitan area that has been serving children for the past 120 years;

WHEREAS, Alan C. Korz began his career with the Episcopal Center for Children in 1962 as a nighttime counselor for children and in 1973 he became its executive director, a position he held until his retirement on April 30, 2015;

WHEREAS, under his tenure, the Episcopal Center for Children attained full accreditation by the American Association of Psychiatric Services for Children in 1978, and by the Joint Commission in 1998;

WHEREAS, the Episcopal Center for Children was awarded the gold seal of excellence by the Joint Commission in September 2014;

WHEREAS, Alan C. Korz believes in children, their strengths, and their potential, not in their past; his goal is to enable children to return to their communities, be able to re-engage with their families, and have a real opportunity for emotionally healthy and productive futures; and

WHEREAS, Alan C. Korz has been a tireless champion for special needs children for decades and his impact on those children and their families has been profound.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the District of Columbia is grateful for the service of Alan C. Korz and recognizes his outstanding dedication to those around him.

Sec. 2. This resolution may be cited as the “Alan C. Korz 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

21-65

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To honor the graduates of DC Central Kitchen's 100th Culinary Job Training Program on July 10th 2015, the date of their graduation, recognize the success of the culinary job training program for residents of the District of Columbia, and declare July 10, 2015, as "DC Central Kitchen Day" in the District of Columbia.

WHEREAS, DC Central Kitchen began operations in 1989 with the belief that it could go beyond feeding the District's underprivileged citizens and instead empower them to attain self-sufficiency;

WHEREAS, DC Central Kitchen launched the Culinary Job Training Program in 1990, enrolling District residents with histories of homelessness, addiction, incarceration, and chronic unemployment in a rigorous 3-month curriculum;

WHEREAS, the Culinary Job Training Program has produced 1,500 graduates over the past 25 years, offering them formal culinary skills, food handlers' certifications, social support services, tough love, and hope;

WHEREAS, since the recession of 2008, DC Central Kitchen has produced 570 graduates with a 90% job placement rate;

WHEREAS, the success of DC Central Kitchen's culinary graduates has inspired the launch of more than 60 like-minded culinary training programs and social enterprises across the United States;

WHEREAS, graduates of the Culinary Job Training program are 90% less likely to return to prison than other ex- offenders nationwide;

WHEREAS, women and men from the Culinary Job Training program have demonstrated their skills before 2 Presidents of the United States, a Nobel Prize winner, 4 Mayors of the District of Columbia, and dozens of District of Columbia Councilmembers, United States Congressmen, and United States Senators; and

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WHEREAS, DC Central Kitchen's Culinary Job Training Program has provided a path for District residents to rejoin their community, reunite their families, participate in our economy, and break the intergenerational cycle of hunger, homelessness, prison, and poverty.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors DC Central Kitchen and its 100th Culinary Job Training Program Class for their efforts to strengthen the economy, broaden prosperity, and defeat hunger and poverty in the metropolitan area, and declares July 10, 2015, as "DC Central Kitchen Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "DC Central Kitchen Culinary Job Training Program Recognition Resolution of 2015".

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

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A CEREMONIAL RESOLUTION

21-66

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To recognize and honor native Washingtonian and music producer Chucky Thompson.

WHEREAS, Carl E. Thompson Jr., better known as Chucky Thompson, was born to Charlotte and Carl E. Thompson on July 12, 1968;

WHEREAS, Chucky Thompson attended Paul Lawrence Dunbar High School;

WHEREAS, Chucky Thompson began his music career in the District of Columbia, playing keyboards for some of the District's local Go-Go bands;

WHEREAS, in 1994, Chucky Thompson, as a member of Bad Boy Records' "The Hitmen", produced platinum singles "One More Chance" and "Big Poppa" for the late Notorious B.I.G. as well as the GRAMMY-nominated album *My Life* for Mary J. Blige;

WHEREAS, Chucky Thompson, as a member of "The Hitmen" production team, helped Bad Boy Records achieve monumental success in hip-hop and R&B music, leading to 21 platinum and gold records;

WHEREAS, in 2007, Chucky Thompson received GRAMMY nominations for producing Raheem DeVaughn's hit R&B single "Woman" and for producing Emily King's debut album *East Side Story* for "Best Contemporary R&B Album;

WHEREAS, in 2009, Chucky Thompson received a GRAMMY nomination for "Best R&B Album" for Ledisi's *Turn Me Loose*;

WHEREAS, in 2010, Chucky Thompson received a GRAMMY nomination for "Best R&B Performance by a Duo or Group with Vocals" for Chuck Brown's song "Love" from the project *We Got This* featuring Jill Scott and Marcus Miller;

WHEREAS, Chucky Thompson has produced over 200 commercial compositions in 26 years in the music industry, and has worked with music industry notables such as Mariah Carey,

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Usher, Sean "Diddy" Combs, Mary J. Blige, Faith Evans, Brian McKnight, Total, Nas, Kelly Price, TLC, Raheem DeVaughn, Ledisi and Leela James, among others;

WHEREAS, Chucky Thompson serves as a member of the National Recording Arts and Sciences Board of Directors, Washington, DC branch, and is instrumental in making decisions on the future of music;

WHERAS, Chucky Thompson desires to build a school in Washington, D.C. for low-income children as an outlet for creativity as an alternative to violence and drugs; and

WHEREAS, Chucky Thompson's music has enriched the lives of District residents and millions of people throughout the world.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia congratulates Chucky Thompson on his many accomplishments in the field of music and bids him continued success.

Sec. 2. This resolution may be cited as the "Chucky Thompson Recognition Resolution of 2015".

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

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A CEREMONIAL RESOLUTION

21-67

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To recognize and honor the Washington Wizards on their winning season, trip to the National Basketball Association playoffs, and advancing to the second round of the playoffs for the second time since 2005.

WHEREAS, in 1997, under the ownership of the legendary Abe Pollin, the Washington Bullets officially became the Washington Wizards;

WHEREAS, in 1997, the Washington Wizards moved to the then MCI Center, now the Verizon Center, in downtown Washington, D.C.;

WHEREAS, in 2010, Ted Leonsis completed a deal to purchase a majority share of the Washington Wizards and Verizon Center from the Pollin family;

WHEREAS, on January 22, 2015, Washington Wizards point guard John Wall was named as an East starter for the 2015 NBA All-Star Game, his second All-Star selection and the first Washington Wizards player to be voted into the NBA All Star Game as a starter since 2007;

WHEREAS, on April 12, 2015, the Washington Wizards finished the 2014-2015 regular NBA season with a 46-36 record, tallying the most wins for the franchise since the 1978-79 season;

WHEREAS, on April 21, 2015, John Wall set the Wizards playoff record with 17 assists in a 117-106 victory over the Toronto Raptors;

WHEREAS, on April 26, 2015, the Washington Wizards defeated the Toronto Raptors by a score of 125-94, thus winning the postseason series between the 2 teams, 4-0, and advancing to the second round of the NBA playoffs for the second time since 2005;

WHEREAS, the 4 games series sweep of the Toronto Raptors marked the first 4-game playoff sweep in Wizards franchise history, a period spanning 54 seasons;

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WHEREAS, on May 3, 2015, the Washington Wizards defeated the Atlanta Hawks to become the 1st team ever to win the opening game of a series on the road for 4 consecutive series;

WHEREAS, on May 15, 2015, despite an inspiring and valiant effort, the Washington Wizards lost to the Atlanta Hawks, thus ending their season but providing hope for a rich basketball future in the District;

WHEREAS, on May 20, 2015, Washington Wizards point guard John Wall was named to the NBA All-Defensive Second Team, becoming the ninth player in franchise history to be named to an all-defensive team;

WHEREAS, the Washington Wizards are truly winners in every meaningful way; and

WHEREAS, the excitement stirred, the overwhelming fan support and commitment will carry on, and the Wizards will continue to grow individually and as a team.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the Washington Wizards and their contribution to sports and to the District of Columbia.

Sec. 2. This resolution may be cited as the "Washington Wizards 2014-2015 Season Celebration Recognition Resolution of 2015".

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

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A CEREMONIAL RESOLUTION

21-68

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To recognize DC Legendary Musicians for their dedication to preserving, protecting and promoting the artistic legacy, contributions, and well-being of Washington, D.C.'s professional musicians.

WHEREAS, the mission of DC Legendary Musicians ("DCLM") is to preserve, protect, and promote the artistic legacy, contributions, and well-being of Washington, DC's professional musicians;

WHEREAS, DCLM was founded as a nonprofit organization to support and recognize the accomplishments of D.C. born, raised, and resident musicians and to draw on those accomplishments to re-establish, re-animate, and re-vitalize the distinct sound of Washington, D.C. music;

WHEREAS, the District of Columbia can lay claim to many great professional musicians and performers who were born or lived in the city, including Duke Ellington, Keter Betts, Nasar Abadey, Billy Eckstine, Pearl Bailey, Billy Stewart, Marvin Gaye, Charles "Skip" Pitts, Gregory Gaskins, David Akers, Jimi Smooth, Robert "Mousey" Thompson, Al Johnson, The Clovers, Chuck Brown, and many others; and

WHEREAS, DCLM, led by Rev. Dr. Sandra Butler-Truesdale, Chairperson, has been steadfast in its dedication to promoting and preserving the legacy of the District of Columbia's music history as well as supporting live music which provides jobs and income for District musicians, and performers and musicians nationally and internationally of all genres.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the contributions of the District's professional musicians and the work of DCLM in promoting and preserving the legacy of the District's music history.

Sec. 2. This resolution may be cited as the "DC Legendary Musicians 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

21-69

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To recognize the contributions of Jade Floyd, the outgoing president of the DC Arts and Humanities Education Collaborative.

WHEREAS, the DC Arts and Humanities Education Collaborative consists of 90 nonprofit member organizations in the District of Columbia.

WHEREAS, the mission of the DC Arts and Humanities Education Collaborative is to work with its members to provide equitable access to arts and humanities education for all District of Columbia public and public charter schools;

WHEREAS, Jade Floyd served as President of the DC Arts and Humanities Education Collaborative from 2012 to 2015 and as a member of its Board of Directors from 2004 to 2015;

WHEREAS, under the leadership of Jade Floyd, the DC Arts and Humanities Education Collaborative sent more than 70,000 District of Columbia Public Schools students from 120 schools to high-quality arts and humanities experiences at many of the greatest cultural institutions in the world;

WHEREAS, under the leadership of Jade Floyd, the DC Arts and Humanities Education Collaborative expanded the Board of Directors, increased membership, partnered with new funders, reached more students than ever in Wards 7 and 8, revitalized staff, and ensured the delivery of programs that make a positive difference in the lives of children across the city, ensuring that they are in the best position to learn and to succeed;

WHEREAS, Jade Floyd provided steadfast leadership to the DC Arts and Humanities Education Collaborative during the challenging economic time of her presidency;

WHEREAS, Jade Floyd, committed her time and talents in service to the betterment of the District of Columbia through her work with the DC Arts and Humanities Education Collaborative and its members;

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WHEREAS, Jade Floyd has been unwavering in her service to advancing the mission of the DC Arts and Humanities Education Collaborative; and

WHEREAS, arts and humanities education plays an important role in engaging students and ensuring students are prepared to compete in an information-based economy so they are in the best position to learn and to succeed.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors Jade Floyd for her outstanding contributions and invaluable service to the DC Arts and Humanities Education Collaborative and the District of Columbia.

Sec. 2. This resolution may be cited as the "Jade Floyd Recognition Resolution of 2015".

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

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A CEREMONIAL RESOLUTION

21-70

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To recognize and honor the Capital Pride Alliance for its commitment to the lesbian, gay, bisexual, transgender, gender nonconforming, queer, and questioning community in the District of Columbia and surrounding areas, and to declare June 2015 as "LGBTQ Pride Month" in the District of Columbia.

WHEREAS, the District of Columbia is home to the highest percentage of lesbian, gay, bisexual, transgender, gender nonconforming, queer, and questioning ("LGBTQ") individuals of any state in the Union;

WHEREAS, the LGBTQ community contributes significantly to the cultural, economic, and societal well-being of the District of Columbia;

WHEREAS, the modern LGBTQ movement began at the Stonewall Inn with a riot in response to police brutality and systemic oppression;

WHEREAS, we commemorate the Stonewall Riot every year with LGBTQ pride celebrations in the District of Columbia and throughout the nation;

WHEREAS, Capital Pride is the producer of the Capital Pride Festival, the annual celebration of the District of Columbia and the National Capital Area LGBTQ community and partners;

WHEREAS, each June, Capital Pride presents nearly 2 weeks of events to celebrate the diversity of District of Columbia and National Capital Area LGBTQ community, including the Capital Pride Parade, Festival, and Concert;

WHEREAS, Capital Pride produces a wide range of educational, entertainment, and community events to celebrate the community throughout the year; and

WHEREAS, Capital Pride serves to celebrate, motivate, and support diverse communities in order to grow and protect the LGBTQ legacy for future generations.

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IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the hard work of the Capital Pride Alliance and the contributions of annual Pride celebrations to the District of Columbia, and declares June 2015 as "LGBTQ Pride Month" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Capital Pride Alliance Recognition Resolution of 2015".

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

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A CEREMONIAL RESOLUTION

21-71

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To recognize and honor Reverend Dr. Morris L. Shearin, Sr., for 27 years of service to the District of Columbia through community outreach and engagement.

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., was born in Northampton County, North Carolina, on December 11, 1940;

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., graduated from Shaw University with a Bachelor of Arts in Philosophy & Religion and a Master of Divinity;

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., earned a Doctorate of Ministry from Howard University School of Divinity in May of 1981;

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., is the Pastor of Israel Baptist Church, located in Ward 5;

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., is the President of Baptist Convention of D.C. and Vicinity;

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., is a member of the National Board of Directors of the NAACP, the Past-President of the D.C. Branch of the NAACP, and served as Chairman of the NAACP National Convention in 2006;

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., is the Chairman of the Project Labor Agreement Task Force, a member of the Judicial Nomination Commission, and was an invited guest to Harvard Law School for the 2008 African American Labor Leaders Economic Summit on Labor and Religion;

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., won the Outstanding Citizen Award from the Metropolitan Washington Council AFL-CIO in 2005, and is a member of the Shaw University Theological Alumni Association;

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., is a member and the Past-President of the Howard University National Theological Alumni Association;

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WHEREAS, Reverend Dr. Morris L. Shearin, Sr., is a member of the board of directors for the Stoddard Baptist Home and secured $12 million of commercial and public funding for the Life Learning Center;

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., is the 2013 Honoree of the Washington D.C. Hall of Fame Award and has led several tours with "The Land of the Bible", including tours in Egypt, Israel, and Greece; and

WHEREAS, Reverend Dr. Morris L. Shearin, Sr., is the husband of Bertha M. Shearin, the father of Felicia and Morris, Jr., and the grandfather to 2 adoring granddaughters, Morgan and Alana.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors Reverend Dr. Morris L. Shearin, Sr., for his commitment and dedication to District of Columbia residents.

Sec. 2. This resolution may be cited as the "Reverend Dr. Morris L. Shearin, Sr. Recognition Resolution of 2015".

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

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A CEREMONIAL RESOLUTION

21-72

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To recognize and honor Robert "Bob" King for his commitment to District of Columbia seniors and dedication to public service in the District of Columbia .

WHEREAS, Robert King, since 1985, has served in several leadership roles in the Fort Lincoln community, including serving as the Advisory Neighborhood Commissioner for Advisory Neighborhood Commission 5A12 and 5C03 for over 30 years, and President of the Fort Lincoln Civic Association for 10 years;

WHEREAS, Robert King actively participated in the electoral process by serving as a senior advisor and city-wide coordinator for many District candidates;

WHEREAS, Robert King, in June 2005, as a part of the District of Columbia Sister City partnership, traveled to Dakar, Senegal to bring greetings on behalf of Mayor Anthony Williams;

WHEREAS, Robert King retired from the District of Columbia in 2007 as a senior advisor on elderly affairs, where he worked with several District Mayors, including Walter E. Washington, Marion Barry, Sharon Pratt Kelly, Anthony Williams, and Adrian Fenty;

WHEREAS, Robert King has been featured in numerous articles and publications, including "Black in Urban America", "Who's Who Among Blacks in Metropolitan D.C.", the 2013 edition of "Who's Who in Black Washington", and "African American Biographies: Profiles of 558 Current Men and Women";

WHEREAS, Robert King, since 1985, has improved seniors' lives by advocating for increased transportation and recreation;

WHEREAS, Robert King is a member of the Ward 5 Senior Council, and Mayor Vincent Gray named September 29, 2014 as "Robert "Bob" King Day"; and

WHEREAS, Robert King, who is known to many neighbors and friends as "Bob", is a native Washingtonian, proud Ward 5 resident, and father to 7 children.

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IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors Robert King for his commitment and dedication to District residents.

Sec. 2. This resolution may be cited as the "Robert "Bob" King 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

21-73

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To posthumously honor the life of Kevin "Lightbulb" McRae for his exceptional commitment and 24 years of service to the Fire and Emergency Medical Services Department and the District of Columbia and to declare November 22, 2015, as "Lt. Kevin McRae Day" in the District of Columbia.

WHEREAS, Kevin McRae served with the Fire and Emergency Medical Services Department as a training instructor, a member of a special operations unit, a member of a truck company, and as an engine company leader;

WHEREAS, Kevin McRae was born in Washington, D.C. on November 22, 1970;

WHEREAS, Kevin McRae graduated from Frank W. Ballou Senior High School in 1989;

WHEREAS, Kevin McRae joined the Fire and Emergency Medical Services Department as a member of Cadet Class 4 in 1989;

WHEREAS, Kevin McRae was assigned to Engine 6 in 1991;

WHEREAS, Kevin McRae was promoted to the rank of Sergeant in 2003;

WHEREAS, Kevin McRae was promoted to Lieutenant in 2008;

WHEREAS, Kevin McRae served admirably with the proud men and women of Engine Company 6;

WHEREAS, Kevin McRae was the 100th D.C. firefighter since 1856 to give his life in the line of duty while responding to a two-alarm fire in the 1300 block of 7th Street, N.W.; and

WHEREAS, Kevin McRae's legacy continues with his wife, Trell McRae, and his 5 children: Desmond McRae, Davon McRae, Tiara Parker, Dalonte Mitchell, and Keavon McRae.

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IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes, honors, and celebrates the life of Kevin McRae for his distinguished service and extensive contributions to the District of Columbia and declares November 22, 2015, as "Lt. Kevin McRae Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Kevin McRae 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.

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A CEREMONIAL RESOLUTION

21-74

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 2, 2015

To declare June 14, 2015, as "District of Columbia Flag Day" in the District of Columbia, to reflect on the continuing disenfranchisement of the District and its residents and rally around the symbol of our right to have full and equal participation as the 51st state in the union.

WHEREAS, on June 14 of each year, the United States honors the adoption of the national flag by celebrating Flag Day;

WHEREAS, Flag Day is a day to celebrate the birthday of the American flag, and to carry the message and history of the flag of the United States to its citizens and residents;

WHEREAS, the U.S. Flag does not have a star for the District of Columbia nor its people;

WHEREAS, the people of the District of Columbia deserve both a star on the flag and full and equal inclusion in American democracy;

WHEREAS, each state has its own flag to be commemorated and celebrated as parts of the whole that make up the great United States of America;

WHEREAS, Charles A.R. Dunn in 1921 sketched a District of Columbia flag design, drawn from the coat of arms of George Washington, with "three red stars above the two red stripes on a white field";

WHEREAS, the Flag Commission and the Fine Arts Commission in 1938 chose Mr. Dunn's design out of a number of submissions of flag designs;

WHEREAS, the District of Columbia's flag was rated as America's Best Flag in 2004 by the North American Vexillological Association, yet this designation belongs to a jurisdiction that is still denied voting representation in Congress;

ENROLLED ORIGINAL

WHEREAS, the District of Columbia continues to suffer from Congress's colonial rule over the District, with its 659,000 residents denied autonomy, self-governance, and statehood;

WHEREAS, residents of the District of Columbia pay more than $24 billion dollars annually in federal taxes, which is more than the residents in 21 states, and finally seek an end to the last vestige of taxation without representation on American soil;

WHEREAS, the District of Columbia has all the attributes and characteristics of a state, yet still struggles to free itself from congressional interference in local law and spending;

WHEREAS, the District of Columbia has developed and fostered a rich culture and history since its founding in 1790, and the flag is a representation of the District and its people; and

WHEREAS, District of Columbia Flag Day is a day to reflect on the continuing disenfranchisement of the District and its residents, while rallying around the effort to make the District the 51st state in the union and finally securing a star on the American flag and thus helping to fulfill the promise of the Constitution by creating a more perfect union.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council declares June 14, 2015, as "District of Columbia Flag Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "District of Columbia Flag Day Recognition Resolution of 2015".

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-76

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 16, 2015

To declare June as "Men's Health Month" in the District of Columbia and to recognize the work of the D.C. Goes Blue Campaign to promote men's health in the District of Columbia.

WHEREAS, addressing the complex health needs of men and their families is fundamental to the future of the District of Columbia;

WHEREAS, the need for comprehensive, coordinated health services for men, young and old, places a critical responsibility on our community;

WHEREAS, it is appropriate that a month should be designated each year for the direction of our thoughts toward men's health and well-being;

WHEREAS, the District of Columbia has some of the highest rates of health disparities among men in the nation;

WHERAS, D.C. Goes Blue is a citywide effort lead by the Community Wellness Alliance that is focused on Wards 5, 7, and 8, areas of the District where male death rates from chronic diseases are highest;

WHERAS, Union Temple Baptist Church, The Keys to Canaan, LimeLite Boxing & Fitness, Evolution to Adulthood, North Columbia Heights Civic Association, Green Spaces for DC, Gold's Gym, Howard University Cancer Center, Breathe DC, the District of Columbia Department of Health and a host of other community partners have all joined in this effort; and

WHERAS, the Community Wellness Alliance through the D.C. Goes Blue Campaign and its unique approach to serving the residents of the District of Columbia is effectively addressing cancer, tobacco use, diabetes, cardiovascular diseases, obesity, and mental health among men in our community.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia declares the month of June as "Men's

ENROLLED ORIGINAL

Health Month" in the District of Columbia and recognizes the efforts of the D.C. Goes Blue campaign.

Sec. 2. This resolution may be cited as the "D.C. Goes Blue for Men's Health 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

21-77

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 30, 2015

To recognize the Washington (DC) Alumni Chapter of Kappa Alpha Psi Fraternity, Inc., for 90 years of achievement on the special occasion of the 2015 Kappa Widows Luncheon.

WHEREAS, Kappa Alpha Psi Fraternity, Inc. ("Fraternity") was founded on the night of January 5, 1911, on the campus of Indiana University at Bloomington, Indiana;

WHEREAS, the Fraternity now is comprised of functioning undergraduate and alumni chapters on major campuses and in cities throughout the United States and around the world, including the District of Columbia;

WHEREAS, the Washington (DC) Alumni Chapter of Kappa Alpha Psi Fraternity, Inc., was chartered on October 15, 1924;

WHEREAS, the Washington (DC) Alumni Chapter has been and continues to be an outstanding and integral part of the District of Columbia community at-large and within the Eastern Province of the Fraternity, including its standing as the chapter home to such local luminaries as, among others: Atty. James E. Scott, Dr. W. Henry "Stud" Greene, Dr. William L. Crump, Dr. Paul P. Cooke; Dr. Oscar L. Mims; Jesse O. Dedmon, Jr.; Atty. George E.C. Hayes; Atty. Franklin D. Reeves; Atty. Herbert O. Reid; Atty. Julian R. Dugas; Atty. Winfred R. Mundle; and 2015 Widows Luncheon Keynote Speaker, Dr. Carl E. Anderson;

WHEREAS, representatives of the Washington (DC) Alumni Chapter have held leadership positions within the District government and at every level of the Fraternity, including 4 Grand Polemarches (International President); 3 Senior Grand Vice Polemarches; the 8th Grand Keeper of Records and Exchequer; a past National Executive Director; the 1st Grand Chapter General Counsel; a Grand Historian; a Grand Board Member; 5 Province Polemarches (Regional President); 5 Senior Province Vice Polemarches; 8 Laurel Wreath Laureates; 12 Elder Watson Diggs Awardees; a Guy Levis Grant Awardee; a Past National Advisor of the Year; past members of the Province Board of Directors; several Grand Chapter or Eastern Province Committee Chairmen; numerous other appointees to Grand Chapter or Eastern Province Commissions and Committees; and 10 recipients of the Pillar of the Province Award;

ENROLLED ORIGINAL

WHEREAS, the Washington (DC) Alumni Chapter consistently has shown its leadership in the District of Columbia, not only through its contributions to the city and its residents through social, political, and educational activities such as Kappa Scholarship Endowment Fund, Kappas on Kapitol Hill and Guide Right, but also by having its members serve as the Mayor of the District of Columbia, on the Council of the District of Columbia, and as the Superintendent of the District of Columbia Public Schools;

WHEREAS, the Washington (DC) Alumni Chapter has augmented the social and economic stimuli of the city by serving as the host or co-host of Grand Chapter Meetings (National Conventions) for the Fraternity in the District of Columbia during 1926, 1936, 1954, 1985, and 2009;

WHEREAS, the Washington (DC) Alumni Chapter is the only chapter across the Fraternity that honors and celebrates the life and legacy of the widows of its dearly departed brothers with a special "Kappa Widows Luncheon" each year in which a Grand Chapter meeting is held; and

WHEREAS, the 2015 Kappa Widows Luncheon will be held at the headquarters of the American Psychological Association in the District of Columbia on June 27, 2015, in advance of the Fraternity's 82nd Grand Chapter Meeting in New Orleans, Louisiana.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia congratulates the Washington (DC) Alumni Chapter of Kappa Alpha Psi Fraternity, Inc. and its 44th Polemarch, Robert C. Cooper, Esq., for 90 years of achievement on this special occasion of the 2015 Kappa Widows Luncheon.

Sec. 2. This resolution may be cited as the "Washington (DC) Alumni Chapter of Kappa Alpha Psi Fraternity, Inc., 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

21-78

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 30, 2015

To recognize National Caribbean-American Heritage Month and the Caribbean-American community as an integral and celebrated cultural community in the District of Columbia.

WHEREAS, in 1996, residents of Caribbean heritage first conceived of a national celebration of Caribbean-American heritage, including Ward 4 residents Doreen Thompson, Denys Vaughn Cooke, Errol McLaren, and Robert Nichols, with Ward 1 resident Basil Buchanan;

WHEREAS, Mayor Anthony Williams first proclaimed June as Caribbean-American Heritage Month is 2001, and the campaign moved to the national stage through the efforts of Dr. Claire Nelson of the Institute of Caribbean Studies, located in the District of Columbia;

WHEREAS, Representative Barbara Lee of California spearheaded the bipartisan, bicameral legislative effort to recognize Caribbean-American Heritage Month nationally, appointing staff person Jamila Thompson, a Ward 5 resident of Caribbean heritage, to coordinate the policy strategy;

WHEREAS, the efforts of Representative Lee and Jamila Thompson resulted in President George W. Bush declaring June 2006 as the inaugural National Caribbean-American Heritage Month, since recognized annually by the sitting President of the United States of America;

WHEREAS, Caribbean immigrants have contributed to the well-being of American society since the country's founding;

WHEREAS, the District of Columbia has benefitted from Caribbean-Americans through their contributions to our city and nation, including the Ali family of Ben's Chili Bowl, Wayne A.I. Frederick, President of Howard University, and entertainers with Caribbean roots, including Lamman Rucker and Dave Chappelle;

ENROLLED ORIGINAL

WHEREAS, countless residents of Caribbean heritage serve the District of Columbia in the areas of public service, education, business, technology, health care, family services, the arts, and culture in every corner of the city; and

WHEREAS, Ward 4 has been the historical base for the Caribbean community, continues to have the largest number of persons of Caribbean heritage in the District of Columbia, and includes many Caribbean-American restaurants and food businesses, as well as a major church of worship for the Caribbean community.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the outstanding contributions and the valued accomplishments of the Caribbean-American community in the District of Columbia and the United State of America and recognizes District residents of Caribbean heritage on the occasion of National Caribbean-American Heritage Month.

Sec. 2. This resolution may be cited as the "Caribbean-American Heritage Month and Caribbean-American Community 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

21-79

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 30, 2015

To recognize and honor the Citi Open Tennis Tournament as it celebrates its 47th annual event and to declare August 1 through August 9, 2015, as "Tennis Week" in the District of Columbia.

WHEREAS, the Washington, D.C. tennis tournament, now known as the Citi Open Tennis Tournament, celebrates its 47th year as the Capital Tennis Tradition;

WHEREAS, the Citi Open Tennis Tournament was founded in 1969 by tennis legend and Hall of Famer Donald Dell, along with partner John Harris and with support from Arthur Ashe;

WHEREAS, Arthur Ashe declared he would only play in a naturally integrated neighborhood so everyone could enjoy the sport, leading to its location on 16th and Kennedy Streets, N.W., in Rock Creek Park;

WHEREAS, in 1972, Donald Dell gave the tournament charter to the Washington Tennis & Education Foundation (then called the Washington Area Tennis Patrons Foundation), raising funds to benefit nearly 1,500 low-income and underserved children from across Washington, D.C. each year;

WHEREAS, the Citi Open Tennis Tournament draws the best players in the world, making Washington, D.C., a global tennis destination, seen on television screens in 182 countries; and

WHEREAS, a 2014 economic impact study found that the estimated total gross impact of the Citi Open Tennis Tournament on the Washington, D.C. metropolitan regional economy in a given year is more than $26 million.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia acknowledges and honors the Citi Open Tennis Tournament and the Washington Tennis & Education Foundation for hosting a

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world-class sporting event, bringing exceptional annual economic impact to the District of Columbia, and contributing millions of dollars to low-income and underserved youth from across the city, and declares August 1 through August 9, 2015, as "Tennis Week" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Citi Open Tennis 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

21-80

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 30, 2015

To recognize Dr. William B. Lawson for his remarkable service to the residents of the District of Columbia.

WHEREAS, Dr. William B. Lawson graduated from Howard University in 1966 with a B.S;

WHEREAS, Dr. William B. Lawson graduated from the University of Virginia in 1969 with a M.A.;

WHEREAS, Dr. William B. Lawson graduated from the University of New Hampshire in 1972 with a PhD in Psychology;

WHEREAS, Dr. William B. Lawson graduated from the Pritzker School of Medicine, University of Chicago in 1978;

WHEREAS, Dr. William B. Lawson completed his medical postgraduate work at Stanford University School of Medicine from 1978-1979;

WHEREAS, Dr. William B. Lawson completed his residency within the Department of Psychiatry and Behavioral Sciences at Stanford University School of Medicine from 1979-1982;

WHEREAS, Dr. William B. Lawson served as an Assistant Professor within the Department of Psychiatry at Howard University School of Medicine, and as a psychiatrist at the D.C. Institute of Mental Hygiene in the District from 1982-1984;

WHEREAS, Dr. William B. Lawson served as Assistant Professor within the Department of Psychiatry at numerous schools throughout his career, including the University of Illinois at Champaign-Urbana, the University of California at Irvine, and Vanderbilt University School of Medicine;

WHEREAS, Dr. William B. Lawson served as Associate Professor at numerous schools throughout his career, including the Department of Pharmacology and Toxicology at the University of Arkansas for Medical Science;

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WHEREAS, Dr. William B. Lawson actively serves as the Professor and Chair of the Department of Psychiatry and Behavioral Sciences at Howard University School of Medicine, where he has been serving since 2000;

WHEREAS, Dr. William B. Lawson actively serves as President of the D.C. Chapter of Mental Health America, and has served as President or Chair of many distinguished organizations, including the Black Psychiatrists of America, the Psychiatry and Behavioral Science Section of the National Medical Association, and the Washington Psychiatric Association;

WHEREAS, Dr. William B. Lawson has received numerous impressive distinctions for his hard work and dedication in his field of psychiatry, including recognition as a Distinguished Life Fellow of the American Psychiatric Association, the Jeanne Spurlock Award from the American Psychiatric Association, the E.Y. Williams Clinic Scholar of Distinction Award from the Psychiatry and Behavioral Sciences Section of the National Medical Association, the Howard University College of Medicine Research Award, the Faculty Senate Creativity and Research Award, Profiles in Courage Award, a Multicultural Workplace Award from the Veterans Administrations, the National Alliance for the Mentally Ill Exemplary Psychiatrist Award, and the National Alliance for the Mentally Ill Outstanding Psychologist Award;

WHEREAS, Dr. William B. Lawson has been named one of "America's Leading Black Doctors" by Black Enterprise Magazine;

WHEREAS, Dr. William B. Lawson has been named a "Super Doctor" by the Washington Post;

WHEREAS, Dr. William B. Lawson has been named a "Top Doctor" by the US News and World Report;

WHEREAS, Dr. William B. Lawson has over 180 publications and has received federal, industry, and foundation funding to study and treat severe mental illness, substance abuse, and HIV/AIDS; and

WHEREAS, Dr. William B. Lawson will be retiring with over 15 years of service to Howard University and the residents of the District of Columbia and 36 years of service in his field.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the significant contributions of Dr. William B. Lawson, spanning the decades of his service in the District of Columbia, to its residents and visitors.

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Sec. 2. This resolution may be cited as the "Dr. William B. Lawson 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

21-81

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 30, 2015

To recognize Fiesta DC for promoting and preserving the richness of the Latino heritage and culture in the Washington, D.C., area on the celebration of its 44th anniversary and the role of Latin American nationals and immigrants for their economic vitality, development, diversity, and rich cultural contributions in our city, the nation's capital.

WHEREAS, September 19, 2015, is the 44th anniversary of Fiesta DC;

WHEREAS, Fiesta DC was founded in 1971 as "El Festival Latino" by a group of successful Latino grassroots activists in Washington, D.C., with the purpose of saving their roots and pride;

WHEREAS, Maria Corrales has been the President of Fiesta DC since 2011;

WHEREAS, Fiesta DC 2014 was attended by 150,000 people;

WHEREAS, Fiesta DC has expanded to a 2-day event;

WHEREAS, Fiesta DC is recognized nationally as an excellent event showcasing the great pride and beauty of Latino people and culture;

WHEREAS, Fiesta DC 2015 will celebrate and educate participants about the heritage and contributions of the District's large Salvadoreño population via "Marca País: El Salvador"; and

WHEREAS, Latin Americans from all around the Washington, D.C. area and beyond gather to celebrate this festival that unites all Latin Americans with people of all communities in our area by exposing the Latin American culture, cuisine, arts, and more, which are part of their heritage and ours.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council recognizes and celebrates September 19 through September 20, 2015, as the celebration of Fiesta DC, and in unity with all Latin American families, organizers,

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and participants of this event, we honor the contributions that Latin Americans make every day to our city, the District of Columbia metropolitan area, and our nation.

Sec. 2. This resolution may be cited as the "El Dia Fiesta 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

21-82

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 30, 2015

To celebrate the exceptional accomplishments and dedication of William O. Howland, Jr. who, during his 11-year tenure as the Director of the Department of Public Works, provided outstanding service to the residents of the District of Columbia.

WHEREAS, William O. Howland, Jr. began his long District career in 2001 as Deputy Director for the Department of Human Services, where he oversaw the construction and renovation of agency buildings and was instrumental in creating an emergency management plan for the District;

WHEREAS, from 2002 to 2004, William O. Howland, Jr. continued his service as Chief of Staff to the Deputy Mayor for Operations, where he worked to resolve issues facing the Department of Motor Vehicles, the Office of Contracting and Procurement, and the Office of Property Management;

WHEREAS, William O. Howland, Jr. became Director of the Department of Public Works in April of 2004 and is the longest-serving director in the history of the department;

WHEREAS, William O. Howland, Jr. has worked tirelessly to achieve the Department of Public Works's core mission of providing environmentally healthy municipal services that are both ecologically sound and cost-effective in the areas of solid-waste management, parking enforcement, and fleet-management services;

WHEREAS, at William O. Howland, Jr.'s direction, the District became the first jurisdiction in the nation to apply the Zipcar reservation model to its fleet operation and the first jurisdiction in the region to provide free, monthly document shredding to protect residents from identity theft;

WHEREAS, because of William O. Howland, Jr., the Department of Public Works improved the productivity of its fleet operations through integrated management techniques, it increased use of alternative-fuel vehicles in the District's fleet, and it established the District government's only apprenticeship program for mechanics-in-training;

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WHEREAS, under the tenure of William O. Howland, Jr., the District government's fleet of vehicles has been named among the top 20 Green Fleets in the country for the past 5 years;

WHEREAS, William O. Howland, Jr. increased the District's residential-recycling rate by 50% through the introduction of the single stream recycling program and implementation of weekly collections of household hazardous waste and electronics; and

WHEREAS, William O. Howland, Jr.'s vision of incorporating technology in operations at the Department of Public Works is now a reality that can be seen throughout the agency: the use of license plate recognition technology to enforce a range of parking violations- a first in the metropolitan area; the creation of an online vehicle auction program that allows anyone in the world to bid on vehicles; the introduction of smartphones to parking enforcement to improve the accuracy of parking tickets; and the introduction of tablet-size computers to solid waste enforcement to provide access to the District's property database.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the District of Columbia is grateful for the service of Director William O. Howland, Jr., a public servant who has exemplified outstanding leadership, dedication, and service

Sec. 2. This resolution may be cited as the "William O. Howland, Jr. 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

21-83

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 30, 2015

To recognize and honor Dr. Patrick J. Canavan for his years of dedicated public service to the District of Columbia in the fields of mental health and government administration.

WHEREAS, Dr. Patrick J. Canavan was born in 1962 in Elizabeth, New Jersey;

WHEREAS, Dr. Patrick J. Canavan has earned several degrees over the course of his career, receiving a degree in English & Religious Studies from Villanova University in 1974, a Master's of Education in Counseling & Student Personnel from the University of Delaware in 1986, and a Doctor's of Psychology from the Illinois School of Profession Psychology in 1995;

WHEREAS, Dr. Patrick J. Canavan is a Certified Public Manager after receiving training at the George Washington University and completed the Program for Senior Executives in State and Local Governments at Harvard University's John F. Kennedy School of Government;

WHEREAS, Dr. Patrick J. Canavan started his career in District government as a Forensic Psychology Fellow with the DC Commission on Mental Health Services at Saint Elizabeths Hospital from 1993 through 1996 before advancing in to the role of Clinical Administrator, where he served for 3 more years;

WHEREAS, Dr. Patrick J. Canavan continued in his role in District government, moving on to the Office of the City Administrator in 1999, where he served as a Special Assistant before being tapped as the Director of the Office of Neighborhood Services, creating a 16-agency neighborhood services program designed to create and sustain clean, safe, healthy, and economically vibrant neighborhoods in the District;

WHEREAS, Dr. Patrick J. Canavan was confirmed as Director of the Department of Consumer and Regulatory Affairs in 2005 during the administration of Mayor Anthony Williams, helping to create the Office of the Chief Tenant Advocate along with the Illegal Construction Unit, restored the Office of Consumer Protection, and reduced permit application backlogs from over 5,200 to less than 400;

ENROLLED ORIGINAL

WHEREAS, Dr. Patrick J. Canavan left his post at DCRA to return to Saint Elizabeths Hospital in early 2007 when he was appointed as their Chief Executive Officer during a troubling time when the facility was in disrepair and under federal investigation;

WHEREAS, Dr. Patrick J. Canavan, during his tenure at Saint Elizabeths, had a truly impressive list of accomplishments to help turn around the struggling facility, including successfully managing the United States Department of Justice ("DOJ") Settlement Agreement by instituting significant improvements across a wide range of clinical practices, fully complying with the 224 requirements under the DOJ resulting in the dismissal of the federal lawsuit in 2014, as well as managing the completion and transition to the new $143 million replacement hospital on time with minimal disruption to those in care of the hospital; and

WHEREAS, Dr. Patrick J. Canavan has made a significant impact on the District of Columbia with his dedication to public service and the field of mental health.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes, thanks, and honors Dr. Patrick J. Canavan for his lengthy career of service at Saint Elizabeths Hospital and various District government agencies, and to the residents of the District of Columbia

Sec. 2. This resolution may be cited as the "Dr. Patrick J. Canavan 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

21-84

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 30, 2015

To recognize Mr. Michael Wiencek's over 30 years of contributions to the citizens of the District of Columbia through the construction and rehabilitation of affordable and supportive housing, schools, libraries, and community centers.

WHEREAS, Mr. Wiencek serves as President of Wiencek and Associates Architects and Planners, located in the Dupont Neighborhood of the District;

WHEREAS, Mr. Wiencek served as the architect for the construction and renovation of dozens of affordable and permanent supportive housing buildings throughout the District of Columbia, including the Edgewood Campus, Wheeler Terrace, the Avenue, Overlook at Oxon Run, Channel Square Apartments, Monsenor Romero, and 5 So Others Might Eat properties;

WHEREAS, Mr. Wiencek served as the architect for the construction of the Friendship Public Charter School and the renovation of the KIPP Will Academy, creating a welcoming atmosphere for young residents to learn and grow;

WHEREAS, Mr. Wiencek served as the architect for the construction of the Washington Highlands and Woodridge libraries and the renovation of the Francis A. Gregory Neighborhood Library, building beautiful spaces for residents to come together and enjoy the rich programing of the District of Columbia Public Library system; and

WHEREAS, Mr. Wiencek served as the architect for the renovation of the N Street Village, Cafritz Fitness Center, House of Ruth, Mayfair Mansions Community Center, and Edewood Terrace I and III Community Centers, creating spaces for residents to receive crucial services and build a sense of community;

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia hereby honors Mr. Michael Wiencek for his tremendous impact on the citizens of the District of Columbia.

Sec. 2. This resolution may be cited as the "Michael Wiencek 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

21-85

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To recognize the significance of the Lincoln Highway, celebrate the 100th anniversary of it being routed through the District of Columbia via the Lincoln Highway Feeder, and declare July 27, 2015, as "Lincoln Highway Feeder Day" in the District of Columbia.

WHEREAS, the Lincoln Highway was the nation's first transcontinental highway, from New York to San Francisco, established by "Proclamation of Route" on September 10, 1913, by the Lincoln Highway Association of Detroit, Michigan;

WHEREAS, the Lincoln Highway was built in honor of President Abraham Lincoln as a "Perpetual Memorial" and "Road of Character," binding the nation together in his spirit to be perpetuated by the energies of future generations as a "Labor of Love" as mankind continues its march toward perfection;

WHEREAS, 100 years ago, on July 27, 1915, the Lincoln Highway was officially routed through the Nation's Capital via the Lincoln Highway Feeder, making the Lincoln Highway a true national highway, binding together north and south and making the Mason-Dixon line a thing of the past;

WHEREAS, this historic routing was made possible through the combined efforts of the DC Board of Commissioners, the Chamber of Commerce, the Board of Trade, U.S. Senators John Smith and Blair Lee of Maryland, and President Woodrow Wilson;

WHEREAS, Colonel Robert N. Harper, President of the Chamber of Commerce and Chairman of the Lincoln Highway Feeder Committee provided extraordinary vision and leadership in the development of Washington, D.C., and was the driving force behind all matters concerning the Lincoln Highway Feeder in Washington, D.C.;

WHEREAS, the Lincoln Highway Feeder entered the District from Baltimore via Bladensburg Road and Maryland Avenue, then past the Capitol on B Street, down First Street, up Pennsylvania Avenue, past the White House, down 17th Street, around the Lincoln Memorial, then back up 17th and 16th Streets to Scott Circle, Massachusetts Avenue, and Wisconsin Avenue to Gettysburg, Pennsylvania;

ENROLLED ORIGINAL

WHEREAS, the Lincoln Highway Feeder played a significant role in the development of Washington and was the catalyst for "The National Capital Prepared", the first comprehensive film ever made of Washington, D.C., featuring local business and municipal officials, President Wilson, his Cabinet, and many members of Congress, as well as all the city's attractions, including the highlight of the film, the Fire Department responding to a large blaze; and.

WHEREAS, the Lincoln Highway was also the catalyst for the zero milestone dedicated as the nation's "Golden Milestone" and the starting point of the nation's highway system on the north side of the Ellipse in front of the White House at the start of the first Army Transcontinental Motor Transport Convoy that traveled across the continent from Washington, D.C., to San Francisco via the Lincoln Highway in 1919, with Colonel Harper, Chairman of the Washington Lincoln Highway Feeder Committee, as Master of Ceremonies.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the significance of the Lincoln Highway, celebrates the 100th anniversary of it being routed through the District of Columbia via the Lincoln Highway Feeder, and declares July 27, 2015, as "Lincoln Highway Feeder Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Lincoln Highway Feeder 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

21-86

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To recognize the Washington Kastles for winning their historic 4th straight World Team Tennis Championship on July 27, 2014, the team's 5th title since 2009.

WHEREAS, in 2008, Mark D. Ein founded the Washington Kastles, and remains the owner today;

WHEREAS, the Washington Kastles played their first match in downtown District of Columbia on July 8, 2008;

WHEREAS, in 2009, the Kastles won their first World Team Tennis ("WTT") Championship;

WHEREAS, in 2011, the Kastles won all 16 of their matches, including the WTT Finals, to become the first team in the 40-year history of the league to complete a perfect season;

WHEREAS, in 2012, the Kastles completed an unprecedented 2nd straight undefeated season, winning their 3rd WTT title and increasing their unbeaten run to 32 matches;

WHEREAS, in 2012, Bobby Reynolds won the Mylan WTT Male MVP Award, Martina Hingis won the 2012 Mylan WTT Female MVP Award, and Coach Murphy Jensen won WTT Coach of the Year;

WHEREAS, in 2012, the Washington Kastles had some of the league's top players: Leander Paes for men's doubles and Anastasia Rodionova for mixed doubles;

WHEREAS, on July 9, 2013, the Washington Kastles won their 34th consecutive match, defeating the Boston Lobsters 25-12, breaking the pro-team sports record of 33 wins in a row by the 1971-72 Los Angeles Lakers, and setting the longest winning streak in major U.S. pro-sports history;

ENROLLED ORIGINAL

WHEREAS, past and present Washington Kastles players have combined to capture 102 Grand Slam singles, doubles, and mixed doubles titles;

WHEREAS, among the stars to suit up in Kastles red and blue are current World No. 1 Serena Williams and former World No. 1s Venus Williams**,** Leander Paes, and Martina Hingis, who all played major roles in the Kastles' 5 championship runs;

WHEREAS, Martina Hingis, Leander Paes, and Venus Williams, who are all playing for the Kastles this season, have been honored with annual WTT awards: Leander Paes is a 2-time WTT Male MVP, Martina Hingis was named the 2013 WTT Female MVP and 2014 WTT Finals MVP, and Venus Williams earned 2012 WTT Finals MVP honors;

WHEREAS, in July 2014, the Washington Kastles moved into the indoor, state-of-the art Kastles Stadium at the Smith Center in Foggy Bottom;

WHEREAS, the Washington Kastles finished the 2014 season with an overall record of 12-4 and on July 27, 2014, the Washington Kastles defeated the Springfield Lasers, 25-13, to win the 2014 WTT Championship;

WHEREAS, the Washington Kastles' 2014 WTT Championship victory was the team's 4th consecutive championship, a very rare feat among professional sports teams; and

WHEREAS, since 2011, the Washington Kastles have been the epitome of success, posting an amazing 58 – 6 record and capturing 4 championships.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the Washington Kastles and their contribution to sports and to the District of Columbia.

Sec. 2. This resolution may be cited as the "Washington Kastles Fourth Straight World Team Tennis Championship 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

21-87

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To recognize, honor, and celebrate the 25th anniversary of the Americans with Disabilities Act and the tremendous impact its passage has had on the ability of all Americans with disabilities to lead full and productive lives.

WHEREAS, in 1986, the National Council on Disability recommended enactment of an Americans with Disabilities Act, and drafted the first version of the bill, which was introduced in the House and Senate in 1988;

WHEREAS, Senator Tom Harkin (D-IA), who authored what became the final bill and was its chief sponsor in the Senate, delivered part of his introduction speech in sign language, saying it was so his deaf brother could understand;

WHEREAS, the Americans with Disabilities Act was signed into law on July 26, 1990, by President George H. W. Bush;

WHEREAS, the Americans with Disabilities Act was the most significant civil rights legislation for individuals with disabilities in the United States and inspired the rest of the world to work toward establishing equal opportunities for individuals with disabilities;

WHEREAS, the Americans with Disabilities Act affords similar protections against discrimination to Americans with disabilities as the Civil Rights Act of 1964, which made discrimination based on race, religion, sex, national origin, and other characteristics illegal;

WHEREAS, the Americans with Disabilities Act also requires covered employers to provide reasonable accommodations to employees with disabilities, and imposes accessibility requirements on public accommodations;

WHEREAS, the Americans with Disabilities Act covers employment discrimination, which applies to covered employers and covers job application procedures, hiring, advancement, and discharge of employees, job training, and other terms, conditions, and privileges of employment;

ENROLLED ORIGINAL

WHEREAS, the Americans with Disabilities Act prohibits disability discrimination by all public entities at the local level (for example, school district, municipal, city, or county), and at state level; applies to public transportation provided by public entities through regulations by the U.S. Department of Transportation and includes the National Railroad Passenger Corporation, along with all other commuter authorities; and applies to all state and local public housing, housing assistance, and housing referrals;

WHEREAS, the Americans with Disabilities Act ensures that no individual may be discriminated against on the basis of disability with regards to the full and equal enjoyment of the goods, services, facilities, or accommodations of any place of "public accommodation" by any person who owns, leases, or operates a place of "public accommodation";

WHEREAS, the Americans with Disabilities Act amended the landmark Communications Act of 1934 requiring that all telecommunications companies in the U.S. take steps to ensure functionally equivalent services for consumers with disabilities, notably those who are deaf or hard of hearing and those with speech impairments;

WHEREAS, the Americans with Disabilities Act prohibits retaliation or coercion by any individual or entity that seeks to prevent an individual from exercising his or her rights or to retaliate against him or her for having exercised those rights;

WHEREAS, the Office of Disability Rights for the District of Columbia was created by the Disability Rights Protection Act of 2006 to provide technical support, training, resolution of complaints, and overall guidance;

WHEREAS, the Department of Disability Services for the District of Columbia oversees and coordinates services for residents with disabilities through a network of private and non-profit providers; and

WHEREAS, the Office of Human Rights for the District of Columbia confronts disability discrimination through its enforcement of the District of Columbia Human Rights Act and Americans with Disabilities Act;

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes, honors, and celebrates the 25th anniversary of the historic Americans with Disabilities Act.

Sec. 2. This resolution may be cited as the “Americans with Disabilities Act 25th 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

21-88

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To declare the month of October 2015 as "Breast Cancer Awareness Month" in the District of Columbia.

WHEREAS, approximately 231,840 new cases of invasive breast cancer will be diagnosed in women before the end of 2015 and, of those cases, about 430 will occur in women of the District of Columbia;

WHEREAS, the American Cancer Society estimates that about 40,290 women in the United States will die from the disease in 2015 and, of those cases, about 80 will be women in the District;

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

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

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

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

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

WHEREAS, an estimated 231,840 new cases of invasive breast cancer are expected to be diagnosed among women in the U.S. during 2015 and about 2,350 new cases are expected in men;

ENROLLED ORIGINAL

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

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

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

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

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

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

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia honors breast cancer patients, survivors, and their families and recognizes the month of October 2015 as "Breast Cancer Awareness Month" in the District of Columbia to promote research for a cure.

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

21-89

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To declare October 2015 as "Domestic Violence Awareness Month" in the District of Columbia.

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

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

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

WHEREAS, 32,940 domestic violence-related calls were made to the Metropolitan Police Department in 2014, approximately one call every 16 minutes.

WHEREAS, 5,048 petitions for Civil Protection Orders were filed in 2014; this is a small increase over the number of filings in 2013, and 7% increase over 2012;

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

WHEREAS, many victims are forced to remain in dangerous situations due to their inability to access long-term affordable housing; according to the 2014 Homeless Point-in-Time count report, 27% of District of Columbia homeless families reported a history of domestic violence and 15% were currently homeless as a direct result of a violent incident;

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

ENROLLED ORIGINAL

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

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

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

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

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

21-90

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To declare September 20 through September 26, 2015, as "DC Calls It Quits Week" in the District of Columbia and to promote smoking cessation as critical in efforts to protect the health of Washington, D.C. residents.

WHEREAS, tobacco use is the single most preventable cause of disease, disability, and death in the United States with over 20% of adults in Washington, D.C. smoking;

WHEREAS, the total economic cost burden of smoking in the United States exceeds $300 billion annually, including $170 billion spent on direct medical care for adults;

WHEREAS, stopping smoking is associated with reduced heart disease risk within one to 2 years of quitting, along with lowered risk for lung cancer and many other types of cancer;

WHEREAS, nearly 7 in 10 adult smokers would like to quit smoking, and over 61% of District of Columbia smokers have made a quit attempt within the past year;

WHEREAS, the U.S. Department of Health and Human Services recognizes tobacco dependence as a chronic disease that often requires repeated intervention and multiple attempts to quit;

WHEREAS, of the 42.1 million people in the United States who smoke cigarettes, only 5% are able to quit without assistance from healthcare providers;

WHEREAS, counseling and medication are both effective for treating tobacco dependence and using them together is more effective than using either one alone;

WHEREAS, smokers desiring to quit should have access to approved therapies, such as counseling, nicotine replacement therapy, and pharmaceutical interventions, as well as multiple channels for outreach and support;

ENROLLED ORIGINAL

WHEREAS, Washington, D.C. residents may be unaware of the smoking cessation treatments and services available to them to help them quit, or lack the support they need in order to successfully quit;

WHEREAS, DC Calls It Quits is a smoking cessation campaign that raises awareness of the burden of tobacco on the Washington, D.C. community; and

WHEREAS, by providing smokers with the support needed to help quit, DC Calls It Quits aims to support the Washington, D.C. community in quitting its addiction to tobacco.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia declares September 20 through September 26, 2015, as "DC Calls It Quits Week" in the District of Columbia.

Sec. 2. This resolution may be cited as the "DC Calls It Quits 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

21-91

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To posthumously recognize Mr. DuJuan "Rick" Malachi's contributions to the citizens of the District of Columbia through his advocacy as a community organizer, union political action director, labor organizer, Umoja Party founder, and avid University of the District of Columbia advocate.

WHEREAS, Mr. Malachi was a longstanding Washington, D.C. native of the Lamond Riggs neighborhood;

WHEREAS, Mr. Malachi served as a founding member of the Umoja Party in 1994 and ran as an Umoja Party candidate for Ward 4 Councilmember in 1996;

WHEREAS, Mr. Malachi was a founding member of FREE DC and a founding member of Citizens for New Columbia ,which led civil disobedience actions leading up to the 1993 U.S. House of Representative's vote for statehood for the District of Columbia;

WHEREAS, Mr. Malachi served as a community organizer to empower and uplift residents, especially within the African American community;

WHEREAS, Mr. Malachi was a former supervisor of the Marion Barry Summer Youth Employment Program and encouraged youth to work hard, set goals, and become engaged in their community;

WHEREAS, Mr. Malachi spent his adult life as an advocate for a District of Columbia state college, held several protests against the closure of the flagship campus of the University of the District of Columbia ("UDC"), fully embraced the premise that "a strong education was the best way for self-empowerment," and was a current UDC student credits away from obtaining a degree at the time of his passing;

WHEREAS, Mr. Malachi served as the Political Director/Organizing Director/Business Agent for the Service Employees International Union Local 722, where he fought for policies and protections of the working class and their families; and

ENROLLED ORIGINAL

WHEREAS, Mr. Malachi served as a Delegate to the Metropolitan Washington Council AFL-CIO and served as a member of the Committee on Political Education.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia hereby honors Mr. Dujuan "Rick" Malachi for his outstanding service and positive impact on behalf of the citizens of the District of Columbia.

Sec. 2. This resolution may be cited as the "Rick Malachi 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

21-92

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To posthumously honor the life of David F. Conn, Esq., for his exceptional commitment and service to tenants and the tenant community and to all District of Columbia residents, and to declare September 26, 2015 – the day of the 8th Annual D.C. Office of the Tenant Advocate Tenant and Tenant Association Summit – as "David F. Conn Day" in the District of Columbia.

WHEREAS, David Franklin Conn of Silver Spring, Maryland, was born to Elaine R. Conn and the late Robert E. Conn on January 23, 1956, and passed away on June 4, 2015;

WHEREAS, David Conn was the beloved companion for 23 years of Betty Sellers, the loving brother of the late Lawrence Conn, and the uncle of Alexander Conn-Svendsen;

WHEREAS, David Conn abhorred injustice and discrimination and – knowing as a law student that he was risking disqualification from taking the DC Bar examination – nevertheless protested South African apartheid and was arrested for his principles;

WHEREAS, David Conn's work on behalf of renters in the District of Columbia began when he was a law student, when he led fellow tenants at the Berkshire Apartments at 4201 Massachusetts Avenue, N.W., Washington, D.C., in successfully challenging proposed capital improvement surcharges;

WHEREAS, while simultaneously serving as a federal competition attorney at the U.S. Federal Trade Commission, David Conn became a tireless *pro bono* advocate for District renters for over 25 years;

WHEREAS, David Conn helped tenants organize and assisted tenants and tenant associations in litigation; generously mentored and advised countless numbers of tenant attorneys; served as *pro bono* legal advisor for the Tenants' Organizations Political Action Committee and the Tenant Action Network ; and in 1995, founded the Tenant Action Network ; and

ENROLLED ORIGINAL

WHEREAS, David Conn's ever-brilliant, forceful, insightful, sensible, and steadfast advocacy was indispensable to the success of numerous legislative efforts in the realm of tenant rights, which included strengthening the tenant right of purchase law in 2005, creating the DC Office of the Tenant Advocate as an independent voice for tenants within the District government in 2005, and reforming the District's rent control law in 2006.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes, honors, and celebrates the life of David F. Conn, Esq., for his distinguished service and extensive contributions to the tenant community and all District of Columbia residents, and declares September 26, 2015 – the day of the 8th Annual D.C. Office of the Tenant Advocate Tenant and Tenant Association Summit – as "David F. Conn Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "David F. Conn, Esq., 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

21-93

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To recognize Misty Copeland for becoming the first African-American female principal dancer in American Ballet Theatre, one of the 3 leading classical ballet companies in the United States.

WHEREAS, Misty Copeland was born on September 10, 1982 in Kansas City, Missouri and raised in the San Pedro community of Los Angeles, California;

WHEREAS, Misty Copeland began her ballet studies at the San Pedro City Ballet and is considered a prodigy who rose to stardom despite not beginning her ballet career until the age of 13 years;

WHEREAS, Misty Copeland won first place in the Music Center Spotlight Awards at 1 years of age;

WHEREAS, Misty Copeland studied at the San Francisco Ballet School and the American Ballet Theatre's Summer Intensive on full scholarship and declared American Ballet Theatre's National Coca-Cola Scholar in 2000;

WHEREAS, Misty Copeland joined American Ballet Theatre's Studio Company in September 2000, then joined American Ballet Theatre ("ABT") as a member of the corps de ballet in April 2001 and was appointed a Soloist in August 2007;

WHEREAS, in 2014, President Obama appointed Copeland to the President's Council on Fitness, Sports and Nutrition;

WHEREAS, on November 12, 2014, The Washington Ballet announced Misty Copeland's American debut in *Swan Lake* on April 9, 2015 at the Eisenhower Theater in the John F. Kennedy Center for the Performing Arts;

WHEREAS, on June 30, 2015, Misty Copeland became the first African-American female principal dancer in ABT's 75-year history; and

ENROLLED ORIGINAL

WHEREAS, in the past year, Copeland has appeared on the cover of *Time* magazine as one of the most influential figures of 2015, written both a children's book, "Firebird," and a best-selling memoir, "Life in Motion: An Unlikely Ballerina," which has been optioned for a movie, and was the subject of a documentary at this year's Tribeca Film Festival;

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia hereby honors Ms. Misty Copeland for serving as a role model for aspiring young African-American female dancers and her contribution to the art of classical ballet.

Sec. 2. This resolution may be cited as the “Misty Copeland 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

21-94

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To recognize and honor the Omicron Eta Lambda chapter of Alpha Phi Alpha, Fraternity, Incorporated on its 30th anniversary.

WHEREAS, on December 4, 1906, Alpha Phi Alpha Fraternity, Inc. ("Alpha Phi Alpha") was founded at Cornell University in Ithaca, New York by 7 college men who recognized the need for a strong bond of brotherhood among African descendants in this country;

WHEREAS, the visionary founders of Alpha Phi Alpha were Henry Arthur Callis, Charles Henry Chapman, Eugene Kinckle Jones, George Biddle Kelley, Nathaniel Allison Murray, Robert Harold Ogle, and Vertner Woodson Tandy;

WHEREAS, Alpha Phi Alpha became the first intercollegiate Greek-letter fraternity established for African-Americans;

WHEREAS, Alpha Phi Alpha engages in civic and community service to develop leaders and to help men and women achieve higher social, economic and intellectual status;

WHEREAS, since its founding in 1906, Alpha Phi Alpha has supplied voice and vision to the struggle of African Americans and people of color around the world;

WHEREAS, on September 1, 1985, the chapter was chartered by the General Organization of Alpha Phi Alpha Fraternity, Inc. as Omicron Eta Lambda ("OHL") with its seat in Washington, D.C.;

WHEREAS, the first brother elected President was Eugene C. Thomas, and the chartering ceremony was held at Andrews Air Force Base in Suitland, Maryland on January 31, 1986;

WHEREAS, OHL's chartering brothers are Stephen D. Adams, John M. Anderson, Ryle A. Bell, Jimmy B. Boyd, Arnold Bullard, Duane Calloway, Jesse D. Dawkins, Reginald L. Dunn,

ENROLLED ORIGINAL

Malachi B. Jones, Reginald B. Lawrence, Hubert E. Michel, Willie G. Robinson, Jaru Ruley, Ray E. Spears, Eugene C. Thomas, Harry W. Taylor, Robert Warren, Jr., and Jacob R. Wormley, III;

WHEREAS, in keeping with the fraternity's principles, the Omicron Eta Lambda Charitable Foundation annually awards several scholarships of up to $4,000 to eligible senior high school male students enrolled in District of Columbia public schools;

WHEREAS, OHL has since its inception been civically engaged in the District of Columbia through its many philanthropic efforts and service-oriented activities, including an annual community day where OHL provides free health screenings, haircuts, school supplies, games, and food;

WHEREAS, OHL's "1906 Food Drive" collects 1,906 non-perishable food items and distributes them during Alpha Week to So Others Might Eat;

WHEREAS, OHL works to preserve the beauty of the District of Columbia by participating in the Adopt-A-Block program;

WHEREAS, OHL is currently in the process of developing an emerging partnership with the Department of Parks and Recreation to continue working with the King Greenleaf Recreation Center; and

WHEREAS, under current President Thomas L. Davis, OHL continues the work of Alpha Phi Alpha Fraternity, Inc. and continues to uphold the aims of Alpha Phi Alpha Fraternity, Inc., which are: "Manly Deeds, Scholarship, and Love for All Mankind".

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the 30th anniversary of Omicron Eta Lambda and Alpha Phi Alpha, Fraternity, Inc. and commends its service and commitment to improving the District of Columbia.

Sec. 2. This resolution may be cited as the "Omicron Eta Lambda 30th 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

21-95

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To honor Blues Alley Jazz on the occasion of its 50th anniversary, and to declare July 2015 as "Blues Alley Jazz Month" in the District of Columbia.

WHEREAS, Blues Alley Jazz was founded in July, 1965 by trombonist Tommy Gwaltney in order to present the finest live jazz entertainment in Washington, D.C.;

WHEREAS, Blues Alley Jazz has been in existence for 50 years, serving as Washington, D.C.'s premier performance presenter and as the oldest continuously operating jazz supper club in the country;

WHEREAS, Blues Alley Jazz was acquired in 1973 by local impresario John Bunyan who acted as a catalyst by expanding the venue's offerings, increasing its market profile, memorializing performances via live recordings, and pioneering programming by producing music education for children;

WHEREAS, Blues Alley Jazz, in cooperation with internationally renowned jazz trumpeter Dizzy Gillespie, elevated the visibility of the club in 1985 by initiating nonprofit programming through its Blues Alley Jazz Society;

WHEREAS, the nonprofit Blues Alley Jazz Society was similarly acknowledged by the Council of the District of Columbia on April 10, 2015 for its mission to promote youth, jazz and education here in the District of Columbia;

WHEREAS, Blues Alley Jazz honors our nation's indigenous jazz heritage with its own Blues Alley Youth Orchestra, Summer Jazz Camp, and *BIG BAND JAM*! jazz festival for children;

WHEREAS, Blues Alley Jazz has rekindled the careers of jazz's inimitable past by presenting such notable luminaries as Count Basie, Sarah Vaughn, Dave Brubeck, Tony Bennett, Miles Davis, and Ella Fitzgerald; and

WHEREAS, Blues Alley Jazz has ignited the legends of jazz artists Wynton Marsalis, Eva Cassidy, Charlie Byrd, Ramsey Lewis, and Ahmad Jamal through live recordings.

ENROLLED ORIGINAL

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the significance of Blues Alley Jazz and pays tribute to this legendary jazz landmark that enjoys international recognition as both an industry leader and as our official jazz ambassador to the world. Moreover, we appreciate the cultural contributions of owners Harry Schnipper and Madeline Diehl as they continue to perpetuate the landmark legacy of Blues Alley Jazz as a Washington, D.C. jazz institution and, therefore, declare July 2015 as "Blues Alley Jazz Month" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Blues Alley Jazz 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

21-96

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To recognize the accomplishments and contributions of Irasema Salcido upon the occasion of her resignation as Chief Development Officer of César Chávez Public Charter Schools for Public Policy.

WHEREAS, Irasema Salcido came to the United States as the daughter of Mexican immigrant farm workers at 14 years of age with no English proficiency;

WHEREAS, Irasema Salcido persevered through education and received her Bachelor of Arts degree in Business Administration from California State University, Fullerton's College of Business and Economics in 1987;

WHEREAS, Irasema Salcido continued her education at Harvard University, where she completed her Master's degree in Education, Administration, and Social Planning;

WHEREAS, Irasema Salcido worked for 9 years in the District of Columbia Public Schools system, serving for 6 years as an Assistant Principal at Bell Multicultural High School;

WHEREAS, Irasema Salcido made her desire to educate the less fortunate a lifetime goal patterned after her role model, César Chávez, and in tribute, founded the César Chávez Public Charter School in the District of Columbia in 1998;

WHEREAS, Irasema Salcido opened a second school and became the Chief Executive Officer of the César Chávez Public Charter Schools for Public Policy, which has grown into a network of 2 middle schools and 2 high schools;

WHEREAS, Irasema Salcido has become a nationally recognized expert and advocate for charter schools and underserved students;

WHEREAS, Irasema Salcido received several honors and awards over the course of her career – she was designated as one of the "Six Most Caring Citizens in the U.S." of 1999 by the Caring Institute, selected by the U.S. Department of Education to speak on a teleconference panel entitled "Charter Schools: New Choices in Public Education," awarded the "Principal of the Year" award from the Charter School Resource Center, given the "Use Your Life Award" from

ENROLLED ORIGINAL

Oprah Winfrey's Angel Network for her dedication to the students of César Chávez in 2001, and chosen to present a paper at the Cato Institute in 2003 on the first 5 years of Chávez schools in 2003, which was later published in Educational Freedom in Urban America, and awarded the Citizen of the Year Award in 2006 by the National Conference on Citizenship;

WHEREAS, Irasema Salcido addressed the U.S. House of Representatives' Committee on Education and the Workforce and collaborated with the Center for Information and Research on Civic Learning and Engagement , contributing to "The Civic Mission of Schools," a report on civic education;

WHEREAS, Irasema Salcido served on the Education Committee of the St. Elizabeth's Redevelopment Initiative Advisory Board and the Executive Committee of the Raise DC Partnership Initiative, and the DC Public Education Finance Reform Commission;

WHEREAS, Irasema Salcido convened a small group of Parkside-Kenilworth community residents and other school supporters to discuss ways that Chavez and its Parkside campus neighbors could partner to promote academic achievement and college access for their children, in recognition of the problems that challenged the families of many of the students attending the Chavez – Parkside campus and were preventing them from achieving the success they were capable of attaining;

WHEREAS, after 3 years of intensive resident engagement and planning, Cesar Chavez Public Charter Schools submitted a proposal to the U.S. Department of Education for a federal Promise Neighborhood Planning grant, and in late September 2010, Cesar Chavez Public Charter Schools became one of 21 recipients of a Promise Neighborhood planning grant that started the DC Promise Neighborhood Initiative in the Parkside-Kenilworth community of Ward 7; and

WHEREAS, Irasema Salcido resigned from her position as Chief Development Officer after 16 years of service at Chavez Schools to spend more time with her family and fulfilling her other community commitments.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia honors and thanks Irasema Salcido for her accomplishments and contributions as an educator, administrator, and visionary.

Sec. 2. This resolution may be cited as the "Irasema Salcido 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

21-97

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To recognize the 67th World Assembly and International Conference of the World Organization for Early Childhood Education (OMEP).

WHEREAS, the World Organization for Early Childhood Education (OMEP) is an international, non-governmental, and nonprofit organization founded in 1948 that aims to promote for all children the optimum conditions to ensure their well-being, development, learning, and happiness in their families and the institutions that serve them;

WHEREAS, OMEP advocates for the education and well-being of children under the age of 8 years throughout the world by defending and promoting the rights of the child through education, care, and worldwide support of activities that improve accessibility to higher quality education and care; supporting research that may influence the conditions in which children live, develop, learn, and play; assisting in undertakings that will improve early childhood education; and carrying out projects that contribute to an understanding between peoples and to peace in the world;

WHEREAS, OMEP-USA is one of over 70 national committees that belong to World OMEP and has membership from 8 regions that cover the 50 states and the District of Columbia;

WHEREAS, OMEP-USA shares the goals and objectives of World OMEP and works cooperatively with many organizations for which international early childhood education is of primary interest;

WHEREAS, the District of Columbia has positioned itself as a national leader in the provision of high-quality pre-k, boasting a service delivery rate that exceeds 80% and spending the most on pre-k per child in the United States, more than $10,000 over the national average, to ensure that the program is high-quality;

ENROLLED ORIGINAL

WHEREAS, OMEP-USA, its President, Jean Simpson, PhD, and Co-chairpersons Edna Ranck, EdD, and Barbara Ferguson Kamara will host OMEP's 67th World Assembly and International Conference from July 27, 2015 to August 1, 2015, in the District of Columbia, bringing together leaders, educators, and advocates from over 65 member countries in Africa, Asia Pacific, Europe, Latin America, North America, and the Caribbean; and

WHEREAS, the World Assembly and International Conference include plenary sessions and workshops, a film festival, paper and poster presentations, exhibits, visits to early childhood education programs, and with a theme of "Pathways to Sustainability," provides various presentations and symposiums to share information and initiate actions that benefit young children everywhere, focusing on the sub-themes of sustainability through: a highly effective workforce; comprehensive, engaging, play-based curriculum models; STEAM education (Science, Technology, Engineering/Art & Mathematics); facility design and responsive classrooms; systems of comprehensive health and wellness; family engagement, cultural and linguistic diversity; systems building, partnerships, financing, advocacy and public policy; peace education and environmental stewardship; sensible assessment – teacher, environment and children; and children's rights.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia welcomes the 67th World Assembly and International Conference to the District of Columbia and recognizes the work of the World Organization for Early Childhood Education (OMEP) and OMEP-USA.

Sec. 2. This resolution may be cited as the "World Organization for Early Childhood Education (OMEP) 67th World Assembly and International Conference 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

21-98

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To declare June 26 as "LGBT Equality Day" in the District of Columbia, to reflect on the importance of the 3 major rulings issued by the United States Supreme Court that have advanced the rights of all LGBT people.

WHEREAS, in 1995, the District of Columbia repealed its sodomy laws in D.C. Law 10-257, the Anti-Sexual Abuse Act of 1994, and on June 26, 2003, the United States Supreme Court struck down all state laws "making it a crime for two persons of the same sex to engage in certain intimate sexual conduct" (sodomy). *Lawrence v. Texas*, 539 U.S. 558 (2003);

WHEREAS, on July 7, 2009, the District of Columbia began to recognize same-sex marriages entered into in other jurisdictions in D.C. Law 18-9, the Jury and Marriage Amendment Act of 2009, and on June 26, 2013, the United States Supreme Court struck down prohibitions on federal recognition of valid marriages between same-sex couples and invalidated the first half of the Defense of Marriage Act. *United States v. Windsor*, 570 U.S. ____ (2013);

WHEREAS, on March 3, 2010, the District of Columbia legalized same-sex marriage in D.C. Law 18-110, the Religious Freedom and Civil Marriage Equality Amendment Act of 2009, and on June 26, 2015, the Supreme Court struck down all laws prohibiting marriage between 2 persons of the same sex. *Obergefell v. Hodges*, 576 U.S. ___(2015); and

WHEREAS, in light of the fact that the United States Supreme Court has issued 3 major rulings advancing the rights of LGBT people, all on June 26, that date should be declared LGBT Equality Day in the District of Columbia, not just for one year, but as a general date for all time.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council recognizes the importance of the 3 major rulings issued by the United States Supreme Court that have advanced the rights of all LGBT people and declares June 26 as "LGBT Equality Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "LGBT Equality Day 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

21-99

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2015

To recognize and thank Eric C. Jackson for his 27 years of service as an officer in the Metropolitan Police Department.

WHEREAS, Eric C. Jackson was born in the District on July 3, 1965;

WHEREAS, Eric C. Jackson is a product of the District of Columbia Public Schools system, attending Kelly Miller Junior High and graduating from H.D. Woodson High School in 1983;

WHEREAS, Eric C. Jackson attended the University of the District of Columbia for 2 semesters before accepting a job with the Secretary of the United States Senate;

WHEREAS, Eric C. Jackson joined the Metropolitan Police Department in March, 1988, graduating from the police academy the following August;

WHEREAS, Eric C. Jackson was assigned to the Second Police District and served there honorably for 3 years before being transferred to Special Operations Division;

WHEREAS, Eric C. Jackson served in the Special Operations Division for 24 years, escorting 4 United States Presidents and every foreign dignitary who visited the District during that time;

WHEREAS, Eric C. Jackson's most cherished moment of his career was the honor of escorting the late Mayor Marion Barry's funeral procession through the District; and

WHEREAS, Eric C. Jackson retired from the Metropolitan Police Department on July 11, 2015 after 27 years on the force.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and thanks Eric C. Jackson for his decades of service to the Metropolitan Police Department and to the residents of the District of Columbia.

ENROLLED ORIGINAL

Sec. 2. This resolution may be cited as the “Eric C. Jackson 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 EDUCATION
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC HEARING

on

B21-0115, Public Charter School Fiscal Transparency Amendment Act of 2015

on

Wednesday, October 14, 2015
1:00 p.m., Hearing Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the scheduling of a public hearing of the Committee on Education on B21-0115, the Public Charter School Fiscal Transparency Amendment Act of 2015. The roundtable will be held at 1:00 p.m. on Wednesday, October 14, 2015 in Hearing Room 120 of the John A. Wilson Building.

The stated purpose of B21-0115 is to amend the District of Columbia School Reform Act of 1995 to define a conflicting interest transaction for public charter schools; allow an eligible chartering authority to require the production of financial books and records of certain vendors that contract with public charter schools; to establish violation of such conflict of interest provisions as fiscal mismanagement; and to define the circumstances under which a nonprofit corporation that operates a public charter school shall be involuntarily dissolved.

Those who wish to testify are asked to telephone the Committee on Education, at (202) 724-8061, or email Jessica Giles, Committee Assistant, at jgiles@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, October 9, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on October 28, 2015.

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

COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC HEARING

on

B21-0271, Early Learning Quality Improvement Network Amendment Act of 2015 and

B21-0295, Higher Education Licensure Commission Amendment Act of 2015

on

Thursday, October 1, 2015
10:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the scheduling of a public roundtable of the Committee on Education on B21-0271, the Early Learning Quality Improvement Network Amendment Act of 2015 and B21-0295, the Higher Education Licensure Commission Amendment Act of 2015. The roundtable will be held at 10:00 a.m. on Thursday, October 1, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of B21-0271 is to require of the Office of the State Superintendent of Education to establish a pilot community-based Quality Improvement Network comprised of child development hubs, centers, and homes and requires the hubs to provide technical and other specified service to child development centers and homes. The stated purpose of B21-0295 is to clarify the role and duties of the Education Licensure Commission and expand the District's higher-education-licensing structure to include institutions that provide online education to District residents who are physically present in the District.

Those who wish to testify are asked to telephone the Committee on Education, at (202) 724-8061, or email Jessica Giles, Committee Assistant, at jgiles@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, September 29, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on October 14, 2015.

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

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC HEARING ON:

Bill 21-252, the "ABLE Program Trust Establishment Act of 2015"
Bill 21-299, the "Fiscal Year 2016 Tax Revenue Anticipation Notes Act of 2015"

Thursday, September 17, 2015
10:00 a.m.
Room 500 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held on Thursday, September 17, 2015 at 10:00 a.m. in the Council Chamber, Room 500, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Bill 21-252, the "ABLE Program Trust Establishment Act of 2015" would amend Chapter 48 of Title 47 of the District of Columbia Official Code to establish a qualified Achieving a Better Life Experience Act or ABLE program, which would be known as the ABLE Program Trust. The legislation would exempt from income taxation the earnings on deposits made to an ABLE account by an eligible individual to assist the individual with certain expenses related to the individual's blindness or disability.

Bill 21-299, the "Fiscal Year 2016 Tax Revenue Anticipation Notes Act of 2015" would authorize the District to issue general obligation tax revenue anticipation notes (TRANs) in an amount up to $600 million in Fiscal Year 2016 to finance governmental expenses and seasonal cash flow needs for the fiscal year ending September 30, 2016.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Wednesday, September 16, 2015. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

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

COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC HEARING

on

Public School Food and Nutrition Services Programs and

B21-0315, School Food and Nutrition Services Contract Requirement Act of 2015

on

Wednesday, September 30, 2015
10:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the scheduling of a public hearing of the Committee on Education on public school food and nutrition services programs and B21-0315, the School Food and Nutrition Services Contract Requirement Act of 2015. The roundtable will be held at 10:00 a.m. on Wednesday, September 30, 2015 in Hearing Room 412 of the John A. Wilson Building.

The purpose of this hearing to discuss the state of public school food and nutrition services programs and B21-315. The stated purpose of B21-0315 is to require certain terms to be included in any contract for food and nutrition services that is entered into between District of Columbia Public Schools (DCPS) and a vendor.

Those who wish to testify are asked to telephone the Committee on Education, at (202) 724-8061, or email Jessica Giles, Committee Assistant, at jgiles@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Monday, September 28, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on October 14, 2015.

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

COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR21-0216, the District of Columbia Board of Library Trustees Victor Reinoso Confirmation Resolution of 2015, and

PR21-0280, the Public Charter School Board Ricarda Ganjam Confirmation Resolution of 2015

on

Thursday, September 17, 2015
10:00 a.m., Hearing Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the scheduling of a public roundtable of the Committee on Education on PR21-0216, the District of Columbia Board of Library Trustees Victor Reinoso Confirmation Resolution of 2015 and PR21-0280, the Public Charter School Board Ricarda Ganjam Confirmation Resolution of 2015. The roundtable will be held at 10:00 a.m. on Thursday, September 17, 2015 in Hearing Room 120 of the John A. Wilson Building.

The stated purpose of PR21-0216 is to confirm the appointment of Mr. Victor Reinoso to the District of Columbia Board of Library Trustees for a term to end January 5, 2019. The stated purposed of PR21-0280 is to confirm the appointment of Ms. Ricarda Ganjam to the Public Charter School Board for a term to end February 24, 2019.

Those who wish to testify are asked to telephone the Committee on Education, at (202) 724-8061, or email Jessica Giles, Committee Assistant, at jgiles@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, September 15, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on September 30, 2015.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	August 21, 2015
Petition Date:	October 5, 2015
Hearing Date:	October 19, 2015
License No.:	ABRA-090459
Licensee:	Alemeshet B. Bayou
Trade Name:	Abayou Grocery & Deli
License Class:	Retailer's Class "B" Grocery - 25% percent
Address:	3443 14th Street, N.W.
Contact:	Alemeshet Bayou: 301-326-8271/Jeff Jackson: 202-251-1568

WARD 1 ANC 1A SMD 1A04

Notice is hereby given that this applicant has applied for a substantial change to their 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

Class "B" Grocery 25 percent, transfer to a new location.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE

Sunday through Saturday 9am-10pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

**Posting Date:	August 21, 2015
**Petition Date:	October 5, 2015
**Hearing Date:	October 19, 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 expansion sidewalk space is located in front of the adjacent property at the corner of 1821 First Street, N.W. and 83-85 Seaton Place, N.W. 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

****RESCIND**

**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

****CORRECTION**

Posting Date: August 14, 2015
Petition Date: September 28, 2015
Hearing Date: October 13, 2015
Protest Hearing: January 06, 2016

License No.: ABRA-099786
Licensee: Bonfire, LLC
Trade Name: Bonfire
License Class: Retail Class "C" Restaurant
Address: 1132 19th Street, N.W.
Contact: Faigal Gill 310-418-6675

WARD 2 ANC 2B SMD 2B06

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on **January 6, 2016 at 1:30 pm.

NATURE OF OPERATION
New Restaurant with modern American cuisine and entertainment. Occupancy load is 136.

HOURS OF OPERATON
Sunday through Thursday 10 am –2 am, Friday and Saturday 10 am –3 am

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

HOURS OF OPERATION OF ENTERTAINMENT
Sunday through Thursday 6 pm –2 am, Friday and Saturday 6 pm –3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Posting Date:	August 14, 2015
Petition Date:	September 28, 2015
Hearing Date:	October 13, 2015
Protest Date:	January 6, 2016

License No.:	ABRA-099947
Licensee:	Burn DC, LLC
Trade Name:	Burn by Rocky Patel
License Class:	Retailer's Class "C" Tavern
Address:	477 H Street, N.W.
Contact:	Stephen O'Brien: 202-625-7700

WARD 2 ANC 2C SMD 2C02

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 January 6, 2016.

NATURE OF OPERATION

New tavern will operate a cigar lounge serving food and alcohol with a seating capacity of **250 patrons. Total occupancy load of *350. Entertainment Endorsement will provide a DJ and solo performances.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

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

HOURS OF ENTERTAINMENT

Sunday through Saturday 11 am – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

**Posting Date:	August 21, 2015
**Petition Date:	October 5, 2015
**Roll Call Hearing Date:	October 19, 2015
**Protest Hearing Date:	January 6, 2016

License No.:	ABRA-099556
Licensee:	Independence 4 U, LLC
Trade Name:	Declaration
License Class:	Retailer's Class "C" Restaurant
Address:	804 V Street, N.W.
Contact:	Camelia Mazard: 202-589-1834

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for January 6, 2016 at 1:30pm.

NATURE OF OPERATION
New full service casual dining restaurant specializing in intercontinental small-plate food with occasional live entertainment to include DJs, as well as occasional live music (3-4 piece band). Seating inside premises is 50. Total capacity inside premises is 65. Sidewalk Café with seating for 12.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES
Sunday 10am – 11pm, Monday through Thursday 11am-12am, Friday 11am -3am and Saturday, 10am-3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ
Sunday 10am – 11pm, Monday through Thursday 11am-12am, Friday 11am -1am and Saturday, 10am-1am

HOURS OF LIVE ENTERTAINMENT
Sunday 10am-11pm, Monday through Thursday 6pm-12am, Friday 6pm -3am, and Saturday 10am - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

**Posting Date:	July 17, 2015
**Petition Date:	August 31, 2015
**Roll Call Hearing Date:	September 14, 2015
**Protest Hearing Date:	December 2, 2015

License No.:	ABRA-099556
Licensee:	Independence 4 U, LLC
Trade Name:	Declaration
License Class:	Retailer's Class "C" Restaurant
Address:	804 V Street, N.W.
Contact:	Camelia Mazard: 202-589-1834

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for **December 2, 2015 at 4:30pm.

NATURE OF OPERATION
New full service casual dining restaurant specializing in intercontinental small-plate food with occasional live entertainment to include DJs, as well as occasional live music (3-4 piece band). Seating inside premises is 50. Total capacity inside premises is 65. Sidewalk Café with seating for 12.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES
Sunday 10am – 11pm, Monday through Thursday 11am-12am, Friday 11am -3am and Saturday, 10am-3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFÉ
Sunday 10am – 11pm, Monday through Thursday 11am-12am, Friday 11am -1am and Saturday, 10am-1am

HOURS OF LIVE ENTERTAINMENT
Sunday 10am-11pm, Monday through Thursday 6pm-12am, Friday 6pm -3am, and Saturday 10am - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	August 21, 2015
Petition Date:	October 5, 2015
Hearing Date:	October 19, 2015
Protest Hearing Date:	January 6, 2016
License No.:	ABRA-097969
Licensee:	HRH Services, L.L.C.
Trade Name:	The Alibi
License Class:	Retailer's Class "C" Restaurant
Address:	237 2nd Street, N.W.
Contact:	Rachel Traverso: (202)-347-2237

WARD 6 ANC 6C SMD 6C02

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 January 6, 2016 at 1:30 pm.

NATURE OF OPERATION

A restaurant serving British and American foods (i.e. fish, chips, chicken pot pie, smoked pork, etc.) Small-sized jazz bands and other local artists may be hired on occasion for special and/or private events. Live entertainment (including hiring a DJ) will not occur on a regular basis. Total Seats: 100. Total Occupancy: 100. Total Seats for Sidewalk Café: 64.

HOURS OF OPERATION FOR PREMISES AND SIDEWALK CAFE

Sunday 10am-12am, Monday through Thursday 10am – 2 am,
Friday & Saturday 10am – 3am

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

Sunday 11am-11:30pm, Monday through Thursday 11am – 1:30am,
Friday & Saturday 11am – 2:30am

HOURS OF ENTERTAINMENT

Sunday 6pm-11:30pm Monday through Thursday 6pm-1:30am
Friday & Saturday 6pm – 2:30am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: August 21, 2015
Petition Date: October 5, 2015
Hearing Date: October 19, 2015

License No.: ABRA-097131
Licensee: Thip Khao, LLC
Trade Name: Thip Khao
License Class: Retailer's Class "C" Restaurant
Address: 3460 14th Street, N.W.
Contact: Morris Topf: 301-654-6285

WARD 1 ANC 1A SMD 1A02

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 70.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11 am - 12 am, Friday & Saturday 10 am – 2 am

PROPOSED HOURS OF OPERATION FOR SIDEWALK CAFE
Sunday through Thursday 10 am – 10 pm, Friday & Saturday 10 am – 11 pm

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUPMTION FOR SIDEWALK CAFÉ
Sunday through Thursday 11 am - 10 pm, Friday & Saturday 10 am – 11pm

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, NOVEMBER 10, 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 FIVE

19089 ANC-5E **Application of Nezam Yousefi**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101, to allow the construction of a new five-story mixed use building containing 13 units in the C-3-C District at premises 8 P Street N.E. (Square 668, Lot 14).

WARD SIX

19092 ANC-6A **Appeal of Patricia Schaub**, pursuant to 11 DCMR §§ 3100 and 3101, from an October 8, 2013 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. G1500009, to allow the construction of a new garage with roof deck in the R-4 District at premises 1120 Park Street N.E. (Square 987, Lot 8).

WARD FIVE

19101 ANC-5E **Application of (Darryl) O.A. Sulekoiki**, pursuant to 11 DCMR §§ 3104.1, for a special exception from the inclusionary zoning requirements pursuant to § 2606.1, to construct eight flats on eight record lots in the R-4 District at premises 2112-2126 3rd Street N.E. (Square 3561, Lots 42-49).

WARD SIX

19103 ANC-6E **Application of TPC 5th & I Partners LLC**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the rear yard requirements under § 774, the closed court requirements under § 776, the minimum parking requirements under § 2101.1, and the parking access requirements under § 2117, and a special exception from the roof structure requirements under § 770.6 (b) and § 411.3, pursuant to § 411.11, to construct a mixed-use building containing a hotel and apartment house in the DD/C-2-C/MVT District at premises 901 5th Street, N.W. (Square 516, Lot 59).

WARD SIX

19104 ANC-6A **Application of Jacob Joyce**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, the rear yard requirements under § 404, and the nonconforming structure requirements under § 2001.3, to construct a rear spiral staircase to an existing flat in the R-4 District at premises 1617 Gales Street N.E. (Square 4540, Lot 156).

WARD TWO

19105 ANC-2D **Application of Yolanda Garay and Francisco Ruiz**, pursuant to 11 DCMR §§ 3104.1, for a special exception from the use requirements pursuant to § 320.3, to convert a one-family dwelling into a one-family dwelling with accessory apartment in the R-3 District at premises 2113 Bancroft Place N.W. (Square 2531, Lot 802).

THIS CASE WAS POSTPONED BY THE APPLICANT FROM THE PUBLIC HEARING OF OCTOBER 6, 2015:

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).

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.

CHILD AND FAMILY SERVICES AGENCY

NOTICE OF FINAL RULEMAKING

The Director of the Child and Family Services Agency (CFSA), pursuant to Section 372 of the Prevention of Child Abuse and Neglect Act of 1977 (Act), as amended, effective April 23, 2013 (D.C. Law 19-276; 60 DCR 2060 (February 22, 2013)) and Mayor's Order 2013-145, dated August 8, 2013, hereby gives notice of the adoption of the following amendments to Chapters 60 (Foster Homes) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The amendments implement provisions of the Act regarding the care and treatment of foster youth. However, these amendments do not establish any additional private right of action beyond that which already exists under federal or District law. The implementation of specific rights and responsibilities shall be consistent with each foster child's health, welfare, age, and level of development.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on March 20, 2015 at 62 DCR 3419. No written comments were received from the public in connection with this publication and no changes were made. The proposed rulemaking was submitted to the Council on as required by § 372(c) of the Act. Council approved the rules by resolution on May 5, 2015. Final action to adopt these rules was taken on July 27, 2015.

These rules will take effect immediately upon publication of this notice in the *D.C. Register*.

Chapter 60, FOSTER HOMES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 6004, RIGHTS AND RESPONSIBILITIES OF FOSTER CHILDREN LIVING IN FOSTER HOMES, is amended as follows:

Section 6004.1 is amended by adding the following paragraphs:

(qq) To be integrated into household and family activities, consistent with his or her age and level of development.

(rr) To have privileges and responsibilities that correspond with those provided to other children living in the foster home, consistent with his or her age and level of development.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Urban Agriculture: Apiculture Regulations

The Director of the Department of Energy and Environment (Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2013 Repl.)), Sections 211 and 219 of the Sustainable Urban Agriculture Apiculture Act of 2012, effective April 20, 2013 (D.C. Law 19-262; D.C. Official Code §§ 8-1825.01 and 8-1825.09 (2013 Repl.)), as amended by Title IV, Subtitle B of the Sustainable D.C. Omnibus Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-142; 61 DCR 8045 (August 8, 2014)), Mayor's Order 2015-068, dated February 4, 2015, and Mayor's Order 2015-191, dated July 23, 2015, hereby amends Chapter 15 (Fish and Wildlife) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR).

This final rulemaking requires the registration of bee colonies kept in the District, and permits for transportation of bees on combs, empty used combs, used hives, or other used apiary equipment into and out of the District. The District has a growing number of beekeepers. Currently, honey bee colonies are only permitted under very limited conditions, although they are allowed in equally dense cities, such as New York City and Chicago. With a wide variety of vegetation grown by residents in their yards and urban green spaces, cities provide an excellent foraging environment for honey bees. As urban agriculture continues to grow, residents can benefit from the keeping of honey bees in the District, as honey bees are beneficial to home garden vegetable and fruit production. This regulation promotes the raising of honey bees and expands the District's authority to regulate beekeeping, refines the responsibilities of beekeepers, manages colony disposition, and regulates the management of colony density and distance from property lines.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 12, 2015 at 62 DCR 008314. A single comment on the definition of top bar hives was received. The Department carefully considered this stylistic, but non-substantive comment, and modified the definition to clarify the intended meaning. The final version of these rules contains minor modifications, but no substantive alterations have been made to the proposed rulemaking.

These rules were adopted as final on July 25, 2015 and shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 15, FISH AND WILDLIFE, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended to add new Sections 1520 – 1530, and to amend Section 1599 as follows:

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1520 URBAN APICULTURE: GENERAL PROVISIONS

1520.1 No person shall keep a colony of bees in the District unless the colony is registered annually with the Department of Energy and Environment (Department).

1520.2 A person may keep a colony in the District if the colony is established and maintained in a manner consistent with the provisions of this chapter.

1520.3 A fee shall be assessed per apiary.

1521 URBAN APICULTURE: COLONY REGISTRATION

1521.1 All colonies shall be registered within thirty (30) days of establishment of a colony.

1521.2 To register a colony, the beekeeper shall provide the Department with the following information:

(a) The beekeeper's name, street address, phone number, and e-mail address;

(b) The name, phone number, e-mail address, and address of the owner or manager of the property where the apiary is located;

(c) Written permission from the property owner or property manager to establish a colony on a multi-unit building or property, if the beekeeper is not the owner of the property where the colony is to be kept;

(d) The apiary location, including a street address and global positioning system coordinates;

(e) A photo of the apiary in its entirety;

(f) An emergency contact name and phone number; and

(g) Documentation that the conditions of Section 1525 of this chapter (Apiary Density and Distance) have been met.

1521.3 By registering a colony, the beekeeper is agreeing to provide access for the inspection of the apiary by the Department.

1521.4 A beekeeper registering a colony of bees pursuant to this section shall agree to defend and indemnify and hold harmless the District against any and all claims arising out of the keeping of bees and any other activities related to any permit or registration pursuant to this section.

1521.5 A beekeeper shall notify the Department within ten (10) business days of any changes to the information in the colony registration.

1522 URBAN APICULTURE: FEES

1522.1 A fee of $10.00 per apiary shall be paid annually to the Department.

1523 URBAN APICULTURE: TRANSPORTATION PERMIT

1523.1 No person shall transport into the District, any colony, portion of a colony, bees on combs, empty used combs, used hives, or any other used apiary appliance without first obtaining a permit from the Department.

1523.2 To obtain a permit to transport a colony or portion of a colony, bees on combs, empty used combs, or used hives into the District, the beekeeper shall provide the Department with the following information:

(a) The name, phone number, e-mail address, and street address of the beekeeper;

(b) A description of the item(s), quantity, and origin of item(s) to be brought into the District; and

(c) A certificate of inspection performed by the state of origin within the previous ninety (90) days.

1523.3 No person shall transport out of the District any colony, portion of a colony, bees on combs, empty used combs, or used hives without first notifying the state of destination, and obtaining a Certificate of Apiary Inspection from the Department.

1523.4 To obtain a Certificate of Apiary Inspection, a person shall provide the Department with the following information at least thirty (30) days prior to transport:

(a) Name, phone number, e-mail address, and street address of beekeeper; and

(b) Apiary item, quantity leaving the District, destination, date of movement, and reason for movement.

1523.5 The Department shall inspect the colony for disease prior to issuing a Certificate of Apiary Inspection.

1524 URBAN APICULTURE: BEEKEEPER RESPONSIBILITIES

1524.1 All colonies are subject to inspection by the Department.

1524.2 The beekeeper shall keep the colony in a Langstroth-type hive, Top Bar hive, or other hive with removable combs.

1524.3 The beekeeper shall maintain the hive in sound condition.

1524.4 The beekeeper shall maintain adequate space in the hive to prevent overcrowding and to deter swarming.

1524.5 The beekeeper shall provide the colony with a convenient, adequate, and constant source of water to prevent the bees from seeking water from sources where they can be considered a nuisance.

1524.6 The beekeeper shall be responsible for the remediation of bee swarms and nuisance conditions.

1524.7 In the event that a beekeeper fails to remediate the bee swarm or nuisance condition, the owner of the property on which the colony is located shall be responsible for the remediation, and the beekeeper shall reimburse the property owner for the cost incurred by the remediation.

1525 URBAN APICULTURE: APIARY DENSITY AND DISTANCE

1525.1 A hive shall be located at least fifteen feet (15 ft.) from a property line, unless one of the following applies:

(a) A flyway barrier is maintained where the hive is at least five feet (5 ft.) from the property line;

(b) The hive is located eight feet (8 ft.) or more above the grade of the property immediately adjacent;

(c) The hive is located on a rooftop and is five feet (5 ft.) from the side of the building or structure and at least fifteen feet (15 ft.) from the nearest occupied structure, including a roof deck or balcony; or

(d) Annual written approval is granted from neighbors whose properties are located within thirty feet (30 ft.) of the proposed hive.

1525.2 Flyway barriers shall:

(a) Be at least six feet (6 ft.) high at all points:

(b) Extend ten feet (10 ft.) beyond the hive in each direction;

(c) Consist of dense vegetation or a solid barrier; and

(d) Comply with the requirements of the District of Columbia Building Code.

1525.3 A beekeeper shall not keep more than four (4) hives, unless the property is greater than one-quarter acre (10,890 sq. ft.)

1525.4 A beekeeper may add an additional four (4) hives for each additional quarter acre (10,890 sq. ft.) of land.

1525.5 Upon written request, the Department may grant a beekeeper permission to keep more than four (4) hives, if the beekeeper has at least three (3) years of documented beekeeping experience and one of the following:

(a) The beekeeper has received written permission from all neighbors with properties located within thirty feet (30 ft.) of the proposed hive site;

(b) The hives are located on or adjacent to non-residential, agricultural, industrial, or undeveloped land;

(c) The hives are used at a school or other institution for educational or research purposes; or

(d) The hives are being held temporarily during an emergency or hive relocation for no more than thirty (30) days, unless a written extension is granted by the Department.

1525.6 Documented beekeeping experience shall include the following:

(a) Registration as a beekeeper in the District or another jurisdiction; or

(b) An active membership in a regionally recognized beekeeping association.

1525.7 If any of the conditions in Subsection 1525.5 change, the Department may rescind approval for more than four (4) hives, giving the beekeeper thirty (30) days to make changes.

1526 URBAN APICULTURE: COLONY DISPOSITION

1526.1 A colony shall be selected from honey bee stock bred for gentleness.

1526.2 The possession of Africanized bees is prohibited.

1526.3 A beekeeper shall promptly re-queen the colony with a marked queen if the colony exhibits unusual aggressive characteristics, such as unprovoked stinging or excessive swarming.

1527 URBAN APICULTURE: BEE DISEASE

1527.1 A beekeeper shall take measures to control the spread of bee diseases, including American foulbrood.

1527.2 A beekeeper shall quarantine the colony if the colony is suspected of having American foulbrood or other bee disease that may pose a risk to the colony, environment, or public health.

1527.3 The beekeeper shall immediately notify the Department of the quarantined colony.

1527.4 Bees, colonies, and equipment may not be moved from a quarantined area.

1527.5 The quarantine will remain in effect until terminated in writing by the Department.

1527.6 The Department may investigate to assess the health of a colony. In assessing colony health, the Department shall:

(a) Consider all evidence obtained or presented; or

(b) Request a test from the United States Department of Agriculture Bee Research Laboratory.

1527.7 The Department shall provide the results of the health assessment of the colony to the beekeeper by personal service, posting, or prepaid mail.

1527.8 A colony with an untreatable disease, like American foulbrood, shall be destroyed and the hive and equipment incinerated. The beekeeper must contact the District of Columbia Fire and Emergency Medical Services Department (FEMS) Fire Marshal for an open burning permit and instructions prior to incinerating a diseased hive.

1527.9 The Department may order a beekeeper to take measures to control the spread of bee diseases.

1527.10 The Department shall treat or destroy the bees, hives, and honey of a beekeeper who fails to take measures ordered by the Department to control or eradicate bee disease.

1527.11 The Department may require the beekeeper or property owner to reimburse the costs it incurs to eradicate bee disease.

1527.12 The beekeeper may contest the health assessment and the measures ordered by the Department to control or eradicate the bee disease by requesting a hearing with the District of Columbia Office of Administrative Hearings (OAH).

1528 URBAN APICULTURE: DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION OF REGISTRATION

1528.1 The Department may deny, suspend, modify, or revoke the registration issued pursuant to Section 1521, if the beekeeper has:

(a) Threatened the public health, safety, or welfare, or the environment;

(b) Violated or threatened violation of law, and the rules set forth in Sections 1520 to 1527 of this chapter, or the terms and conditions of the registration; or

(c) Made a false statement or misrepresentation material to the issuance, modification, or renewal of a registration.

1528.2 The notice of proposed denial, suspension, modification, or revocation shall be in writing and shall include the following:

(a) The name and address of the beekeeper and the apiary;

(b) A statement of the action or proposed action and the effective date or proposed effective date and duration of the denial, suspension, modification, or revocation;

(c) The grounds upon which the Department is proposing to deny, suspend, modify, or revoke the registration;

(d) Notice that the beekeeper has a right to request an administrative hearing before the OAH, in accordance with Rules of Practice and Procedure of OAH set forth in Chapter 28 of Title 1 of the District of Columbia Municipal Regulations; and

(e) Information notifying the respondent of any scheduled hearing date or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the suspension or immediate revocation, if applicable.

1528.3 The beekeeper shall have fifteen (15) calendar days from the date of service of the notice to deny, suspend, modify, or revoke the registration, to request a hearing with the OAH to show cause why the registration should not be denied, suspended, modified, or revoked.

1528.4 The Department may serve a notice of denial, suspension, modification, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.

1528.5 The Department shall not reissue a registration to any person whose registration has been revoked until the applicant has submitted a new application, and complies with the requirements in Sections 1520 to 1527.

1528.6 An appeal to OAH pursuant to this section shall be subject to the requirements of Section 1530.

1529 URBAN APICULTURE: ENFORCEMENT AND PENALTIES

1529.1 A person who violates any provision in §§ 1520 to 1529 shall be subject to civil fines and penalties under the schedule of fines for a class 4 infraction, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801 *et seq.*), and the enforcement procedures in this section.

1529.2 Each day that a violation occurs is a separate offense.

1529.3 Each colony shall constitute a single offense or count.

1529.4 The Department may also pursue administrative enforcement through:

(a) Notices of violation;

(b) Compliance orders;

(c) Notices of violation combined with an immediate compliance order;

(d) Denial, modification, suspension, or revocation of registration;

(e) Notices of infraction; or

(f) Any other order necessary to protect public health, safety, or welfare or the environment.

1529.5 An administrative enforcement action shall:

(a) Include a statement of the facts and the nature of the alleged violation;

(b) Allow a reasonable time for compliance with the order, consistent with the likelihood of any harm and the need to protect the public health, safety, or welfare or the environment;

(c) Advise the respondent that the respondent has the right to request an administrative hearing and at the respondent's expense, the right to legal representation at the hearing;

(d) Inform the respondent of any scheduled hearing date, or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the compliance order or failure to request a hearing;

(e) State the action that the respondent is required to take, or the activity or activities that the respondent is required to cease to comply with the order; and

(f) State that civil infraction fines, penalties, or costs may be assessed for failure to comply with the order.

1530 URBAN APICULTURE: ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

1530.1 A person adversely affected or aggrieved by an enforcement action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the OAH, established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; DC official Code §§ 2-1831.01 *et seq*.), or OAH's successor.

1530.2 The appeal to OAH shall be filed in writing within the following time period:

(a) Within fifteen (15) calendar days of service of the notice of the action; or

(b) Another period of time stated specifically in the section for an identified Department action.

1530.3 OAH shall:

(a) Resolve an appeal or a notice of infraction by:

(1) Affirming, modifying, or setting aside the Department's action complained of, in whole or in part;

(2) Remanding for Department action or further proceedings, consistent with OAH's order; or

(3) Providing such relief as the governing statues, regulations and rules support.

(b) Act with the same jurisdiction, power, and authority as the Department may have for the matter before OAH; and

(c) By its final decision, render a final agency action which will be subject to judicial review.

1530.4 The filing of an administrative appeal shall not in itself stay enforcement of an action except that a person may request a stay according to the rules of OAH.

1530.5 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:

(a) To the Department when a party challenges the Department's denial, suspension, modification, or revocation of a registration;

(b) To the party who asserts an affirmative defense; or

(c) To the party who asserts an exception to the requirements or prohibitions of a statute or rule.

1530.6 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

1530.7 Judicial review of a final OAH decision shall not be done de novo, but shall be a review of the administrative record alone and shall not duplicate agency proceedings or consider additional evidence.

1599 DEFINITIONS

Africanized bee - a hybrid variety of *Apis mellifera* produced by the cross-breeding of the aggressive African honey bee *Apis mellifera scutellata* with a European honey bee subspecies.

American foulbrood – also known as *Paenibacillus larvae* spp. *larvae* is a rod-shaped, spore-forming bacterium that affects bee larvae.

Apiary - a place where a colony is kept.

Bee disease - an abnormal condition resulting from action by a parasite, predator, or infectious agent.

Beekeeper - a person who maintains a honey bee colony.

Brood - the embryo and egg, larva, and pupa stages of a bee.

Certificate of Apiary Inspection - certification required to transport a colony, portion of a colony, bees on combs, empty used combs, or used hives out of the District.

Colony - a hive and its equipment and appurtenances, including bees, brood, comb, pollen, and honey.

Comb - the assemblage of cells containing a living stage of a bee at a time prior to emergence as an adult.

Department - the Department of Energy and Environment.

Director - the Director of the Department of Energy and Environment.

Domestic animal - any animal that is kept by humans for food, work, or as a pet that depends on a human for food, shelter, and water. Including, but not limited to dogs, cats, sheep, chickens, goats, horses, rabbits, and ferrets.

Flyway barrier - barrier to encourage bees leaving and entering their colony to fly upward, minimizing unwanted human contact.

Hive - a container used for the housing of a colony.

Honey bee or bee - *Apis mellifera* or another species designated as suitable for an urban environment by the Director of the District Department of the Environment.

Langstroth-type hive - standard bee hive used in beekeeping with removable four-sided frames.

Multi-unit building - a building with at least four (4) separate housing units.

Non-residential property - any property which does not house a residential building, including but not limited to office or retail buildings, shopping centers, industrial parks, churches, hotels, school learning centers, hospitals, sports arenas, retail stores, and transportation terminals.

Nuisance – a condition such as aggressive bee behavior, colony placement or movement that interferes with pedestrian traffic or causes a substantial or unreasonable interference with the right to property, comfort, or safety of persons residing on or adjacent to the hive premises, and overcrowded, deceased, or abandoned hives.

Person - an individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, or any other legal entity.

Property - a parcel of land where an apiary is located.

Quarantine - a period of enforced isolation to contain and prevent the spread of disease. During this time bees, bee colonies, or bee equipment may not be moved from the quarantined property without the permission of the Department.

Resident - a person who resides in the District of Columbia.

Top bar hives - a bee hive that consists of an array of horizontal bars from which honey bees attach and build wax combs.

Undeveloped land - idle land that has not been improved and is not in the process of being improved, and has no structures, facilities, or improvements intended for human use or occupancy. This includes land used exclusively for streets, highways, or commercial agriculture.

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF FINAL RULEMAKING

The Director of the Department of Motor Vehicles ("Director"), pursuant to the authority set forth in Sections 1 and 7 of An Act to provide for annual inspection of all motor vehicles in the District of Columbia, approved February 18, 1938 (52 Stat. 78; D.C. Official Code §§ 50-1101 and 50-1107 (2012 Repl.)), and Mayor's Order 94-176, effective August 2, 1994, hereby gives notice of the adoption of the following rulemaking that will amend Chapter 6 (Inspection of Motor Vehicles) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations ("DCMR").

The proposed rules revise the safe operating condition and compliance inspection of taxicabs and other vehicles for hire from semi-annual to annual and modify the inspection fee to seventy dollars ($70).

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 19, 2015 at 62 DCR 8695. No comments were received. No changes were made to the text of the proposed rules. The rules were adopted as final on July 22, 2015, and will become effective upon publication of this notice in the *D.C. Register*.

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

Chapter 6, INSPECTION OF MOTOR VEHICLES, is amended as follows:

Section 601, INSPECTION REQUIREMENTS, is amended as follows:

Subsection 601.6 is amended as follows:

Subparagraph (2) is amended by striking the word "semiannually" and inserting the word "annually" in its place.

Subsection 601.8 is amended as follows:

Paragraph (h) is amended by striking the word "and".

Paragraph (i) is amended to read as follows:

"(i) Taxicabs and other vehicles for hire: $70;"

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

"(j) All other motor vehicles: $35."

OFFICE OF TAX AND REVENUE

NOTICE OF FINAL RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR), of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code § 47-1335 (2012 Repl.); Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub. L. 109-356; D.C. Official Code § 1-204.24d (2014 Repl.)); and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of this final action to amend Chapter 3 (Real Property Taxes) of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR).

The amendments to Section 316 (Real Property Tax Sale Redemption and Tax Deed Issuance Rules) are necessary to be consistent with recent changes to D.C. Official Code §§ 47-1330, *et seq.*, related to the conduct and procedure of real property tax sales in the District.

The rules were previously published as proposed rulemaking in the *D.C. Register* on June 19, 2015 at 62 DCR 8696. No comments were received concerning the proposed rulemaking, and this final rulemaking is identical to the published text of the proposed rulemaking.

OTR adopted these rules as final on August 7, 2015. The rules shall become effective upon publication of this notice in the *D.C. Register*.

Chapter 3, REAL PROPERTY TAXES, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:

Section 316, REAL PROPERTY TAX SALE REDEMPTION AND TAX DEED ISSUANCE RULES, is amended by striking the section in its entirety and replacing it with the following:

316.1 This section shall apply to any tax sale conducted pursuant to Chapter 13A of Title 47 of the D.C. Official Code.

316.2 Tax Sale.

(a) A prospective tax sale purchaser shall have on deposit with the Cashier's Office of the D.C. Treasurer twenty percent (20%) of the total purchase price.

(b) If a prospective tax sale purchaser does not have twenty percent (20%) of the purchase price on deposit, a sale cannot be completed, and the property will be re-auctioned immediately or as soon as possible.

(c) If a prospective tax sale purchaser bids on multiple properties, the deposit on record shall be applied to his or her winning bids in the consecutive order that the bids were placed. If a prospective tax sale purchaser bids on a property for which the deposit or any remaining deposit is insufficient, the property for which there is insufficient deposit shall be re-auctioned.

(d) Final payment for all properties purchased is due within five (5) business days from the last day of the tax sale.

(e) If final payment is not received within five (5) business days, 20% of the remaining deposit will be forfeited to the District and the sale of the property will be voided. If a tax sale purchaser purchased multiple properties and can only make a partial payment, the Office of Tax and Revenue will only select as sold to the tax sale purchaser as many of the properties as sold in consecutive order whose combined purchase price does not exceed the amount timely paid by the tax sale purchaser.

316.3 Forbearance.

A real property owner may apply to forbear a tax amount. Such application shall be submitted to OTR up to thirty (30) days prior to the first day of the tax sale. OTR shall review and either approve or deny the application within ninety (90) days of receipt of the application. The application shall be approved if the real property receives a homestead deduction and the tax amount to be sold is less than or equal to seven thousand, five hundred dollars ($7,500). OTR, in its discretion, may also approve an application that demonstrates hardship even if the real property is not receiving the homestead deduction, or the tax amount to be sold is more than $7,500. Upon approval of an application for forbearance, OTR shall remove the real property from the tax sale to which the approved forbearance corresponds or, if the tax sale has already occurred, cancel the sale. Penalties and interest shall continue to accrue on any tax amounts subject to forbearance from tax sale.

316.4 Redemption prior to the initiation of a foreclosure action in the Superior Court of the District of Columbia.

(a) A real property owner shall meet the following conditions:

(1) Pay all real property taxes (including amounts certified to OTR pursuant to D.C. Official Code § 47-1340), business improvement district (BID) taxes, and vault rents to bring the real property's account to current.

(2) Pay the reimbursable Pre-Complaint Legal Expenses the tax sale

purchaser has incurred prior to the initiation of a foreclosure action in the Superior Court of the District of Columbia, as provided in D.C. Official Code § 47-1377(a)(1)(A).

(3) Pay all delinquent special assessments owed pursuant to an energy efficient loan agreement under subchapter IX of Chapter 8 of Title 47.

(b) The real property owner shall make all payments to the District in the manner provided in this section and the tax sale purchaser shall not accept any payment. Pre-Complaint Legal Expenses are collected by the District and reimbursed to the tax sale purchaser.

(c) The real property's account shall be deemed to have been brought to current for purposes of redemption if the amounts payable to the Mayor, including tax, interest, penalties and expenses falls below one hundred dollars ($100). The remaining balance shall remain due and owing and any remaining expenses shall thereafter be deemed a real property tax.

(d) To stop further adverse actions to enforce collection of the lien sold at tax sale, the property owner shall provide OTR with proof of payment of all outstanding taxes, assessments, fees, costs and expenses in the manner provided below:

(1) If the real property owner pays the real property tax, vault rent, BID tax or other lien certified pursuant to D.C. Official Code § 47-1340, the property owner shall provide OTR with:

(A) A copy of the bill reflecting the outstanding real property taxes, vault rent, BID tax or other lien certified pursuant to D.C. Official Code § 47-1340, fees and costs; and

(B) A copy of the paid receipt issued by the bank; or

(C) A copy of the check or money order, remitted in payment of any tax stated in § 316.4(d)(A) if payment is made via US Mail.

316.5 Prerequisites to begin the processing of a Tax Sale Refund prior to the initiation of a foreclosure action in the Superior Court of the District of Columbia.

(a) To begin the processing of a Tax Sale Refund, the property's real property taxes, vault rents, BID taxes and expenses payable to the Mayor shall be current or paid to within one hundred dollars ($100) or the tax sale shall

have been cancelled in accordance with the requirements set forth in Subsection 316.11.

(b) Upon notification from OTR or information obtained from OTR records, including information on the OTR website, of payment of all real property taxes, vault rents, BID taxes, liens certified pursuant to D.C. Official Code § 47-1340, fees and charges payable to OTR on account of the real property, the tax sale purchaser shall surrender the original Certificate of Sale to OTR at the address provided on the Certificate of Sale.

(c) Upon receipt of a copy of the Certificate of Sale, OTR shall process the Tax Sale Refund.

(d) The Tax Sale Refund shall be comprised of the amount paid at tax sale, including any Surplus, and Statutory Interest.

(e) Interest payable to the tax sale purchaser shall cease to accrue once the taxes on the real property tax bill, BID taxes and vault rents have been paid to current, subject to the liability threshold of D.C. Official Code § 47-1361(b-2).

(f) To collect the reimbursable Pre-Complaint Legal Expenses, the tax sale purchaser shall provide the following documentation:

(1) A copy of the Tax Sale Certificate; and

(2) Receipt issued for the rendering of the Pre-Complaint Legal Expenses; or

(3) An affidavit or a declaration from legal counsel attesting to the fact that the Pre-Complaint Legal Expenses were rendered. Such affidavit or declaration shall state when such expenses were incurred. Pre-Complaint Legal Expenses incurred within four (4) months from the last day of the tax sale shall not be reimbursed.

(g) The documentation required in Subsection 316.5(f) shall be provided to OTR at the address on the Certificate of Sale.

(h) Upon receipt of the documentation required in Subsection 316.5(f), OTR shall process the refund of the Pre-Complaint Legal Expenses. Interest shall not be paid on the Pre-Complaint Legal Expenses.

316.6 Payment of subsequent real property taxes by the tax sale purchaser.

(a) The tax sale purchaser shall pay the Tax Sale Purchaser's Bill at the Cashier's Office of the DC Treasurer. Once payment has been remitted, the tax sale purchaser shall immediately provide OTR with a copy of the paid receipt issued by the Cashier's Office of the DC Treasurer and retain a copy of the receipt for the tax sale purchaser's record.

(b) Any intended subsequent tax payment made against the Real Property Tax Bill instead of against a Tax Sale Purchaser's Bill shall be applied to the real property taxes due and owing against the real property as if the payments were made by the property owner. The tax sale purchaser shall not receive credit for any payment of subsequent real property taxes unless payment is made on a Tax Sale Purchaser's Bill in the manner provided in Subsection 316.6(a).

(c) Any payments made by a tax sale purchaser pursuant to a Tax Sale Purchaser's Bill shall be applied to the real property tax account at the time a Tax Deed is issued to the tax sale purchaser.

(d) The Tax Sale Purchaser's Bill shall include all interest and penalty due and owing on the real property. All liabilities on the Tax Sale Purchaser's Bill shall be paid by the tax sale purchaser.

316.7 Notices.

(a) The notices of delinquency required by D.C. Official Code § 47-1341 and the post-sale notice required by D.C. Official Code § 47-1353.01 shall be available on OTR's website.

(b) OTR shall mail a notice of tax delinquency on or before May 1st to the person who last appears as the owner of the real property on the tax roll, at the last mailing address shown on the tax roll, in accordance with D.C. Official Code § 47-1341(a). OTR shall mail a second notice at least two (2) weeks before the tax sale to the person who last appears as the owner of the real property on the tax roll, at the last mailing address shown on the tax roll, in accordance with D.C. Official Code § 47-1341(b-1). OTR shall also mail duplicate notices to the premise address if different from the mailing address, addressed to "Property Owner".

(c) Within thirty (30) days after the date of the tax sale, OTR shall send a post-sale notice to the last known address of the owner in accordance with D.C. Official Code § 47-1353.01. OTR shall also mail a duplicate notice to the premise address if different from the mailing address, addressed to "Property Owner". A copy of either version of the notice shall be posted to the property by the tax sale purchaser at least forty-five (45) days before

the filing of the Complaint to Foreclose the Right of Redemption. The post-sale notice cannot be posted to the property until at least four (4) months from the date of the tax sale.

(d) The tax sale purchaser shall provide notice of the filing of the action to foreclose the right of redemption in the Superior Court of the District of Columbia by filing a notice of the pendency of the action (*lis pendens*), within thirty (30) days, in the Office of the Recorder of Deeds, pursuant to D.C. Official Code §§ 42-1207, *et seq*.

(e) The tax sale purchaser shall notify OTR and the Real Property Tax Ombudsman of filing of the Complaint to Foreclose the Right of Redemption within thirty (30) days of the filing. Such notification shall be by electronic mail to OTR's Tax Sale Unit at taxsale@dc.gov and to the Real Property Tax Ombudsman at realpropertytax@dc.gov. The subject line of such electronic mail shall state: "Foreclosure Action Filed." The electronic mail shall contain as attachments copies of the complaint and certificate of sale. OTR and the Real Property Tax Ombudsman shall provide reply confirmations to the purchaser by electronic mail within five (5) business days of receipt of the notice from the tax sale purchaser.

316.8 Redemption after initiation of an action to foreclose the right of redemption in the Superior Court of the District of Columbia.

(a) To qualify the property for redemption, the real property owner shall pay in full the following:

(1) Pay all real property taxes (including amounts certified pursuant to D.C. Official Code § 47-1340), BID taxes, and vault rents to bring the real property current.

(2) Pay the reimbursable Pre-Complaint Legal Expenses the tax sale purchaser has incurred prior to the initiation of a foreclosure action in the Superior Court of the District of Columbia, as provided in D.C. Official Code § 47-1377(a)(1)(A);

(3) Pay all Post-Complaint Legal Expenses to which the tax sale purchaser is entitled to reimbursement under D.C. Official Code § 47-1377(a)(1)(B) where an action to foreclose the right of redemption has been filed;

(4) Pay all delinquent special assessments owed pursuant to an energy efficiency loan agreement under subchapter IX of Chapter 8 of Title 47.

(b) With the exception of Post-Complaint Legal Expenses, the real property owner shall make all payments to the District and the tax sale purchaser shall not accept any payment. Pre-Complaint Legal Expenses are collected by the District and reimbursed to the tax sale purchaser. The tax sale purchaser shall not include Pre-Complaint Legal Expenses in Post-Complaint Legal Expenses.

(c) Upon notification that the property owner is attempting to Redeem, OTR may request a Payoff Statement from the tax sale purchaser that indicates all allowable, reimbursable Post-Complaint Legal Expenses.

(d) Within fourteen (14) days of a request for a Payoff Statement made by OTR, the tax sale purchaser shall provide the property owner and OTR with a Payoff Statement reflecting the amount necessary to satisfy the Post-Complaint Legal Expenses. If the tax sale purchaser fails to respond to the request for a Payoff Statement, OTR will send by certified mail a request to the tax sale purchaser for a Payoff Statement.

(e) Failure to provide OTR with a copy of the Payoff Statement within fourteen (14) days from the date of the request sent by certified mail may result in the issuance of a Certificate of Redemption to the owner, upon request.

(f) If there is a dispute regarding the amount required to satisfy the Post-Complaint Legal Expenses, any party shall apply to the Superior Court of the District of Columbia for an order fixing the amount of expenses.

(g) The property owner shall pay in full the reimbursable Post-Complaint Legal Expenses payable to the tax sale purchaser. All payments of reimbursable Post-Complaint Legal Expenses shall be made to the tax sale purchaser, not to OTR.

(h) The real property's account shall be deemed to have been brought to current for purposes of redemption if the amounts payable to the Mayor, including tax, interest, penalties and expenses is less than one hundred dollars ($100). The remaining balance shall remain due and owing and any remaining expenses shall thereafter be deemed a real property tax.

(i) At the time the property owner pays the Post-Complaint Legal Expenses as provided in this section, the tax sale purchaser shall provide to the property owner a receipt showing full satisfaction of said expenses.

(j) If the tax sale purchaser has filed a Lis Pendens at the Recorder of Deeds,

within thirty (30) days from redemption, as provided in Subsection 316.8(a), the tax sale purchaser shall file a Release of Lis Pendens with the Recorder of Deeds.

316.9 Collection of the Tax Sale Refund after the initiation of a foreclosure action in the Superior Court of the District of Columbia.

(a) The tax sale purchaser shall submit the following documentation to begin the processing of a Tax Sale Refund, provided that all amounts required to be paid to OTR under Subsection 316.8 shall have been paid or the tax sale shall have been cancelled in accordance with the requirements set forth in Subsection 316.11:

(1) Copy of Tax Sale Registration Form with D.C. Cashier's receipt documenting payment;

(2) Copy of Tax Sale Certificate, if issued to Purchaser or assignor;

(3) Proof of subsequent tax payments, if applicable, in the form of a copy of the D.C. Cashier's receipt or a copy of the front and back of the cancelled check;

(4) Proof of the incurred Pre-Complaint Legal Expenses in the same manner as provided in Subsection 316.5(f).

(b) Upon receipt of the documentation required in paragraph (a) of this section, OTR shall process the Tax Sale Refund.

(c) The Tax Sale Refund shall be comprised of:

(1) The amount paid for the property sold at tax sale, including Surplus, and Statutory Interest. Statutory Interest shall be paid on the amount for which the property was sold (excluding Surplus). Statutory Interest shall not be paid on the Surplus.

(2) The Pre-Complaint Legal Expenses; and

(3) The amount paid pursuant to a Tax Sale Purchaser’s Bill to satisfy the subsequent real property taxes inclusive of interest.

(d) The Statutory Interest is paid on the amount of the real property tax delinquency sold at tax sale and accrues at a rate of 1 1/2 percent per month or part thereof.

(e) Interest is paid only on the base tax amount paid by the tax sale purchaser for the subsequent real property taxes and accrues at a rate of one and one-half percent (1½ %) per month or part thereof. No interest shall be paid for penalty and interest paid by the tax sale purchaser, although same shall be paid by the tax sale purchaser in addition to base tax. The interest shall begin to accrue on the first day of the month following the date the subsequent tax payment was made and shall cease to accrue on the date of cancellation or the Date of Redemption.

316.10 Issuance of a Tax Deed.

(a) To apply for a Tax Deed, the tax sale purchaser shall submit to OTR a certified copy, including an electronically issued copy with the official court date stamp and issuing judge's electronic signature, of the final judgment issued by the Superior Court of the District of Columbia that forecloses the right of redemption to the real property and orders the issuance of a Tax Deed to the tax sale purchaser upon payment of the amounts specified in a Bill for Tax Deed.

(b) Upon proper application to OTR for a Tax Deed, the tax sale purchaser shall be issued a Bill for Tax Deed.

(c) The Bill for Tax Deed shall be satisfied no less than thirty (30) days from the date of issuance and may include the following: (1) a Real Property Tax Bill; (2) BID tax bill; (3) Vault Rent Bill; and (4) Payoff Statements from subsequent and prior year tax sale purchasers.

(d) Payment of the Bill for Tax Deed may be made in the following ways:

(1) Any Surplus shall be applied to the outstanding taxes, assessments, fees and other costs due and owing against the real property. Any remaining surplus shall appear as a credit on the real property tax account and shall be refunded to the party who made the overpayment only upon receipt of a written request for refund that includes proof of payment; or

(2) If the Surplus (if applicable) is insufficient to pay the total taxes, assessments, fees and other costs due, the amount necessary to pay the total taxes, assessment, fees and other costs shall be paid in the form of cash, certified check, cashier's check or money order.

(e) If the payment is made by certified check, cashier's check or money order, the tax sale purchaser shall provide OTR with:

(1) A copy of the certified check, cashier's check or money order remitted in payment of the Bill for Tax Deed;

(2) A copy of the receipt issued by the bank, the Cashier's Office of the D.C. Treasurer and/or Third-Party Assignee; and

(3) A copy of the release showing that the Payoff Statement from the Third-Party Assignee and/or prior years or subsequent years tax sale purchasers has been satisfied.

(f) If payment is made by cash, the tax sale purchaser shall so indicate on the receipt and provide OTR with:

(1) A copy of the receipt issued by the bank, Cashier's Office of the D.C. Treasurer and/or Third-Party Assignee indicating payment by cash;

(2) A copy of the release showing that the Payoff Statements from any and all Third-Party Assignees and prior years' and subsequent years' tax sale purchasers have been satisfied.

(g) The tax sale purchaser may forfeit all monies paid for the property at tax sale and any payments made toward the subsequent real property taxes if the tax sale purchaser fails to satisfy the Bill for Tax Deed on or before the due date provided on the Bill for Tax Deed.

(h) The tax sale purchaser shall provide Payoff Statements and receipts from prior years and subsequent years tax sale purchasers. Proof of payment includes:

(1) Copies of certified payments and receipts showing that the prior years and subsequent years tax sale purchasers' Post-Complaint Legal Expenses were paid; and

(2) If applicable, signed releases from prior years and subsequent years tax sale purchasers or tax sale purchasers' representatives that all Post-Complaint Legal Expenses were paid.

316.11 These are rules and prerequisites for Cancellation of a Certificate of Sale by OTR.

(a) A Certificate of Sale may be cancelled to prevent an injustice to the real property owner or to a person with an interest in the real property.

(b) A Certificate of Sale shall be canceled where:

(1) The amount set forth in the notice of delinquency in order to avoid the tax sale is timely paid;

(2) A forbearance authorization has been approved in writing for the applicable tax sale, in accordance with the requirements of Subsection 316.3;

(3) The amount of tax sold was less than two thousand, five hundred dollars ($2,500) for improved Class 1 properties;

(4) The property is a Class 1 property that receives the homestead deduction with respect to which there is an outstanding non-void certificate of sale that was issued within three (3) years of the date of the tax sale; or

(5) The property is a Class 1 property with five (5) or fewer units and the record owner or other person with an interest proves:

(A) A failure of OTR to mail any of the notices required by §§ 47-1341(a), 47-1341(b) or 47-1353.01; or

(B) OTR did not correctly or substantively update or change the address of the person who last appears as the record owner as properly updated by the record owner by the filing of a change of address.

(c) If a Certificate of Sale is cancelled, the tax sale purchaser shall be refunded the following:

(1) The amount paid for the property sold at tax sale, including Surplus and Statutory Interest;

(2) The Pre-Complaint Legal Expenses actually paid and properly incurred, with proof of such expenses to be submitted to OTR in the same manner as Subsection 316.5(f);

(3) The amount paid to satisfy the subsequent real property taxes and Statutory Interest;

(4) Post-Complaint Legal Expenses as permitted under D.C. Official Code § 47-1377(a)(1)(B).

(d) When cancelled, OTR shall provide to the tax sale purchaser a notice of

cancellation of the tax sale.

(e) If the tax sale is cancelled after the initiation of a foreclosure action in the Superior Court of the District of Columbia, the tax sale purchaser shall provide OTR with the following documents upon receiving notification of cancellation of the tax sale:

(1) A Payoff Statement, signed by the tax sale purchaser's attorney of record, for the expenses incurred as a result of the initiation of the foreclosure action; or

(2) A copy of the paid receipt issued for the rendering of services for the initiation of a foreclosure action; and

(3) An affidavit attesting that services were rendered for the initiation of a foreclosure action.

(f)

(1) Post-Complaint Legal Expenses shall not be reimbursed to the tax sale purchaser when any of the following circumstances would have put the tax sale purchaser on notice to suspend further action to foreclose and to request authorization from OTR to proceed (and OTR timely responded by cancelling the sale within forty-five (45) days or before the complaint was filed, whichever is later):

(A) Errors in ownership obtainable from a title report;

(B) Selling a real property under the threshold;

(C) Property was sold within three (3) years of the date of the Certificate of Sale and there is an outstanding non-void certificate of sale; or

(D) Property was sold in violation of a bankruptcy stay.

(2) Timely disclosure of the foregoing shall be made to the Tax Sale Unit Manager via electronic mail to taxsale@dc.gov.

(g) Sales of properties owned by low-income seniors who later deferred taxes pursuant to D.C. Official Code § 47-845.03 shall be cancelled. Notwithstanding such a cancellation, the amount of accrued attorneys' fees paid to a tax sale purchaser by the District when a sale is so cancelled shall remain the liability of the property owner. Upon payment of the refund to the tax sale purchaser, OTR shall add the amount representing

the legal fees to the real property tax account of the low-income senior.

316.12 Assignment of the Certificate of Sale.

(a) The assignee of the Certificate of Sale shall notify OTR's Tax Sale Unit via electronic mail at taxsale@dc.gov of the assignment within thirty (30) days from the assignment of the Certificate of Sale. The assigned Certificate of Sale must meet the following requirements:

(1) A written agreement, executed and acknowledged in the same manner as an absolute deed, that contains the assignee's name, address, telephone number and taxpayer identification number, notification of an assignment of the interest in the payment of other taxes and liabilities (subsequent taxes), and the legal identification of the property; and

(2) The notice of assignment must be signed and acknowledged by the parties agreeing to the assignment and recorded among the land records in the Recorder of Deeds to be effective as to any person not having actual notice.

Recording of the Certificate of Assignment with the Recorder of Deeds shall not constitute notice to OTR. Actual notice shall include a copy of the Certificate of Sale, and be sent to OTR. An assignee shall be compliant with D.C. Official Code § 47-1346(a)(5) [Clean Hands].

(b) At the time that OTR receives notice of the Assignment of the Certificate of Sale, the assignee of the Certificate of Sale shall submit a completed "Compliance Certification for Tax Sale Assignees."

(c) If an assignee of the Certificate of Sale shall be found in violation of D.C. Official Code § 47-1346(a)(5), the assignee shall forfeit at the discretion of OTR all monies paid for the Certificate of Sale and any monies paid toward the subsequent real property taxes.

(d) Once the Certificate of Sale has been assigned, the assignee becomes the tax sale purchaser of the property associated with the certificate. The assignee shall be bound by all rules and regulations pertaining to a tax sale purchaser, including all rules of forfeiture.

316.13 These are rules and prerequisites to be followed for the filing of a Certificate of Redemption or a Praecipe of Dismissal with the Recorder of Deeds.

(a) After redeeming the property pursuant to Subsection 316.4 or 316.8, as

applicable, a property owner may request a Certificate of Redemption or a certified copy of the Praecipe of Dismissal filed in the foreclosure action be filed with the Recorder of Deeds to cause a release of the Certificate of Sale. If a Praecipe of Dismissal is to be filed, it shall contain the square, suffix, and lot numbers, or parcel and lot numbers of the real property.

(b) OTR will process a Certificate of Redemption within sixty (60) days of receipt of a request.

(c) Upon issuance, a Certificate of Redemption releases the Certificate of Sale.

316.14 These definitions are essential to clarify the tax sale process.

(a) **Assignment of the Certificate of Sale** - The act of transferring all rights acquired in the Certificate of Sale.

(b) **Bill For Tax Deed** - A special tax bill required to be obtained by the tax sale purchaser, after the Superior Court of the District of Columbia has issued a judgment of foreclosure, to pay all real property taxes (together with penalties and interest), vault rents, BID taxes, liens certified pursuant to D.C. Official Code § 47-1340, fees, costs and expenses due and owing to the District of Columbia or other tax sale purchasers before a tax deed is issued.

(c) **Certificate of Redemption** - A document that confirms that all outstanding real property taxes (together with penalties and interest), vault rents, BID taxes, liens certified pursuant to D.C. Official Code § 47-1340, fees, costs and expenses have been paid for purposes of redemption only. This document statutorily releases any encumbrance created by the recordation of a certificate of sale.

(d) **Certificate of Sale** - A document issued to a tax sale purchaser that evidences that its holder is the purchaser of a tax lien.

(e) **Date of Cancellation** - Date a Certificate of Sale is cancelled.

(f) **Date of Redemption** - The date of payment of all real property taxes, penalties, interest, vault rents, BID taxes, liens certified pursuant to D.C. Official Code § 47-1340, costs and expenses.

(g) **OTR** - Office of Tax and Revenue.

(h) **Payoff Statement** - A document prepared by the tax sale purchaser that

itemizes the allowable Post-Complaint Legal Expenses incurred as a result of filing and pursuing a foreclosure action in the Superior Court of the District of Columbia.

(i) **Praecipe of Dismissal** - a document submitted to the Superior Court of the District of Columbia by the tax sale purchaser to end all legal action to foreclose the owner's right of redemption subsequent to the owner having made all payments required to redeem or the tax sale being cancelled under the statute and regulations.

(j) **Pre-Complaint Legal Expenses** – Pursuant to D.C. Official Code § 47-1377(a)(1)(A), the tax sale purchaser's reimbursable expenses incurred prior to an action to foreclose the right of redemption being filed, which includes the costs of a title search (limit to three hundred dollars ($300)), posting the notice required by § 47-1353.01 ($50), and the recordation fee charged by the District of Columbia to record the Certificate of Sale at the Recorder of Deeds.

(k) **Post-Complaint Legal Expenses** – Pursuant to D.C. Official Code § 47-1377(a)(1)(B), the tax sale purchaser's reimbursable expenses incurred for filing and pursuing an action to foreclose the right of redemption in the Superior Court of the District of Columbia, including expenses incurred for personal service of process, service of process by publication, for publication, for postage and reasonable attorney's fees.

(l) **Real Property Owner** - An owner of record of real property, or a party with a reasonably ascertainable ownership interest in the real property.

(m) **Real Property Tax Bill** - The tax bill mailed to a property owner semi-annually for the collection of real property taxes.

(n) **Redeem** - The payment of all outstanding real property taxes, penalties, interest, vault rents, BID taxes, liens certified pursuant to D.C. Official Code § 47-1340, costs and expenses (including Pre-Complaint Legal Expenses and Post-Complaint Legal Expenses) due and owing on the real property.

(o) **Statutory Interest** - The monthly simple interest (one and one-half percent (1½ %) that accrues on the amount paid for the purchase of properties sold or bid off at tax sale, excluding surplus, and which begins accruing the first day of the month following the tax sale and ends on the Date of Redemption or Date of Cancellation.

(p) **Surplus** - The portion of the bid for the property that exceeds the taxes,

penalties, interest and costs for which the property was sold.

(q) **Tax Deed** - The document that transfers fee simple interest in real property, as described in the Certificate of Sale, to the tax sale purchaser pursuant to D.C. Official Code § 47-1382 and subject to (a) a lien filed by a taxing agency under D.C. Official Code § 47-1430(c) (tax deeds arising from sales under § 47-1353(a)(3) or (b) excepted); (b) the tenancy of a residential tenant (other than a tenant described in D.C. Official Code § 47-1371(b)(1)(C) and (D)); (c) easements of record and any other easement that can be observed by an inspection of the real property; (d) an instrument securing payment of a promissory note executed under D.C. Official Code § 47-1353(a)(3); (e) an energy efficiency loan agreement under subchapter IX of Chapter 8 of Title 47, and related documents or instruments and the obligation to pay the special assessment; and (f) a ground lease described in D.C. Official Code § 47-1345(b), any recorded covenant, agreement, or other instrument, and any other document incorporated by reference into a recorded covenant, agreement, or other instrument to which a ground lessor as described in D.C. Official Code § 47-1345(b) is a party or beneficiary.

(r) **Tax Sale Purchaser's Bill** - A special tax bill, which includes accrued penalty and interest, requested by the tax sale purchaser to facilitate the payment of current and prior tax liabilities that have not been sold or bid off at tax sale. Payment of these tax liabilities is credited to the Bill for Tax Deed. Interest is tolled for the tax sale purchaser beginning on the first day of the month following the date payment is made. Interest continues to accrue for the owner.

(s) **Tax Sale Refund** - Comprises the amount paid at tax sale, Statutory Interest, and the Pre-Complaint Legal Expenses.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation (DDOT), pursuant to the authority in Sections 3(b), 5(2)(K) (developing safe bicycle policies), 5(3)(D) (allocating and regulating on street parking and curb regulations), and 6(b) and (c) (transferring functions delegated to DPW) of the Department of Transportation Establishment Act of 2002 ("DDOT Establishment Act"), effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02(b), 50-921.04(2)(K), (3)(D), and 50-921.05(b) and (c) (2014 Repl.)); Section 6(a)(1), (a)(2)(B), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code §§ 50-2201.03(a)(1), (a)(2)(B), (a)(6), and (b) (2014 Repl.)); and Mayor's Order 2013-063, dated April 2, 2013, hereby gives notice of the intent to adopt amendments to Chapters 12 (Bicycles, Motorized Bicycles, and Miscellaneous Vehicles), and 99 (Definitions) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

These amendments modify the regulations for pedicabs by establishing additional safety and operating standards, and prohibit the operation of multi-seat pedal cycles on public roadways in the District of Columbia. Multi-seat pedal cycles are also commonly referred to as sightseeing pedal buses, pedal taverns, multi-seat party cycles, or conference bikes, and should not be confused with tandem-style bicycles having two or more riders pedaling.

An initial Notice of Proposed Rulemaking was published in the *D.C. Register* on June 14, 2013, at 60 DCR 9084. In response to public comments received, a number of revisions were made to the proposed pedicab rulemaking. A Notice of Second Proposed Rulemaking was published in the *D.C. Register* on February 20, 2015, at 62 DCR 2362. Several commentators requested that the seat belt requirement be dropped from the pedicab regulations, but a seat belt requirement has been part of the adopted rules since 2011, and at that time, seat belt use was supported by both the Mayor's Office and the Metropolitan Police Department. Additionally, a number of other cities require pedicabs to be equipped with a seatbelt, including New York City, Chicago and San Diego, and DDOT believes that the use of seatbelts has been proven to save lives. Two commentators objected to the proposed requirement that a pedicab not be equipped with a pedal assist device with an electric motor because some parts of the District are hilly, but three additional commentators representing the pedicab industry favored the requirement because a pedicab equipped with such a device can go too fast and is unsafe. A pedicab, as defined in this rulemaking, is used for transporting passengers for hire and DDOT has determined that because pedicabs using the pedal assist device with an electric motor can travel at 20 mph and potentially up to 30 mph, the use of the device poses an undue safety risk to passengers and other public space users. Also, DDOT has concluded that due to the difficulty New York City is experiencing in enforcing its prohibition on the use of the device, the requirement that a pedicab not be equipped with the device is the best approach. Therefore, no changes were made to the pedicab portion of the rulemaking. Additionally, no comments were received for the Multi-seat Pedal Cycle portion of the rulemaking and no changes were made to that portion of the rulemaking either.

DDOT adopted the rules as final on May 15, 2015. The rules will go into effect upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*.

Chapter 12, BICYCLES, MOTORIZED BICYCLES, AND MISCELLANEOUS VEHICLES, of Title 18 DCMR, VEHICLES AND TRAFFIC, is amended as follows:

Section 1213, PEDICABS, is amended to read as follows:

1213 PEDICABS

1213.1 Pedicabs shall be propelled solely by human power and shall not be equipped with a pedal assist device with an electric motor.

1213.2 Pedicabs shall be operated in accordance with the safe operation of bicycle regulations set forth in § 1201.

1213.3 Notwithstanding § 1213.2, pedicabs shall be operated only on public streets.

1213.4 Each pedicab shall meet the following safety requirements:

(a) The maximum width of the pedicab shall be fifty-five inches (55 in.);

(b) The maximum length of the pedicab shall be ten feet (10 ft.);

(c) The pedicab shall be equipped with:

(1) Passenger seat belts (either one (1) seat belt for each passenger or one (1) seat belt that covers all passengers);

(2) Hydraulic or mechanical disc or drum brakes, which shall be unaffected by rain or wet conditions;

(3) At least one (1) and no more than two (2) battery-operated head lamps which shall emit a steady or flashing white light visible from a distance of at least five hundred feet (500 ft.) from the front of the pedicab, under normal atmospheric conditions at the times that use of the head lamp is required;

(4) Battery-operated tail lamps mounted on the right and left areas of the rear of the pedicab, which, when operated, shall emit a steady or flashing red light visible from a distance of five hundred feet (500 ft.) to the rear, under normal atmospheric conditions at the times that use of the head lamp is required;

(5) Turning lights;

(6) A bell or other device capable of giving a signal audible for a distance of at least one hundred feet (100 ft.); and

(7) Reflectors on the spokes of the wheels of the pedicab.

(d) Reflective tape shall be affixed on the pedicab in accordance with the following requirements:

(1) The tape shall be at least two inches (2 in.) wide;

(2) The tape shall be at least twelve inches (12 in.) long; and

(3) There shall be at least one (1) piece of tape on each side of the pedicab.

(e) A triangular shaped slow-moving vehicle (SMV) emblem conforming to the American National Standards Institute standard S276.7, shall be permanently affixed to the rear of the pedicab as follows:

(1) With one (1) point up;

(2) As close to the horizontal center of the pedicab as possible; and

(3) No less than two feet (2 ft.) and no more than six feet (6 ft.) above the roadway surface as measured from the lower edge of the emblem.

1213.5 Each pedicab shall be operated in accordance with the following provisions:

(a) All passengers shall be seated within the confines of the pedicab passenger seating area while the pedicab is in motion;

(b) All passengers shall have a seatbelt securely fastened while the pedicab is in motion. There shall be affixed to the pedicab a sign stating that all passengers shall have a seatbelt securely fastened while the pedicab is in motion, and the sign shall be clearly visible to passengers;

(c) A pedicab shall not be operated on a roadway with a posted speed limit of more than thirty miles per hour (30 m.p.h.);

(d) A pedicab may not be operated or parked on a sidewalk;

(e) Pedicab passengers shall be loaded and off-loaded while the pedicab is stopped;

(f) No pedicab operator shall stop to load or unload passengers on the traffic-facing side of the pedicab, while occupying any intersection or crosswalk, or in such a manner as to unduly interfere with the orderly flow of traffic. All pedicab operators shall pull as close to the curb or edge of the roadway as possible to take on or discharge passengers;

(g) A pedicab shall not be parked and left unattended in a restricted zone identified for other vehicles, including, but not limited to, parking meter zones, residential permit parking zones, valet parking zones, bus zones, taxicab zones;

(h) A pedicab shall not be tied, cabled, or otherwise attached to a parking meter, street light pole, tree, or other public space asset;

(i) At any time from one half (1/2) hour after sunset to one-half (1/2) hour before sunrise, and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of five hundred feet (500 ft.) ahead, a pedicab shall be operated as follows:

(1) With a headlamp capable of being seen from a distance of at least five hundred feet (500 ft.); and

(2) With tail lamps capable of being seen from a distance of five hundred feet (500 ft.);

(j) When operating a pedicab upon a roadway at less than the normal speed of traffic, a person shall travel in the right-most travel lane.

(k) Notwithstanding paragraph (j) of this subsection, a pedicab may be operated in a travel lane other than the rightmost travel lane when:

(1) Operating in a lane designated for bicycles;

(2) Preparing to access a lane designated for bicycles;

(3) Preparing for a turn;

(4) Encountering road hazards or stopped or parked vehicles;

(5) Necessary to comply with lane use restrictions;

(6) Necessary for passenger safety;

(7) Directed to do so by a police officer or other law enforcement or public safety official or by a traffic control officer; or

(8) Operating on a one (1)-way street and traveling in the direction of traffic in the left-most travel lane.

1213.6 No one shall operate or be in control of a pedicab while the person's alcohol concentration is eight hundredths of a gram (0.08 g) or more either per one hundred milliliters (100 ml) of blood or per two hundred and ten liters (210 L) of breath or one tenth of a gram (0.10 g) or more per one hundred milliliters (100 ml) of urine, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor.

A new Section 1217 is added to read as follows:

1217 MULTI-SEAT PEDAL CYCLES

1217.1 No person shall operate, park, or stand any multi-seat pedal cycle, or cause any multi-seat pedal cycle to operate, park, or stand on any public bicycle path, public highway, or other public right-of-way within the District of Columbia.

Section 9901, DEFINITIONS, of Chapter 99, DEFINITIONS, is amended as follows:

The definition for Pedicab is amended to read as follows:

Pedicab – a bicycle with a single frame that connects two (2) rear wheels and one (1) front wheel or one (1) rear wheel and two (2) front wheels that is designed to be propelled by no more than one (1) person, that transports, or is capable of transporting, passengers on seats attached to the bicycle, and that is used for transporting passengers for hire.

New definitions for multi-seat pedal cycle and public bicycle path are added in alphabetical order to read as follows:

Multi-seat pedal cycle - a bicycle with three or more wheels that is designed and constructed to permit seating by more than two people, that is propelled by human power, and that is designed to permit propulsion by more than two individuals simultaneously. A multi-seat pedal cycle includes, but is not limited to conference bicycles, sightseeing pedal buses, or pedal taverns. A multi-seat pedal cycle shall not include a tandem bicycle.

Public bicycle path - means a right-of-way under the jurisdiction and control of the District of Columbia for use primarily by bicycles and pedestrians.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Section 3(b)(11) and (15) of the State Education Office Establishment Act of 2000 (Act), as amended, effective October 21, 2000 (D.C. Law 13-176, D.C. Official Code §§ 38-2602(b)(11) and (15) (2012 Repl. & 2015 Supp.)); and Section 102(c) of the Act, effective February 22, 2014, (D.C. Law 20-84, D.C. Official Code §§ 38-2610(a) (2015 Supp.)), hereby gives notice of her adoption, on an emergency basis, of amendments to Title 5 (Education), Subtitle A (Office of the State Superintendent of Education), Chapter 23 (State-wide Assessments) of the District of Columbia Municipal Regulations (DCMR).

The Office of the State Superintendent of Education (OSSE), pursuant to D.C. Official Code § 38-2610(a) (2015 Supp.) is responsible for "developing and administering all student tests and evaluations as required by federal law or as a condition of a federal grant including the yearly student academic assessments that are required for the purposes of determining adequate yearly progress under Title I, Part A, Section 1111 of the Elementary and Secondary Education Act [ESEA] of 1965, approved January 8, 2002 (115 Stat. 1444; 20 U.S.C. § 6311)."

The purpose of this rulemaking is to ensure alignment of the regulations governing administration of the District's State-wide assessments with the administration of the next generation assessments, such as the Partnership for Assessment of Readiness for College and Careers (PARCC) Assessment for English language arts/literacy and math, D.C.'s next generation science standards assessment in 5th grade science, 8th grade science, and high school biology, and the National Center and State Collaborative (NCSC) Assessment in math and English language arts as the alternate assessment for students with significant cognitive disabilities.

This notice therefore proposes: (1) amendment of Subsection 2300.3 of Section 2300 of Title 5-A DCMR to amend when the state-wide assessment program shall be administered in high school; and (2) amendment of Section 2301 of Title 5-A DCMR to strike the requirement that all students enrolled in grade (10) shall participate in the state-wide assessment program and insert a high school student shall participate in the state-wide assessment program as appropriate to the student's curricula and course progression or as determined by OSSE.

This notice is being circulated throughout the District for a thirty (30) day period, including an opportunity to submit written comments on these proposals, as is set forth in detail below.

Chapter 23, STATE-WIDE ACADEMIC ASSESSMENTS, of Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is amended as follows:

Subsection 2300.3 of Section 2300, ADMINISTRATION OF STATE-WIDE ACADEMIC ASSESSMENTS, is amended to read as follows:

2300 ADMINISTRATION OF STATE-WIDE ACADEMIC ASSESSMENTS

…

2300.3 The state-wide assessment program shall be administered each school year in conformance with guidelines established by the State Superintendent to include, at a minimum, the testing and reporting of results for all students enrolled in the District of Columbia Public Schools system and public charter schools who participated in the state-wide assessment program that year.

Section 2301, PARTICIPATION IN STATE-WIDE ACADEMIC ASSESSMENTS, is amended to read as follows:

2301 PARTICIPATION IN STATE-WIDE ACADEMIC ASSESSMENTS

2301.1 All students enrolled in grades three (3) through eight (8) shall participate in the state-wide mathematics and English language arts assessments.

2301.2 All students enrolled in grades five (5) and eight (8) shall participate in the state-wide science assessment.

2301.3 All students enrolled in grades nine (9) through twelve (12) shall participate in the state-wide mathematics assessment and English language arts assessment at least once in high school, as appropriate to the student's curricula and course progression or as determined by OSSE.

2301.4 All students enrolled in grades nine (9) through twelve (12) shall participate in the state-wide science assessment. Students shall take the assessment at least once in high school, as appropriate to their curricula and course progression or as determined by OSSE.

2301.5 The State Superintendent shall issue guidance annually to prescribe how students enrolled in grades nine (9) through twelve (12) are selected to participate in the state-wide assessments under this chapter.

2301.6 All District of Columbia students enrolled in nonpublic schools and receiving educational services funded by the District of Columbia shall participate in the annual academic assessments administered by the District of Columbia in conformance with this chapter. Wards of the District of Columbia receiving educational services funded by the District of Columbia, living outside the District of Columbia and attending a public school in another jurisdiction shall be exempt from participating in the District of Columbia's statewide academic assessment, provided they participate in the statewide system of assessment in the jurisdiction in which they are enrolled.

2301.7 The State Superintendent shall issue guidance to prescribe how students with disabilities and English language learners are to be assessed under this chapter, including the use of appropriate testing accommodations.

All persons desiring to comment on the subject matter of this 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* via email addressed to: ossecomments.proposedregulations@dc.gov; or by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Jamai Deuberry re: Graduation Requirements and Diplomas, 810 First Street, NE 9th Floor, Washington, DC 20002. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at www.osse.dc.gov.

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Interim Executive Director of the District of Columbia Lottery and Charitable Games Control Board (D.C. Lottery), pursuant to the authority set forth in the Law to Legalize Lotteries, Daily Numbers, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code §§ 3-1306 and 3-1321 (2012 Repl.)); District of Columbia Financial Responsibility and Management Assistance Authority Order, issued September 21, 1996; Office of the Chief Financial Officer Financial Management Control Order No. 96-22, issued November 18, 1996, and Office of the Chief Financial Officer Financial Management Control Orders No. 97-15, issued May 15,1997, and No. 96-16 (September 24, 1996); and Office of the Chief Financial Officer Financial Management Control Order No. 15-11, issued April 14, 2015 (appointing Tracey Cohen Interim Executive Director of the District of Columbia Lottery and Charitable Games Control Board), hereby gives notice of the adoption of amendments to Chapters 9 (Description of On-Line Games) and 99 (Definitions) of Title 30 (Lottery and Charitable Games, of the District of Columbia Municipal Regulations (DCMR).

These amendments are necessary to implement unilateral changes to the nationwide POWERBALL® game. These changes start October 4, 2015.

The Interim Executive Director also gives notice of the intent to take final rulemaking action to adopt these amendments in no less than thirty (30) days from the date of publication in the *D.C. Register*.

Chapter 9, DESCRIPTION OF ON-LINE GAMES, of Title 30 DCMR, LOTTERY AND CHARITABLE GAMES, is amended as follows:

Section 906, DESCRIPTION OF THE POWERBALL® GAME, is amended as follows:

Subsections 906.1 and 906.4 are amended to read as follows:

906.1 POWERBALL® is a five (5) out of sixty-nine (69) plus one (1) out of twenty-six (26) numbers online lottery game drawn every Wednesday and Saturday as part of the POWERBALL drawing event, which pays the Grand Prize, at the player's election, on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for this prize pool on a pari-mutuel basis. Except as provided in these rules, all other prizes are paid on a fixed cash basis. To play POWERBALL®, a player must select five (5) different numbers, between one (1) and sixty-nine (69) and one (1) additional number between one (1) and twenty-six (26) for input into a terminal.

906.4 The price of a POWERBALL® game ticket shall be one (1) play for two dollars ($ 2) or any other price designated by the Executive Director from a price schedule adopted by the Agency pursuant to § 500.1.

Section 907, PRIZE POOL(S) AND BONUS PRIZE, is renamed "POWERBALL® PRIZE POOL(S)" and amended as follows:

907 POWERBALL® PRIZE POOL(S)

907.1 The Agency shall pay in prizes at least fifty percent (50%) of each week's POWERBALL® sales from all tickets and shall allocate that amount to the winning pool or pools for payment of prizes for that game.

907.2 The prize money allocated to the Grand Prize category shall be awarded equally to the number of game boards winning a Grand Prize.

907.3 If in any game drawing there are no plays that qualify for the prize, the prize money for that game drawing shall be added to the prize pool.

907.4 Any amount remaining in the prize pool at the end of this game shall be returned to all lotteries participating in the prize pool after the end of all claim periods of all selling lotteries, carried forward to a replacement game or expended in a manner as directed by the Executive Director in accordance with District law.

907.5 An amount up to five percent (5%) of a Party Lottery's sales, including any specific statutorily mandated tax of a Party Lottery to be included in the price of a play, shall be deducted from a Party Lottery's Grand Prize Pool contribution and placed in trust in one or more Powerball prize pool accounts and prize reserve accounts held by the Product Group at any time that the prize pool accounts and Party Lottery's share of the prize reserve account(s) is below the amounts designated by the Product Group.

907.6 The Product Group has established the following prize reserve accounts for the POWERBALL® game: the Powerball Prize Reserve Account (PRA), which is used to guarantee the payment of valid, but unanticipated, Grand Prize claims that may result from a system error or other reason; and the Powerball Set Prize Reserve Account (SPRA), which is used to fund deficiencies in low-tier Powerball prize payments (subject to the limitations of these rules).

Section 908, POWERBALL® GRAND PRIZE PAYMENT, is amended as follows:

Add Subsection 908.22 to read as follows:

908.22 The holder of a winning ticket may win only one (1) prize per play in connection with the winning numbers in the highest matching prize category.

Section 909, POWERBALL® FIXED PRIZE STRUCTURE, is renamed "POWERBALL® SET PRIZE STRUCTURE", and is amended as follows:

909 POWERBALL® SET PRIZE STRUCTURE

909.1 Provided the prize pools are fully funded, the set prize payments for POWERBALL® based on a two dollar ($ 2) bet are as follows:

Number of Matches Per Play	
All five (5) of first set plus one (1) of second set.	Grand Prize
All five (5) of the first set and none of the second set	$ 1,000,000.00
Any four (4) of the first set plus one (1) of the second set	$ 50,000.00
Any four (4) of the first set and none of the second set	$ 100.00
Any three (3) of the first set plus one (1) of the second set	$ 100.00
Any three (3) of the first set and none of the second set	$ 7.00
Any two (2) of the first set plus one (1) of the second set	$ 7.00
Any one (1) of the first set plus one (1) of the second set	$ 4.00
None of the first set plus one (1) of the second set	$ 4.00

909.2 If the prize pools are not fully funded and there are not sufficient funds in the prize pool to pay Powerball Set Prizes, the prizes shall be paid pursuant to § 909.3, including payment on a pari-mutuel basis if required.

909.3 The Powerball Set Prize (for single payment prizes of one million dollars ($1,000,000.00) or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Powerball Set Prizes awarded in the current draw. If the total of the Powerball Set Prizes (as multiplied by the respective Power Play multiplier if applicable) awarded in a drawing exceeds the percentage of the prize pool allocated to the Powerball Set Prizes, then the amount needed to fund the Powerball Set Prizes, including Power Play prizes, awarded shall be drawn from the following sources, in the following order:

(a) The amount allocated to the Powerball Set Prizes and carried forward from previous draws, if any;

(b) An amount from the Set Prize Reserve Account, if available, not to exceed forty million dollars ($ 40,000.000.00) per drawing; and

(c) Other amounts as agreed to by the Product Group in their sole discretion.

909.4 If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded, including Power Play prizes, then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize, including Power Play prizes, shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning plays in proportion to their respective prize percentages. Powerball Set Prizes and Power Play prizes will be reduced by the same percentage.

909.5 By agreement with the Licensee Lotteries, the Licensee Lotteries shall independently calculate their Set Prize pari-mutuel prize amounts including Power Play prizes. The Party Lotteries and the Licensee Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

Section 910, PROBABILITY OF WINNING, is renamed "PROBABILITY OF WINNING POWERBALL® PRIZES", and is amended as follows:

910 PROBABILITY OF WINNING POWERBALL® PRIZES

910.1 The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations in POWERBALL®:

PROBABILITY DISTRIBUTION

Probable/Set Number of Matches Per Ticket	Winners	Probability	Prize Amount
All five (5) of first set plus one (1) of second set	1	1: 292,201,338.0000	Grand Prize
All five (5) of first set and none of second set	25	1:11,688,053.5200	$ 1,000,000.00
Any four (4) of first set plus one (1) of second set	320	1: 913,129,1813	$ 50,000.00
Any four (4) of first set and none of second set	8,000	1: 36,525.1673	$ 100.00
Any three (3) of first set plus one (1) of second set	20,160	1:14,494.1140	$ 100.00
Any three (3) of first set and none of second set	504,000	1:579.7646	$ 7.00
Any two (2) of first set plus one (1) of second set	416,640	1:701.3281	$ 7.00
Any one (1) of first set plus one (1) of second set	3,176,880	1:91.9775	$ 4.00
None of first set plus one (1) of second set	7,624,512	1:38.3239	$ 4.00
Overall	11,750,538	1:24.8671	

Section 913, DESCRIPTION OF THE POWERBALL® POWER PLAY PROMOTION, is renamed "DESCRIPTION OF THE POWERBALL® POWER PLAY PROMOTION AND PRIZE PAYMENT", and is amended as follows:

913 DESCRIPTION OF THE POWERBALL® POWER PLAY PROMOTION AND PRIZE PAYMENT

913.1 The POWERBALL® Power Play Promotion ("Power Play") is a limited extension of the POWERBALL® game and is conducted in accordance with the POWERBALL® game rules and other lottery rules applicable to the POWERBALL® game except as may be amended herein. The Executive Director

shall determine the starting and ending dates of Power Play. Power Play will offer to the owners of a qualifying play a chance to multiply the amount of any of the eight (8) lowest Set Prizes (the prizes normally paying four dollars ($ 4.00) to $ one million dollars ($1,000,000)) won in a drawing held during the promotion. The Grand Prize is not a Set Prize and will not be increased.

913.2 A qualifying play is any single POWERBALL® play for which the player pays an extra dollar for the Power Play option play and which is recorded at the Agency's central computer as a qualifying play.

913.3 Except as provided in these rules, a qualifying play which wins one of seven lowest Set Prizes (excluding the Match 5+0 prize) will be multiplied by the number selected, either two, three, four, five or sometimes ten (2, 3, 4, 5 or sometimes 10), in a separate random Power Play drawing announced during the official Powerball drawing show. The ten (10X) multiplier will be available for drawings in which the initially advertised annuitized Grand Prize amount is one hundred fifty million dollars ($150,000,000.00) or less. The announced Match 5+0 prize, for players selecting the Power Play option, shall be two million dollars ($2,000,000.00) unless a higher limited promotional dollar amount is announced by the Product Group.

913.4 Prize Payments**.** All Power Play prizes shall be paid in one single payment through the Selling Lottery that sold the winning ticket(s). A Selling Lottery may begin paying Power Play prizes after receiving authorization to pay from the MUSL central office.

Section 914, POWERBALL® POWER PLAY PRIZE POOL AND PRIZE PAYMENT, is renamed "POWERBALL® POWER PLAY EXPECTED PRIZE PAYOUT AND PROBABILITY OF WINNING", and is amended as follows:

914 POWERBALL® POWER PLAY EXPECTED PRIZE PAYOUT AND PROBABILITY OF WINNING

914.1 POWERBALL® POWER PLAY EXPECTED PRIZE PAYOUT

Prize Amount		**Regardless of Power Play number selected:**				
Match 5+0	$1,000,000.00	$2,000,000.00	$2,000,000.00	$2,000,000.00	$2,000,000.00	$2,000,000.00
Set Prize Amount		**10X**	**5X**	**4X**	**3X**	**2X**
Match 4+1	$50,000.00	$500,000.00	$250,000.00	$200,000.00	$150,000.00	$100,000.00
Match 4+0	$ 100.00	$1,000.00	$500.00	$400.00	$300.00	$200.00
Match 3+1	$ 100.00	$1,000.00	$500.00	$400.00	$300.00	$200.00
Match 3+0	$ 7.00	$70.00	35.00	$28.00	$21.00	$14.00
Match 2+1	$ 7.00	$70.00	$35.00	$28.00	$21.00	$14.00
Match 1+1	$ 4.00	$40.00	$20.00	$16.00	$12.00	$8.00

Match 0+1	$ 4.00	$40.00	$20.00	$16.00	$12.00	$8.00

914.2 In certain rare instances, the Powerball set prize amount may be less than the amount shown. In such a case, the eight (8) lowest Power Play prizes will be changed to an amount announced after the draw. For example, if the Match 4+1 Powerball set prize amount of $50,000.00 becomes $25,000.00 under the rules of the POWERBALL® game and a 5x Power Play multiplier is selected, then a Power Play player winning that prize amount would win $125,000.00.

914.3 The following table sets forth the probability of the various Power Play numbers being drawn during a single POWERBALL® drawing, except that the Power Play amount for the Match 5+0 prize will be two million dollars ($2,000,000). The Group may elect to run limited promotions that may modify the multiplier features.

POWER PLAY PROBABILITY OF WINNING

When the 10x multiplier is available:

Power Play	**Probability of Prize Increase**		**Chance of Occurrence**
10X -	Prize Won Times 10	1 in 43	2.3255%
5X -	Prize Won Times 5	2 in 43	4.6512%
4X -	Prize Won Times 4	3 in 43	6.9767%
3X -	Prize Won Times 3	13 in 43	30.2326%
2X -	Prize Won Times 2	24 in 43	55.8140%

When the 10x multiplier is not available:

Power Play	**Probability of Prize Increase**		**Chance of Occurrence**
10X -	Prize Won Times 10	0 in 42	0.00%
5X -	Prize Won Times 5	2 in 42	4.7619%
4X -	Prize Won Times 4	3 in 42	7.1429%
3X -	Prize Won Times 3	13 in 42	30.9523%
2X -	Prize Won Times 2	24 in 42	57.1429%

Power Play does not apply to the Grand Prize. Except as provided in § 914.1, a Power Play Match 5 prize is set at two million dollars ($2 million), regardless of the multiplier selected.

914.4 For Party Lotteries, the prize pool percentage allocated to the Power Play set prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

914.5 In drawings where the ten (10X) multiplier is available, the expected payout for all prize categories shall consist of up to forty-nine and nine hundred sixty-nine thousandths percent (49.969%) of each drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery ticket. In drawings where the ”ten (10)” multiplier is not available, the expected payout for all prize categories shall consist of up to forty-five and nine hundred thirty-four thousandths percent (45.934%) of each drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery ticket.

914.6 The prize payout percentage per draw may vary. The Power Play Prize Pool shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Power Play prizes awarded in the current draw and held in the Power Play Pool Account.

914.7 In drawings where the “ten (10)” multiplier is available, an additional thirty-one thousandths percent (0.031%) of sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery ticket, may be collected and placed in trust in the Power Play pool account, for the purpose of paying Power Play prizes. In drawings where the “ten (10)” multiplier is not available, four and sixty-six thousandths percent (4.066%) of sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery ticket, may be collected and placed in trust in the Power Play pool account, for the purpose of paying Power Play prizes.

914.8 Any amount remaining in the Power Play pool account when the Product Group declares the end of this game shall be returned to the lotteries participating in the account after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game, or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

914.9 Power Play does not apply to the POWERBALL® Grand Prize or to any Bonus Prize.

9900 DEFINITIONS

Advertised Grand Prize - shall mean the estimated annuitized Grand Prize amount as determined by the MUSL Central Office by use of the MUSL Annuity Factor and communicated through the Selling Lotteries prior to the Grand Prize drawing. The “Advertised Grand Prize” is not a guaranteed prize amount and the actual Grand Prize amount may vary from the advertised amount.

Party Lottery or Member Lottery - means a state lottery or lottery of a political subdivision or entity that has joined the MUSL and, in the context of these Product Group Rules, is authorized to sell the Powerball game. Unless otherwise indicated, "Party Lottery" or "Member Lottery" does not include "Licensee Lotteries."

Product Group or the Group - means a group of lotteries that has joined together to offer a product pursuant to the terms of the Multi-State Lottery Agreement and the Product Group's own rules.

Set Prize also referred to as Low-Tier Prize - in regards to POWERBALL® means all other prizes, except the Grand Prize, and, except in instances outlined in these rules, will be equal to the prize amount established by the MUSL Board for the prize level.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Comments should be filed with Antar Johnson, Senior Counsel, Lottery and Charitable Games Control Board, 2235 Shannon Place, S.E., Washington, D.C. 20020, or e-mailed to antar.johnson@dc.gov, or file online at www.dcregs.gov. Additional copies of these proposed rules may be obtained at the address stated above.

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Interim Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in Section 424a of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 790, Pub. L. 93-198; D.C. Official Code § 1-204.24(a) (2014 Repl.)), as amended by the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (Pub. L. No. 109-356, § 201, 120 Stat. 2019; D.C. Official Code §§ 1-204.24a(c)(6) (2012 Repl.)); Section 4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code §§ 3-1306(a), 3-1322, 3-1323, 3-1324, and 3-1325 (2012 Repl.)); District of Columbia Financial Responsibility and Management Assistance Authority Order, issued September 21, 1996; the Office of the Chief Financial Officer Financial Management Control Order No. 96-22, issued November 18, 1996; the Office of the Chief Financial Officer Financial Management Control Orders No. 97-15, issued May 15,1997, and No. 96-16, issued September 24, 1996; and Office of the Chief Financial Officer Financial Management Control Order No. 15-11, issued April 14, 2015 (appointing Tracey Cohen Interim Executive Director of the District of Columbia Lottery and Charitable Games Control Board), hereby gives notice of the intent to amend Chapters 12 (Bingo, Raffle, Monte Carlo Night Party and Supplier's Licenses) and 15 (Raffles) of Title 30 (Lottery and Charitable Games) of the District of Columbia Municipal Regulations (DCMR). "."

In response to implementation of the final rules for 50/50 Raffles Conducted By Charitable Foundations Affiliated with Collegiate or Professional Sports Teams the Agency decided modifications were required for Subsections 1205.1, 1205.2, and 1205.3 on bonding of charitable events to ensure compliance with D.C. Official Code § 3-1325. The Agency also decided modifications to Subsections 1509.3(a) and (b), Classes of 50/50 Raffle Licenses and Fees, were required to allow licensed organizations to conduct more licensed events and to reduce the fees associated with event licenses.

The Interim Executive Director gives thirty (30) days' notice for the finalization of this rule to become effective upon publication of this notice in the *D.C. Register*.

Chapter 12, BINGO, RAFFLE, MONTE CARLO NIGHT PARTY AND SUPPLIER'S LICENSES, of Title 30 DCMR, LOTTERY AND CHARITABLE GAMES, is amended as follows:

Section 1205, BONDING, is amended to read as follows:

1205.1 At the time application for a bingo or raffle license is made, the Agency shall require each applicant to provide financial security in the form of certified funds, a bond, or other form of security as prescribed by the Executive Director.

1205.2 In accordance with D.C. Official Code § 3-1325, the financial security required in §1205.1 shall guarantee the faithful discharge of the duties of the member responsible for gross receipts, payment of expenses, including fees and taxes, that net proceeds are expended for a lawful purpose, and that all prizes are awarded.

1205.3 The amount of the financial security shall be at least two hundred ($200) dollars and shall not exceed the aggregate value of the prize(s) offered.

Section 1509, 50/50 RAFFLES CONDUCTED BY CHARITABLE FOUNDATIONS AFFILIATED WITH COLLEGIATE OR PROFESSIONAL SPORTS TEAMS, of Chapter 15, RAFFLES, is amended as follows:

Amend Sections 1509.3 (a) and (b) to read as follows:

1509.3 Classes of 50/50 Raffle Licenses and Fees.

(a) Class A single licensed event raffle license: $100.00.

(b) Class B season raffle license:

$100.00 multiplied by the number of licensed events. There is a maximum of (125) licensed events per Class A single licensed event or Class B season raffle license period and a limit of one (1) raffle draw per licensed event.

All persons desiring to comment on the subject matter of this 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 Antar Johnson, Senior Counsel, Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020, or e-mailed to antar.johnson@dc.gov, or filed online at www.dcregs.gov. Additional copies of these proposed rules may be obtained at the address stated above.

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF PROPOSED RULEMAKING

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

These amendments are intended to make grammatical corrections and update rules to comply with federal regulations.

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

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

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

The chapter heading is amended to read as follows:

CHAPTER 13 COMMERCIAL DRIVER LICENSES AND COMMERCIAL LEARNER PERMITS

Section 1300, GENERAL PROVISIONS, is amended as follows:

Subsection 1300.1(g) is amended to read as follows:

(g) Issuing commercial driver licenses and commercial learner permits.

Section 1301, APPLICATION FOR A COMMERCIAL DRIVER'S LICENSE, is amended as follows:

The section heading is amended to read as follows:

1301 APPLICATION FOR A COMMERCIAL DRIVER LICENSE OR COMMERCIAL LEARNER PERMIT

Subsection 1301.1 is amended as follows:

The lead-in text is amended to read as follows:

1301.1 The application or renewal application for a commercial driver license or commercial learner permit shall include the following:

Paragraph (f) is amended to read as follows:

(f) All jurisdictions in which the applicant has previously been licensed to operate any type of motor vehicle within the last ten years;

Paragraph (h) is amended by striking the word "and".

Paragraph (i) is amended by striking the period at the end and inserting a semicolon in its place.

New paragraphs (j), (k), (l), and (m) are added to read as follows:

(j) Whether the person is a United States citizen or has lawful permanent residency as specified in 49 C.F.R. § 383.71(a)(2)(v), (b)(9), (c)(6), and (d)(5);

(k) The medical certification required by 49 C.F.R. § 383.71(h);

(l) If applicable, applicant's certification that he or she operates only in intrastate commerce and is subject to the District of Columbia's driver qualification requirements; and

(m) If the applicant is seeking to transfer a commercial driver license from another jurisdiction, and wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in 49 C.F.R. §§ 383.71(b)(8) and 383.141 and ensure that the driver has passed the test for such endorsement specified in 49 C.F.R. § 383.121.

Subsection 1301.2 is amended by striking the phrase "commercial driver's license or commercial driver's instruction license" and inserting the phrase "commercial driver license or commercial learner permit" in its place.

Subsection 1301.3 is amended by striking the phrase "commercial driver's license" and inserting the phrase "commercial driver license or commercial learner permit" in its place.

Section 1302, COMMERCIAL DRIVER'S INSTRUCTION LICENSE, is amended as follows:

The section heading is amended to read as follows:

1302 ISSUANCE OF COMMERCIAL LEARNER PERMIT

Section 1302 is amended by striking the phrase "commercial driver's instruction license" wherever it appears and inserting the phrase "commercial learner permit" in its place.

Subsection 1302.1 is amended to read as follows:

1302.1 A commercial learner permit shall be issued only to an individual who:

(a) Provides proof of citizenship or lawful permanent residency as specified in 49 C.F.R. § 383.71(a)(2)(v), (b)(9), (c)(6), and (d)(5);

(b) Except as set forth in §1303.7 of this chapter, is a resident of the District of Columbia; and

(c) Holds a valid noncommercial driver license or a valid commercial driver license if applying to operate commercial vehicles in a group or endorsement other than the group or endorsement that he or she is authorized to operate.

Subsection 1302.7 is amended to read as follows:

1302.7

(a) The commercial learner permit shall be valid for no more than one hundred and eighty (180) days from the date of issuance. The learner permit may be renewed for an additional one hundred and eighty (180) days without requiring the permitee to retake the general or endorsement knowledge test. The permit may be renewed within thirty (30) days before its expiration.

(b) The commercial learner permit holder is not eligible to take the commercial driver license skills test in the first thirty (30) days after the initial issuance of the commercial learner permit.

Section 1303, ISSUANCE OF COMMERCIAL DRIVER'S LICENSE, is amended as follows:

The section heading is amended to read as follows:

1303 ISSUANCE OF COMMERCIAL DRIVER LICENSE AND COMMERCIAL LEARNER PERMIT

Subsection 1303.1 is amended to read as follows:

1303.1 No person shall be issued a commercial driver license unless that person:

(a) Is a resident of the District of Columbia, except as set forth in § 1303.7;

(b) Either:

(1) Possesses a commercial learner permit;

(2) Has met the requirements of §§ 1315 and 1316 of this chapter or

(3) Is granted a waiver pursuant to § 1318;

(c) Meets the requirements set forth in § 1327;

(d) Surrenders his or her non-commercial or commercial driver license from any state; and

(e) Provides proof of citizenship or lawful permanent residency as specified in 49 C.F.R. § 383.71.

A new Subsection 1303.7 is added to read as follows:

1303.7 A person may obtain a non-domiciled commercial driver learner permit or commercial driver license if:

(a) The applicant is domiciled in a foreign jurisdiction, as defined in 49 C.F.R. § 383.5 and the Federal Motor Carrier Administration Administrator has not determined that the commercial motor vehicle operator testing and licensing standards of that jurisdiction meet the standards contained in subparts 49 C.F.R. part 383, subparts F, G and H; or

(b) The applicant is domiciled in a state that is prohibited from issuing commercial learner permits or commercial driver licenses in accordance with 49 C.F.R. § 384.405.

A new Subsection 1303.8 is added to read as follows:

1303.8 An applicant for a non-domiciled commercial learner permit or a commercial license must:

(a) Complete the requirements to obtain a commercial learner permit contained in 49 C.F.R. § 383.71(a) or a commercial driver license contained in 49 C.F.R. § 383.71(b). Exception: An applicant domiciled in a foreign jurisdiction must provide an unexpired employment authorization document issued by the United States Citizenship and Immigration Services or an unexpired foreign passport accompanied by an

approved I–94 form documenting the applicant's most recent admittance into the United States. No proof of domicile is required; and

(b) After receipt of the non-domiciled commercial learner permit or commercial driver license, and for as long as it is valid, notify the Department of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his or her driving privileges. Such adverse actions include, but are not limited to, license disqualification or disqualification from operating a commercial motor vehicle for the convictions described in 49 C.F.R. § 383.51 Notifications must be made within the time periods specified in 49 C.F.R. § 383.33.

Section 1304, LIMITATION ON NUMBER OF DRIVER'S LICENSES, is amended as follows:

The section heading is amended to read as follows:

1304 LIMITATION ON NUMBER OF DRIVER LICENSES

Subsection 1304.1 is amended by striking the word “driver’s” and inserting the word “driver” in its place.

Section 1305, COMMERCIAL DRIVER’S LICENSE REQUIRED, is amended as follows:

The section heading is amended to read as follows:

1305 COMMERCIAL DRIVER LICENSE REQUIRED

Subsection 1305.1 is amended as follows:

The lead-in text is amended to read as follows:

1305.1 No resident of the District of Columbia shall drive a commercial vehicle unless he or she has been issued a valid commercial driver license or a valid commercial learner permit, which authorizes him or her to operate the following types of vehicles:

Subsection 1305.2 is amended by striking the phrase “commercial driver's instruction license or commercial driver's license” and inserting the phrase “commercial learner permit or commercial driver license” in its place

Subsection 1305.3 is amended to read as follows:

1305.3 No person shall drive a commercial motor vehicle in the District of Columbia unless the person holds a commercial driver license with the applicable class and endorsements for the vehicle(s) he or she is driving, except when driving under a

commercial driver learner permit and accompanied by the holder of a commercial driver license for the vehicle being driven.

Section 1306, DISQUALIFICATION, is amended as follows:

Subsection 1306.1 is amended to read as follows:

1306.1 The Director shall disqualify a person from operating a commercial vehicle, by denying an application for a commercial driver license or learner permit or by withdrawing a person's commercial driver license or learner permit, if the person:

(a) Is convicted of driving any vehicle while under the influence of alcohol or a controlled substance;

(b) Is convicted of having an alcohol concentration of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine while operating a commercial vehicle;

(c) Is convicted of refusing to take an alcohol test while operating any vehicle;

(d) Is convicted of leaving the scene of an accident while operating any vehicle;

(e) Is convicted of causing a fatality through the negligent operation of a commercial vehicle;

(f) Is convicted of using any vehicle in the commission of a felony;

(g) Is convicted of driving a commercial vehicle when, as a result of prior violations committed while operating a commercial vehicle, the person’s commercial driver license is revoked or suspended, or the person is disqualified from operating a commercial vehicle;

(h) Is convicted of driving a commercial vehicle and failing to slow down and stop before reaching a railroad crossing to check that railroad tracks are clear of an approaching train;

(i) Is convicted of driving a commercial vehicle without leaving sufficient space to drive through a railroad crossing without stopping;

(j) Is convicted of failure to obey a traffic control device or the directions of an enforcement official at a railroad crossing while operating a commercial vehicle;

(k) Is convicted of failure to negotiate a railroad crossing because of insufficient undercarriage clearance while operating a commercial vehicle;

(l) Is convicted of operating a commercial vehicle in violation of an out-of-service order;

(m) Is convicted of two (2) or more serious traffic violations within a three (3) year period;

(n) Is convicted of operating a school bus, operating a vehicle designed to transport sixteen (16) or more people, including the driver, operating any vehicle that is more than twenty-six thousand and one (26,001) pounds, transporting hazardous material, or engaging in commercial interstate operation while under twenty-one (21) years of age;

(o) Has falsified information contained in the commercial driver license or learner permit application or a document submitted as part of the application process. In such an instance, the Director shall at a minimum disqualify the person's commercial driver license or learner permit or the person's pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least sixty (60) consecutive days;

(p) Is convicted of fraud related to the issuance of that commercial driver license or learner permit. The person so convicted who seeks to renew, transfer, or upgrade the fraudulently obtained commercial driver license or learner permit shall be disqualified for one (1) year and the Director shall record the withdrawal in the person's driving record. The person may not reapply for a new commercial driver license or learner permit for at least one (1) year; or

(q) Is suspected, but has not been convicted, of fraud related to the issuance of his or her commercial driver license or learner permit, and within thirty (30) days after receiving notification from the Director that re-testing is necessary, the affected commercial driver license or learner permit holder has not made an appointment or otherwise scheduled to take the next available test. In such an instance, the commercial driver license or learner permit holder shall be disqualified from driving a commercial motor vehicle. If the person fails either the knowledge or skills test or does not take the test, he or she shall be disqualified from driving a commercial motor vehicle. Once a commercial motor vehicle or learner permit holder has been so disqualified, he or she must reapply for a commercial driver license or learner permit under the procedures set forth in this chapter.

Subsection 1306.2 is amended as follows:

1306.2 For purposes of this chapter, the following violations are serious traffic violations:

…

(i) Texting while driving;

(j) Use of a hand-held mobile telephone while driving.

Section 1307, COMMERCIAL MOTOR VEHICLE DRIVER RESPONSIBILITY, is amended as follows:

Subsection 1307.1 is amended by striking the phrase "commercial driver's license" and inserting the phrase "commercial driver license or commercial learner permit" in its place.

Subsection 1307.2 is amended to read as follows:

1307.2 When the holder of a commercial driver license changes his or her name, mailing address or residence, he or she shall file an application for a duplicate commercial driver license with the Department of Motor Vehicles within sixty (60) calendar days.

Subsection 1307.3(a) is amended by striking the word "driver's" and inserting the word "driver" in its place.

Section 1309, EMPLOYER'S RESPONSIBILITY, is amended as follows:

A new Subsection 1309.5 is added to read as follows:

1309.5 An employer shall not knowingly allow, require, permit, or authorize any of its drivers to engage in texting or using a hand-held mobile telephone while driving.

Section 1310, COMMERCIAL DRIVER'S LICENSE CONTENT, is amended as follows:

The section heading is amended to read as follows:

1310 COMMERCIAL DRIVER LICENSE CONTENT

Section 1310.1 is amended by striking the word "driver's" and inserting the word "driver" in its place.

Subsection 1310.2 is added to read as follows:

1310.2 The commercial learner permit shall be marked "CLP" and shall include, in addition to the information included on a regular driver license, the group(s) of commercial motor vehicles that the permitee is authorized to operate, as specified by class in § 1312 and by endorsement in § 1313.

Section 1311, DURATION OF COMMERCIAL DRIVER'S LICENSE, is amended as follows:

The section heading is amended to read as follows:

1311 DURATION OF COMMERCIAL DRIVER LICENSE

Section 1311 is amended by striking the word "driver's" wherever it appears and inserting the word "driver" in its place.

Section 1312, DRIVER'S LICENSE TYPE AND CLASS, is amended as follows:

The section heading is amended to read as follows:

1312 DRIVER LICENSE TYPE AND CLASS

Subsection 1312.1 is amended to read as follows:

1312.1 The following types of driver licenses shall be issued by the Director, Department of Motor Vehicles, or his or her designee:

(a) Regular Driver License - For persons qualifying to operate Class "D," Class "M", and Class "N" vehicles;

(b) Commercial Driver License - For persons qualifying to operate Class "A," Class "B," and Class "C" vehicles;

(c) Learner Driver License - For persons qualifying to operate Class "D," and Class "M" vehicles, during a period of instruction; and

(d) Commercial Learner Permit - For persons qualifying to operate Class "A", Class "B," and Class "C" vehicles, during a period of instruction.

Subsection 1312.2 is amended by striking the word "driver's" and inserting the word "driver" in its place.

Section 1313, DRIVER'S LICENSE ENDORSEMENTS AND RESTRICTIONS, is amended as follows:

The section heading is amended to read as follows:

1313 COMMERCIAL DRIVER LICENSE AND COMMERCIAL LEARNER PERMIT ENDORSEMENTS AND RESTRICTIONS

Subsection 1313.1 is amended by striking the word "driver's" and inserting the word "driver" in its place.

Paragraph (f) is amended by striking the word "Motorcycles" and inserting the word "Motorcycle" in its place.

Paragraph (g) is amended by striking the phrase "Commercial Driver's Instruction License" and inserting the phrase "Commercial Learner Permit" in its place.

Paragraph (h) is amended by striking the phrase "Commercial Driver's Instruction License" and inserting the phrase "Commercial Learner Permit" in its place.

Paragraph (i) is amended by striking the phrase "Commercial Driver's Instruction License" and inserting the phrase "Commercial Learner Permit" in its place.

Subsection 1313.3 is amended by striking the word "driver's" and inserting the word "driver" in its place.

A new Subsection 1313.5 is added to read as follows:

1313.5 A commercial learner permit holder with a passenger endorsement shall not operate a commercial motor vehicle carrying passengers, other than federal or state auditors and inspectors, test examiners, other trainees, and the commercial driver license holder accompanying the commercial learner permit holder as prescribed by §§ 1302.5 and 1302.6 of this chapter.

A new Subsection 1313.6 is added to read as follows:

1313.6 A commercial learner permit holder with a school bus endorsement shall not operate a school bus with passengers other than federal or state auditors and inspectors, test examiners, other trainees, and the commercial driver license holder accompanying the commercial learner permit holder as prescribed by §§ 1302.5 and 1302.6 of this chapter.

A new Subsection 1313.7 is added to read as follows:

1313.7 A commercial learner permit holder with a tanker endorsement may only operate an empty tank vehicle and shall not operate a tank vehicle that previously contained hazardous materials that has not been purged of any residue.

Section 1314, PROCEDURES FOR LICENSING ACTIONS, is amended as follows:

Section 1314 is amended by striking the word "driver's" wherever it appears and inserting the word "driver" in its place.

Section 1315, COMMERCIAL DRIVER'S LICENSE KNOWLEDGE TEST, is amended as follows:

The section heading is amended to read as follows:

1315 COMMERCIAL DRIVER LICENSE KNOWLEDGE TEST

Subsections 1315.1, 1315.2, 1315.4a, and 1315.5 are amended by striking the word "driver's" wherever it appears and inserting the word "driver" in its place.

Section 1316, COMMERCIAL DRIVER'S LICENSE SKILLS TEST, is amended as follows:

The section heading is amended to read as follows:

1316 COMMERCIAL DRIVER LICENSE SKILLS TEST

Subsections 1316.1, 1316.3, 1316.4, and 1316.5, and 1316.7 are amended by striking the word "driver's" wherever it appears and inserting the word "driver" in its place.

Subsection 1316.8 is added to read as follows:

1316.8 If allowed by another U.S. jurisdiction, a District of Columbia resident who has taken commercial driver license training in that jurisdiction may take the skills test in that jurisdiction. The test results will be accepted as if the tests were administered in the District.

Section 1318, TEST WAIVER, is amended as follows:

Subsection 1318.1 is amended by striking the word "driver's" wherever it appears and inserting the word "driver" in its place.

Section 1319, OUT-OF-SERVICE ORDERS, is amended as follows:

Subsection 1319.2 is amended by striking the phrase "commercial driver's license" and inserting the phrase "commercial driver license or commercial learner permit" in its place.

Section 1321, RECIPROCITY, is amended as follows:

Subsection 1321.1 is amended as follows:

The lead-in text is amended by striking the phrase "commercial driver's license or commercial driver's instruction license" and inserting the phrase "commercial driver license or commercial learner permit" in its place.

Paragraph (a) is amended by striking the phrase "driver's license" and inserting the phrase "commercial driver license or commercial learner permit" in its place.

Section 1322, COMPLIANCE, is amended as follows:

Subsection 1322 is amended by striking the phrase "commercial driver's license or a commercial driver's instruction license" wherever it appears and inserting the phrase "commercial driver license or a commercial learner permit" in its place.

Section 1326, FEES, is amended as follows:

Subsection 1326.1 is amended as follows:

The lead-in text is amended to read as follows:

1326.1 Every applicant for a commercial driver license or commercial learner permit shall pay a non-refundable fee, payable to the D.C. Treasurer, for the following transactions:

The chart is amended by:

Striking the phrase "Commercial Driver's Learner Permit" and inserting the phrase "Commercial Driver Learner Permit"; striking the phrase "Commercial Driver's License" and inserting the phrase "Commercial Driver License" in its place.

Subsection 1326.2 is amended by striking the phrase "Commercial Driver's Instruction License" and inserting the phrase "Commercial Learner Permit" in its place.

Subsection 1326.3 is amended by striking the phrase "Commercial Driver's Instruction License" and inserting the phrase "Commercial Learner Permit" in its place.

Section 1327, PHYSICAL QUALIFICATIONS AND EXAMINATIONS, is amended as follows:

Subsection 1327.1 is amended to read as follows:

1327.1 No person shall be issued or maintain a commercial driver license or commercial learner permit unless he or she is physically qualified and, except as provided in 49 C.F.R. § 391.49, presents to the Department a valid medical examiner's certificate, as set forth in 49 C.F.R. § 391.43(h) that is not more than two (2) years old.

Subsection 1327.3 is amended to read as follows:

1327.3 Except as otherwise provided in this section, a medical examination to determine an applicant's physical qualification to operate a commercial motor vehicle shall be performed by a medical practitioner who is listed on the National Registry of Certified Medical Examiners.

Subsection 1327.4 is amended by striking the phrase "ophthalmologist or".

Subsection 1327.7 is amended by striking the word "driver's" and inserting the word "driver" in its place.

Section 1329, EXEMPTIONS TO THE COMMERCIAL DRIVER'S LICENSE REQUIREMENTS, is amended as follows:

The section heading is amended to read as follows:

1329 EXEMPTIONS TO THE COMMERCIAL DRIVER LICENSE REQUIREMENTS

Section 1399, DEFINITIONS, is amended as follows:

Subsection 1399.1, is amended as follows:

By striking "Commercial Driver's Instruction License" and inserting "Commercial Learner Permit" in its place; and by striking "Commercial Driver's License" and inserting "Commercial Driver License" in its place.

By adding the following definitions to read as follows:

Mobile telephone -- a mobile communication device that falls under or uses any commercial mobile radio service, as defined in regulations of the Federal Communications Commission, 47 C.F.R. part 20.3. It does not include two-way or Citizens Band Radio services.

School bus -- a bus which is regularly used by or on behalf of a school to transport children to or in connection with school activities; Provided, that this definition shall not include buses operated by common carriers which are not used primarily for the transportation of school children, or vehicles owned by the United States government.

Texting -- means manually entering alphanumeric text into, or reading text from, an electronic device that includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access an internet page, or engaging in any other form of electronic text retrieval or entry, for present or future communication.

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

DEPARTMENT OF PUBLIC WORKS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Public Works, pursuant to the authority set forth in Section 8 of An Act Providing for the removal of snow and ice from the paved sidewalks of the District of Columbia, effective March 11, 2015 (D.C. Law 20-211; 62 DCR 4482 (December 26, 2014); to be codified at D.C. Official Code § 9-607) (the Act), and Mayor's Order 2015-174, dated June 25, 2015, hereby gives notice of intent to adopt a new Chapter 17 (Winter Sidewalk Safety) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules provide guidance on compliance with the Act, set forth the penalty for failure to comply and establish a process by which a senior citizen or resident with a disability may self-certify his or her exemption from compliance.

The Director also gives notice of the intent to adopt the following rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register* and after the earlier of either the completion of the thirty-day (30) day period of Council review established by Section 8 of the Act, or the date upon which the rulemaking is deemed approved by Council.

Chapter 17, WINTER SIDEWALK SAFETY, of Title 24 DCMR, PUBLIC SPACE AND SAFETY, is added to read as follows:

CHAPTER 17 WINTER SIDEWALK SAFETY

1700 WINTER SIDEWALK SAFETY: GENERAL PROVISIONS

1700.1 Each owner of a commercial or residential building or property in the District shall remove snow and ice from any paved sidewalks, curb cuts, and curb ramps abutting the building or property within eight (8) hours of daylight after the snow or other precipitation has ceased falling, regardless of the source of the accumulation.

1700.2 The owner may delegate this responsibility to a tenant, occupant, lessee, or other individual (referred to in this chapter as a "delegee") by written agreement.

1701 DUTIES OF OWNER OR DELEGEE

1701.1 In carrying out his or her obligation under Section 1701, the owner or delegee shall:

(a) Clear the entire width of the sidewalk or to a width of thirty-six inches (36″), whichever is less. If only a width of thirty-six inches (36″) is required to be cleared under this paragraph, the owner or delegee shall ensure that the sidewalk is cleared in a continuous path.;

(b) Clear all curb ramps that provide access to the sidewalk, regardless of the source of snow accumulation;

(c) Clear all curb cuts abutting the property, regardless of the source of the snow accumulation; and

(d) Place snow or ice in the tree box area or in the grassy area adjacent to the sidewalk. If no tree box or grassy area is present, the owner shall place the snow or ice in the area of the sidewalk adjacent to the curb but not in the street or bicycle lane.

1701.2 If snow or ice cannot be removed without damaging the sidewalk, the owner or delegee shall cover the snow or ice with sand, sawdust, or another appropriate substance to render the sidewalk safe for pedestrian travel.

1702 PENALTIES FOR FAILURE TO COMPLY

1702.1 If the owner or delegee fails to properly remove or cover snow or ice within twenty-four (24) hours after the snow or other precipitation has ceased to fall, the Mayor or his or her designated agent may issue a notice of violation for the failure to comply with this section.

1702.2 No more than one (1) notice of violation may be issued within a twenty-four (24) hour period for the same property.

1702.3 The fine imposed for a violation shall be:

(a) Twenty-five dollars ($25) for a residential property; and

(b) One hundred and fifty dollars ($150) for a commercial property.

1702.5 A notice of violation issued under this subsection shall be adjudicated pursuant to the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code §§ 8-801 *et seq.*).

1703 EXEMPTIONS FOR SENIOR CITIZENS AND DISABLED PERSONS

1703.1 A residential property owner who is sixty-five (65) years of age or older or who is disabled shall be exempt from the provisions of this section.

1703.2 If such an owner is issued a notice of violation, it shall be a complete defense if the owner self-certifies that he or she is sixty-five (65) years of age or older or disabled, unless the District shows by a preponderance of the evidence that the certification is false or does not meet the standards set forth in Subsection 1703.1 of this section.

1703.3 For the purposes of this section an owner is disabled if the owner:

(a) Has been determined to have a disability pursuant to a government assistance program; or

(b) Has evidence from a medical doctor that he or she is unable to, or should not, undertake the physical activity require to remove ice or snow.

1703.3 For the purposes of the exemption set forth in this section, the property must be owner-occupied and residential.

1799 DEFINITIONS

1799.1 For the purposes of this chapter, the following terms shall have the meanings ascribed:

Commercial property - property that does not receive District government solid waste collection service.

Curb cut – a depression or opening in the curb along the traveled portion of a roadway created to permit the travel of motor vehicles from the roadway to property adjacent to the roadway.

Curb ramp – a ramp cutting through a curb or built up to the curb, generally designed to provide an accessible path to individuals with disabilities, such as a ramp leading from a roadway to a sidewalk.

Residential property - property that receives District government solid waste collection service (residential buildings containing three (3) or fewer dwelling units) as defined in 24 DCMR § 1399.1.

Comments on these proposed rules should be submitted, in writing, to Christine V. Davis, General Counsel, Department of Public Works, 2001 14th St, N.W., 6th Floor, Washington, D.C. 20009, within thirty (30) days after the date of publication of this notice in the *D.C. Register.* Questions may be directed to (202) 671-2030 or Christine.davis@dc.gov. Additional copies of these proposed rules are available from the above address.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF SECOND EMERGENCY RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth in Sections 8(c) (1), (2), (3), (4), (7), (10), (11), (14), (16), (18), (19) and (20), 14, 15, and 20j of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986, as amended by the Vehicle-for-Hire Innovation Amendment Act of 2014 ("Vehicle-for-Hire Act"), effective March 10, 2015 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(1),(2),(3), (4) (7), (10), (11), (14), (16), (18), (19) and (20), 50-313, 50-314, and 50-329 (2012 Repl. & 2014 Supp.), hereby gives notice of its intent to adopt amendments to Chapter 2 (Panel on Rates and Rules: Rules of Organization and Rules of Procedure for Ratemaking), Chapter 4 (Taxicab Payment Service Providers), Chapter 6 (Taxicab Parts and Equipment), Chapter 7 (Enforcement), Chapter 8 (Operation of Public Vehicles for Hire), Chapter 9 (Insurance Requirements), Chapter 10 (Public VehiclesFor Hire), Chapter 11 (Public Vehicles For Hire Consumer Service Fund), Chapter 12 (Luxury Services - Owners, Operators, and Vehicles), Chapter 14 (Operation of Black Cars), Chapter 16 (Dispatch Services and District of Columbia Taxicab Industry Co-op) and Chapter 99 (Definitions), and add a new Chapter 19 (Private Vehicles-for-Hire), of Title 31 (Taxicabs and Public Vehicles-for-Hire) of the District of Columbia Municipal Regulations (DCMR).

This second emergency rulemaking amends Chapters 2, 4, 6, 7, 8, 9, 10, 11, 12, 14, 16, and 99, and add a new Chapter 19, in order to conform Title 31 DCMR to the provisions of the Vehicle-for-Hire Act. The second emergency rulemaking is required to: (1) prevent provisions of Title 31 from being rendered null and void due to a conflict with the provisions of the Vehicle-for-Hire Act; (2) create a consistent legal framework for the operation of the District's vehicle-for-hire industry; (3) maintain uniform treatment of stakeholders between classes of service, where relevant; (4) minimize legal exposure to the District; (5) create rules and procedures necessary for the Office of Taxicabs ("Office") to implement and comply with the Vehicle-for-Hire Act; and (6) create rules and procedures for District enforcement officials to enforce the Vehicle-for-Hire Act. No provision in this second emergency rulemaking is intended to exceed or alter any person's legal obligations under the Establishment Act, as amended by the Vehicle-for-Hire Act. The changes to this second emergency rulemaking from the first emergency rulemaking adopted by the Commission on March 11, 2015 are intended to clarify the requirements of the rules and decrease certain burdens on affected stakeholders.

This second emergency rulemaking shall be effective beginning on July 10, 2015, the intent of the Commission being to extend without interruption the emergency rulemaking which was adopted by the Commission on March 11, 2015, which took effect immediately and which remained in effect for one hundred and twenty (120) days after the date of adoption, expiring on July 10, 2015. The first emergency rulemaking was combined with a Notice of Proposed Rulemaking and was published August 14, 2015 at 62 DCR 11313. This second emergency rulemaking rules shall remain in effect for one hundred and twenty (120) days after the date of

adoption (expiring November 5, 2015), unless earlier superseded by an amendment or repeal by the Commission, or by the publication of final rulemaking, whichever occurs first.

Chapter 2, PANEL ON RATES AND RULES: RULES OF ORGANIZATION AND RULES OF PROCEDURE FOR RATEMAKING, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is repealed and reserved.

Chapter 4, TAXICAB PAYMENT SERVICE PROVIDERS, is amended as follows:

Section 410, ENFORCEMENT, is amended as follows:

Subsection 410.1 is amended to read as follows:

410.1 The enforcement of this chapter shall be governed by Chapter 7.

Subsection 410.2 is repealed and reserved.

Chapter 6, TAXICAB PARTS AND EQUIPMENT, is amended to read as follows:

Subsection 600.4 is repealed and reserved.

Section 610, NOTICE OF PASSENGER RIGHTS, is amended as follows:

Subsection 610.1 is amended to read as follows:

610.1 There shall be displayed in a conspicuous location in each taxicab in clear view of the passenger a notice in a form created by Office which contains the following information:

(a) A statement that a taxicab must accept credit cards through the approved taximeter system;

(b) A statement that a taxicab shall not operate without a functioning taximeter system;

(c) A statement that failure to accept a credit card is in violation of the law and is punishable by a fine; and

(d) Information required for passengers to submit an alleged violation or complaint, including the Commission's telephone number and website address.

Subsection 610.2 is repealed.

Section 611 is amended to read as follows:

611 PENALTIES

611.1 Each violation of this chapter by a taxicab company, independent owner, or taxicab operator shall subject the violator to:

(a) The civil fines and penalties set forth in § 825 or in an applicable provision of this chapter, provided, however, that where a specific civil fine or penalty is not listed in § 825 or in this chapter, the fine shall be:

(1) One hundred dollars ($100);

(2) Two hundred fifty dollars ($250) where a fare is charged to any person based on information entered by the operator into any device other than as required for an authorized additional charge under § 801.7 (b); and

(3) Double for the second violation of the same provision and triple for each violation of the same provision thereafter, in all instances where a civil fine may be imposed;

(b) Impoundment of a vehicle operating in violation of this chapter;

(c) Confiscation of an MTS unit or unapproved equipment used for taxi metering in violation of this chapter;

(d) Suspension, revocation, or non-renewal of such person's license or operating authority; or

(e) Any combination of the sanctions listed in (a)-(d) of this subsection.

611.2 A PSP that violates a provision of this chapter shall be subject to the penalties in Chapter 4.

Section 612, PENALTIES, is amended to read as follows:

612 ENFORCEMENT

612.1 The enforcement of this chapter shall be governed by Chapter 7.

Chapter 7, ENFORCEMENT, is amended to read as follows:

Section 700, APPLICATION AND SCOPE, is amended to read as follows:

700.1 This chapter is intended by the Commission to establish fair and consistent procedural rules for enforcement of and compliance with this title.

700.2 This chapter applies to all persons regulated by this title.

700.3 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act, as amended by Vehicle-for-Hire Act, and of the Impoundment Act.

700.4 No provision of this chapter requiring a delegation of authority from the Mayor shall apply in the absence of such authority.

700.5 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, including a penalty provision, the provision of this chapter shall control.

700.6 The provisions of this chapter shall apply to all matters and contested cases pending on the date of final publication of this chapter to the extent allowed by the Administrative Procedures Act and other applicable law.

Section 702, COMPLIANCE ORDERS, is amended to read as follows:

702 COMPLIANCE ORDERS

702.1 An authorized employee or official of the Office or a District enforcement official may issue a written or oral compliance order to any person licensed or regulated by this title or other applicable law. Oral compliance orders may be issued during traffic stops, as provided in § 702.7.

702.2 A compliance order may require the respondent to take any lawful action related to enforcement, compliance, or verification of compliance, with this title or other applicable law, to the extent authorized or required by this title and the Establishment Act or other applicable law, through an order to:

(a) Appear at the Office for a meeting or other purpose provided that the order clearly states that the appearance is mandatory;

(b) Make a payment to the District for an amount such person owes under a provision of this title or other applicable law;

(c) Allow an administrative inspection of a place of business;

(d) Surrender, or produce for inspection and copying, a document or item related to compliance with this title or other applicable law, such as an original licensing or insurance document, at:

(1) The location where document or item is maintained in the ordinary course of business;

(2) The Office; or

(3) Another appropriate location as determined by the Office or a District enforcement official in their sole discretion;

(e) Submit a vehicle or equipment in the vehicle for testing or inspection in connection with a traffic stop;

(f) Provide information to locate or identify a person, where there is reasonable suspicion of a violation of this title or other applicable law; or

(g) Take any lawful action to assist with or accomplish the enforcement of a provision of this title or other applicable law.

702.3 Each compliance order shall include the following information:

(a) The action the respondent must take to comply;

(b) Except for oral compliance orders, the deadline for compliance; and

(c) If the compliance order is in writing:

(1) A statement of the circumstances giving rise to the order;

(2) A citation to the relevant chapter of this title or other applicable law; and

(3) If the order requires a person to provide information to assist the Office or a District enforcement official in an enforcement action against a person with whom the respondent is believed to be or has been associated: the name of and contact information for such person to the extent available.

702.4 Where a compliance order is issued to a private sedan business to allow the Office to inspect and copy records under § 702.2 (d), the following limitations shall apply:

(a) The Office's inspection shall be limited to safety and consumer protection-related records to ensure compliance with the applicable provisions of Chapter 19, where the Office has a reasonable basis to suspect non-compliance; and

(b) Any records disclosed to the Office shall not be released by the Office to a third party, including through a FOIA request.

702.5 OAH may draw an adverse inference where any person who is required by this title or other applicable law to maintain documents or information fails to maintain such documents or information as required.

702.6 A written compliance order shall be served in the manner prescribed by § 712.

702.7 The civil penalties for failure to comply with a compliance order are established as follows:

(a) Each individual who fails to timely and fully comply with a compliance order shall be subject to a civil of five hundred dollars ($500), which shall double for the second violation, and triple for the third and subsequent violations.

(b) Each entity that fails to timely and fully comply with a compliance order shall be subject to a civil fine of one thousand dollars ($1,000), which shall double for the second violation, and triple for the third and subsequent violations.

702.8 Each traffic stop shall comply with the following requirements:

(a) It shall comply with all applicable provisions of this title and other applicable laws.

(b) No vehicle shall be stopped while transporting a passenger without reasonable suspicion of a violation of this title or other applicable laws.

(c) An oral compliance order may be issued in connection with a traffic stop for the purpose of:

(1) Determining compliance with this title and other applicable laws;

(2) Securing the presence and availability of the operator, the vehicle, and any other evidence at the scene;

(3) Preventing hindrance, disruption, or delay of the traffic stop;

(4) Ensuring the orderly and timely completion of the traffic stop;

(5) Requiring full and complete cooperation by the operator;

(6) Requiring the operator to provide access to a device for the purpose of demonstrating compliance with this title and other applicable law;

(7) Making inquiries regarding the operator and/or vehicle to government agencies for law enforcement and related regulatory purposes; and

(8) Protecting the safety of the vehicle inspection officer, the operator, or any other individual.

(d) Notwithstanding the requirements of § 702.8 (c), a vehicle inspection officer shall not take possession of a device which may contain evidence relevant to the enforcement of this title or other applicable law, unless:

(1) The device is or appears to be a component of a taxicab's modern taximeter system (MTS);

(2) The operator denies ownership, possession, or custody of the device;

(3) The operator abandons the device or attempts to transfer its possession with intent to prevent access to the device for purposes of enforcement; or

(4) The operator is determined to be an unlawful operator in violation of D.C. Official Code § 47-2829.

(e) The term "possession" as used in paragraph (d) of this section shall not include handling, operation, or examination of a device for purposes of enforcement of this title or other applicable law.

(f) A private sedan operator's lack of registration with a private sedan business registered under Chapter 19 may be considered evidence of a violation of D.C. Official Code § 47-2829.

Section 703, ENFORCEMENT ACTIONS, is amended as follows:

Subsections 703.7 and 703.8 are amended to read as follows:

703.7 In addition to any other enforcement action authorized by this title or other applicable law, where a private sedan business certifies an intentionally false or misleading statement on a form required by this title or other applicable law, the Office may refer the matter for civil and/or criminal investigation by an appropriate agency of the District or federal government.

703.8 The circumstances giving rise to a respondent's suspension may be considered by the Office in any determination of whether to issue or renew a license to the respondent.

A new Subsection 703.9 is added to read as follows:

703.9 Each impoundment of a vehicle shall be conducted in compliance with the Impoundment Act.

Section 704, NOTICES OF INFRACTION, is amended as follows:

Subsection 704.1 is amended to read as follows:

704.1 The Office or a District enforcement official (including a vehicle inspection officer) may issue an NOI, imposing a civil fine or other civil penalty, whenever the Office or the District enforcement official has reasonable grounds to believe the respondent is in violation of a provision of this title or other applicable law.

Chapter 8, OPERATION OF TAXICABS, is amended as follows:

The title of Chapter 8 is amended to read as follows:

Chapter 8, OPERATING RULES FOR PUBLIC VEHICLES-FOR-HIRE

Section 800, APPLICATION AND SCOPE, is amended to read as follows:

800.1 This chapter shall apply to every person that provides a public vehicle-for-hire service subject to licensing or regulation by the Commission.

800.2 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act.

Subsections 800.3 and 800.4 are repealed.

Section 819, CONSUMER SERVICE AND PASSENGER RELATIONS, is amended as follows:

A new Subsection 819.10 is added to read as follows:

819.10 Once a trip has been accepted by a public vehicle-for-hire operator through a digital dispatch service, the public vehicle-for-hire operator shall not fail to pick up the passenger or to complete the trip after the passenger has been picked up. A violation of this subsection shall be treated as a refusal to haul pursuant to § 818.2 or 819.5. In addition, a violation of § 818.2 may be reported to the D.C. Office of Human Rights.

Section 823, MANIFEST RECORD, is amended as follows:

A new Subsection 823.7 is added to read as follows:

823.7 A trip manifest maintained in an electronic format by an operator who connects with a passenger through digital dispatch may include a phrase "as directed" or similar phrase in lieu of including a passenger's trip destination; provided, that the destination is included upon completion of the trip.

Section 825, TABLE OF CIVIL FINES AND PENALTIES, is amended as follows:

Subsection 825.2 is amended as follows:

Conduct

Unlawful activities as outlined in § 816	$500
Threatening, harassing, or abusive conduct or attempted threatening, harassing, or abusive conduct as outlined in § 817	$750
Violation of any affirmative obligation or prohibition outlined in Chapter 5 of this title	$500 Impoundment of the vehicle, license suspension, revocation, or non-renewal, or a combination of the sanctions listed in § 817

Passenger Safety and Service

Loading or unloading in crosswalk	$50
Overloading	$50
Asking destination/violation of § 819.9	$50

Refusal to haul/discrimination/violation of § 818/819.4	$750
Illegal shared ride	$250

Chapter 9, INSURANCE REQUIREMENTS, is amended as follows:

The title of Chapter 9, INSURANCE REQUIREMENTS, is amended to read as follows:

Chapter 9, INSURANCE REQUIREMENTS FOR PUBLIC VEHICLES FOR HIRE

The title of Section 900, APPLICATION AND SCOPE OF INSURANCE REQUIREMENTS, is amended to read as follows:

900 APPLICATION AND SCOPE

Chapter 10, PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 1000, GENERAL REQUIREMENTS, is amended as follows:

Subsections 1000.1 and 1000.2 are amended to read as follows:

1000.1 No individual shall operate a public vehicle-for-hire in the District unless such individual has a valid DCTC operator's license (face card), the vehicle has a valid DCTC vehicle license, and the operator and vehicle are in compliance with all applicable provisions of this title and other applicable laws.

1000.2 Notwithstanding the provisions of § 1000.1, a valid DCTC operator's license (face card) and valid DCTC vehicle license shall not be required where the operator is in strict compliance with the applicable provisions of § 828 (reciprocity regulations).

Section 1001, ELIGIBILITY FOR HACKER'S LICENSE, is amended as follows:

Subsection 1001.9 is amended to read as follows:

1001.9 The Chairperson shall not issue nor renew a license under this chapter to a person who has not, immediately preceding the date of application for a license, been a bona fide resident for at least one (1) year of the Multi-State Area ("MSA"), and has not had at least one (1) year's driving experience as a licensed vehicle operator within the MSA during such one (1) year period.

Section 1003, HEALTH REQUIREMENTS, is amended as follows:

Subsection 1003.1 is amended to read as follows:

1003.1 Each application (including a renewal application) shall be accompanied by a certificate from a licensed physician who is a resident of the MSA, certifying that, in, the opinion of that physician, the applicant does not have a physical or mental disability or disease which might make him or her an unsafe driver of a public vehicle-for-hire.

Subsection 1003.7 is amended to read as follows:

1003.7 An operator's license shall not be issued or renewed under this chapter for an individual who has a mental disability or disease that would negatively impact his or her ability to meet the requirements of this chapter with respect to the operation of a public vehicle-for-hire, unless he or she provides a certificate from a licensed physician who is a resident of the MSA certifying that, in the opinion of that physician, the person's mental disability or disease, as may be currently treated, does not negatively impact his or her ability to meet the requirements of this chapter with respect to the operation of a taxicab. If the person's mental disability or disease, or his or her treatment, substantially changes during the period of licensure, he or she shall provide a re-certification from a physician who is a resident of the MSA or shall immediately surrender his or her license to the Commission.

Section 1004, INVESTIGATION AND EXAMINATION OF APPLICANTS, is amended as follows:

Subsection 1004.3 is amended to read as follows:

1004.3 The examination shall test the following subject areas:

(a) General familiarity with the MSA, including history and geography;

(b) Monuments, landmarks, and other places of interest;

(c) Customer service for interaction with passengers and the general public;

(d) Business and accounting practices;

(e) Cultural sensitivity;

(f) Disability accommodation and non-discrimination requirements;

(g) Familiarity with applicable provisions of this title, Title 18 of the DCMR (Vehicles and Traffic), and other applicable laws; and

(h) Such other topics as the Office may identify in an administrative issuance.

Section 1005, ISSUANCE OF LICENSES, is amended as follows:

Subsection 1005.5 is amended to read as follows:

1005.5 A person to whom an operator's license has been issued shall continue to reside within the MSA during the term of the license and shall, no later than five (5) days after the termination of the residence within the MSA, surrender the license to the Office.

Section 1013, COMPLAINTS AGAINST OPERATORS OF PUBLIC VEHICLES FOR HIRE, is repealed and reserved.

Chapter 11, PUBLIC VEHICLES FOR HIRE CONSUMER SERVICE FUND, is amended as follows:

Section 1100, PURPOSE, is amended as follows:

Subsection 1100.1 is amended to read as follows:

1100.1 The purpose of this chapter is to establish procedural and substantive rules governing assessment and collection of all funds to be deposited into the Public Vehicle-for-hire Consumer Service Fund as authorized by Section 20a of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-320 (2012 Repl. & 2014 Supp.), and the Vehicle-for-hire Act of 2014.

Subsection 1100.2 is amended to read as follows:

1100.2 Consumer Service Fund shall consist of:

(a) All funds collected from a passenger surcharge on taxicab trips;

(b) All funds collected by the Commission from the issuance and renewal of a public vehicle-for-hire license pursuant to D.C. Official Code § 47-2829 (2012 Repl. & 2014 Supp.), including such funds held in miscellaneous trust funds by the Commission and the Office of the People's Counsel prior to June 23, 1987, pursuant to D.C. Official Code § 34-912(a) (2012 Repl. & 2014 Supp.);

(c) All funds collected by the Commission from the Department of Motor Vehicles through the Out-Of-State Vehicle Registration Special Fund,

pursuant to Section 3a of the District of Columbia Revenue Act of 1937, effective March 26, 2008 (D.C. Law 17-130; D.C. Official Code § 50-1501.03a (2012 Repl. & 2014 Supp.);

(d) All taxicab operator and passenger vehicle-for-hire operator assessment fund fees collected by the Commission pursuant to Subsections (c) and (d) of Section 20a of the Act; and

(e) All funds collected by the Office of the Chief Financial Officer from the quarterly payments of a digital dispatch service pursuant to § 1604.7.

Section 1103, PASSENGER SURCHARGE, is amended as follows:

Subsection 1103.1 is amended to read as follows:

1103.1 Each trip provided by taxicab licensed by the Office, shall be assessed a twenty-five cent ($0.25) per trip passenger surcharge.

Chapter 12, LUXURY SERVICES – OWNERS, OPERATORS, AND VEHICLES, is amended as follows:

The title of Chapter 12 is amended to read as follows:

Chapter 12, LUXURY CLASS SERVICES – OWNERS, OPERATORS, AND VEHICLES

Section 1201, GENERAL REQUIREMENTS, is amended as follows:

Subsection 1201.3 is amended to read as follows:

1201.3 Operator requirements. An individual shall be authorized to provide luxury class services if he or she:

(a) Has a valid and current driver's license issued by the District of Columbia, the State of Maryland, or the Commonwealth of Virginia;

(b) Has a valid and current DCTC operator's license authorizing the person to provide luxury class service under § 1209; and

(c) Is in compliance with Chapter 9 (Insurance Requirements) of this title.

Subsection 1201.5 is amended to read as follows:

1201.5 Operating requirements. Luxury class service shall not be provided unless, from the time each trip is booked, through the conclusion of the trip, all of the

following requirements are met:

(a) The operator is in compliance with § 1201.3;

(b) The vehicle is in compliance with § 1201.4;

(c) The owner is in compliance with § 1202.1;

(d) The operator is maintaining with the Office current contact information, including his or her full legal name, residence address, cellular telephone number, and, if associated with an LCS organization, contact information for such organization or for the owner for which the operator drives;

(e) The operator informs the Office of any change in the information required by subsection (d) within five (5) business days through U.S. Mail with delivery confirmation, by hand delivery, or in such other manner as the Office may establish in an Office issuance;

(f) The operator is maintaining in the vehicle a manifest that:

(1) Is either:

(A) In writing, compiled by the operator not later than the end of each shift using documents stored safely and securely in the vehicle; or

(B) In electronic format, compiled automatically and in real time throughout each shift;

(2) Is in a reasonable, legible, and reliable format that safely and securely maintains the information;

(3) Reflects all trips made by the vehicle during the current shift;

(4) Includes:

(A) The date, the time of pick up;

(B) The address or location of the pickup;

(C) The final destination, which may be phrased “as directed” for electronic manifest maintained in accordance with Chapter 16; and

(D) The time of discharge; and

(5) For manifest maintained in a non-electronic format, does not include terms such as "as directed" in lieu of any information required by this paragraph in accordance with § 1201.8; and

(6) Is kept in the vehicle readily available for immediate inspection by a District enforcement official (including a public vehicle enforcement inspector (hack inspector)).

(g) Where limousine service is provided, the trip is booked by contract reservation based on an hourly rate;

(h) Where black car service is provided, the trip is conducted in accordance with the operating requirements of Chapter 14 of this title;

(i) The trip is not booked in response to a street hail solicited or accepted by the operator or by any other person acting on the operator's behalf; and

(j) There is no individual present in the vehicle who is not the operator or a passenger for whom a trip is booked or payment is made.

A new Subsection 1201.8 is added to read as follows:

1201.8 A trip manifest maintained in an electronic format by an operator who connects with a passenger through digital dispatch may include a phrase "as directed" or similar phrase in lieu of including a passenger's trip destination; provided, that the destination is included upon completion of the trip.

Section 1204, LICENSING OF LCS VEHICLES, is amended as follows:

Subsection 1204.4 is amended to read as follows:

1204.4 The DMV or any District enforcement official may inspect the vehicle to determine whether it meets the definitions of "black car", "limousine", or both, as set forth in § 9901.1, consistent with the applicant's stated intentions for the use of vehicle.

Section 1212, ENFORCEMENT OF THIS CHAPTER, is amended as follows:

Subsections 1212.2 through 1212.10 are repealed.

Chapter 14, OPERATION OF BLACK CARS, is amended as follows:

Section 1400, APPLICATION AND SCOPE, is amended to read as follows:

1400.1 This chapter establishes regulations for the businesses, operators, and vehicles which participate in providing black car service.

1400.2 Additional provisions applicable to the operators and vehicles which participate in providing black car service appear in Chapter 12.

1400.3 Additional provisions applicable to the digital dispatch services which participate in providing black car service appear in Chapter 16.

1400.4 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act, as amended by Vehicle-for-Hire Act, and by the Impoundment Act.

1400.5 No provision of this chapter requiring a delegation of authority from the Mayor shall apply in the absence of such authority.

1400.6 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, the more restrictive provision shall control**.**

Section 1402, OPERATING REQUIREMENTS, is amended as follows:

Subsection 1402.6 is amended to read as follows:

1402.6 The fare for black car service, if any, shall:

(a) Be based on time and distance rates as set by the DDS except for a set fare for a route approved by the Office order for a well-traveled route, including a trip to an airport or to an event;

(b) Be consistent with the DDS' statement of its fare calculation method posted on its website pursuant to Chapter 16;

(c) Be disclosed to the passenger in a statement of the DDS' fare calculation method in accordance with Chapter 16;

(d) Be used to calculate an estimated fare, if any, and disclosed to the passenger prior to the acceptance of service;

(e) State whether demand pricing applies and, if so, the effect of such pricing on the estimate; and

(f) Not include a gratuity that does not meet the definition of a "gratuity" as defined in this title.

Section 1404, PENALTIES, is amended as follows:

Subsections 1404.2 (f) and (g) are amended to read as follows:

(f) For a violation of § 1403.3 by soliciting or accepting a street hail: a civil fine of seven hundred fifty dollars ($750);

(g) For a violation of § 1403.3 by engaging in false dispatch: a civil fine of one thousand dollars ($1,000);

Chapter 16, DISPATCH SERVICES AND DISTRICT OF COLUMBIA TAXICAB INDUSTRY CO-OP, is amended as follows:

Section 1600, APPLICATION AND SCOPE, is amended to read as follows:

1600.1 This chapter establishes regulations for the businesses, operators, and vehicles which participate in providing dispatch services, and establishes the District of Columbia Taxicab Industry Co-op.

1600.2 Additional provisions applicable to the businesses, owners, operators, and vehicles which participate in providing taxicab service appear in Chapters 4-11.

1600.3 Additional provisions applicable to the businesses, owners, operators, and vehicles which participate in providing black car service appear in Chapters 12 and 14.

1600.4 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act, as amended by Vehicle-for-Hire Act, and by the Impoundment Act.

1600.5 The definitions in Chapter 99 shall apply to all terms used in this chapter.

1600.6 The phrase "company that uses digital dispatch for public vehicle-for-hire service", as used in the Establishment Act, as amended by the Vehicle-for-Hire Act, shall include only a digital dispatch service, as defined in Chapter 99, and shall not include any other person regulated by this title in connection with the provision of a public vehicle-for-hire service, such as a taxicab company.

1600.7 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, the more restrictive provision shall control**.**

Section 1601, GENERAL REQUIREMENTS, is amended as follows:

Subsections 1601.3 and 1601.4 are amended to read as follows:

1601.3 No person regulated by this title shall be associated with, integrate with, or conduct a transaction in cooperation with, a dispatch service that is not in compliance with this chapter.

1601.4 No telephone dispatch service shall participate in providing a vehicle for hire service in the District unless it is operated by a taxicab company with current operating authority under Chapter 5.

Section 1602, RELATED SERVICES, is amended as follows:

Subsection 1602.2 is repealed.

Section 1603, OPERATING REQUIREMENTS FOR ALL DISPATCH SERVICES, is amended to read as follows:

1603 TELEPHONE DISPATCH SERVICES – OPERATING REQUIREMENTS

1603.1 Each telephone dispatch service shall operate in compliance with this title and other applicable laws.

1603.2 Each telephone dispatch service shall be licensed to do business in the District of Columbia.

1603.3 Each gratuity charged by a telephone dispatch service shall comply with the definition of “gratuity”.

1603.4 Each telephone dispatch service shall comply with the requirements for passenger rates and charges set forth in § 801.

1603.5 Each telephone dispatch service shall provide a passenger seeking wheelchair service with such service, when available, and if not available through the telephone dispatch service, shall make reasonable efforts to assist the passenger in locating available wheelchair service through another source within the District.

1603.6 Where a telephone dispatch service shares a request for wheelchair service with another person, the passenger’s destination shall not be provided.

1603.7 Each telephone dispatch service shall maintain a customer service telephone number for passengers with a “202” prefix or a toll-free area code, posted on its website, which is answered or replied to promptly during normal business hours.

1603.8 Each telephone dispatch service shall maintain a website with current information that includes:

(a) The name of the telephone dispatch service;

(b) Contact information for its bona fide administrative office or registered agent authorized to accept service of process;

(c) Its customer service telephone number or email address, and;

(d) The following statement prominently displayed:

> Vehicle-for-hire services in Washington, DC are
> regulated by the DC Taxicab Commission
> 2235 Shannon Place, S.E., Suite 3001
> Washington, D.C. 20020-7024
> www.dctaxi.dc.gov
> dctc3@dc.gov 1-855-484-4966 TTY: 711

and;

(e) A link to § 801 allowing passengers to view applicable rates and charges.

1603.9 Each telephone dispatch service shall comply with §§ 508 through 513, to the same extent as if it were a taxicab company.

1603.10 Each telephone dispatch service shall provide its service throughout the District.

1603.11 Each telephone dispatch service shall perform the service agreed to with a passenger in a dispatch, including picking up the passenger at the agreed time and location, except for a bona fide reason not prohibited by § 819.5 or other applicable provision of this title.

1603.12 Protection of certain information relating to passenger privacy and safety.

(a) A telephone dispatch service shall not:

(1) Release information to any person that would result in a violation of the personal privacy of a passenger or that would threaten the safety of a passenger or an operator; or

(2) Permit access to real-time information about the location, apparent gender, or number of passengers awaiting pick up by a person not authorized by the telephone dispatch service to receive such information. Where a telephone dispatch service shares a request for wheelchair service with another person pursuant to § 1603.5, the passenger's destination shall not be provided.

(b) This subsection shall not limit access to information by the Office or a District enforcement official.

1603.13 A telephone dispatch service shall not transmit to the operator any information about the destination of a trip, except for the jurisdiction of the destination, until the trip has been booked. Where a telephone dispatch service shares a request for wheelchair service with another person pursuant to § 1603.5, the passenger's destination shall not be provided.

1603.14 Each telephone dispatch service shall store its business records in compliance with industry best practices and all applicable laws, make its business records related to compliance with its legal obligations under this title available for inspection and copying as directed by the Office, and retain its business records for five (5) years.

1603.15 Each telephone dispatch service shall comply with all applicable provisions of this title and other laws regulating origins and destinations of trips, including all reciprocal agreements between governmental bodies in the Washington Metropolitan Area governing public vehicle-for-hire service such as those in § 828.

1603.16 A telephone dispatch service shall not transmit to the operator any information about the destination of a trip, except for the jurisdiction of the destination, until the trip has been booked.

1603.17 Each telephone dispatch service shall store its business records in compliance with industry best practices and all applicable laws, make its business records related to compliance with its legal obligations under this title available for inspection and copying as directed by the Office, and retain its business records for five (5) years.

1603.18 Each telephone dispatch service shall comply with all applicable provisions of this title and other laws regulating origins and destinations of trips, including all reciprocal agreements between governmental bodies in the Washington Metropolitan Area governing public vehicle-for-hire service such as those in § 828.

Section 1604, REGISTRATION, is amended to read as follows:

1604 DIGITAL DISPATCH SERVICES – OPERATING REQUIREMENTS

1604.1 Each digital dispatch service shall operate in compliance with this title and other applicable laws.

1604.2 Each digital dispatch service shall calculate fares and, where applicable, provide receipts to passengers, as provided in: Chapter 8 for taxicabs, Chapter 14 for black cars, and Chapter 19 for private sedans.

1604.3 Each digital dispatch service shall submit proof that the company maintains a website containing information on its:

(a) Method of fare calculation

(b) Rates and fees charged, and

(c) Customer service telephone number or email address

1604.4 If a digital dispatch service charges a fare other than a metered taxicab rate, the company shall, prior to booking, disclose to the passenger:

(a) The fare calculation method;

(b) The applicable rates being charged; and

(c) The option to receive an estimated fare.

1604.5 Each digital dispatch service shall review any complaint involving a fare that exceeds the estimated fare by twenty (20) percent or twenty-five (25) dollars, whichever is less.

1604.6 Each digital dispatch service shall provide its service throughout the District.

1604.7 Every three (3) months, each digital dispatch service shall separately transmit to the Office of the Chief Financial Officer (OCFO), for deposit into the Consumer Service Fund in accordance with Chapter 11 of the Title, each of the following amounts:

(a) For trips by taxicab: the per trip taxicab passenger surcharge; and

(b) For trips by black cars and private sedans: one (1) percent of all gross receipts.

1604.8 An authorized representative of each digital dispatch service shall certify in writing under oath, using a form provided by the Office, that each amount transmitted to OCFO pursuant to § 1604.7 meets the requirements of § 1604.7, accompanied by documentation of the digital dispatch service's choosing which reasonably supports the amount of the deposit. Each certification and supporting documentation shall be provided to OCFO.

1604.9 Not later than January 1, 2016, each digital dispatch service shall ensure that its website and mobile applications are accessible to the blind and visually impaired, and the deaf and hard of hearing.

1604.10 Each digital dispatch service shall train its associated operators in the proper and safe handling of mobility devices and equipment, and how to treat individuals with disabilities in a respectful and courteous manner. Completion of training acceptable to qualify an individual for an AVID operator's license issued by the Office shall satisfy this training requirement.

1604.11 Each digital dispatch service shall:

(a) Use technology that meets or exceeds current industry standards for the security and privacy of all payment and other information provided by a passenger, or made available to the digital dispatch service as a result of the passenger's use of the digital dispatch service;

(b) Promptly inform the Office of a security breach requiring a report under the Consumer Personal Information Security Breach Notification Act of 2006, effective March 8, 2007 (D.C. Law 16-237, D.C. Official Code §§ 28-3851, *et seq.*), or other applicable law;

(c) Not release information to any person that would result in a violation of the personal privacy of a passenger or that would threaten the safety of a passenger or an operator; and

(d) Not permit access to real-time information about the location, apparent gender, or number of passengers awaiting pick up by a person not authorized to receive such information. Where a digital dispatch service shares a request for service with another person for the purpose of providing wheelchair service to a passenger, the passenger's destination shall not be provided.

1604.12 Subsection 1604.11 shall not limit access to information by the Office.

1604.13 During a state of emergency declared by the Mayor, a digital dispatch service which engages in surge pricing shall limit the multiplier by which its base fare is multiplied to the next highest multiple below the three highest multiples set on different days in the sixty (60) days preceding the declaration of a state of emergency for the same type of service in the Washington Metropolitan Area.

1604.14 Each digital dispatch service shall comply with § 828.

Section 1605, PROHIBITIONS, is repealed.

A new Section 1605, DIGITAL DISPATCH SERVICES – REGISTRATION, is added to read as follows.

1605 DIGITAL DISPATCH SERVICES - REGISTRATION

1605.1 No digital dispatch service shall operate in the District unless it is registered with the Office as provided in this section.

1605.2 Each digital dispatch service operating in the District on the effective date of the Vehicle-for-Hire Act of 2014 shall register with the Office within five (5) business days of the effective date of this chapter, and all other digital dispatch services shall register with the Office prior to commencing operations in the District.

1605.3 Where a digital dispatch service provides digital dispatch for an associated or affiliated private sedan business, the digital dispatch service and its associated or affiliated private sedan business shall contemporaneously apply for registration under this chapter and Chapter 19, respectively.

1605.4 Each digital dispatch service shall register by completing an application form made available by the Office, which shall include information and documentation:

(a) Demonstrating that the digital dispatch service is licensed to do business in the District;

(b) Demonstrating that the digital dispatch service maintains a registered agent in the District;

(c) Demonstrating that the digital dispatch service maintains a website that complies with § 1604.3;

(d) Describing in writing the digital dispatch service's app, with accompanying screenshots, to allow District enforcement officers to understand the functionality of the app, and to verify during a traffic stop:

(1) If the vehicle is a public vehicle-for-hire: that the operator and the vehicle are associated with the digital dispatch service;

(2) If the vehicle is a private sedan: that the operator and the vehicle are registered with the digital dispatch service's associated or affiliated private sedan business and not under suspension; and

(3) The time and location of the most recent request for service.

(e) A certification that the digital dispatch service is in compliance with the operating requirements of § 1604.

1605.5 Each registration application form filed under § 1605.3 shall be executed under oath by an individual with authority to complete the filing and shall be accompanied by a filing fee of five hundred dollars ($500).

1605.6 The Office shall complete its review of a registration application form within fifteen (15) business days of filing. Each applicant shall cooperate with the Office to supplement or correct any information needed to complete the review. The Office may deny registration where it appears the private sedan business will not be operating in compliance with this title and other applicable laws.

1605.7 Each registration under this section shall be effective for twenty four (24) months.

1605.8 Each registered digital dispatch service shall renew its registration at least fourteen (14) days prior to its expiration as provided in § 1605.6.

1605.9 Each registered digital dispatch service shall promptly inform the Office of any of the following occurrences in connection with its most recent registration:

(a) A change in the operation of its app which affects how a District enforcement official uses the app during a traffic stop to determine that the operator and vehicle are in compliance with this title and other applicable laws;

(b) A change in contact information; and

(c) A materially incorrect, incomplete, or misleading statement.

Section 1606, ENFORCEMENT, is repealed.

A new Section 1606, PROHIBITIONS, is added to read as follows.

1606 PROHIBITIONS

1606.1 No person shall violate an applicable provision of this chapter.

1606.2 No dispatch service shall provide dispatch for a person subject to regulation under this title which the dispatch service knows or has been informed by the Office is not in compliance with this title and other applicable laws.

1606.3 No dispatch service shall attempt through any means to contradict or evade the requirements of this title or other applicable laws.

1606.4 No dispatch service shall impose additional or special charges for an individual with a disability for providing services to accommodate the individual or require the individual to be accompanied by an attendant.

1606.5 No fee charged by a dispatch service in addition to a taximeter fare shall be processed by a payment service provider (PSP), or displayed on or paid using any component of an MTS unit, except for a telephone dispatch fee under § 801, or where a digital dispatch service and the PSP have integrated pursuant to Chapter 4.

1606.6 Each digital dispatch service shall ensure that a private sedan operator cannot log in to the digital dispatch service's app while the operator is suspended or after the operator has been terminated by the private sedan business.

Section 1607, PENALTIES, is repealed.

A new Section 1607, ENFORCEMENT, is added to read as follows:

1607 ENFORCEMENT

1607.1 The provisions of this Chapter shall be enforced pursuant to Chapter 7.

A new Section 1608, PENALTIES, is added to read as follows:

1608 PENALTIES

1608.1 A dispatch service that violates this chapter shall be subject to:

(a) A civil fine established by a provision of this chapter;

(c) Enforcement action other than a civil fine, as provided in Chapter 7; or

(d) A combination of the sanctions enumerated in parts (a) and (b).

1608.2 Except where otherwise specified in this title, the following civil fines are established for violations of this chapter by a dispatch service, which shall double for the second violation of the same provision, and triple for the third and subsequent violations of the same provision thereafter:

(a) A civil fine of one thousand dollars ($1,000) where no civil fine is enumerated;

(b) A civil fine not to exceed twenty five thousand dollars ($25,000) per day or portion thereof, based on the circumstances, for a violation of § 1604.7 by a digital dispatch service for failure to timely transmit to OCFO any amount required to be transmitted under that subsection, provided however, that a penalty shall not be assessed under both this section and § 1907.4 (x) where a digital dispatch service and a private sedan business are not separate legal entities;

(c) A civil fine of two thousand five hundred dollars ($2,500) per day or portion thereof for a violation of § 1604.8 by a digital dispatch service for failure to timely provide a required certification for an amount required to be transmitted to OCFO; and

(d) A civil fine of two thousand five hundred dollars ($2,500) for a violation of § 1604.8 by a digital dispatch service for failure to ensure that a private sedan operator suspended or terminated by a private sedan business is unable to log in to the digital dispatch service's app.

A new Chapter 19, PRIVATE VEHICLES-FOR-HIRE, of the DCMR is added to read as follows:

1900 APPLICATION AND SCOPE

1900.1 This chapter establishes regulations for the businesses, operators, and vehicles which participate in providing private vehicle-for-hire service.

1900.2 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act, as amended by Vehicle-for-Hire Act, and of the Impoundment Act.

1900.3 The definitions in Chapter 99 shall apply to all terms used in this chapter. The phrase "company that uses digital dispatch for public vehicle-for-hire service", as used in the Establishment Act, as amended by the Vehicle-for-Hire Act, shall include only a digital dispatch service, as defined in Chapter 99, and shall not

include any other person regulated by this title in connection with the provision of a public vehicle-for-hire service, such as a taxicab company or association.

1900.4 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, the more restrictive provision shall control**.**

1901 GENERAL PROVISIONS

1901.1 Each private sedan business shall be registered under this chapter.

1901.2 Each digital dispatch service associated or affiliated with a private sedan business shall be registered with the Office under Chapter 16.

1901.3 Nothing in this chapter shall be construed as soliciting or creating a contractual relationship, agency relationship, or employer-employee relationship between the District and any other person.

1901.4 The District shall have no liability for the negligent, reckless, illegal, or otherwise wrongful conduct of any individual or entity which provides private sedan service.

1902 PRIVATE SEDAN BUSINESSES - REGISTRATION

1902.1 Each private sedan business operating in the District shall be registered with the Office as provided in this section.

1902.2 Each private sedan business operating in the District on the effective date of the Vehicle-for-Hire Act of 2014 shall register with the Office within five (5) business days of the effective date of this chapter, and all other private sedan businesses shall register with the Office prior to commencing operations in the District.

1902.3 Each private sedan business and its associated or affiliated digital dispatch service shall contemporaneously apply for registration under this chapter and Chapter 16.

1902.4 Each private sedan business shall apply for registration by providing a certification on a form made available by the Office, which shall include the following information and documentation:

(a) Proof that the private sedan business is licensed to do business in the District;

(b) Proof that the private sedan business maintains a registered agent in the District;

(c) Proof that the private sedan business maintains a website that includes the information required by § 1903.3;

(d) Proof that the private sedan business has established a trade dress required by § 1903.8, including an illustration or photograph of the trade dress;

(e) Identification of the private sedan business's associated or affiliated digital dispatch service;

(f) Proof that the private sedan business or its associated private sedan operators are in compliance with the insurance requirements of § 1905, including a complete copy of the policy(ies), the accord form(s), all endorsements, the declarations page(s), and all terms and conditions; and

(g) Contact information for one or more designated individuals with whom the Office shall be able to communicate at all times for purposes of enforcement and compliance under this title and other applicable laws, including cellphone number(s) and an email address which shall be dedicated exclusively to the purposes of this paragraph.

1902.5 Each certification filed under § 1902.4 shall be executed under oath by an individual with authority to complete the filing and shall be accompanied by a filing fee of twenty five thousand dollars ($25,000) for each initial certification, and one thousand dollars ($1,000) for each renewal certification.

1902.6 The Office shall complete its review of a certification within fifteen (15) business days of filing. All proof of insurance shall be subject to a review by DISB. Each applicant shall cooperate with the Office to supplement or correct any information needed to complete the review. The Office may deny registration where it appears the private sedan business will not be operating in compliance with this title and other applicable laws.

1902.7 Each registration under this section shall be effective for twenty four (24) months.

1902.8 Each registered private sedan business shall renew its registration by filing a certification at least fourteen (14) days prior to its expiration as provided in § 1902.7.

1902.9 Each registered private sedan business shall promptly inform the Office of either of the following occurrences in connection with its most recent registration:

(a) A change in contact information; or

(b) A materially incorrect, incomplete, or misleading statement.

1902.10 No document submitted with an application for registration under § 1904.4 shall contain any redaction or omission of original text except for insurance premium amounts or text redacted or omitted with the written permission of the Office.

1902.11 Proof of insurance consistent with § 1902.4 (f) shall immediately be filed with the Office for each insurance policy obtained by a private sedan business to replace an existing, lapsing, terminated, or cancelled policy. The Office shall review the proof within ten (10) business days of filing. The private sedan business shall cooperate with the Office to supplement or correct any information needed to complete the review. The Office may suspend or revoke the private sedan business's registration where it appears the private sedan business will not be operating in compliance with the insurance requirements of this title or other applicable laws.

1903 PRIVATE SEDAN BUSINESSES – OPERATING REQUIREMENTS

1903.1 Each private sedan business shall create an application process for an individual to apply to the private sedan business to register as a private sedan operator.

1903.2 Each private sedan business shall maintain a current and accurate registry of the operators and vehicles associated with the business.

1903.3 Each private sedan business shall display the following information on its website:

(a) The private sedan business's customer service telephone number or electronic mail address;

(b) The private sedan business's zero tolerance policies established pursuant to §§ 1903.9 and 1903.11 of this section;

(c) The private sedan business's procedure for reporting a complaint about an operator who a passenger reasonably suspects violated the zero tolerance policy §§1903.9 and 1903.11 of this chapter; and

(d) A telephone number or electronic mail address for the Office.

1903.4 Each private sedan business shall verify that an initial safety inspection of a motor vehicle used as a private sedan was conducted within ninety (90) days of when the vehicle enters service and that the vehicle passed the inspection and was determined to be safe by a licensed mechanic in the District, pursuant to D.C. Official Code § 47-2851.03(a)(9) or an inspection station authorized by the State

of Maryland or the Commonwealth of Virginia to perform vehicle safety inspections, provided however, that an initial safety inspection need not be conducted if the vehicle is compliant with an annual state-required safety inspection.

1903.5 Each safety inspection conducted pursuant to § 1903.4 shall check the following motor vehicle equipment to ensure that such equipment is safe and in proper operating condition:

(a) Brakes and parking brake;

(b) All exterior lights, including headlights, parking lights, brake lights and license plate illumination lights;

(c) Turn signal devices;

(d) Steering and suspension;

(e) Tires, wheels, and rims;

(f) Mirrors;

(g) Horn;

(h) Windshield and other glass, including wipers and windshield defroster;

(i) Exhaust system;

(j) Hood and area under the hood, including engine fluid level and belts;

(k) Interior of vehicle, including driver's seat, seat belts, and air bags;

(l) Doors;

(m) Fuel system; and

(n) Floor pan.

1903.6 Each private sedan business shall verify the safety inspection status of a vehicle as described in § 1903.5 on an annual basis after the initial safety inspection is conducted.

1903.7 Each private sedan business shall perform the background checks required by § 1903.16 on each applicant before such individual is allowed to provide private sedan service and update such background checks every three (3) years thereafter.

1903.8 Each private sedan business shall establish and maintain a trade dress policy as follows:

(a) A trade dress:

(1) Utilizing a consistent and distinctive logo, insignia, or emblem;

(2) Which is sufficiently large and color contrasted so as to be readable during daylight hours at a distance of at least fifty (50) feet;

(3) Which is reflective, illuminated, or otherwise patently visible in darkness; and

(b) A policy requiring the trade dress to be displayed in a specific manner in a designated location on the vehicle at all times when the operator is logged into the private sedan business's associated or affiliated DDS, in a manner consistent with all DMV regulations and other applicable laws, and removed at all other times.

1903.9 Each private sedan business shall establish and maintain a policy of zero tolerance for the use of alcohol or illegal drugs or being impaired by the use of alcohol or drugs while a private sedan operator is logged into the private sedan business's associated or affiliated DDS.

1903.10 Each private sedan business shall:

(a) Conduct an investigation when a passenger alleges that a private sedan operator violated the zero tolerance policy established by § 1903.9; and

(b) Immediately suspend for the duration of the investigation required by subparagraph (b) of this subsection, a private sedan operator upon receiving a written complaint from a passenger submitted through regular mail or electronic means containing a reasonable allegation that the operator violated the zero tolerance policy established by § 1903.9.

1903.11 Each private sedan business shall establish a policy of zero tolerance for discrimination and discriminatory conduct on the basis of a protected characteristic under D.C. Official Code § 2-1402.31, while a private sedan operator is logged into a private sedan business's associated or affiliated DDS.

1903.12 Discriminatory conduct under § 1903.11 may include but shall not be limited to:

(a) Refusal of service on the basis of a protected characteristic, including refusal of service to an individual with a service animal unless the operator has a documented serious medical allergy to animals on file with the private sedan business;

(b) Using derogatory or harassing language on the basis of a protected characteristic of the passenger;

(c) Refusal of service based on the pickup or drop-off location of the passenger;

(d) Refusal of service based solely on an individual's disability which leads to an appearance or to involuntary behavior which may offend, annoy, or inconvenience the operator or another individual; and

(e) Rating a passenger on the basis of a protected characteristic.

1903.13 It shall not constitute discrimination under § 1903.11 for a private sedan operator to refuse to provide service or to cease providing service to an individual who engages in violent, seriously disruptive, or illegal conduct.

1903.14 Each private sedan business shall:

(a) Conduct an investigation when a passenger makes a reasonable allegation that an operator violated the zero tolerance policy established by § 1903.11; and

(b) Immediately suspend, for the duration of the investigation conducted pursuant to subparagraph (a) of this subsection a private sedan operator upon receiving a written complaint from a passenger submitted through regular mail or electronic means containing a reasonable allegation that the operator violated the zero tolerance policy established by § 1903.11.

1903.15 Each private sedan business shall maintain records relevant to the requirements of this section for the purposes of enforcement.

1903.16 Each private sedan business shall register private sedan operators in accordance with the following requirements:

(a) Each individual applying to register with a private sedan business ("applicant") shall be at least twenty one (21) years of age.

(b) A third party accredited by the National Association of Professional Background Screeners or a successor accreditation entity shall conduct the following examinations:

(1) A local and national criminal background check;

(2) The national sex offender database background check; and

(3) A full driving record check.

(c) A private sedan business shall reject an application and permanently disqualify an applicant who:

(1) As shown in the local or national criminal background check conducted in accordance with subparagraph (b) of this subsection, has been convicted within the past seven (7) years of:

(A) An offense defined as a crime of violence under D.C. Official Code § 23-1331 (4);

(B) An offense under Title II of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law l0-257; D.C. Official Code § 22-3002 *et seq*.);

(C) An offense under section 3 of the District of Columbia Protection Against Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; D.C. Official Code § 22-3102);

(D) Burglary, robbery, or an attempt to commit robbery under An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1323; D.C. Official Code §§ 22-801, 22-2801 and 22-2802);

(E) Theft in the first degree under section 112 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3212);

(F) Felony fraud or identity theft under sections 112, 121, or 127b of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code §§ 22-3212, 22-3221, and 22-3227.02); or

(G) An offense under any state or federal law or under the law of any other jurisdiction in the United States involving conduct that would constitute an offense described in subparagraphs (A), (B), (C), (D), (E), and (F) of this paragraph if committed in the District;

(2) Is a match in the national sex offender registry database;

(3) As shown in the national background check or driving record check conducted in accordance with subsections (b)(l) and (b)(3) of this section, has been convicted within the past seven (7) years of:

(A) Aggravated reckless driving under section 9(b-1) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1123; D.C. Official Code § 50-2201.04 (b-1));

(B) Fleeing from a law enforcement officer in a motor vehicle under section l0b of the District of Columbia Traffic Act, 1925, effective March 16, 2005 (D.C. Law 15-239; D.C. Official Code § 50-2201.05b);

(C) Leaving after colliding under section 10c of the District of Columbia Traffic Act, 1925, effective April 27, 2013 (D.C. Law 19-266; D.C. Official Code § 50-2201.05c);

(D) Negligent homicide under section 802(a) of An Act To amend an Act of Congress entitled "An Act to establish a Code of Law for the District of Columbia", approved March 3, 1901, as amended, by adding three new sections to be numbered 802(a), 802(b), and 802(c), respectively, approved June 17, 1935 (49 Stat. 385; D.C. Official Code § 50-2203.01);

(E) Driving under the influence of alcohol or a drug, driving a commercial vehicle under the influence of alcohol or a drug, or operating a vehicle while impaired under sections 3b, 3c, or 3e of the Anti-Drunk Driving Act of 1982, effective April 27, 2013 (D.C. Law 19-266; D.C. Official Code §§ 50-2206.11, 50-2206.12, and 50-2206.14);

(F) Unauthorized use of a motor vehicle under section 115 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code §22-3215); and

(G) An offense under any state or federal law or under the law of any other jurisdiction in the United States involving conduct that would constitute an offense described in subparts (A), (B), (C), (D), (E), or (F) of this part if committed in the District; or

(4) Has been convicted within the past three (3) years of driving with a suspended or revoked license under section 13(e) of the District of Columbia Traffic Act,1925, approved March 3,1925 (43 Stat. 1123; D.C. Official Code § 50-1403.01(e)), according to the driving record check conducted in accordance with § 1902.16 (b).

1903.17 Each private sedan business shall allow its operators to use only vehicles which:

(1) Have a manufacturer's rated seating capacity of eight (8) persons or fewer, including the operator;

(2) Have at least four (4) doors and meet applicable federal motor vehicle safety standards for vehicles of its size, type, and proposed use; and

(3) Are not more than ten (10) model years of age at entry into service and not more than twelve (12) model years of age while in service.

1903.18 A private sedan business may offer service at no charge, suggest a donation, or charge a fare, provided however, that if a fare is charged the private sedan business shall comply with the provisions of § 1604.4.

1903.19 Each private sedan business shall possess the insurance required by § 1905 and be registered with the Office as required by § 1905.4.

1903.20 Each private sedan business shall notify the Office immediately upon the suspension or termination of an operator, by providing the operator’s name, address, driver’s license information, and the vehicle’s make, model, year, color, and tag information.

1903.21 Each private sedan business shall designate and maintain one or more individuals with whom the Office shall be able to communicate <u>at all times</u> for purposes of enforcement and compliance under this title and other applicable laws, whom the

private sedan business shall identify in its registration under § 1902.4, and shall maintain an email address dedicated exclusively to the purposes of this paragraph.

1903.22 Each private sedan business shall ensure a private sedan operator cannot log in to the app of the private sedan business's associated or affiliated DDS app while the operator is suspended or after the operator is terminated by the private sedan business.

1904 PRIVATE SEDAN OPERATORS – REQUIREMENTS

1904.1 Each private sedan operator shall comply with the following requirements for providing private sedan service in the District of Columbia.

(a) The operator shall provide service only when registered with and not under suspension by a private sedan business which is registered under this chapter. The provision of private sedan service while under suspension shall be deemed a failure to be registered with any private sedan business.

(b) The operator shall accept trips only through the use of, and when logged into, an app provided by a digital dispatch service, registered under Chapter 16, and associated or affiliated with the private sedan business with which the operator is registered.

(c) The operator shall not solicit or accept a street hail, engage in false dispatch, or use a taxicab or limousine stand.

(d) The operator shall not be logged in to the app of a private sedan business's associated or affiliated digital dispatch service without displaying the trade dress of such private sedan business in the manner required by its trade dress policy as established pursuant to § 1903.8.

(e) The operator shall keep the following documents present in the vehicle, readily accessible for inspection by a vehicle inspection officer, police officer, and other District enforcement official:

(1) A current and valid personal driver's license issued by a jurisdiction within the MSA;

(2) A current and valid motor vehicle registration issued by a jurisdiction within the MSA;

(3) Written proof of the personal motor vehicle insurance coverage required by D.C. Official Code § 31-2403; and

(4) If the private sedan business with which the operator is registered does not provide the insurance coverage required by § 1905: proof that the operator is maintaining the insurance coverage required by § 1905.

(f) The operator shall fully and timely cooperate with vehicle inspection officers, police officers, and other District enforcement officials, during traffic stops, and during all other enforcement and compliance actions under this title and other applicable laws. A violation of this paragraph shall be treated as a violation of a compliance order under § 702.(g)

(g) The operator shall, in the event of an accident arising from or related to the operation of a private sedan originating in or occurring in the District:

(1) Notify the private sedan business with which the operator is associated if required by the private sedan business; and

(2) Notify the Office within three (3) business days if the accident is accompanied by the loss of human life or by serious personal injury without the loss of human life. The notice shall include a copy of each report filed with MPD or other police agency, a copy of each insurance claim made by the private sedan operator, and such other information and documentation as required by the Office.

(h) The operator shall be chargeable with knowledge of the applicable provisions of this title and other applicable laws, applicable notices published in the *D.C. Register*, and applicable administrative issuances, instructions and guidance posted on the Commission's website.

1905 PRIVATE SEDAN BUSINESSES AND OPERATORS - INSURANCE REQUIREMENTS

1905.1 Each private sedan business or private sedan operator shall maintain a primary automobile liability insurance policy that provides coverage for the vehicle and the operator when the operator is engaged in a prearranged ride of at least one million dollars ($1,000,000) per occurrence for accidents involving a private sedan operator, for all private sedan trips originating in or occurring in the District, under which the District is a certificate holder and a named additional insured.

1905.2 Each private sedan business or private sedan operator shall maintain a primary automobile liability insurance policy that provides coverage for the vehicle and

the operator, for all private sedan trips originating in or occurring in the District, under which the District is a certificate holder and a named additional insured, for the time period when the operator is logged in to a private sedan business's DDS, showing that the operator is available to pick up passengers but is not engaged in a prearranged ride.

1905.3 The coverage amounts under § 1905.2 shall be minimum coverage of at least fifty thousand dollars ($50,000) per person per accident, with up to one hundred thousand dollars ($100,000) available to all persons per accident, and twenty-five thousand dollars ($25,000) for property damage per accident and either:

(a) Offers full-time coverage similar to the coverage required under § 15 of the Act;

(b) Offers an insurance rider to, or endorsement of, the operator's personal automobile liability insurance policy as required by § 7 of the Compulsory/No Fault Motor Vehicle Insurance Act; or

(c) Offers a liability insurance policy purchased by the private sedan business that provides primary coverage for the time period in which the operator is logged into the private sedan business's DDS showing that the operator is available to pick up passengers.

1905.4 Each private sedan business that purchases an insurance policy under this chapter shall provide proof to the Office, at the time of registration, that the private sedan business has secured the policy, and shall provide proof of its compliance with § 1905.11 within five (5) business days of such compliance.

1905.5 A private sedan business shall not allow a private sedan operator who has purchased his or her own policy to fulfill the requirements of this chapter to accept a trip request through the DDS used by the private sedan business until the private sedan business verifies that the operator maintains insurance as required under this chapter. If the insurance maintained by a private sedan operator to fulfill the insurance requirements of this chapter has lapsed or ceased to exist, the private sedan business shall provide the coverage required by this chapter beginning with the first dollar of a claim.

1905.6 If more than one insurance policy purchased by a private sedan business provides valid and collectable coverage for a loss arising out of an occurrence involving a motor vehicle operated by a private sedan operator, the responsibility for the claim shall be divided on an equal basis among all of the applicable polices; provided, that a claim may be divided in a different manner by written agreement of all of the insurers of the applicable policies and the policy owners.

1905.7 In a claims coverage investigation, a private sedan business shall cooperate with any insurer that insures the private sedan operator's motor vehicle, including providing relevant dates and times during which an accident occurred that involved the operator to determine whether the operator was logged into a private sedan business's DDS showing that the operator is available to pick up passengers.

1904.8 The insurance requirements set forth in this chapter shall be disclosed on each private sedan business's website, and the business's terms of service shall not contradict or be used to evade the insurance requirements of this chapter.

1905.9 Within ninety (90) days of the effective date of the Vehicle-for-Hire Act, a private sedan business that purchases insurance on an operator's behalf under this chapter shall disclose in writing to the operator, as part of its agreement with the operator:

(a) The insurance coverage and limits of liability that the private sedan business provides while the operator is logged into the business's DDS showing that the operator is available to pick up passengers; and

(b) That the operator's personal automobile insurance policy may not provide coverage, including collision physical damage coverage, comprehensive physical damage coverage, uninsured and underinsured motorist coverage, or medical payments coverage because the operator uses a vehicle in connection with a private sedan business.

1905.10 An insurance policy required by this chapter may be obtained from an insurance company authorized to do business in the District or with a surplus lines insurance company with an AM Best rating of at least A-.

1905.11 Each private sedan business and operator shall have one hundred twenty (120) days from the effective date of the Vehicle-for-Hire Act to procure primary insurance coverage that complies with the requirements of § 1905.2; provided however, that until such time, each private sedan business shall maintain a contingent liability policy meeting at least the minimum limits of § 1905.2 that will cover a claim in the event that the private sedan operator's personal insurance policy denies a claim.

1905.12 Each insurance policy required by this chapter shall provide that the Office receive all notices of policy cancellations and changes in coverage.

1905.13 Each private sedan business shall ensure that the Office receives all notices of policy lapses.

1905.14 Each private sedan business shall file proof of insurance as required by § 1902.11 whenever an insurance policy is obtained to replace an existing, lapsing, terminated, or cancelled policy, including where a private sedan business changes from allowing its associated operators to provide the coverage required by the chapter to providing the coverage itself.

1906 PROHIBITIONS

1906.1 No person shall violate any applicable provision of this chapter.

1906.2 No private sedan operator shall threaten, harass, or engage in abusive conduct, or attempt to use or use physical force against any District enforcement official.

1906.3 No private sedan operator shall provide service if such operator is not registered with a private sedan business registered under this chapter.

1906.4 No private sedan operator shall log in to the app of the DDS associated or affiliated with the private sedan business with which the operator is registered during any period when the operator has been suspended by the private sedan business. An operator suspended by a private sedan business shall be deemed not registered with such private sedan business.

1906.5 No private sedan operator shall provide service while under the influence of illegal intoxicants, or under the influence of legal intoxicants that have been prescribed with a warning against use while driving or operating equipment.

1906.6 No private sedan operator shall solicit or accept a street hail, engage in false dispatch, or use a taxicab or limousine stand.

1906.7 No private sedan operator shall access or attempt to access a passenger's payment information after the payment has been processed.

1906.8 No private sedan operator or private sedan business shall engage in conduct which hinders or prevents the District from receiving an amount which the private sedan business's associated or affiliated digital dispatch service must transmit to OCFO pursuant to § 1604.7.

1906.9 No private sedan business shall commence operating in the District after March 11, 2015 unless it has been granted a registration by the Office pursuant to § 1902.6.

1906.10 No insurance policy which provides the coverage required by this chapter shall contain language that does not conform with this title or the Act.

1906.11 No private sedan business or private sedan operator shall attempt through any means to contradict or evade the requirements of this title or other applicable laws.

1907 PENALTIES

1907.1 Each violation of this chapter by a private sedan operator shall subject the operator to:

(a) A civil fine established by a provision of this chapter;

(b) Impoundment pursuant to the Impoundment Act, where a vehicle is operated without a document required by § 1904.1 (e);

(c) Enforcement action other than a civil fine, as provided in Chapter 7; or

(d) A combination of the sanctions enumerated in parts (a) through (c).

1907.2 Each violation of this chapter by a private sedan business shall subject the business to:

(a) A civil fine established by a provision of this chapter;

(b) Enforcement action other than a civil fine, as provided in Chapter 7; or

(c) A combination of the sanctions enumerated in parts (a) and (b).

1907.3 The following civil fines are established for violations of this chapter by a private sedan business or private sedan operator, which shall double for the second violation of the same provision, and triple for the third and subsequent violations of the same provision thereafter:

(a) For a violation of a provision of this chapter, where no civil fine is enumerated:

(1) By a private sedan operator: a civil fine of one hundred fifty dollars ($150); and

(2) By a private sedan business: a civil fine of one thousand dollars ($1,000).

(b) A civil fine of two hundred fifty dollars ($250) for a violation of § 1904.1 (d) by a private sedan operator for failing to display trade dress while providing service;

(c) A civil fine of two hundred fifty dollars ($250) for a violation of § 1904.1 (e) (4) by a private sedan operator for failure to maintain in the vehicle proof of insurance required by § 1905;

(d) A civil fine of two hundred fifty dollars ($250) for a violation of § 1904.1 (g) (2) by a private sedan operator for failure to notify the Office within three (3) business days where there has been an accident accompanied by the loss of human life or by serious personal injury without the loss of human life

(e) A civil fine of one thousand dollars ($1,000) for a violation of § 1905 by a private sedan operator for failure to maintain the insurance required by § 1905;

(f) A civil fine of seven hundred fifty dollars ($750) for a violation of § 1906.2 by a private sedan operator for threatening, harassing, or engaging in abusive conduct toward a District enforcement official;

(g) A civil fine of two thousand five hundred dollars ($2,500) for a violation of § 1906.2 by a private sedan operator for attempting to use or for using physical force against any District enforcement official;

(h) A civil fine of five hundred dollars ($500) for a violation of § 1906.4 by a private sedan operator by logging in to the app if the operator knows the private sedan business is under suspension;

(i) A civil fine of two thousand five hundred dollars ($2,500) for a violation of § 1906.5 by a private sedan operator for providing service while under the influence of an illegal or legal intoxicants;

(j) A civil fine of five hundred dollars ($500) for a violation of § 1906.6 by a private sedan operator for using a taxicab or limousine stand;

(k) A civil fine of seven hundred fifty dollars ($750) for a violation of § 1906.6 by a private sedan operator for soliciting or accepting a street hail;

(l) A civil fine of one thousand dollars ($1,000) for a violation of § 1906.6 by engaging in false dispatch;

(m) A civil fine of three thousand dollars ($3,000) for a violation of § 1903.2 by a private sedan business for failure to maintain a current and accurate registry of the operators and vehicles associated with the business;

(n) A civil fine of one thousand five hundred dollars ($1,500) for a violation of §§ 1903.4-1903.7 by a private sedan business for failure to conduct an appropriate motor vehicle safety inspection or failure to verify that such an inspection has been completed;

(o) A civil fine of three thousand dollars ($3,000) for a violation of §§ 1903.9-1903.14 by a private sedan business for failure to maintain a required zero tolerance policy, failing to investigate a violation, or failure to suspend an operator;

(p) A civil fine of two thousand five hundred dollars ($2,500) for a violation of § 1903.20 by a private sedan business for failure to immediately notify the Office upon the suspension or termination of an operator;

(q) A civil fine of four thousand dollars ($4,000) for a violation of § 1903.21 by a private sedan business for failure to maintain 24/7/365 communication for enforcement and compliance purposes;

(r) A civil fine of two thousand five hundred dollars ($2,500) for a violation of § 1903.22 by a private sedan business for failure to prevent a private sedan operator from logging in to the app of the private sedan business's associated or affiliated digital dispatch service while the operator is suspended or after the operator has been terminated;

(s) A civil fine of three thousand dollars ($3,000) for a violation of § 1903.15 by a private sedan business for failure to maintain business records;

(t) A civil fine of five thousand dollars ($5,000) for a violation of § 1903.16 (b) by a private sedan business for failure to conduct a required check of an operator's criminal background, presence on the national sex offender registry database, or driving record;

(u) A civil fine of seven thousand dollars ($7,500) for a violation of § 1903.16 (b) by a private sedan business for allowing the registration of an operator where the private sedan business knew or should have known the operator was ineligible for registration;

(v) A civil fine not to exceed twenty five thousand dollars ($25,000) per day based on the circumstances, for a violation of § 1905 by a private sedan business, for each day or portion thereof where a private sedan business fails to maintain in force and effect insurance coverage it has notified the Office it will provide;

(w) A civil fine of five thousand dollars ($5,000) for a violation of § 1905 by a private sedan business other than for a failure to maintain in force and effect insurance coverage it has notified the Office it will provide; and

(x) A civil fine of twenty five thousand dollars ($25,000) per day or portion thereof for a violation of § 1906.8 for engaging in conduct which hinders or prevents the District from receiving an amount which the private sedan business's associated or affiliated digital dispatch service must transmit to OCFO pursuant to § 1604.7, provided however, that a penalty shall not be assessed under both this section and § 1608.2 (b) where a digital dispatch service and a private sedan business are not separate legal entities.

1907.4 An operator charged with a violation of § 1906.7 for false dispatch may be adjudicated liable for the lesser-included violation of solicitation or acceptance of a street hail, in the discretion of the trier of fact based on the evidence presented, but shall not be held liable for both violations.

1907.5 In addition to any other penalty or action authorized by a provision of this title, the Office may report violations to another government agency for appropriate action which may include the denial, revocation or suspension of any license that may be issued by the other agency.

Chapter 99, DEFINITIONS, is amended to read as follows:

Section 9901, DEFINITIONS, is amended as follows:

Subsection 9901.1, is amended as follows:

"App" - an application, as defined in this chapter.

"Application" – a piece of software designed to fulfill a particular purpose, which is downloadable by a user to a mobile device, such as a tablet or smartphone. For purposes of this title, unless otherwise stated, an app's purpose shall be assumed to be the digital dispatch of, or the digital dispatch and digital payment of, trips by vehicles-for-hire.

"Black car" – a luxury class vehicle which operates exclusively through advance reservation made by a digital dispatch service, which may not solicit or accept street hails, and for which the fare is calculated by time and distance.

"Compulsory/No Fault Motor Vehicle Insurance Act" - the Compulsory/No Fault Motor Vehicle Insurance Act of 1982, effective September 18, 1982 (D.C. Law 4-155; D.C. Official Code § 31-2406) (2012 Repl. & 2014 Supp.).

"Consumer Service Fund" – the Public Vehicle-for-Hire Consumer Service Fund as authorized by the Establishment Act, as defined in this chapter, as amended by the Vehicle-for-Hire Act, as defined in this chapter.

"Digital dispatch" – hardware and software applications and networks, including mobile phone applications, used for the provision of vehicle-for-hire services.

"Digital dispatch service" – a dispatch service that provides digital dispatch for vehicles-for-hire. The phrase "company that uses digital dispatch for public vehicle-for-hire service", as used in the Establishment Act, as amended by the Vehicle-for-Hire Act, shall include only a digital dispatch service, and shall not include any other person regulated by this title in connection with the provision of a public vehicle-for-hire service, such as a taxicab company.

"DISB" – the Department of Insurance, Securities and Banking.

"Dispatch" – a means of booking a vehicle-for-hire through advance reservation.

"Dispatch service" – an organization, including a corporation, partnership, or sole proprietorship, operating in the District that provides telephone or digital dispatch, as defined in this chapter, for vehicles-for-hire.

"District enforcement official" - a vehicle inspection officer or other authorized official, employee, general counsel or assistant general counsel of the Office, or any law enforcement officer authorized to enforce a provision of this title or other applicable law.

"Establishment Act" - the District of Columbia Taxicab Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-301 *et seq*. (2012 Repl. & 2014 Supp.).

"Hack Inspector" – a vehicle inspection officer as defined in this chapter.

"Limousine" – a luxury class vehicle which operates exclusively though advance reservation by the owner or operator, which may not solicit or accept street hails, and for which the fare is calculated by time.

"Luxury class vehicle" – a public vehicle-for-hire that:

(a) Has a manufacturer's rated seated capacity of fewer than 10 person;

(b) Is not a salvaged vehicle or a vehicle rented from an entity whose predominant business is that of renting motor vehicles on a time basis; and

(c) Is no more than ten (10) model years of age at entry into service and no more than twelve (12) model years of age while in service.

"MSA" – the Multi-State Area as defined in this chapter.

"Multi-State Area" – the area comprised of the District of Columbia, the State of Maryland and the Commonwealth of Virginia.

"Pre-arranged ride" - A period of time that begins when a private sedan operator accepts a requested ride through digital dispatch (an app), continues while the operator transports the passenger in the operator's private sedan, and ends when the passenger departs from the private sedan.

"Private sedan" – a private motor vehicle that shall:

(a) Have a manufacturer's rated seating capacity of eight (8) or fewer, including the private vehicle-for-hire operator;

(b) Have at least four (4) doors and meet applicable federal motor vehicle safety standards for vehicles of its size, type, and propose use; and

(c) Be no more than ten (10) model years of age at entry into service and no more than twelve (12) model years of age while in service.

The term "private sedan" in this title is synonymous with the term "private vehicle-for-hire" as defined in the Establishment Act, as amended by the Vehicle-for-Hire Act.

"**Private sedan business" –** an organization, including a corporation, partnership, or sole proprietorship, operating in the District that uses digital dispatch to connect passengers to a network of operators of private sedans, as defined in this chapter.

"Private sedan operator" – an individual who operates a personal motor vehicle to provide private sedan service, as defined in this chapter, in association with a private sedan business, as defined in this chapter.

"Private sedan service" - a class of transportation service by which a network of private sedan operators, as defined in this chapter, registered with a private sedan business, as defined in this chapter, provides vehicle-for-hire service through a digital dispatch service, as defined in this chapter.

"Public vehicle-for-hire" – classes of for-hire transportation which exclusively use operators and vehicles licensed by the Office pursuant to D.C. Official Code § 47-2829.

"Sedan" – a black car as defined in this chapter. The terms "sedan" and "black car" are synonymous in this title.

"Taxicab" – a class of public vehicle-for-hire which may be hired by dispatch or hailed on the street, and for which the fare complies with the provisions of § 801.

"Telephone dispatch" – a traditional means for dispatching a vehicle-for-hire, originating with a telephone call by the passenger. The term "telephone dispatch" in this title is synonymous with the term "dispatch" as defined in the Establishment Act, as amended by the Vehicle-for-Hire Act.

"Trade Dress" – a logo, insignia, or emblem established by a private sedan business for display on its associated vehicles while providing service.

"Vehicle-for-hire" – a public vehicle-for-hire or a private sedan, as defined in this chapter.

"Vehicle-for-Hire Act" – the Vehicle-for-Hire Innovation Amendment Act of 2014, effective March 10, 2015 (D.C. Law 20-0197); D.C. Official Code §§ 50-301 *et seq*.).

"Vehicle-for-hire industry" – all persons directly involved in providing public vehicle-for-hire and private sedan services, including companies, associations, owners, operators, and any individual who, by virtue of employment or office, is directly involved in providing such services.

"Vehicle inspection officer" – an Office employee trained in the laws, rules, and regulations governing vehicle-for-hire service to ensure the proper provision of service and to support safety through street enforcement efforts, including traffic stops of vehicles-for-hire, pursuant to Establishment Act, as amended by the Vehicle-for-Hire Act, and other applicable provisions of this title and other applicable laws.

Subsection 9901.1 is amended to remove the following definitions:

"Public vehicle inspection officer" – a Commission employee trained in the laws, rules, and regulations governing public vehicle-for-hire services to ensure the proper provision of service and to support safety through street enforcement efforts, including traffic stops of public vehicles-for-hire, pursuant to protocol established by the Commission

"Vehicle" – a public vehicle-for-hire subject to licensing and regulation by the Commission.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Section 1914, entitled "Vehicle Modification Services," of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement for vehicle modification services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). The amendment must also be approved by CMS, which will affect the effective date of the emergency rulemaking.

Vehicle modifications are designed to help the person live his/her life with greater independence and to increase access to the community. The adaptations or modifications to a vehicle may include the installation of a lift or other adaptations to make the vehicle accessible to the person, or to enable the person to drive the vehicle. The current Notice of Final Rulemaking for 29 DMCR § 1914 (Vehicle Modification Services) was published in the *D.C. Register* on March 14, 2014, at 61 DCR 002108. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 22, 2015, at 62 DCR 006695. That emergency and proposed rulemaking, which was adopted on May 8, 2015, but was never effective because the amendment was not approved by CMS, amended the previously published final rules by: (1) clarifying service definition exclusions; (2) clarifying service authorization requirements for vehicle modification services; (3) clarifying requirements to request additional services beyond the limitations or caps on a service; (4) removing the exclusion under the previous rule that prohibited caregivers who provide Host Home services from utilizing Vehicle Modifications; and (5) clarifying that the service may not be used with Supported Living with Transportation. DHCF did not receive any comments in response to the first emergency and proposed rulemaking but is promulgating this Notice of Second Emergency and Proposed Rulemaking to continue the changes reflected in the first notice of emergency and proposed rulemaking described above.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of vehicle modification services. The new requirements will enhance the quality of services. Therefore, in order to ensure that the person's health, safety, and welfare are not threatened by lack of access to needed vehicle modification services provided pursuant to the updated delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on August 13, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment, whichever is later. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until December 11, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date with the Notice of Final Rulemaking.

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

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsections 1914.3, 1914.9, 1914.12, 1914.13, and 1914.17 of Section 1914, VEHICLE MODIFICATION SERVICES, are amended to read as follows:

1914.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) before providing VM services. The request for prior authorization shall include a written justification demonstrating how the services will help the person to function with greater independence and increase his/her access to the community. The vehicle being serviced shall be owned by the person or the person's family, guardian, or other primary caretaker who is not providing Residential Habilitation Services, Supported Living Services or Supported Living Services with Transportation.

1914.9 Before pre-authorization of any VM services, the vehicle owner shall submit at least two (2) written bids from providers for the service to the DDS service coordinator for comparison, in order to determine the most cost efficient use of Medicaid waiver funding for the service.

1914.12 Medicaid reimbursable VM services shall be available for modification of no more than two (2) vehicles over the course of five (5) years and shall not exceed a total of ten thousand dollars ($10,000), unless the person receives service authorization from DDS through the exception process in § 1914.13.

1914.13 Exceptions to the ten thousand dollar ($10,000) limit and/or the two (2) vehicle limit over the course of five (5) years may be approved by DDS on a case-by-case basis by the DDS Medicaid Waiver Supervisor or a designated Developmental Disabilities Administration (DDA) staff member for persons who demonstrate need. The request for exception must be in writing and must specify the amount requested above the $10,000 limit; describe the demonstrated need for the exception; and include supporting documentation.

1914.17 Medicaid reimbursable VM services shall not be provided to those persons receiving residential supports through Residential Habilitation, Supported Living, or Supported Living with Transportation.

Comments on these emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Section 1927, entitled "Personal Emergency Response System Services," of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Development Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of personal emergency response system services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990). The amendment must also be approved by CMS, which will affect the effective date for the emergency rulemaking.

Personal Emergency Response System (PERS) is an electronic device that enables persons who are at high risk of institutionalization to secure help in an emergency. The person may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal a response center once the "help" button is activated. Trained professionals staff the response center. PERS services are available to those individuals who live alone, who are alone for significant parts of the day, or who would otherwise require extensive routine supervision. The Notice of Final Rulemaking for 29 DCMR § 1927 (Personal Emergency Response System Services) was published in the *D.C. Register* on March 21, 2014, at 61 DCR 002470. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on May 8, 2015, at 62 DCR 005775. That emergency and proposed rulemaking, which was adopted on April 24, 2015, but was never effective because the amendment was not approved by CMS, amended the previously published final rules by (1) clarifying the requirements that the criteria set forth in Section 1906 of Title 29 DCMR, Chapter 19, only apply to responders who are employed by a provider agency; (2) correcting the identification of the agency for incident reporting; (3) allowing PERS to be delivered concurrently with Supported Living Periodic services and Supported Living with Transportation Periodic services; (4) eliminating the prohibition from PERS being provided for a person receiving Host Home services; and (5) changing the rate for monthly rental, maintenance, and service fee. DHCF did not receive any comments in response to the first emergency and proposed rulemaking but is

promulgating this Notice of Second Emergency and Proposed Rulemaking to continue the changes reflected in the first notice of emergency and proposed rulemaking described above.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of ID/DD Waiver services. The ID/DD Waiver serves some of the District's most vulnerable residents. As discussed above, these amendments clarify certain requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on August 12, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment. The emergency rules shall remain in effect for one hundred and twenty (120) days or until December 10, 2015 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date of these emergency rules with the Notice of Final Rulemaking. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication on this notice in the *D.C. Register*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsections 1927.11, 1927.14, 1927.18 and 1927.20 of Section 1927, PERSONAL EMERGENCY RESPONSE SYSTEM SERVICES, are amended to read as follows:

1927 PERSONAL EMERGENCY RESPONSE SYSTEM (PERS) SERVICES

1927.11 If the responder who will be in direct contact with the person is an employee of a Medicaid Waiver provider agency, he or she shall meet all of the requirements set forth in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1927.14 Each provider of Medicaid reimbursable PERS services shall follow the DDS Developmental Disabilities Administration (DDA) incident reporting process within twenty four (24) hours of an emergency response. Emergency responses shall not include test signals or activations made by a person.

1927.18 Medicaid reimbursable PERS services shall only be provided in a person's personal residence. PERS shall not be provided to persons receiving Residential Habilitation services, Supported Living or Supported Living with Transportation services, with the exception of Supported Living Periodic and Supported Living with Transportation Periodic services.

1927.20 Medicaid reimbursement for PERS services shall be as follows:

(a) Fifty dollars ($50.00) for the initial installation, training, and testing; and

(b) Thirty dollars and thirty-nine cents ($30.39) for the monthly rental, maintenance, and service fee.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Section 1930, entitled "Respite Services", of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Development Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of respite services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 61 DCR 9990 (October 3, 2014)). The amendment must also be approved by CMS, which will affect the effective date for the emergency rulemaking.

Respite care provides relief to the family or primary caregiver to meet planned or emergency situations. Respite care gives the caregiver a period of relief for scheduled time away from the individual, including vacations. It may also be used in case of emergencies. Respite is only provided to those individuals who live in their own home, or their family home. Respite care will ensure that individuals have access to community activities as delineated in the individual's ISP/Plan of Care. A Notice of Final Rulemaking for 29 DCMR § 1930 (Respite Services) was published in the *D.C. Register* on February 7, 2014, at 61 DCR 000993. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 24, 2015, at 62 DCR 005209. That emergency and proposed rulemaking, which was adopted on April 10, 2015, but was never effective because the amendment was not approved by CMS, amended the previously published final rules by (1) clarifying that quarterly reports are not required for respite daily services; (2) requiring that respite daily providers comply with Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR; (3) removing the exception that a provider already receiving reimbursement for the general care of the person may not receive Medicaid reimbursement for providing respite services; and (4) modifying the hourly and daily rates to reflect the approved methodology in accordance with the ID/DD Waiver. DHCF did not receive any comments in response to the first emergency and proposed rulemaking but is promulgating this Notice of Second Emergency and Proposed Rulemaking to continue the changes reflected in the first notice of emergency and proposed rulemaking

described above, and to change the hourly rate in § 1930.14 to twenty dollars and fifty-two cents ($20.52).

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of ID/DD Waiver services. The ID/DD Waiver serves some of the District's most vulnerable residents. As discussed above, these amendments clarify certain requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on August 12, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment. The emergency rules shall remain in effect for one hundred and twenty (120) days after adoption of the rules until December 10, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date of these emergency rules with the Notice of Final Rulemaking. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication on this notice in the *D.C. Register*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsections 1930.8, 1930.9, 1930.11, 1930.14, and 1930.18, of Section 1930, RESPITE SERVICES, are amended, and a new Subsection 1930.21 is added, to read as follows:

1930.8 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR, except that no quarterly report is required for respite hourly services.

1930.9 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR, except that no quarterly report is required for respite hourly services.

1930.11 Medicaid reimbursement shall not be available if respite services are provided by the following individuals or provider:

(a) The person's primary caregiver; or

(b) A spouse, parent of a minor child, or legal guardian of the person receiving respite services.

1930.14 Medicaid reimbursement for hourly respite services shall be twenty dollars and fifty-two cents ($20.52) per hour and shall be limited to seven hundred twenty (720) hours per calendar year.

1930.18 Medicaid reimbursement for daily respite services shall be four hundred dollars ($400.00) per day and shall be limited to thirty (30) days per calendar year.

1930.21 Each provider of Medicaid reimbursable respite daily services shall comply with the requirements under Section 1938 (Home and Community-Based Settings Requirements) of Chapter 19 of Title 29 DCMR.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; 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 the adoption, on an emergency basis, of amendments to Section 1931, entitled "Skilled Nursing Services," of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement of skilled nursing services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155: 61 DCR 9990 (October 3, 2014)). The amendment must also be approved by CMS, which will affect the effective date for the emergency rulemaking.

Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. The current Notice of Final Rulemaking for 29 DCMR § 1929 (Skilled Nursing Services) was published in the *D.C. Register* on March 28, 2014 – Part 1, at 61 DCR 002615. These emergency and proposed rules will amend the previously published rules by: (1) changing the schedule for required updates from sixty (60) days to quarterly, or as needed; (2) changing the requirements for contents of progress notes; (3) eliminating the responsibility for completing quarterly reports from the licensed practical nurse (LPN); (4) eliminating the requirement that nurses providing this service meet the requirements for Direct Support Professionals; (5) allowing the service to be provided with Supported Living and Supported Living with Transportation, but not Supported Living with Skilled Nursing; and (6) increasing the rate for LPN visits.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of nursing services. The new requirements will enhance the quality of services. Therefore, in order to ensure that the person's health, safety, and welfare are not threatened by lack of access to skilled nursing services provided pursuant to the updated delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on August 13, 2015, but these rules shall become effective for services rendered on or after September 1, 2015, if the corresponding amendment to the ID/DD Waiver has been approved by CMS with an effective date of September 1, 2015, or on the effective date established by CMS in its approval of the corresponding ID/DD Waiver amendment, whichever is later. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until December 11, 2015, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. If approved, DHCF shall publish the effective date with the Notice of Final Rulemaking. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 1931, SKILLED NURSING SERVICES, of Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety and amended to read as follows:

1931 SKILLED NURSING SERVICES

1931.1 The purpose of this section is to establish standards governing Medicaid eligibility for skilled nursing services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of skilled nursing services.

1931.2 Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. These services include health assessments and treatment, health related trainings and education for persons receiving Waiver services and their caregivers.

1931.3 To be eligible for Medicaid reimbursement, the person shall first exhaust all available skilled nursing visits provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving skilled nursing services under the Waiver.

1931.4 To be eligible for Medicaid reimbursement, the person shall have a condition of circulatory or respiratory function complications, gastrointestinal complications, neurological function complications, or the existence of another severe medical condition that requires monitoring or care at least every other hour.

1931.5 To be eligible for Medicaid reimbursement, skilled nursing services shall:

(a) Be ordered by a physician when it is reasonable and necessary to the treatment of the person's illness or injury, and include a letter of medical necessity, a summary of the person’s medical history and the duties that the skilled nurse would perform; and a skilled nurse checklist; and

(b) Be authorized in accordance with each person's Individual Support Plan (ISP) and Plan of Care after all Medicaid State Plan skilled nursing visits have been exhausted.

1931.6 The physician's order described in Subsection 1931.5 shall include the scope, frequency, and duration of skilled nursing services; shall be updated at least every ninety (90) calendar days; and shall be maintained in the person's records.

1931.7 In order to be eligible for Medicaid reimbursement, the duties of a registered nurse (RN) delivering skilled nursing services shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 of the District of Columbia Municipal Regulations (DCMR). They may include, at a minimum, but are not limited to the following duties:

(a) Performing a nursing assessment in accordance with the Developmental Disabilities Administration's Health and Wellness Standards;

(b) Assisting in the development of the Health Care Management Plan (HCMP);

(c) Coordinating the person's care and referrals;

(d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements in the jurisdiction where services are provided;

(e) Administering medication or oversight of licensed medication administration personnel;

(f) Providing oversight and supervision to the licensed practical nurse (LPN), when delegating and assigning nursing interventions;

(g) Providing updates to Department on Disability Services (DDS) quarterly and more frequently as needed, if there are any changes to the person's needs or physician's order;

(h) Training the person, licensed practical nurse (LPN), family, caregivers, and any other individual, as needed; and

(i) Recording progress notes during each visit that meet standards of nursing care and include the following:

(1) Any unusual health or behavioral events or changes in status;

(2) Any matter requiring follow-up on the part of the service provider or DDS; and

(3) Clearly written records that contain a statement of the person's progress or lack of progress, medical conditions, functional losses, and treatment goals that demonstrate that the person's services are and continue to be reasonable and necessary.

(j) Submit summary notes at least quarterly and submit quarterly reports in accordance with the requirements in Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1931.8 In order to be eligible for Medicaid reimbursement, the duties of an LPN delivering skilled nursing services shall be consistent with the scope of practice standards for a licensed practical nurse set forth in Chapter 55 of Title 17 DCMR. They may include, at minimum, but are not limited to the following duties:

(a) Immediately reporting, any changes in the person's condition, to the supervising registered nurse;

(b) Providing wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and

(c) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia. If services are provided in another jurisdiction, the services shall be consistent with that jurisdiction's requirements.

1931.9 Medicaid reimbursable skilled nursing services shall be provided by an RN or LPN under the supervision of an RN, in accordance with the standards governing delegation of nursing interventions set forth in Chapters 54 and 55 of Title 17 DCMR.

1931.10 In order to be eligible for Medicaid reimbursement, each person providing skilled nursing services shall be employed by a home health agency that has a current District of Columbia Medicaid Provider agreement authorizing the service provider to bill for skilled nursing services.

1931.11 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1931.12 To be eligible for Medicaid reimbursement, skilled nursing services shall have prior authorization from DDS.

1931.13 In order to be eligible for Medicaid reimbursement, the RN shall monitor and supervise the provision of services provided by the licensed practical nurse, including conducting a site visit at least once every thirty (30) days, or more frequently, if specified in the person's ISP.

1931.14 In order to be eligible for Medicaid reimbursement, each provider shall maintain records pursuant to the requirements described under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) under Chapter 19 of Title 29 DCMR.

1931.15 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall ensure that the LPN receives ongoing supervision and that the service provided is consistent with the person's ISP.

1931.16 Each skilled nursing provider shall review and evaluate skilled nursing services provided to each person, at least quarterly.

1931.17 The skilled nursing provider shall maintain a contingency plan that describes how skilled nursing will be provided when the scheduled nurse is unavailable; and, if the lack of immediate care poses a serious threat to the person's health and welfare, how the service will be provided when back-up staff are unavailable.

1931.18 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirements:

(a) The person has exhausted all nursing visits allowable under the Medicaid State Plan;

(b) DDS provides a written service authorization before the commencement of services;

(c) The service name and home health agency delivering services must be identified in the ISP and Plan of Care;

(d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and

(e) Services shall not conflict with the service limitations described under Subsection 1931.20.

1931.19 Medicaid reimbursement for skilled nursing services is only available for individuals who live independently in their natural homes, and people who receive the following residential supports: Host Homes; Supported Living; and Supported Living with Transportation. Skilled nursing services shall not be available when provided with Residential Habilitation or when Supported Living or Supported Living with Transportation is billed using the rate that includes direct skilled nursing services.

1931.20 Medicaid reimbursement is not available under the Waiver for skilled nursing visits that exceed fifty-two (52) visits per person annually.

1931.21 Upon exhaustion of the hours available for skilled nursing services under the Medicaid State Plan, Medicaid reimbursement may be available for one-to-one extended nursing services for twenty-four (24) hours a day, for up to three hundred and sixty-five (365) days, with prior approval from DDS, for persons on a ventilator or requiring frequent tracheal suctioning.

1931.22 Prior approval for one-to-one extended nursing services shall be obtained from the Medicaid Waiver Supervisor or designated DDS staff person after submission of documentation demonstrating the need for the extended services.

1931.23 Medicaid reimbursement governing the provision of skilled nursing services shall be developed using the following two (2) rate structures:

(a) Skilled nursing services rate; and

(b) Extended skilled nursing services rate.

1931.24 The Medicaid reimbursement rate for skilled nursing services shall be sixty-five dollars ($65.00) per visit for services provided by an RN or LPN for four (4) hours or less in duration. The Medicaid reimbursement rate for extended RN visits shall be thirty-two dollars ($32.00) per hour or eight dollars ($8.00) per fifteen minutes for extended RN visits for four (4) hours or less in duration. The Medicaid reimbursement rate for extended LPN visits shall be twenty-two dollars ($22.00) per hour or five dollars and fifty cents ($5.50) per fifteen minutes for extended visits for four (4) hours or less in duration.

1931.25 A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

Comments on these emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-193
August 10, 2015

SUBJECT: Appointments — State Advisory Panel on Special Education for the District of Columbia

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and in accordance with Mayor's Order 2012-48, dated April 5, 2012, it is hereby **ORDERED** that:

1. **DEON WOODS BELL** is appointed as a member of the State Advisory Panel on Special Education (hereinafter referred to as **"Panel"**) representing parents of children with disabilities, replacing Kim Acquaviva, for a two year term to end on April 24, 2017.

2. **TAMERA BROWN** is appointed as a member of the Panel representing parents of children with disabilities, replacing Kimberly Ernst, for a two year term to end on April 24, 2017.

3. **TRACY DOVE** is appointed as a member of the Panel representing parents of children with disabilities, replacing Martha Kent, for a two year term to end on April 24, 2017.

4. **VIVIAN GUERRA** is appointed as a member of the Panel representing parents of children with disabilities, replacing Tony Munter, for a two year term to end on April 24, 2017.

5. **EFFECTIVE DATE:** This Order shall become effective *nunc pro tunc* to April 24, 2015.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCES SYSTEM

Mayor's Order 2015-194
August 12, 2015

SUBJECT: Appointments — Age-Friendly DC Task Force

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and pursuant to Mayor's Order 2013-172, dated September 20, 2013 and Mayor's Order 2015-142, dated May 27, 2015, it is hereby **ORDERED** that:

I. **APPOINTMENTS.**

A. **BRENDA DONALD,** Deputy Mayor for Health and Human Services, is appointed as Co-Chairperson of the Age Friendly DC Task Force (**"Task Force"**), and shall serve at the pleasure of the Mayor so long as she continues in her official capacity with the District.

B. **ERIC D. SHAW,** Director, Office of Planning, or his designee, is appointed as a government representative to the Task Force, and shall serve at the pleasure of the Mayor so long as he continues in his official capacity with the District.

C. **LEIF DORMSJO,** Director, District Department of Transportation, or his designee, is appointed as a government representative to the Task Force, and shall serve at the pleasure of the Mayor so long as he continues in his official capacity with the District.

D. **POLLY DONALDSON,** Director, Department of Housing and Community Development, or her designee, is appointed as a government representative to the Task Force, and shall serve at the pleasure of the Mayor so long as she continues in her official capacity with the District.

E. **CHARON HINES,** Director, Office of Community Affairs, or her designee, is appointed, as a government representative to the Task Force, and shall serve at the pleasure of the Mayor so long as she continues in her official capacity with the District.

F. **DEBORAH CARROLL,** Director, Department of Employment Services, or her designee, is appointed as a government representative to the Task Force and shall serve at the pleasure of the Mayor so long as she continues in her official capacity with the District.

G. **KEVIN DONAHUE,** Deputy Mayor for Public Safety and Justice, or his designee, is appointed as a government representative to the Task Force and shall serve at the pleasure of the Mayor so long as he continues in his official capacity with the District.

H. **LAURA GREEN ZEILINGER,** Director, Department of Human Services, or her designee, is appointed as a government representative to the Task Force and shall serve at the pleasure of the Mayor so long as she continues in her official capacity with the District.

I. **JENNIFER NILES,** Deputy Mayor for Education, or her designee, is appointed as a government representative to the Task Force and shall serve at the pleasure of the Mayor so long as she continues in her official capacity with the District.

J. **BRIAN T. KENNER,** Deputy Mayor for Planning and Economic Development, or his designee, is appointed as a government representative to the Task Force and shall serve at the pleasure of the Mayor so long as he continues in his official capacity with the District.

K. **COURTNEY SNOWDEN**, Deputy Mayor for Greater Economic Opportunity, or her designee, is appointed as a government representative to the Task Force and shall serve at the pleasure of the Mayor so long as she continues in her official capacity with the District.

L. **RON SWANDA**, Executive Council, AARP DC, is appointed, as a non-government representative to the Task Force with a particular focus on Domain #4, Social Participation, and shall serve a term to end December 31, 2017.

M. **KATHLEEN QUINN**, Executive Director, National Adult Protective Services Association, is appointed, as a non-government representative to the Task Force with a particular focus on Domain #10, Elder Abuse, Neglect, and Fraud, and shall serve a term to end December 31, 2017.

N. **CHRISTIAN T. KENT**, Assistant General Manager, Department of Access Services, Washington Metropolitan Area Transit Authority, is appointed, as a non-government representative to the Task Force with a particular focus on Domain #2, Transportation, and shall serve a term to end December 31, 2017.

O. **TEGENE BAHARU**, Chief Technology Officer, Office of the Chief Technology Officer, or his designee, is appointed as a government representative to the Task Force and shall serve at the pleasure of the Mayor so long as he continues in his official capacity with the District.

II. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to May 27, 2015.

MURIEL BOWSER
MAYOR

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

BRIDGES PUBLIC CHARTER SCHOOL

AND

BRIYA PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Legal Services

Mamie D. Lee, LLC ("LLC") is a partnership between Bridges and Briya Public Charter Schools to lease, sublease, finance, redevelop, and operate the Mamie D. Lee site as the permanent home for each school. The LLC invites all interested parties to submit proposals to provide legal services related to site control, financing, construction and development-related contracts, and other matters as they arise to support the Mamie D. Lee redevelopment project. Proposals are due no later than 12:00 PM on September 4, 2015. The complete RFP can be obtained by contacting rfp@buildinghope.org.

CENTER CITY PUBLIC CHARTER SCHOOLS, INC.

REQUEST FOR PROPOSALS

Special Education Legal Services

Center City Public Charter Schools, Inc. is soliciting proposals from qualified vendors for the following:

Center City Pubic Charter School seeks bids for services in the area of special education. Interested parties should read the requirements listed within the RFP to submit a proposal that outlines services, fees and qualifications.

To obtain copies of full RFP's, please visit our website: www.centercitypcs.org. The full RFP's contain guidelines for submission, applicable qualifications and deadlines.

Contact person:

Cristine Doran
cdoran@centercitypcs.org

CHILD AND FAMILY SERVICES AGENCY

Mayor's Advisory Committee on Child Abuse and Neglect (MACCAN)

Tuesday – August 25, 2015
10:30 a.m. – 12:00 p.m.
Child and Family Services Agency
200 I Street SE, Conference Room 1001-A
Washington, DC 20003

Agenda

1. Call to Order

2. Ascertainment of Quorum

3. Acknowledgement of Adoption of the Minutes of the June 30, 2015, meeting

4. Report by the Chair and Co-Chair of MACCAN

    a. Update on Membership/Meeting with MOTA
    b. Changes in the Chair

5. Presentation 11:00-11:50

    a. Human Trafficking & Child Welfare
    Presenter: Stephanie Minor Harper, Court Improvement Project Director, DC Superior Court

6. Opportunity for Public Comment

7. Adjournment

8. Next Meeting October 27, 2015, 10:30-12:00 pm @ CFSA

If any questions/comments, please contact Roni Seabrook at (202) 724-7076 or roni.seabrook@dc.gov.

CREATIVE MINDS INTERNATIONAL PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER INTO THREE SOLE SOURCE CONTRACTS

Pursuant to the School Reform Act, D.C. 38-1802 (SRA) and the D.C. Public Charter Schools procurement policy, Creative Minds International Public Charter School (CMIPCS) hereby submits this notice of intent to award the following three sole source contracts:

1). Apple Inc.
CMIPCS intends to enter into a sole source contract with Apple Inc. for computers (with 3 year extended warranties), Ipads and relevant accessories amounting to over $25,000 during school year 2015-16. CMIPCS is an Apple product based school and uses these products for administrative and instructional purposes. Apple Inc. constitutes the sole source for all Apple products with discounts for educational institutions.

2). Achievement Network (A-NET)
CMIPCS intends to enter into a sole source firm fixed price contract with A-NET amounting to over $25,000 during school year 2015-16. This fixed price contract with A-NET is entered into based on their role as a unique niche provider of interim assessments that give the school timely, actionable and student-specific data. This data combined with the professional development associated with A-NET creates a unique support to teachers and students not found in other vendors.

3). Inspired Teaching Fellow Program
CMIPCS intends to enter into a sole source firm fixed price contract with Inspired Teaching amounting to over $25,000 during school year 2015-16. This fixed price contract with Inspired Teaching is entered into based on their role as a unique niche provider of a nationally recognized intensive 2-year teacher-training program specific to Inspired Teaching in Washington, D.C.

For further information regarding these three notices please contact James Lafferty-Furphy no later than 5:00 pm August 21st, 2015:

James Lafferty-Furphy
Director of Operations

Creative Minds International Public Charter School
3224 16th Street NW
Washington, D.C. 20010
tel: 202-588-0370 x112
fax: 202-588-0263

james.lafferty-furphy@creativemindspcs.org
www.creativemindspcs.org

CREATIVE MINDS INTERNATIONAL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS 2015

Creative Minds International PCS is a public charter school that opened in August 2012. The school will be serving 238 students from preschool to 5th grade during school year 2015-16.

Creative Minds International PCS, in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995, invites all interested and qualified vendors to submit proposals to provide goods and services in the following areas for SY 2015-16 beginning August 24th, 2015:

- Aftercare Services
- Special Education Services (SPED) and related services including but not limited to, Psychological Assessments and Special Education Evaluations
- Substitute Teaching Staff

Proposals are due no later than 5:00 pm August 21st, 2015. Questions and proposals may be emailed to procurement@creativemindspcs.org.

Assumptions and Agreements
Proposals will not be returned. Creative Minds International PCS reserves the right to dismiss a proposal without providing a reason. Creative Minds International PCS reserves the right to terminate a contract at any time. Creative Minds International PCS reserves the right to renew a contract at the end of the first year for the next school year, based on mutual agreement of both parties.

Submission Information
Bids must include evidence of experience in the field, qualifications and estimated fees. Please send proposals to James Lafferty-Furphy at procurement@creativemindspcs.org - 202-588-0370 x112.

Basis for Award of Contract
Creative Minds International PCS reserves the right to award a contract as it determines to be in the best interest of the school.

Proposals must be received by 5:00 pm August 21st, 2015, 5PM EST. Late proposals will not be accepted.

D.C. INTERNATIONAL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Legal Services

The District of Columbia International Public Charter School invites all interested and qualified parties to submit proposals to provide legal services related to site control, financing, construction and development-related contracts, and other matters as they arise to support the development of a permanent facility at the former Walter Reed Army Medical Center. Proposals are due no later than 12:00 PM on September 4, 2015. The complete RFP can be obtained by contacting rfp@buildinghope.org.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY

FISCAL YEAR 2016

SAT Preparation Expansion Grant

Request for Application (RFA) Release Date: September 4, 2015

Grant Application Submission Deadline: October 5, 2015 (no later than 4:00 PM EST)

The Office of the State Superintendent of Education (OSSE) – Division of Postsecondary & Career Education is soliciting grant applications for the District of Columbia SAT Preparation Expansion Grant. The goal of the SAT Preparation Expansion Grant is to increase the number of District high school students receiving high quality test preparation services in school year 2015-2016. Additionally, OSSE seeks to understand which type or types of SAT preparation programs have the greatest positive impact on student scores for the greatest number of District students as well as which type or types of SAT preparation programs may be most effective for specific student populations. The grant is supported through local funds as part of a strategic citywide effort to ensure all District students are college and career ready.

Eligibility: OSSE will make these grants available through a competitive process. Eligible applicants include SAT exam test preparation companies, in partnership with District of Columbia Local Education Agencies (LEAs), who shall provide one or more of three (3) specific SAT preparation program options:

- *Option 1: Curriculum Integration*: OSSE will fund programs that train academic subject area teachers to integrate SAT strategies and content into pre-existing classroom curriculum.

- *Option 2: LEA-provided SAT Test Preparation Course*: OSSE will fund programs that support school-employed staff to teach a standalone SAT course or courses as part of the school day.

- *Option 3: Company-provided SAT Preparation Course*: OSSE will fund programs that provide an external instructor or instructors directly from the test preparation company to teach a standalone SAT preparation and strategy course for students. Applicants interested in option three must provide a funding match of 2:1, with the applicant providing the 1/3 portion.

Test preparation companies may choose to apply for as many options as they see fit in partnership with one or more LEAs. However, eligible applicants shall offer the SAT preparation course during the school day and for credit (at least ½ a credit). In addition, SAT preparation program offerings must occur no earlier than October 2015 and no later than May 2016.

Eligible applicants must secure partnerships with the LEAs with which they intend to work and will be required to verify these partnerships. Applicants must submit a Partnership Agreement for each partnership, signed by each partner, that details the parameters of the partnership and demonstrates each partner's role in the planning and implementation of programs and services. Any qualified test preparation company may serve as the lead applicant for funding and will be fully responsible for fiscal management of funds awarded by OSSE.

OSSE will be holding two information sessions to answer questions about the RFA and grant competition. Please see the full RFA for a detailed timeline of events.

Length of Award: The grant award period is one year.

Available Funding for Award: The total funding available for this award period is $225,000. Eligible applicants may apply for any amount up to the full amount but may be awarded amounts less than requested.

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 each 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 Postsecondary and Career Education will make all final award decisions.

For additional information regarding this grant competition, please contact:

Amelia Hogan
Coordinator, Early College & Career Awareness
Division of Postsecondary and Career Education
810 First Street NE, 3rd Floor, Washington, DC 20002
Phone: 202-481-3481
Email: amelia.hogan@dc.gov

The RFA will be available on www.osse.dc.gov/sat-preparation-grant. Applications will be submitted through the Enterprise Grants Management System (EGMS).

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

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

VACANT: 7C06

Petition Circulation Period: **Monday, August 24, 2015 thru Monday, Sept. 14, 2015**
Petition Challenge Period: **Thursday**, **Sept. 17, 2015 thru Wednesday, Sept. 23, 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**.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Certification of Filling a Vacancy
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections "Board" from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Shirley Adelstein
Single-Member District 3F02

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE REGISTRATION SUMMARY

As Of JULY 31, 2015

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	39,877	2,547	685	126	114	10,442	**53,791**
2	26,153	4,999	193	154	93	9,357	**40,949**
3	33,473	6121	341	119	87	10,007	**50,148**
4	44,529	2,078	496	67	120	8,279	**55,569**
5	47,304	1,970	537	87	139	8,158	**58,195**
6	48,495	6021	485	166	148	11,922	**67,237**
7	44,801	1155	396	29	109	6,268	**52,758**
8	40,983	1,118	355	23	131	6,617	**49,227**
Totals	325,615	26,009	3,488	771	941	71,050	**427,874**
Percentage By Party	**76.10%**	**6.08%**	**.82%**	**.18%**	**.22%**	**16.61%**	**100.00%**

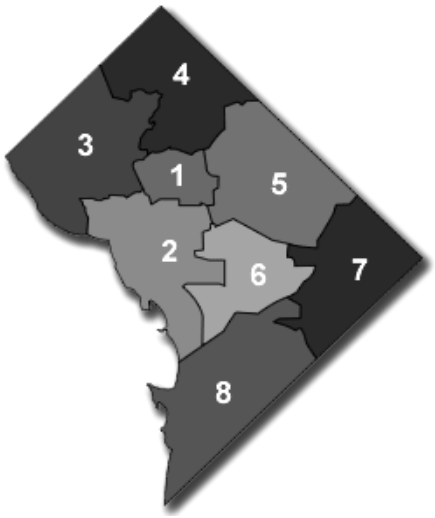
DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF

VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS

AS OF THE END OF JULY 31, 2015

COVERING CITY WIDE TOTALS BY:

WARD, PRECINCT AND PARTY



ONE JUDICIARY SQUARE
441 4TH STREET, NW SUITE 250N
WASHINGTON, DC 20001
(202) 727-2525
http://www.dcboee.org

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 1 REGISTRATION SUMMARY

As Of JULY 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,236	28	7	2	5	194	**1,472**
22	3,496	325	29	14	10	908	**4,782**
23	2,448	172	44	14	5	651	**3,334**
24	2,198	234	32	10	6	692	**3,172**
25	3,252	360	51	10	4	958	**4,635**
35	2,974	174	49	13	2	770	**3,982**
36	3,840	244	65	7	9	1,004	**5,169**
37	2,949	121	51	8	8	687	**3,824**
38	2,602	122	56	11	10	674	**3,475**
39	3,875	199	81	7	13	928	**5,103**
40	3,700	193	99	11	13	1,017	**5,033**
41	3,149	176	66	12	15	981	**4,399**
42	1,638	68	30	2	8	433	**2,179**
43	1,593	59	18	3	4	338	**2,015**
137	927	72	7	2	2	207	**1,217**
TOTALS	**39,877**	**2,547**	**685**	**126**	**114**	**10,442**	**53,791**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 2 REGISTRATION SUMMARY

As Of JULY 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
2	737	163	10	10	9	471	**1,400**
3	1,410	351	16	7	10	631	**2,425**
4	1,528	434	5	12	3	695	**2,677**
5	1,850	558	10	12	6	653	**3,089**
6	2,027	789	20	9	15	1,117	**3,977**
13	1,129	208	6	3	0	355	**1,701**
14	2,465	411	20	14	7	823	**3,740**
15	2,641	311	21	18	10	778	**3,779**
16	3,191	373	20	14	10	809	**4,417**
17	3,922	518	31	21	10	1,215	**5,717**
129	1,996	328	13	13	4	761	**3,115**
141	1,965	241	13	13	7	566	**2,805**
143	1,292	314	8	8	2	483	**2,107**
TOTALS	**26,153**	**4,999**	**193**	**154**	**93**	**9,357**	**40,949**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 3 REGISTRATION SUMMARY

As Of JULY 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,156	375	17	3	2	526	**2,079**
8	2,250	597	28	4	7	722	**3,608**
9	1,050	447	8	11	6	444	**1,966**
10	1,634	390	17	4	6	609	**2,660**
11	2,992	858	38	16	9	1,169	**5,082**
12	415	169	1	0	2	178	**765**
26	2,464	297	19	9	4	762	**3,555**
27	2,258	255	19	10	1	558	**3,101**
28	2,095	474	32	8	4	680	**3,293**
29	1,204	222	11	5	7	381	**1,830**
30	1,229	205	14	3	4	271	**1,726**
31	2,220	301	18	3	7	537	**3,086**
32	2,469	290	21	3	4	556	**3,343**
33	2,600	294	28	7	6	608	**3,543**
34	2,934	360	29	14	4	865	**4,206**
50	1,932	244	13	5	7	433	**2,634**
136	670	91	7	3	1	253	**1,025**
138	1,901	252	21	11	6	455	**2,646**
TOTALS	**33,473**	**6,121**	**341**	**119**	**87**	**10,007**	**50,148**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 4 REGISTRATION SUMMARY
As Of JULY 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	1,974	66	29	6	4	360	**2,439**
46	2,622	77	37	5	11	495	**3,247**
47	2,787	145	34	3	11	685	**3,665**
48	2,569	118	29	6	4	518	**3,244**
49	758	42	16	0	4	182	**1,002**
51	3,083	504	24	6	5	602	**4,224**
52	1,219	162	4	0	2	211	**1,598**
53	1,136	66	20	1	5	233	**1,461**
54	2,242	76	25	1	5	444	**2,793**
55	2,301	73	19	2	9	418	**2,822**
56	2,801	85	31	7	7	594	**3,525**
57	2,287	66	36	6	12	418	**2,825**
58	2,107	50	17	3	4	335	**2,516**
59	2,440	87	28	7	7	395	**2,964**
60	1,914	60	20	1	5	566	**2,566**
61	1,477	49	11	1	2	243	**1,783**
62	3,031	115	27	2	3	348	**3,526**
63	3,276	121	52	2	11	613	**4,075**
64	2,126	56	16	5	4	313	**2,520**
65	2,379	60	21	3	5	306	**2,774**
Totals	**44,529**	**2,078**	**496**	**67**	**120**	**8,279**	**55,569**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of JULY 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	3,941	175	66	10	5	899	**5,096**
44	2,576	213	27	5	14	609	**3,444**
66	4,248	100	40	4	6	497	**4,895**
67	2,803	91	21	2	7	379	**3,303**
68	1,749	122	25	8	6	344	**2,254**
69	1,980	65	13	2	11	254	**2,325**
70	1,385	71	20	1	3	200	**1,680**
71	2,292	62	25	2	9	306	**2,696**
72	3,986	103	30	5	13	659	**4,796**
73	1,794	80	26	5	4	318	**2,227**
74	4,016	206	56	8	10	785	**5,081**
75	3,203	157	57	16	6	728	**4,167**
76	1,272	57	13	2	4	248	**1,596**
77	2,531	99	20	5	10	428	**3,093**
78	2,715	78	34	3	8	441	**3,279**
79	1,882	74	16	2	9	325	**2,308**
135	2,842	174	39	6	10	511	**3,582**
139	2,089	43	9	1	4	227	**2,373**
TOTALS	**47,304**	**1,970**	**537**	**87**	**139**	**8,158**	**58,195**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 6 REGISTRATION SUMMARY

As Of JULY 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	3,787	414	42	14	9	982	**5,248**
18	4,321	300	41	15	11	952	**5,640**
21	1,132	58	13	2	1	256	**1,462**
81	4,297	347	40	8	17	858	**5,567**
82	2,360	234	28	10	8	549	**3,189**
83	4,012	502	37	16	8	1,054	**5,629**
84	1,862	403	23	6	6	497	**2,797**
85	2,575	483	20	12	9	701	**3,800**
86	2,048	251	25	6	7	438	**2,775**
87	2,614	227	19	3	9	530	**3,402**
88	2,057	274	14	3	8	493	**2,849**
89	2,408	609	23	12	5	708	**3,765**
90	1,534	245	11	6	9	454	**2,259**
91	3,822	364	37	14	15	921	**5,173**
127	3,701	265	48	13	8	756	**4,791**
128	2,190	198	34	7	7	595	**3,031**
130	711	280	7	3	2	262	**1,265**
131	1,738	412	10	13	5	544	**2,722**
142	1,326	155	13	3	4	372	**1,873**
TOTALS	**48,495**	**6,021**	**485**	**166**	**148**	**11,922**	**67,237**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of JULY 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,378	82	11	2	4	241	**1,718**
92	1,558	36	11	2	6	237	**1,850**
93	1,428	39	20	2	4	199	**1,692**
94	1,929	46	18	0	3	284	**2,280**
95	1,471	41	15	0	2	246	**1,775**
96	2,236	63	20	0	7	345	**2,671**
97	1,390	37	17	1	4	192	**1,641**
98	1,736	39	22	2	4	238	**2,041**
99	1,260	37	13	2	3	199	**1,514**
100	2,080	42	16	1	3	245	**2,387**
101	1,523	24	14	1	5	161	**1,728**
102	2,289	51	19	0	8	309	**2,676**
103	3,321	75	33	3	12	516	**3,960**
104	2,693	71	22	2	10	377	**3,175**
105	2,280	62	21	3	4	363	**2,733**
106	2,706	50	18	0	9	382	**3,165**
107	1,547	43	13	1	4	212	**1,820**
108	1,075	27	7	1	0	120	**1,230**
109	898	33	5	0	1	87	**1,024**
110	3,630	92	21	4	6	406	**4,159**
111	2,475	59	25	0	6	373	**2,938**
113	1,963	53	21	1	1	236	**2,275**
132	1,935	53	14	1	3	300	**2,306**
TOTALS	**44,801**	**1,155**	**396**	**29**	**109**	**6,268**	**52,758**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of JULY 31, 2015

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	1,944	54	10	0	7	277	**2,292**
114	2,951	99	23	1	18	492	**3,584**
115	2,643	63	18	7	8	593	**3,332**
116	3,727	93	35	2	11	581	**4,449**
117	1,848	43	19	0	7	298	**2,215**
118	2,445	60	25	0	4	391	**2,925**
119	2,690	105	35	0	11	518	**3,359**
120	1,789	33	16	2	3	277	**2,120**
121	2,965	68	25	1	9	428	**3,496**
122	1,533	38	14	0	6	209	**1,800**
123	1,963	87	24	3	11	293	**2,381**
124	2,345	53	13	1	4	317	**2,733**
125	4,115	97	31	2	11	655	**4,911**
126	3,253	103	31	2	11	604	**4,004**
133	1,167	33	10	0	1	159	**1,370**
134	1,934	37	21	1	3	275	**2,271**
140	1,671	52	5	1	6	250	**1,985**
TOTALS	**40,983**	**1,118**	**355**	**23**	**131**	**6,617**	**49,227**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 6/30/2015 and 7/31/2015

NEW REGISTRATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Beginning Totals	**350,684**	**28,560**	**3,820**	**779**	**1,051**	**79,096**	**463,990**
Board of Elections Over the Counter	36	1	1	0	0	6	**44**
Board of Elections by Mail	37	7	2	0	2	21	**69**
Board of Elections Online Registration	3	1	0	0	0	1	**5**
Department of Motor Vehicle	1,088	174	20	23	2	328	**1,635**
Department of Disability Services	4	0	0	0	0	0	**4**
Office of Aging	0	0	0	0	0	0	**0**
Federal Postcard Application	1	0	0	0	0	1	**2**
Department of Parks and Recreation	0	0	0	0	0	0	**0**
Nursing Home Program	0	0	0	0	0	0	**0**
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0	**0**
Department of Corrections	0	0	0	0	0	0	**0**
Department of Human Services	4	0	0	0	0	3	**7**
Special / Provisional	0	0	0	0	0	0	**0**
All Other Sources	29	0	0	0	1	16	**46**
+Total New Registrations	**1,202**	**183**	**23**	**23**	**5**	**376**	**1,812**

ACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Reinstated from Inactive Status	411	35	1	1	0	93	**541**
Administrative Corrections	7	0	0	0	18	209	**234**
+TOTAL ACTIVATIONS	**418**	**35**	**1**	**1**	**18**	**302**	**775**

DEACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Changed to Inactive Status	25,398	2,683	344	34	111	8,360	**36,930**
Moved Out of District (Deleted)	1	0	0	0	0	0	**1**
Felon (Deleted)	1	0	0	0	0	0	**1**
Deceased (Deleted)	1,016	65	6	0	2	99	**1,188**
Administrative Corrections	448	45	7	24	2	57	**583**
-TOTAL DEACTIVATIONS	**26,864**	**2,793**	**357**	**58**	**115**	**8,516**	**38,703**

AFFILIATION CHANGES	DEM	REP	STG	LIB	OTH	N-P	
+ Changed To Party	332	62	13	30	4	156	
- Changed From Party	-157	-38	-12	-4	-22	-364	
ENDING TOTALS	**325,615**	**26,009**	**3,488**	**771**	**941**	**71,050**	**427,874**

DEPARTMENT OF ENERGY AND ENVIRONMENT

FISCAL YEAR 2015

PUBLIC NOTICE

AIR QUALITY TITLE V OPERATING PERMIT AND GENERAL PERMIT FOR FORT MYER CONSTRUCTION CORPORATION PLANT #2

Notice is hereby given that Fort Myer Construction Corporation has applied for a Title V air quality permit pursuant to the requirements of Title 20 of the District of Columbia Municipal Regulations, Chapters 2 and 3 (20 DCMR Chapters 2 and 3) to operate a 95.63 million Btu per hour (MMBtu/hr) dual fuel fired burner; a 2.1 MMBtu/hr natural gas fired oil heater; a baghouse for operational emissions; various storage piles of rock and asphalt, incidental welding rod operations for repair of equipment and seven (7) aboveground fuel and asphalt production storage tanks associated with the production of paving asphaltic concrete at its Plant #2 facility located at 1155 W Street NE, Washington DC. The contact person for the facility is Ken Cucina, Plant Manager at (202) 636-9535.

With the potential to emit (PTE) approximately 35.6 tons per year (TPY) of oxides of nitrogen (NO_x) and 26.8 TPY of volatile organic compounds (VOCs), the source has the potential to emit greater than the District's major source thresholds of 25 TPY of NO_x and VOCs. Additionally, the facility has the potential to emit approximately 148.9 TPY of carbon monoxide (CO), which exceeds the District's major source threshold of 100 TPY of CO. Therefore, the facility is classified as a major source of air pollution and is subject to 20 DCMR Chapter 3 and must obtain an operating permit under that regulation.

The Department of Energy and Environment (DOEE) has reviewed the permit application and related documents and has made a preliminary determination that the applicant meets all applicable air quality requirements promulgated by the U.S. Environmental Protection Agency (EPA) and the District. Therefore, draft permit #030-I2 has been prepared.

The application, the draft permit, and all other materials submitted by the applicant [except those entitled to confidential treatment under 20 DCMR 301.1(c)] considered in making this preliminary determination are available for public review during normal business hours at the offices of the Department of Energy and Environment, 1200 First Street NE, 5th Floor, Washington DC 20002. Copies of the draft permit and related fact sheet are available at http://doee.dc.gov.

A public hearing on this permitting action will not be held unless DOEE has received a request for such a hearing within 30 days of the publication of this notice. Interested parties may also submit written comments on the permitting action. Hearing requests or comments should be directed to Stephen S. Ours, DDOE Air Quality Division, 1200 First Street NE, 5th Floor, Washington DC 20002. Questions about this permitting action should be directed to Olivia Achuko at (202) 535-2997 or olivia.achuko@dc.gov. No comments or hearing requests postmarked after September 21, 2015 will be accepted.

DEPARTMENT OF HEALTH (DOH)
COMMUNITY HEALTH ADMINISTRATION (CHA)
NUTRITION AND PHYSICAL FITNESS BUREAU
NOTICE OF FUNDING AVAILABILITY (NOFA)

Request for Applications (RFA)
RFA# CHA_HFAI090415

Healthful Food Access Initiatives

The Government of the District of Columbia, Department of Health (DOH), Community Health Administration (CHA) is soliciting applications from qualified applicants to provide innovative healthful food access programming to income eligible District residents.

Approximately **$1,175,000** in FY2016 locally appropriated funds will become available for up to three awards to provide for two separate healthful food access funding opportunities. The first opportunity will be to provide pop up style markets at elementary schools in Wards 7 and 8. The second opportunity involves administering a farmers' market incentive program for the Fiscal Year 2016 season. All awards resulting from this RFA are contingent upon the continued availability of local funds.

Eligible applicants are nonprofit organizations or businesses with a demonstrated track record in providing healthful food, nutrition and wellness education services to culturally diverse limited income District residents. **Eligible Use of Funds**: Applicants may propose projects which will increase access to and consumption of healthful foods by the target population. Awards are projected to begin in October, 2015.

Application Process: The Request for Application #CHA_HFAI090415 will be released on Friday September 4, 2015. The RFA will be posted on the Office of Partnerships and Grant Services website, under the District Grants Clearinghouse http://opgs.dc.gov/page/opgs-district-grants-clearinghouse. A limited number of copies of the RFA will be available for pick up at DOH/CHA offices located at 899 North Capitol Street, NE Washington, DC 20002 3rd floor.

The deadline for submission is Friday, September 25, 2015 at 3:00 pm. All applications must be received in the DOH/CHA suite on the third floor by 3:00 pm. Late submissions and incomplete applications will not be forwarded to the review panel.

A Pre-Application Conference will be held at the CHA offices located at 899 North Capitol Street, NE Washington, DC 20002 3rd floor on **Friday**, **September 11, 2015 from 1 pm to 2 pm**. Please contact Amelia Peterson-Kosecki at 202.442.9140 or Amelia.peterson-kosecki@dc.gov for additional information.

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

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Travel Agency Services

KIPP DC is soliciting proposals from qualified vendors for Travel Agency Services. The RFP can be found on KIPP DC's website at http://www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on August 28, 2015. Questions can be addressed to kyle.stewart@kippdc.org.

LEE MONTESSORI PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Project Management, Architect or General Contractor Services

Lee Montessori Public Charter School, an approved 501(c)3 organization, is seeking proposals from qualified firms to provide project management, architect, or general contractor services related to the development of a new facility. The specific facility has yet to be identified, but may include the renovation or construction to a commercial or former public school facility. The project may be in partnership with Building Hope, the Charter School Incubator Initiative, the Shaed School, LLC, or another development partner. The method of delivery may include either design/build, construction manager at risk, or design/bid/build. Proposals are due no later than 12:00pm on September 9, 2015. The complete RFP can be obtained by contacting rfp@buildinghope.org. Please indicate which RFP you are requesting in the subject line.

MERIDIAN PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Special Education Related Services

Meridian Public Charter School (MPCS) requests multi year (2yr) proposals from qualified individuals and/or agencies interested in providing special education services to MPCS students with disabilities designated by their respective IEPs for the 2015¬2016 SY. Meridian Public Charter School will be accepting bid until Friday August 28th.

Ancillary and Related Services shall include, but may not be limited to, the following:

- Speech and Language Pathology (Service Delivery/ Evaluations)
- Occupational Therapy (Service Delivery/ Evaluations)
- Physical Therapy (Service Delivery/ Evaluations)
- Behavior and Social Therapy/ Counseling
- School Social Workers
- School Psychologist (Service Delivery/ Evaluations)
- Board Certified Behavior Analyst (FBA/BIP)
- Assistive Technology
- Dedicated Aides (Academic/Behavioral/Functional support)

Specific proposal for bids and all necessary criteria may be obtained from:

Kendria Boyd, M.Ed.
Director of Special Education
Meridian Public Charter School
KBoyd@Meridian-dc.org

PERRY STREET PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Multiple Services

The Perry Street Prep Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for the following services:

- Speech and Language Therapy
- Occupational Therapy

Please go to www.pspdc.org/bids to view a full RFP offering, with more detail on scope of work and bidder requirements.

Proposals shall be received no later than 5:00 P.M., Friday, September 4, 2015.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator
gjackson@pspdc.org

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. Food Service). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF PUBLICATION: SOLICITATION FOR DEVELOPMENT FOR FRANKLIN SCHOOL

The Government of the District of Columbia (the "District"), through the Office of the Deputy Mayor for Planning and Economic Development ("DMPED"), is issuing a solicitation for "pre-qualified respondents" ("Respondents"), per the Request for Qualifications ("RFQ"), issued February 9th, 2015, and closed on May 4th, 2015, to respond for the disposition and development of the following site with the associated issuance dates:

- **Franklin School, Square 0285 Lot 0808;**
  - Request for Proposals ("RFP")
  - Issuance Date: August 21, 2015

DMPED invites "pre-qualified respondents" ("Respondents") to respond to this RFP for the redevelopment of the Franklin School in Northwest, Washington, D.C. There will be Pre-Response Site Visits exclusive to the "pre-qualified respondents" ("Respondents") held onsite.

For more information and project updates, please visit www.dmped.dc.gov.

ST. COLETTA SPECIAL EDUCATION PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

St. Coletta Special Education Public Charter School is currently accepting proposals from qualified contractors to provide the following services for our Washington, DC facility. Email jsurratt@stcoletta.org, to request full RFP.

- **Evening custodial services**
- **Landscaping and lawn maintenance services**
- **Uniformed and unarmed security services**

Contact:
Jamar Surratt, Facilities Manager
St. Coletta of Greater Washington, Inc.
(202) 350-8680 Office

Deadline & Submission:
Submit your proposal no later than August 27th, 2015. Proposals received after this date will not be considered.

WILLIAM E. DOAR JR. PUBLIC CHARTER SCHOOL FOR THE PERFORMING ARTS

REQUEST FOR PROPOSALS

The William E. Doar Jr. Public Charter School for the Performing Arts, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest from Vendors or Consultants for the following tasks and services:

Occupational Therapy - W. E. Doar Jr. Public Charter school is soliciting a vendor to provide OT Services for the 2015-2016 year.

Proposal Submission

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **2:00 p.m. EST on September 4, 2015** unless otherwise stated in associated RFP's. Proposals should be emailed to bids@wedjschool.us

For information regarding the school please see: www.wedjschool.us

No phone call submission or late responses please. Interviews, samples, demonstrations will be scheduled at our request after the review of the proposals only.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18823 of Peggy Joyner, as amended[1] pursuant to 11 DCMR § 3103.2 for area variances from the lot occupancy requirements under § 403 of the Zoning Regulations, the rear yard requirements under § 404 of the Zoning Regulations, and the nonconforming structure requirements under § 2001.3 of the Zoning Regulations, to construct additions to an existing row house dwelling and detached garage located at 738 Quincy Street, N.W. (Square 3130, Lot 55).

EXPEDITED REVIEW CALENDAR:	September 6, 2014
HEARING DATES:	November 18, 2014, December 9, 2014, and February 3, 2015
DECISION DATE:	February 3, 2015

DECISION AND ORDER

On June 26, 2014, Peggy Joyner, (the "Applicant) filed an application with the Board of Zoning Adjustment (the "Board") seeking special exception relief from the Zoning Regulations, to allow additions to an existing nonconforming dwelling and detached garage, and an elevated walkway connecting the new second-story garage with the main floor of the existing dwelling. Following revisions to the proposal and a request for a variance instead of a special exception, the Board held a full public hearing on the matter. After the hearing, the Board voted to approve the proposal, as revised.

PRELIMINARY MATTERS

Authorization. The Applicant in this case is Peggy Joyner, owner of the property located at 738 Quincy Street, N.W. She was represented by Catarina Ferreira, an architect with the firm "archi-TEXTUAL, PLLC." (Exhibit 13.)

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent by the Office of Zoning to the Applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission ("ANC") 4C, and the District of Columbia Office of Planning ("OP").

The Initial Special Exception Application. The application was filed by Ms. Ferreira on June 26, 2014, seeking a "special exception"[2] encompassing the lot occupancy requirements under § 403

[1] The Applicant initially sought a special exception, but as will be explained in greater detail, she amended her request to seek variance relief from the lot occupancy requirements, the rear yard requirements, and the nonconforming structure requirements. The caption reflects these changes.

[2] There is no reference to § 223 in the initial filings. However, the Board assumes the Applicant's initial intent was to seek relief under this provision of the Zoning Regulations.

of the Zoning Regulations, to allow the rebuilding of an existing screened porch at the residence, the addition of a second story onto an existing one-story garage building at the rear of the lot, and an elevated walkway to connect the garage to the dwelling. (See, Exhibit 1, Application and Exhibit 6, Self-Certification form.) The Applicant asserted that the existing nonconforming lot occupancy was 69%, and the proposal would result in a new lot occupancy of 70%. (Exhibit 6, Self-Certification form, and Exhibit 5, Architect's Statement, dated June 20, 2014.)

The Applicant also stated that the special exception application qualified for "Expedited Review" pursuant to § 3118 of the Regulations. Accordingly, she requested a "Waiver of Public Hearing for Expedited Review" (Exhibit 2), and the matter was scheduled for the Expedited Review Calendar on September 6, 2014.

The Request for Variance Relief. The Applicant did not file a formal request to amend her application or to remove the application from the Expedited Review Calendar. However, the Board treats her submissions as such. The Applicant filed a Statement dated September 9, 2014, clarifying that she was requesting area variances from the lot occupancy requirements and the rear yard requirements. (Exhibit 27.) Ms. Ferreira explained that the existing lot occupancy was actually 70%, not 69% as she had initially thought; and the proposed additions would result in a lot occupancy of 80%, not 70% as she had initially thought. The Board therefore concluded that the proposed project would not qualify for special exception relief under § 223[3]; and that variance relief is required for this project.

Accordingly, the application was removed from the Expedited Review Calendar and set for public hearing on November 18, 2014. The hearing was thereafter continued to December 9, 2014, due to the Applicant's initial failure to post placards at the property in accordance with the requirements under § 3113. Thereafter, the Applicant filed an Affidavit of Posting indicating that she had complied with the posting requirements. (Exhibit 31.)

ANC 4C Report. The subject site is located within the jurisdiction of ANC 4C, which is automatically a party to this application. By a Report dated October 30, 2014, ANC 4C indicated that, at a properly noticed meeting on that date, with a quorum present, the ANC voted 7-0-1 to recommend approval of the request for relief.

Requests for Party Status. The Board received no requests for party status.

Persons in Support. No persons appeared at the hearing to testify in support of the application. However, the Board received letters in support from four nearby neighbors, two of whom were located adjacent to the property (Exhibits 14 and 29) and two of whom were located across the alley from the subject property. (Exhibits 15 and 28.)

Persons in Opposition. No persons appeared at the hearing to testify in opposition to the application, nor were any letters received from persons in opposition to the application.

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[3] Under § 223, the granting of relief may not result in a lot occupancy that exceeds 70%. (11 DCMR §223.3.)

BZA APPLICATION NO. 18823
PAGE NO. 3

Government Reports:

Office of Planning ("OP") Report. OP reviewed the application and prepared a report stating it could not recommend approval of the variance relief, stating the alleged exceptional qualities of the lot did not result in practical difficulty that was sufficient to warrant the extent of the relief proposed. (Exhibit 32.) OP noted, however, that the proposal would not result in a detriment to the public good. Because the lot is next to public space, OP stated that the lot is perceived to be larger than it is, and the lot coverage therefore appears to be a smaller percentage than it actually is. OP opined further that the proposal would begin to erode the intent of the R-4 District and would, thus, impair the zone plan. However, OP also noted that "the proposed additions are similar in size to other similar deck and walkway additions in other R-4 districts and are essentially accessory uses to the main residential use of the property as they are one-story and unenclosed." Finally, OP notes that the project would also require relief from § 2001.3, since the existing structures are nonconforming with respect to lot occupancy.

District of Columbia Department of Transportation ("DDOT"). DDOT submitted a report stating that it has no objection to the application. (Exhibit 26.)

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 738 Quincy Street, N.W., in Square 3130, Lot 55, in the R-4 Zone District.

2. The property is a rectangular lot approximately 2,434 square feet in area, with a frontage of 20 feet on Quincy Street.

3. The rear of the lot is 20 feet in width and abuts a 15-foot wide public alley.

4. The lot is an end row lot that is adjacent to an empty enclosed public space to the west. The public space and the subject property are at the same elevation.

5. The lot is improved with a row dwelling and a one-story garage at the rear of the property. At the rear of the dwelling, there is a flight of stairs that lead to the rear yard.

6. The nearby properties are also predominantly row dwellings.

7. From east to west along the alley side of the block, there is a drop in elevation of about 10 feet between the adjacent property to the east, and the subject property.

The Proposal

8. The Applicant proposes the following: enclosure of the existing porch at the dwelling, construction of a new second-story addition located above the existing one-story detached

garage (to be used as a gym), construction of a new wooden deck at the rear of the dwelling with stairs to the rear yard, and construction of an elevated walkway connecting the new second-story garage with the main floor of the existing dwelling.

9. During the course of the proceedings, the Applicant reduced the width of the elevated walkway from four feet to three feet. (Hearing Transcript ("T."), February 3, 2015, p. 33-34.)

The Zoning Relief Required

10. Subsection 403.2 allows a maximum lot occupancy of 60% in the R-4 Zone District. The dwelling and garage currently occupy 70% of the lot. With the additions described above, the lot occupancy will be 79%.[4.] Thus, an area variance is needed from the requirements of § 403.2.

11. Subsection 404.1 requires a minimum rear yard of 20 feet in the R-4 Zone District. The rear yard at the property is currently 6.5 feet. Construction of the proposed additions will not change the size of the rear yard. Still, an area variance is needed from the requirements of § 404.1.

12. The lot occupancy and rear yard at the property are both nonconforming. However, only the nonconforming lot occupancy will be increased (from 70% to 79%). Because this nonconformity will be increased, relief from the requirements of § 2001.3 is also required.

Exceptional Condition

13. Because of the significant change in elevation on the block, the subject property is at a lower grade than all of the adjacent properties on the block to the east.

14. When comparing the subject property to other properties on the block, there is a significant difference in height between the main level of the dwelling and the rear yard. Most of the properties along the block are about ½ story above the elevation of the rear yard. In contrast, the first floor of the dwelling at the subject property is nearly a full story above the level of the rear yard.

15. The only other property on the block at the same grade as the subject property is the public space to the west. Because the public space is unoccupied, and because it is at the same grade as the subject property, it appears that the two properties are one.

Practical Difficulty

16. Due to the significant height between the subject dwelling and the yard, a long flight of stairs is required to reach the yard level.

[4] The initial proposal resulted in a lot occupancy over 82%. However, the Applicant revised the proposed walkway, resulting in slightly decreased lot occupancy of 79%. (T., February 3, 2015, p. 33).

17. It is practically difficult to go down a full flight of steps to reach the rear yard. Therefore, the Applicant needs a rear deck addition to have convenient access to an outdoor area for grilling and other activities.

18. It is practically difficult to go down a full flight of steps, walk across the yard, and go up another full flight of steps to reach the second story of the garage. Therefore, for convenient access, the Applicant needs an elevated walkway connecting the dwelling to the second story of the garage.

19. The long flight of stairs, rear deck addition, and elevated walkway all contribute to additional lot occupancy.

The Impact of the Proposed Additions

20. Most of the row dwellings in the Square likely exceed the lot occupancy requirements of the R-4 Zone District.

21. The renovation of the existing garage will allow for additional off-street parking.

22. The proposed privacy fence/trellis element under the walkway, and the railings along the deck and walkway, will aid in the privacy and separation of rear yard uses from the adjacent neighbor to the east.

23. The 2,400 square foot area of public space adjacent to the site will help to minimize the impact of the proposed additions. Specifically, the proposed bulk of the additions will be perceived in conjunction with the adjacent open space. Thus, in terms of the "perceived visual impact", the proposed additions will appear at a mass or bulk that is closer to 40% of the lot, due to the adjacency to the fairly large public space area.

24. When viewed from the public alley, the new garage structure will be a visual improvement.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07(g) (3) (2008) to grant variance relief from the strict application of the Zoning Regulations. As noted by the Court of Appeals, the Applicant must meet a three-prong test for the Board to grant relief:

> An applicant must show, first, that the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in the property; second, that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and third, that granting the variance will do no harm to the public good or to the zone plan.

Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 941 (D.C. 1987).

An applicant for a use variance must show that strict compliance with the applicable regulation will result in an undue hardship while an applicant for an area variance must meet the less stringent standard that compliance will result in exceptional practical difficulties. (11 DCMR §3103.7.)

As noted, the Applicant is seeking area variances from the lot occupancy requirement (§ 403), the rear yard requirements (§ 404), and the nonconforming structure requirements (§ 2001.3). Therefore, the "practical difficult[y]" standard will be applied.

The Board finds that the drop in elevation at the subject property presents an exceptional condition. This exceptional conditional leads to a practical difficulty in the Applicant's ability to access outdoor space at the dwelling, and the Applicant's ability to access the proposed second floor garage.

As explained in the Findings of Facts, the elevation at the property results in a main floor that is a full story above the yard level. Because of this fact, a long flight of stairs is necessary to reach the yard level, the only existing outdoor space at the property. Construction of a deck would provide more convenient outdoor space, but would contribute to additional lot occupancy. Similarly, the only way to access the proposed second floor at the garage would be to walk down a full flight of stairs, walk across the yard, and then walk up another full flight of stairs. Construction of an elevated walkway connecting the dwelling and the garage would remedy this difficulty but would also contribute to increased lot occupancy.

OP states in its report that the Applicant has not established the existence of an exceptional condition. (Exhibit 32.) OP explains that neither the fact that the property is nonconforming, nor the fact that the property is adjacent to public space, constitute an exceptional condition. The Board agrees. However, OP did not address the drop in elevation at the property which results in the main floor of the dwelling being significantly above grade, and the access problems which stem from this fact. At the continued hearing on February 3, 2015, the Applicant submitted photographs which depicted this difference in grade, along with a written explanation. (Exhibit 35, Photographs titled "Contextual Analysis: Square 3130 – Differences in Height Between Main Level & Rear Yard".) These submissions confirmed the Board's view that the grade change is an exceptional condition at the property.

Turning to the third prong of the variance test, the Board concludes that the proposed project will not impair the public good or the zone plan. As discussed by the Applicant and by OP, the property is an end row house that is adjacent to a landscaped enclosed public space area that is at the same grade as the subject property. As OP states, the proposed bulk of the additions will be perceived in conjunction with the adjacent open space, and the perceived visual impact will be significantly minimized. (Finding of Fact 23.) Furthermore, the renovation of the existing garage will allow for additional off-street parking and will be a visual improvement when viewed

from the public alley. (Findings of Fact 21and 24.) Finally, the proposed privacy fence/trellis under the walkway, and the railings along the deck and walkway, will both aid in the privacy and separation of rear yard uses with the neighbor to the east. (Finding of Fact 22.)

OP claims that the proposed additions will impair the zone plan. It reasons that there will be a significant increase in lot occupancy for one of the largest row house lots in the Square, and that this increase begins to erode the intent and purpose of the R-4 regulations. However, as even OP observes, the proposed additions are similar in size to other similar deck and walkway additions in other R-4 Districts, and most of the row dwellings in the Square already exceed the lot occupancy requirements of the zone. (Exhibit 32, p. 3 and 4; See, also, Applicant's Exhibit 35, "Lot Occupancy Analysis: Square 3130 showing several properties with lot occupancy of 70% or greater.) The Board cannot find that a condition that is so common in the Square and in other R-4 Districts will impair the zone plan.

Advisory Neighborhood Commission

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)(3)(B) requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case ANC 4C recommended approval of the application. For reasons stated in this Decision and Order, the Board finds the ANC's advice to be persuasive.

Office of Planning

The Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive as to the proposed project not impairing the public good. However, for reasons also stated in this Decision and Order, the Board does not find OP's advice to be persuasive regarding the first and second prongs of the variance test, and as to whether the proposed project would impair the zone plan.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application, as amended, is hereby **GRANTED,** to allow area variances from the lot occupancy requirements, the rear yard requirements, and the nonconforming structure requirements, **SUBJECT TO THE APPROVED REVISED PLANS AS SHOWN ON EXHIBITS 30 AND 37**.

VOTE: **5-0-0** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, Marnique Y. Heath and Marcie I. Cohen to Approve.)

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: August 11, 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
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-01
Z.C. Case No. 15-01
Level 2 Development
(Consolidated PUD and Related Map Amendment @ Square 3587, Lot 4)
July 13, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 4, 2015, to consider applications for a consolidated planned unit development ("PUD") and related zoning map amendment filed by Level 2 Development ("Applicant"). The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby **APPROVES** the applications.

FINDINGS OF FACT

The Applications, Parties, and Hearings

1. On January 28, 2015, the Applicant filed an application with the Commission for consolidated review of a PUD and related map amendment to rezone Lot 4 in Square 3587 ("Property") from the C-M-1 Zone District to the C-3-C Zone District.

2. The proposed project contemplates the development of a mixed-use building composed of retail and residential uses ("Project"). The building will have a density of 8.0 floor area ratio ("FAR") and will include approximately 227,089 square feet of gross floor area. Approximately 217,243 square feet of gross floor area will be devoted to residential use, and approximately 9,880 square feet of gross floor area will be devoted to ground-floor retail use. The building will include 313 residential units (plus or minus 10%) and 143 off-street parking spaces located in a below-grade parking garage. The building will be constructed to a maximum height of 120 feet at its highest point.

3. By report dated March 9, 2015, the District of Columbia's Office of Planning ("OP") recommended that the application be set down for a hearing. At its public meeting held on March 9, 2015, the Commission voted to schedule a public hearing on the application.

4. The Applicant submitted a prehearing statement for the Project on April 3, 2015 (Exhibit ["Ex."] 16-16G), and a hearing was timely scheduled for the matter. A description of the proposed development and the notice of public hearing in this matter were published in the *D.C. Register* on April 24, 2015. The notice of the public hearing was mailed or emailed to all property owners within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 5D (the ANC in which the Property is located), and ANC 6C (the ANC located directly across the street from the Property) on April 13, 2015.

5. The parties to the case were the Applicant, ANC 5D, and ANC 6C.

6. The Commission convened a hearing on June 4, 2015, which was concluded that same evening. At the hearing, the Applicant presented the following witnesses in support of its applications: Jeffrey Blum and Jonathan Kardon on behalf of the Applicant; Susanne Slater of Habitat for Humanity of Washington, DC ("DC Habitat"); Eric Colbert of Eric Colbert & Associates; Jeff Lee of Lee and Associates; and Erwin Andres of Gorove/Slade Associates, Inc. The Commission noted that it has previously accepted each of the Applicant's witnesses as experts in their respective fields.

7. Megan Rappolt and Joel Lawson of OP; Jonathan Rodgers of the District Department of Transportation ("DDOT"); and Jay Wilson of the District Department of the Environment ("DDOE") testified in support of the application with certain comments and conditions.

8. By letter dated January 21, 2015, ANC 5D submitted a letter to the record in support of the application, and by letter dated January 20, 2015, ANC 6C submitted a letter in support of the application into the record. (Ex. 3F, 3G.) The Commission also received letters of support from Councilmember Kenyan McDuffie (Ex. 12, 32); the NoMA BID (Ex. 23); 55 residents of the District of Columbia (Ex. 30, 36); Trinity Baptist Church (Ex. 31); Union Market Stakeholders Group (Ex. 38, 43); Asheel Shah of Kettler (Ex, 34); Richard Perlmutter of Foulger-Pratt Companies (Ex. 35); and Doug Winshall of ClearRock Properties (Ex. 39).

9. At the public hearing, Cheryl Cort of the Coalition for Smarter Growth testified in support of the application.

10. The record was closed at the conclusion of the hearing, except to receive additional submissions from the Applicant, as requested by the Commission, and responses thereto from the parties. The Commission also requested proposed findings of fact and conclusions of law from the Applicant.

11. At its public hearing held on June 4, 2015, the Commission took proposed action to approve with conditions the PUD and related map amendment.

12. On June 22, 2015, the Applicant submitted a post-hearing filing in response to comments from the Commission made at the public hearing. (Ex. 51-52.) The post-hearing filing included revised architectural drawing sheets; a letter from MAC Realty regarding the Applicant's proposed affordable housing proffer; a map showing Ward 5, ANC 5D, and the Census Tract within which the Property is located; a chart indicating compliance/non-compliance with each section of the Inclusionary Zoning ("IZ") regulations; and a letter from Interface Engineering indicating that the roof plan accurately represents the building's mechanical requirements.

13. The application was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District of Columbia Home Rule Act. Through a delegated action taken on July 2, 2015, the Executive Director of the NCPC found that the PUD would not be inconsistent with the Comprehensive Plan for the National Capital nor other federal interests.

14. The Commission took final action to approve the PUD on July13, 2015.

The Property and Surrounding Area

15. The Property has a land area of approximately 28,394 square feet. The Property is an irregularly shaped rectangular lot with approximately 246 linear feet of frontage on Florida Avenue, N.E. to the southwest, and otherwise bounded by private property to the north, east, and west. Square 3587 is bounded by New York Avenue, N.E. to the north, private property and 4th Street, N.E. to the east, Florida Avenue, N.E. to the southwest, and the Amtrak and WMATA rail lines to the west.

16. The Property is presently improved with a one-story concrete building operated as a Burger King and several asphalt parking lots and driveways. The Applicant proposes to raze the existing building in connection with redevelopment of the Property. The Property is surrounded by a variety of uses, including warehouses and commercial uses to the north, residential and commercial uses to the east and south, and major mixed-use residential and commercial uses to the west.

Existing and Proposed Zoning

17. The Property is presently zoned C-M-1. The C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) The Zoning Regulations note that "heavy truck traffic and loading and unloading operations are expected to be characteristic of C-M Districts." (11 DCMR § 800.2.) The C-M-1 Zone District prohibits residential development except as otherwise specifically provided. (11 DCMR § 800.4.) As a matter-of-right, property in the C-M-1 Zone District can be developed with a maximum density of 3.0 FAR. (11 DCMR § 841.1.) The maximum permitted building height in the C-M-1 Zone District is 40 feet and three stories. (11 DCMR § 840.1.)

18. The Applicant proposes to rezone the Property to the C-3-C Zone District in connection with this application. The C-3-C Zone District permits medium-high-density development, including office, retail, housing, and mixed-use development. (11 DCMR § 740.8.) The C-3-C Zone District permits, as a matter-of-right, a maximum building height of 90 feet with no limit on the number of stories, and a maximum density of 6.5 FAR for any permitted use, and a maximum density of 7.8 FAR for projects subject to the

IZ regulations. (11 DCMR §§ 770.1, 771.2, and 2604.1.) The maximum percentage of lot occupancy in the C-3-C Zone District for all uses is 100%. (11 DCMR § 772.1.) Rear yards in the C-3-C Zone District must have a minimum depth of two and one-half inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. (11 DCMR § 774.1.) A side yard is generally not required in the C-3-C Zone District; however, when a side yard is provided, it must have a minimum width of two inches per foot of height of building, but not less than six feet. (11 DCMR § 775.5.)

19. Parking and loading requirements are based upon the proposed use of a property. An apartment house or multiple dwelling in the C-3-C Zone District requires one parking space for each four dwelling units. (11 DCMR § 2101.1.) Retail or service establishments in excess of 3,000 square feet in the C-3-C Zone District require one parking space for each additional 750 square feet of gross floor area. (*Id*.) An apartment house or multiple dwelling with 50 or more units in all zone districts is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. (11 DCMR §2201.1.) A retail or service establishment with 8,000 to 20,000 square feet of gross floor area must provide one loading berth at 30 feet deep, one loading platform at 100 square feet, and one service/delivery space at 20 feet deep. (*Id*.)

Description of the PUD Project

20. The Applicant proposes to construct a mixed-use residential and retail building in accordance with the architectural plans and elevations dated May 15, 2015 (Ex. 24A1-24A3), as modified by the supplemental plans dated June 4, 2015 (Ex. 40), and the additional supplemental sheets dated June 22, 2015 (Ex. 51A) (together, the "Plans"). The Project is located in a context that varies in use and scale, including Uline Arena to the southwest, recent large-scale NoMa developments and residential uses to the southwest, and Union Market and Gallaudet University to the north and east.

21. The Project is sensitive to its varied context and responds in size, form, and use of materials. The program consists of approximately 313 market-rate and affordable dwelling units, a ground level that is programmed with retail and residential uses that activate the street, and two levels of below-grade parking. The Project is located one block away from the NoMa-Gallaudet Metro Station and provides residents with ample secure bicycle parking on the building's ground floor. Parking and loading facilities are accessed from an existing curb cut at the intersection of Florida Avenue and 3rd Street, N.E.

22. The building's design includes modern-industrial architecture as an interpretation of the historical and current warehouse, manufacturing, railroad, and commercial uses of the surrounding neighborhood. The building's form was derived from an abstraction of steel

shipping containers stacked on top of each other. The structure is a series of industrial-framed cubes with a warehouse style grid in a random "in/out" pattern on the Florida Avenue façade. On the west façade the cubes take on a new pattern that incorporates metal-paneled boxes with industrial-style balconies reminiscent of rail cars. The combination of the warehouse-style grids with the varying cubes brings together the rail uses to the west and the warehouse uses to the north. The cube modules float on a recessed base on the third floor as a transition to the brick and glass ground- and second-floor façade. To articulate the set-back on the third floor, the design includes steel columns that echo the riveted steel supports that hold up the railroad underpass nearby. Rough industrial brick is used for the masonry base. On the eastern portion of the ground level, the residential entrance is demarked with a suspended canopy. On the north façade, which faces into Union Market, brick elements of the south base are used to visually connect to the market, which incorporates similar materials. In the upper portion of the north façade, modules of the framed warehouse grid are incorporated to stitch together the various elements of the entire building. Industrial-style sash windows are utilized throughout. Accent balconies are detailed with an expression reminiscent of fire escapes, and composite metal panels are used at non-window façade locations.

23. The organization of the ground-floor program provides neighborhood activity and security at the street. The residential entrance is located along Florida Avenue near the eastern-most portion of the Property. This location will provide a street presence with eyes on Florida Avenue 24-hours a day. Neighborhood retail storefronts are also situated along Florida Avenue to enliven the streetscape and promote pedestrian activity. The Project envisions neighborhood-serving uses to occupy the retail spaces. The overall streetscape will be an accessible amenity shared and enjoyed by the entire neighborhood.

24. A significant component of the Project's public benefits is the creation of a public green space on District-owned land to the west of the Property, with provisions for a potential pedestrian connection to Morse Street into Union Market. The Applicant will build a landscaped public amenity on land that is currently overgrown with neglected trees and shrubbery and is littered with trash and debris. The park will include community gardens, trees and planting areas, new light fixtures, lawns, seating areas, a public plaza, a widened sidewalk, and an ADA-accessible pedestrian path from Florida Avenue up to the abutting property line to the north for future connection to Morse Street. The District's Florida Market Small Area Plan ("FAMS"), dated March, 2009, envisions a pedestrian connection from Florida Avenue into Union Market in the 300 block of Florida Avenue, N.E. The development of the Property and improvements to the adjacent District-owned land will be the first link in creating the connection to the market.

25. The building will be designed to integrate a host of sustainable features equivalent to LEED-Silver, including a green roof, bio retention facility, water-efficient landscaping, construction waste management techniques, recycled and sustainable materials, bicycle

parking, energy-efficient building design and systems, and high-density development at a transit-rich location.

Zoning Flexibility Requested

26. The Applicant requested flexibility from the rear yard requirements of 11 DCMR § 774.1, which requires a minimum rear yard depth of two and one-half inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet, or in this case, 22.88 feet. However, the Applicant is providing a rear yard depth of 11 feet, two inches. Although this depth does not strictly comply with 11 DCMR § 774.1, the total area of open space on the Property (approximately 7,472 square feet) exceeds the area of open space that would be provided with a compliant rear yard (approximately 5,918 square feet). In addition, the majority of the rear face of the building is set back 36 feet, seven inches from the rear property line. As a result, the design provides adequate open space at the rear of the site. Furthermore, a compliant rear yard would require setting back a large portion of the building on the second floor and above, thus significantly compromising the size and layout of the residential units on each floor. The flexibility requested on the rear yard is essential to achieve the exceptional architectural design intent. Consequently, the Commission finds this minor deviation from the setback requirements to be appropriate.

27. The Applicant requested flexibility from the open court width and court niche requirements of 11 DCMR §§ 776.3 and 776.7, which require that courts have a minimum width of four inches per foot of height but not less than 15 feet, and in this case, 35 feet, eight inches. The Project includes three open courts with non-compliant widths of 25 feet, five inches; 12 feet, eight inches; and 20 feet, 10 inches. The courts break up the building's massing; provide façade articulation; activate the rear of the building; introduce light, air, and ventilation to the building; and provide space for additional landscaping and green space. The Applicant cannot increase the width of the courts to meet the requirements because doing so would result in a significant number of impractical design changes to the building's interior configuration that would make it infeasible to achieve the desired residential unit program and exceptional design intent, including, for example, a significant and adverse impact on the locations of the internal stair towers, the location of the elevator core, and the size and layout of at least 12 units per floor (132 units). Thus, the Commission finds the court widths to be appropriate for the Project.

28. The Applicant seeks flexibility from the court niche requirements, since the triangular court niches on the west side of the building do not comply with the 2:1 width-to-depth ratio in some locations. Providing non-compliant court niches will not result in an adverse impact because they are adjacent to the proposed park that will be located to the west of the building and will provide additional light and air to the units on the west

façade. Therefore, the Commission finds that the court niches as proposed are acceptable.

29. The Applicant also requested flexibility from the compact parking space requirements of 11 DCMR § 2115.2, which requires that any accessory parking area or garage containing 25 or more required parking spaces may designate a maximum of up to 40% of the parking spaces for compact cars. In this case, the Project includes 143 total parking spaces, 90 of which (63%) will be compact in size. Providing the compact spaces is necessary to maximize the efficiency of the garage, provide as many parking spaces as possible, maintain a drive aisle width of 20 feet, and accommodate a greater amount of compact, fuel-efficient vehicles that have a lower carbon footprint than full-size vehicles. The Commission finds that approval of this requested flexibility will not have any adverse effects, and will allow the Applicant to adequately accommodate parking for the building's residential and retail users.

30. The Applicant also requested flexibility from the loading requirements of 11 DCMR § 2201.1, which require one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep (residential requirement); and one loading berth at 30 feet deep and one loading platform at 100 square feet (retail requirement). Due to the anticipated needs of the residents and retail tenants, the Project includes one loading berth at 30 feet deep, one service/delivery space at 20 feet deep, and one loading platform at 200 square feet. The requested flexibility is directly in accordance with the Comprehensive Plan's recommendations to consolidate loading areas within new developments, minimize curb cuts, and provide shared loading spaces in mixed-use buildings. Given the nature and size of the residential units, it is unlikely that the building will ever be served by 55-foot tractor-trailer trucks. The loading facilities will be used by residents when they move in or out of the building, and any other use by residents will be infrequent and will be restricted to times which pose the least potential conflicts with retail users. Furthermore, while the Property can accommodate the circulation of trucks into a 30 feet deep loading space, the land-locked nature of the Property would not feasibly accommodate-55 foot tractor-trailer trucks from circulating into and out of the site. Therefore, the Commission finds that the proposed loading facilities are appropriate and adequate for the Project.

31. The Applicant requests flexibility from the roof structure requirements since the roof structure will have walls of unequal heights (§ 411.5) and will not be set back 1:1 from the four corners of the court walls at the rear of the site (§ 770.6). However, the roof structure will not adversely impact the light and air of adjacent buildings since it has been located and designed to minimize its visibility. As a result, the Commission finds that the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

32. The Applicant seeks the flexibility to account for 50% of its IZ requirement off-site (consisting of seven off-site units) without meeting certain of the pre-requisites of 11 DCMR § 2607 as follows:

    a. The Applicant will not be required to demonstrate that compliance on-site would impose an economic hardship. (§ 2607.1.) Although § 2607.3 permits § 2607.2(a) to be waived if the off-site development is owned by the Applicant, that is not the case here. Therefore, the Applicant also seeks flexibility from § 2607.2;

    b. The off-site units will not be within the same census tract as the PUD; (§ 2607.2(a).)

    c. The off-site units may not consist entirely of new construction as required by § 2607.2(b), but may also include the renovation of an existing structure;

    d. The Applicant requests the flexibility to not have the off-site units counted for the purposes of determining whether the off-site project is subject to IZ, which is triggered by there being at least 10 units. In other words, if all seven units were in a project that contained 10 units, the project would not be subject to IZ;

    e. Based upon the same overall square footage, the PUD building would have 13 IZ units while there would be seven off-site IZ units. This results from the fact that the off-site units would be larger than those on-site. Because there would be fewer off-site units, the Applicant requests flexibility from § 2607.2(f); and

    f. Subsection 2607.8 provides that ["n]o application for a certificate of occupancy for a market-rate unit on the inclusionary development shall be granted unless construction of the off-site inclusionary units is progressing at a rate roughly proportional to the construction of the on-site market-rate units." The Applicant does not believe it can make that commitment and instead has proposed that if a building permit application has not been filed for one or more of the off-site inclusionary units, the PUD building would provide a like amount of additional on-site IZ units. Therefore, flexibility from § 2607.8 is required.

33. Further explanation of these areas of flexibility is set forth in Exhibit 51D.

34. The Applicant also requests flexibility in the following areas:

    a. To be able to provide a range in the number of residential units between 281 and 344;

    b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms,

provided that the variations do not change the exterior configuration of the building;

c. To vary or reduce the number, location, and arrangement of parking (vehicular and bicycle) spaces, provided that the total is not reduced below the number required under the Zoning Regulations;

d. To vary the number, location, and arrangement of compact parking spaces, provided that the total number of compact parking spaces does not exceed 63% of the total parking spaces;

e. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the Project is not below the LEED-Silver rating standards;

f. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and to make any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;

g. In the retail and service areas, flexibility to vary the location and design of the ground floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and

h. To vary the features, means and methods of achieving (i) the code-required Green Area Ratio ("GAR") of 0.2, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

Project Benefits and Amenities

35. Urban Design, Architecture, Landscaping, and Open Space – § 2403.9(a). The building will have a positive impact on the visual and aesthetic character of the immediate neighborhood and will further the goals of urban design while enhancing the streetscape. The Project involves the replacement of the existing one-story building and parking lots with a new mixed-use, high-density, visually interesting building with a significant

amount of landscape, garden, and open space features. The streetscape will include new plantings and trees, a new 25-foot-wide concrete sidewalk, and pedestrian-oriented lighting consistent with DDOT standards. The street furnishings will include benches, short-term bicycle racks, and trash/recycling receptacles. Throughout the Project, open spaces will be used to create programmed amenity areas for residents, places of quiet, and activity areas including outdoor seating, courtyards, green space, and outdoor dining and lounging areas.

36. Housing and Affordable Housing – § 2403.9(f). As noted, the Applicant is being permitted to account for one-half of its IZ requirement of 15,494 square feet on-site. The other 7,747 square feet will be accounted for within the boundary of ANC 5D and reserved for households earning up to 50% of the AMI. An additional 6,000 square feet will also be set aside for households earning up to 50% of the AMI and will be located in Ward 5, with a priority area of ANC 5D. This resulting 21,494 net square feet of affordable housing (for a total of 26 units) exceeds the 15,493 square foot IZ requirements for the C-3-C Zone District by 38%. The affordable housing is also at a significantly steeper affordability level than required by the Zoning Regulations by providing 64% (approximately 13,747 net square feet) of affordable housing set-aside for households earning 50% or less of the AMI, thus creating truly affordable housing with homeownership opportunities for low income households. The off-site units will result from the Applicant's $1.4 million contribution to DC Habitat to be made prior to the issuance of a certificate of occupancy for the PUD. A full description of the unit types, the applicable control periods, and the enforcement mechanism to ensure that the off-site units are either created or proportionally accounted for on-site is described in Condition No. B.1. of this Order.

37. Environmental Benefits – § 2403.9(h). The Applicant will ensure environmental sustainability through the implementation of design features and strategies to enhance the sustainable nature of the Property's mixed-use, transit-rich location, and to promote a healthy lifestyle for residents. The Project provides a host of environmental benefits consistent with recommendations of 11 DCMR § 2403.9(h), which include street tree planting and maintenance, landscaping, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. The building will be designed to include sustainable features to achieve a LEED-Silver designation, including a green roof, bio retention facility, landscaping, construction waste management techniques, recycled and sustainable materials, bicycle parking, energy-efficient building design and systems, and high-density development at a transit-oriented location.

38. Transportation Benefits – § 2403.9(c). The Applicant incorporated a number of elements designed to promote effective and safe vehicular and pedestrian access to the site, convenient connections to public transit services, and on-site amenities such as bicycle parking and sufficient vehicular parking. (*See* Sheets A27-29 of the Plans.) Moreover,

the Applicant will implement the following transportation demand management ("TDM") strategies:

a. Designate a TDM Coordinator;

b. Unbundle residential parking from the price of units;

c. Distribute move-in transportation welcome packets to each resident upon move-in. The packets will include information such as:

i. Promotion for DDOT's goDCgo website;

ii. Brochures on carsharing, ridesharing, and bikesharing programs;

iii. Tips on smartphone applications and websites to use to navigate public transportation options;

iv. Maps for nearby bicycle routes and lanes;

v. Maps for Metrorail, Metrobus, and DC Streetcar routes; and

vi. Information on how to efficiently maintain cars to maximize fuel efficiency;

d. Hold annual used bicycle drives for residents to donate bicycles to Gearin' Up Bicycles, or a similar organization that accepts used bicycle donations. Gearin' Up is a nearby non-profit 501c(3) community bike shop in Ward 5 that creates career development opportunities and teaches essential workplace skills to teenagers from underserved communities, while encouraging cycling as a practical, healthy means of transportation. Gearin' Up provides access to quality, affordable, used bicycles for those in need and hosts community outreach programs throughout the year;

e. Provide power stations for electric vehicle car-charging capability in up to five percent of garage parking spaces;

f. Provide a secure bicycle storage with room for up to 105 bicycle parking spaces, including a maintenance area with a bike pump and tool set;

g. Display an electronic message board in the residential lobby of the building that provides information on public transportation and other alternative transportation modes;

h. Offer a one-time, one-year car-sharing or bike-sharing program membership to each initial resident of the building, for up to 313 memberships; and

i. Provide parking spaces in the garage for fuel-efficient vehicles.

39. Employment and Training Opportunities – § 2403.9(j). The Applicant will submit to DCRA a First Source Employment Agreement executed by the Applicant, consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004, and in substantially the same form as the First Source Employment Agreement included in the record. (Ex. 24E.)

40. Use of Special Value to the Neighborhood or the District as a Whole - Section 2403.9(i):

a. The Applicant will dedicate up to $600,000 for the design, construction, and maintenance of a new public park located on District-owned land adjacent to the PUD (Lot 806). Pursuant to Condition No. B.4 of this Order, the Applicant must complete approximately 75% of the construction of the park prior to the issuance of the certificate of occupancy for the PUD, and the remainder of the park must be completed with the next 120 days. As shown on the Plans, the park will include community gardens, trees and planting areas, new light fixtures, lawns, seating areas, a public plaza, a widened sidewalk, and an ADA-accessible pedestrian path from Florida Avenue up to the abutting property line to the north for future connection to Morse Street. The Applicant will collaborate with the contract purchaser of the property to the north of the park (300 Morse Street, N.E.) concerning the pedestrian connection to Morse Street;

b. As called for in the FAMS, the park and pedestrian pathway will meet the FAMS's goals of providing a convenient connection between the NoMa and Union Market neighborhoods and creating desired public green space. The park will be 75% complete prior to the issuance of Certificate of Occupancy for the proposed building, with the remainder to be completed within 120 days after issuance of the Certificate of Occupancy; and

c. The Applicant will also make a $10,000 contribution to the NoMa BID for use in connection with the Metropolitan Branch Trail Safety and Access Analysis, a study being commissioned by the NoMa BID to assess and recommend improvements to safety, infrastructure, and access points to the Metropolitan Branch Trail.

41. The Commission finds that the benefits and amenities are commensurate with the level of flexibility requested. The Commission further finds that the impacts of the Project are favorable and capable of being mitigated or acceptable, in compliance with § 2403 of the PUD regulations. The construction of the new residential building with ground-floor

retail provides efficient use of land compatible with uses of the surrounding properties. The Commission finds that the Project does not cause any adverse traffic impacts and provides sufficient parking to meet demand, as confirmed by the reports of Gorove/Slade Associates and DDOT. The proposed height is consistent with other existing buildings in the vicinity.

Comprehensive Plan

42. The Future Land Use Map of the Comprehensive Plan designates the Property for High-Density Commercial, High-Density Residential, and Production, Distribution, and Repair. The proposed development is consistent with that designation. The proposed C-3-C zoning classification is specifically identified to accommodate major business and employment areas and to provide substantial amounts of employment, housing, and mixed uses. (11 DCMR §§ 740.1-2.) The C-3-C Zone Districts permit medium- and high-density development, including retail, housing, and mixed-use development. (11 DCMR §§ 740.8.) The proposed PUD incorporates all of these elements into a single, high-density building with a mix of residential, retail, and employment opportunities.

43. The Property is designated as a Multi-Neighborhood Center category on the District of Columbia Comprehensive Plan Generalized Policy Map. The proposed rezoning and PUD redevelopment of the Property is consistent with the policies indicated for the Multi-Neighborhood Centers. The existing C-M-1 Zone District is inconsistent with the Policy Map's designation of the Property since C-M Zone Districts are "intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts." (11 DCMR § 800.1.) In contrast, the proposed mix of new residential and retail uses will help to improve the overall neighborhood fabric and bring new residents and retail uses to the area, in compliance with the goals and objectives of Multi-Neighborhood Centers.

44. The Project is consistent with the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as set forth in the Comprehensive Plan. The Project also furthers numerous policies and objectives of the Comprehensive Plan, as discussed below.

45. Policy LU-1.2.2: Mix of Uses on Large Sites. The Project is consistent and compatible with adjacent uses and will provide a number of benefits to the immediate neighborhood and to the city as a whole.

46. Policy LU-1.3 Transit-Oriented and Corridor Development. The Project exemplifies the principals of transit-oriented development. The Property is located within a convenient one-block walking distance of the NoMa/Gallaudet University Metrorail station and is served by several Metrobus routes, including routes 90 and 92, which stop immediately

in front of the Property. The Property is also located within three blocks of four existing Capital Bikeshare stations, and is located two and one-half blocks from the entrance to the Metropolitan Branch Trail, an eight-mile multi-use trail that runs from Union Station to Silver Spring in Maryland. Furthermore, the Property is located in close proximity to NoMa's office district and to multiple dining and entertainment options in the Union Market and H Street neighborhoods. The Property is also one Metro station away from intercity and commuter trains and buses connecting at Union Station. In addition, the Project is consistent with the following principles (i) a preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference for housing above ground-floor retail uses; and (ii) a preference for diverse housing types, including affordable units.

47. Policy LU-1.3.4: Design to Encourage Transit Use. The Project has been designed to encourage transit use and enhance the safety, comfort, and convenience of passengers walking to the Metrorail station and local bus stops since the Project incorporates ground-floor retail uses that will activate and animate the street.

48. Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods. The Project architect sought to augment the mixed income housing supply in the area and expand neighborhood commerce with the parallel goals of protecting the neighborhood's existing character and revitalizing the surrounding community.

49. Policy LU-2.2.4: Neighborhood Beautification. The building is designed to improve the visual aesthetic of the neighborhood. Development of the Property will be an improvement to the current site condition and will help to revitalize the area. The Project also includes a significant amount of landscaped and open spaces which will greatly enhance the streetscape.

50. Policy LU-2.3.3: Buffering Requirements. The Project includes a number of elements designed to serve as buffers, including landscaping, setbacks, and architectural/site planning measures that will prevent adverse effects. The PUD will eliminate the existing one-story building and surface parking uses and will provide much needed new residential and retail opportunities.

51. Policy LU-3.1.4: Rezoning of Industrial Areas. The Property is surrounded by a variety of uses, including residential and commercial development, schools, and industrial warehouses. As the surrounding area continues to be redeveloped with residential, commercial, and entertainment uses, the Property will no longer be suitable for industrial activities. The proposed development and requested rezoning supports the policy of rezoning industrial land to permit residential and commercial uses on land included in a targeted redevelopment area.

52. Policy T-1.1.4: Transit-Oriented Development. The Project is a textbook example of transit-oriented development. It also includes various transportation improvements,

including the construction of new mixed-uses along a major transportation corridor, bicycle storage areas, and public space improvements, including new lighting, trees, benches, bicycle racks, and new and widened sidewalk paving.

53. Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning. The Project architect carefully considered and integrated bicycle and pedestrian safety considerations in the design of the Project. The Project is located two and one-half blocks away from the entrance to the Metropolitan Branch Trail. To promote pedestrian travel on the north side of Florida Avenue, the Applicant will widen the sidewalk width from seven feet to 25 feet, and will locate trees and plantings along the curb to act as a buffer for pedestrians from vehicles on Florida Avenue.

54. Action T-2.3-A: Bicycle Facilites. The Applicant will provide secure bicycle parking and bicycle racks as amenities within the development that accommodate and encourage bicycle use. Specifically, the Applicant will provide approximately 105 bicycle parking spaces within the building to serve residents and employees, and a number of bicycle racks in public space adjacent to the Property in coordination with DDOT.

55. Policy H-1.1.1: Private Sector Support. The Project helps meet the needs of present and future District residents at locations consistent with District land use policies and objectives. Specifically, the Project will contain approximately 217,243 square feet of gross floor area devoted to residential use, which represents a substantial contribution to the District's housing supply. Of this housing, more than eight percent will be dedicated as affordable housing, which will add to the District's affordable housing stock; whereas, under the current zoning, no new housing can be provided. The provision of new housing at this particular location is fully consistent with the District's land use policies.

56. Policy H-1.1.3: Balanced Growth. This policy strongly encourages the development of new housing on surplus, vacant and underutilized land in all parts of the city, and recommends ensuring that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including higher-density housing. The Project supports this policy goal by developing new housing on underutilized land in a rapidly growing and changing mixed-use neighborhood.

57. Policy H-1.1.4: Mixed-Use Development. The Project is consistent with the goals of promoting mixed use development, including housing on commercially or industrially zoned land, particularly in neighborhood commercial centers.

58. Policy H-1.2.3: Mixed-Income Housing. The residential component of the PUD is mixed-income and includes both market-rate and affordable housing units. Thus, the Project will further the District's policy of dispersing affordable housing throughout the City in mixed-income communities, rather than concentrating such units in economically

depressed neighborhoods. Under the current zoning, there would be no new housing on the Property.

59. The Project is also consistent with numerous policies set forth in the Environmental Protection Element, including the following:

a. Encouraging the planting and maintenance of street trees in all parts of the city (Policy E-1.1.1);

b. Encouraging the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity (Policy E-1.1.3);

c. Promoting the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses (Policy E-2.2.1); and

d. Promoting tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction (Policy E-3.1.2).

60. The Property is located within the boundaries of the Upper Northeast Area Element. Section 2407 of the Comprehensive Plan explains the Upper Northeast Area Element's planning and development priorities. One stated priority is to expand retail choices in the Upper Northeast, particularly retail districts along Florida Avenue and areas around Metrorail stations, which have the potential to become pedestrian-oriented shopping districts. (See 10A DCMR § 2407.2(i).) The Upper Northeast Area Element also encourages compatible infill development (Policy UNE-1.1.2), Metro station development (Policy UNE-1.1.3), streetscape improvements (Policy UNE-1.2.1), and environmental quality (Policy UNE-1.2.8), all of which are policies and goals that the PUD will support. The Commission finds that the Project will provide much-needed new housing, retail, and employment opportunities while protecting the nearby lower-density residences and increasing pedestrian accessibility and safety in the area.

Office of Planning Report

61. By report dated May 22, 2015, OP recommended approval of the PUD and related Zoning Map amendment, subject to several conditions to which the Applicant agreed at the public hearing. (Ex. 27.) In its report, OP stated that the PUD and map amendment would not be inconsistent with the maps and written elements of the Comprehensive Plan and the FAMS, and asserted that the Project would further the Land Use; Housing; Parks, Recreation, and Open Space; Urban Design; and Upper Northeast Area Element of the Comprehensive Plan.

62. Through a supplemental report dated July 2, 2015, OP provided additional information in response to questions posed by the Commission during the public hearing concerning the affordable housing and public park proffers. (Ex. 55.) OP expressed concern over the lack of detail concerning how the off-site units would revert to the PUD building should one or more of those units not be constructed by the time the certificate of occupancy for the PUD was issued. OP recommended that the seven off-site IZ units should be constructed prior to the construction of the six non-IZ units. In response, the Applicant provided a detailed chart showing exactly how the reversion would work (which has been inserted in Condition B.1) and agreed to include in its contract with DC Habitat a requirement that the off-site Units be constructed first. OP also expressed concern that the Applicant has backed off its commitment to maintain the public park. However, the Commission notes that the Applicant has promised to dedicate $600,000 for the park's construction and maintenance.

DDOT Report

63. By report dated May 26, 2015, DDOT stated that it had no objection to the Applicant's request for a PUD and related map amendment, provided the Applicant install at least nine short-term bicycle racks in public space near building's entrances. (Ex. 28.) The Applicant agreed to provide the short-term bicycle parking as required.

DDOE Report

64. By report dated May 21, 2015, DDOE summarized items related to the Property and common issues related to many development projects. (Ex. 26.) The report includes DDOE's comments on the Project, provides additional guidance on regulations and other DDOE areas of interest, and recommends areas where the Applicant could exceed guidelines as a public benefit or amenity.

65. On June 22, 2015, the Applicant submitted a post-hearing filing, which responded to the DDOE report. (Ex. 51.) The Applicant explained that it subsequently met with DDOE representatives and explored the sustainable design strategies recommended in the DDOE report. The Applicant is committed to achieving LEED-Silver certification and will pursue sustainable strategies that may increase the LEED points throughout the design, construction, and operation of the project.

ANC Reports

66. By report dated June 3, 2015, ANC 5D recommended approval of the PUD and related map amendment. (Ex. 42.) It noted that the Project proposes a creative public benefits package that supports the residents of ANC 5D and has the potential to serve as a catalyst for creating affordable housing in the District by underscoring a partnership with DC Habitat. The ANC report also noted that the proposed improvement to the District-

owned land will greatly contribute to the safety and connectivity of the Union Market and NoMa neighborhoods.

67. ANC 6C also submitted testimony in support of the Project, which stated that the PUD is an attractive building that will provide housing and retail close to the NoMa Metrorail station. (Ex. 33.) ANC 6C commended the Applicant for its proposal to construct the first piece of the planned pedestrian connection into the interior of the market area, which is essential for the health, safety, and convenience of the future residents of the building, the surrounding community, and future retail patrons and visitors.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the Property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments, which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD complies with the development standards of the Zoning Regulations. The retail and residential uses for the Project are appropriate for the Property. The impact of the Project on the surrounding area and the operation of city services is acceptable, given the quality of the public benefits in the Project. Accordingly, the Project should be approved.

5. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

6. The Applicant's request for flexibility from the Zoning Regulations is not inconsistent with the Comprehensive Plan. The Commission also concludes that the project benefits and amenities are reasonable trade-offs for the requested development flexibility in accordance with §§ 2400.3 and 2400.4.

7. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

8. The proposal to rezone the Property from the C-M-1 Zone District to the C-3-C Zone District is not inconsistent with the Property's designation on the Future Land Use Map and the Generalized Policy Map.

9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2012 Repl.)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive.

10. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (20) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission has carefully considered the ANC 5D's recommendation for approval and concurs in its recommendation.

11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and related map amendment from the C-M-1 Zone District to the C-3-C Zone District for the Property located at Lot 4 in Square 3587. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The Project shall be developed in accordance with the architectural plans and elevations dated May 15, 2015 (Ex. 24A1-24A3), as modified by the supplemental plans dated June 4, 2015 (Ex. 40), and the additional supplemental sheets dated June 22, 2015 (Ex. 51A) (together, the "Plans"), and as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the Plans, the PUD shall be a mixed-used project consisting of approximately 227,089 square feet of gross floor area (8.0 FAR), with approximately 217,243 square feet of gross floor area devoted to residential use and approximately 9,880 square feet of gross floor area devoted to retail use. The Project shall have 313 residential units, plus or minus 10%, and shall have a maximum height of 120 feet.

3. The Applicant shall have zoning flexibility with the PUD in the following areas:

   a. To provide a rear yard of 11 feet, two inches;

   b. To provide three open courts with the following non-compliant court widths: 25 feet, five inches; 12 feet, eight inches; and 20 feet, 10 inches;

   c. To provide court niches that do not comply with the 2:1 width-to-depth ratio in some locations;

   d. To provide 90 compact parking spaces, which is 63% of the total number of on-site parking spaces;

   e. To provide one loading berth at 30 feet deep, one service/delivery space at 20 feet deep, and one loading platform at 200 square feet;

   f. To provide a roof structure with enclosing walls of unequal heights; and

   g. To provide ADUs that do not comply with the requirements of 11 DCMR §§ 2605.5; 2607.1; 2607.2(a)(b)(d)(f); 2607.3; 2607.7; and 2607.8, as set forth in Exhibit 51D.

4. The Applicant shall also have design flexibility with the PUD in the following areas:

   a. To be able to provide a range in the number of residential units between 285 and 346;

   b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

   c. To vary or reduce the number, location, and arrangement of parking (vehicular and bicycle) spaces, provided that the total is not reduced below the number required under the Zoning Regulations;

d. To vary the number, location, and arrangement of compact parking spaces, provided that the total does not exceed 63% of the total parking spaces;

e. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the Project is not below the LEED-Silver rating standards;

f. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim; and to make any other changes in order to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;

g. In the retail and service areas, flexibility to vary the location and design of the ground-floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail use and to accommodate any specific tenant requirements; and to vary the size of the retail area; and

h. To vary the features, means, and methods of achieving (i) the code-required GAR of 0.2, and (ii) stormwater retention volume and other requirements under 21 DCMR Chapter 5 and the 2013 Rule on Stormwater Management and Soil Erosion and Sediment Control.

B. Public Benefits

1. Affordable Housing.

a. *Contribution to DC Habitat*. **Prior to the issuance of a Certificate of Occupancy for the building,** the Applicant shall contribute $107,000 per unit to DC Habitat to co-develop a minimum of approximately 13,747 net square feet in 13 off-site affordable housing units, set aside for-sale to households earning an average of no more than 50% of the AMI. As will be further described below, 7,747 square feet of this amount will be used to satisfy 50% of the building's Inclusionary Zoning ("IZ") requirements and 6,000 square feet of this amount will be additional affordable housing units regulated under DC Habitat conditions. In the event that the

reversionary process set forth in paragraph (e) of this condition is invoked as a result of building permit applications not being filed for one or more of the 13 units, the Applicant is relieved of its obligation to make the $107,000 contribution for that unit or units.

b. *IZ Compliance*. Eight percent of the residential square footage of the building (approximately 15,494 net square feet) shall be subject to the IZ regulations of Chapter 26 of the Title 11 DCMR and shall be accounted for as follows:

i. Fifty percent of the IZ requirement, *i.e.* four percent of the residential square footage of the building (approximately 7,747 net square feet resulting in 13 units of approximately equal size) shall be accounted for in the building;

ii. Fifty percent of the IZ requirement, .*i.e.* four percent of the residential square footage of the building (7,747 net square feet resulting in seven units of approximately equal size) shall be accounted for within the boundary of ANC 5D ("Off-Site IZ Units"). The Off-Site IZ Units shall comply with all the provisions of Chapter 26 including § 2607 therein, except:

1. To the extent that such provisions were expressly waived herein; and

2. The units shall be set aside for-sale to households earning an average of no more than 50% of the AMI;

c. *Off-Site Affordable Housing in Excess of IZ Requirements.* **For the control period as provided by the current DC Habitat covenants**, a minimum equivalent to three percent of the building's residential square footage, but not less than 6,000 net square feet (approximately six units) shall be located in Ward 5, with a priority area of ANC 5D ("Off-Site Non-IZ Units"). These units shall be subject to the current DC Habitat covenants (included as part of Ex. 24D in the record) in lieu of the IZ requirements of Chapter 26 of the Zoning Regulations. The off-site homes shall have an average size of not less than approximately 1,000 square feet, and an average of approximately 2.5 bedrooms. The units shall be set aside for sale households earning an average of no more than 50% of the AMI;

d. *Phasing of Off-Site Construction* **Prior to the Issuance of a Building Permit for the PUD**, the Applicant shall provide proof to the Zoning Administrator that it has entered into a binding and enforceable contract

with D.C. Habitat requiring DC Habitat to complete construction of the Off-Site IZ Units before it begins construction of the Off-Site Non-IZ Units;

e. *Reversion of Off-Site Affordable Units:*

i. **Prior to the issuance of a certificate of occupancy for the building**, the Applicant shall provide proof to the Zoning Administrator that building permit applications have been filed for all of the Off-Site IZ Units and all of the Off-Site Non-IZ Units;

ii. If a building permit application for one or more of the Off-Site IZ Units or the Off-Site Non-IZ Units has not been filed, the gross floor area of each such unit shall revert as set forth in the following table:

Permit Applications Filed	Total Off-Site IZ and Non-IZ Units		IZ Units								Non-IZ Units	
			Total IZ Units		50% AMI				80% AMI		50% AMI	
	Off-Site		On-Site		On-Site		Off-Site		On-Site		Off-Site	
	Unit Count	NSF	Unit Count	NSF	Unit Count	NSF	Unit Count	NSF	Unit Count	NSF	Unit Count	NSF
0 Units Off-Site	**0**	**0**	**26**	**15,493**	**6**	**3,575**	**0**	**0**	**20**	**11,918**	**0**	**0**
1 Unit Off-Site	1	1,107	25	14,897	6	3,575	1	1,107	19	11,322	0	0
2 Units Off-Site	2	2,213	24	14,302	6	3,575	2	2,213	18	10,726	0	0
3 Units Off-Site	3	3,320	23	13,706	6	3,575	3	3,320	17	10,130	0	0
4 Units Off-Site	4	4,427	22	13,110	6	3,575	4	4,427	16	9,534	0	0
5 Units Off-Site	5	5,533	21	12,514	6	3,575	5	5,533	15	8,938	0	0
6 Units Off-Site	6	6,640	20	11,918	6	3,575	6	6,640	14	8,343	0	0
7 Units Off-Site	7	7,747	19	11,322	6	3,575	7	7,747	13	7,747	0	0
8 Units Off-Site	8	8,747	18	10,726	5	2,979	7	7,747	13	7,747	1	1,000
9 Units Off-Site	9	9,747	17	10,130	4	2,384	7	7,747	13	7,747	2	2,000
10 Units Off-Site	10	10,747	16	9,534	3	1,788	7	7,747	13	7,747	3	3,000
11 Units Off-Site	11	11,747	15	8,938	2	1,192	7	7,747	13	7,747	4	4,000
12 Units Off-Site	12	12,747	14	8,343	1	596	7	7,747	13	7,747	5	5,000
Max 13 Units Off-Site	**13**	**13,747**	**13**	**7,747**	**0**	**0**	**7**	**7,747**	**13**	**7,747**	**6**	**6,000**
Avg. Unit Size		**1,057**		**596**		**596**		**1,107**		**596**		**1,000**

iii. All units in the building that result from a reversion shall be subject to the IZ regulations of Chapter 26, even if all 7,747 square feet of Off-Site IZ Units are constructed. Therefore all such reverted units shall deemed to be required by Chapter 26; and

iv. The first six units in the building that result from a reversion shall be set-aside for households earning an average of up to 50% of the AMI. Any additional units in the building resulting from a reversion shall be set aside for households earning an average of up to 80% of the AMI. Thus in the unlikely circumstance that none of the off-site units are built, there shall be approximately 15,493 net square feet of Inclusionary Zoning Units in the building with six of the units (of approximately 3,575 square feet set aside

for households earning up to an average of 50% of the AMI, and 20 units (of approximately 11,918 square feet set aside for households earning up to an average of 80% of the AMI;

f. All of the affordable and market rate units will be developed in accordance with the following chart, which is consistent with the calculations for the District's Certificate of Inclusionary Zoning Compliance form:

Residential Unit Type	Net Square Feet & Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	193,667 residential net square feet	313			
Market Rate	185,920 residential net square feet (96%)	300	Market Rate	N/A	Rental/ Ownership
IZ	7,747 net square feet (4%)	13	80% AMI	In Perpetuity	Rental/ Ownership
IZ	7,747 net square feet (4%)	7	50% AMI	In Perpetuity	Ownership
Affordable/ Non IZ	6,000 net square feet (3%)	6	Affordability established by DC Habitat covenants	Control period established by DC Habitat covenants	Ownership

2. Environmental Benefits. **For the life of the project**, the building shall be designed to include no fewer than 50 points necessary to achieve a LEED-Silver certified designation, as shown on the theoretical LEED score sheet submitted with the Plans. **Prior to the issuance of a building permit**, the Applicant shall register the project with the United States Green Building Council ("USGBC") to commence the LEED-certification process. Within 12 months after the issuance of the Certificate of Occupancy, the Applicant shall submit a completed certification application to USGBC for review for LEED- Silver certification by the Green Building Certification Institute ("GBCI") or similar organization.

3. First Source Employment Agreement. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall submit to DCRA evidence that the Applicant executed and submitted a First Source Employment Agreement to the Department of Employment Services ("DOES"), consistent with the First Source Employment Agreement Act of 1984 and the Apprenticeship Requirements Amendment Act of 2004, and in substantially the same form as the First Source Employment Agreement. (Ex. 24E.)

4. Uses of Special Value to the Neighborhood.

a. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall have completed approximately 75% of the construction

of a new public park, as certified by the landscape architect. The park shall be located on District-owned land adjacent to the PUD (Lot 806). The park shall include community gardens, trees and planting areas, new light fixtures, lawns, seating areas, a public plaza, a sidewalk, and an ADA-accessible pedestrian path from Florida Avenue up to the abutting property line to the north of the Subject Property. The remainder of the construction of the park shall be 100% completed within 120 days after issuance of the Certificate of Occupancy, as certified by the landscape architect;

b. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall dedicate up to $600,000 for the design, construction, and maintenance of the park; and

c. **Prior to the issuance of a Certificate of Occupancy for the building**, the Applicant shall submit to DCRA evidence that the Applicant has made a $10,000 contribution to the NoMa BID for use in connection with the Metropolitan Branch Trail Safety and Access Analysis, a study being commissioned by the NoMa BID to assess and recommend improvements to safety, infrastructure, and access points to the Metropolitan Branch Trail, and provide proof that the study has been completed or is being conducted.

C. Transportation Measures.

1. **Prior to issuance of a Certificate of Occupancy for the building and for the life of the Project**, the Applicant shall provide the following TDM strategies:

a. Designate a TDM Coordinator;

b. Unbundle residential parking from the price of units;

c. Provide power stations for electric vehicle car charging capability in up to five percent of garage parking spaces;

d. Provide a secure bicycle storage room with room for up to 105 bicycle parking spaces, including a maintenance area with a bike pump and tool set;

e. Display an electronic message board in the residential lobby of the building that provides information on public transportation and other alternative transportation modes; and

f. Provide parking spaces in the garage for fuel-efficient vehicles.

2. **Upon initial residential move-in and for the life of the Project**, the Applicant shall distribute move-in transportation welcome packets to each resident. The packets shall include information such as:

a. Promotion for DDOT's goDCgo website;

b. Brochures on carsharing, ridesharing, and bikesharing programs;

c. Tips on smartphone applications and websites to use to navigate public transportation options;

d. Maps for nearby bicycle routes and lanes;

e. Maps for Metrorail, Metrobus, and DC Streetcar routes; and

f. Information on how to efficiently maintain cars to maximize fuel efficiency.

3. **Upon initial residential move-in and for the life of the Project**, the Applicant shall offer a one-time, one-year car-sharing or bike-sharing program membership to each resident of the building, for up to 313 memberships.

4. **Upon initial residential move-in and for the life of the Project**, the Applicant shall hold annual used bicycle drives for residents to donate bicycles to Gearin' Up Bicycles, or a similar organization that accepts used bicycle donations. Gearin' Up is a nearby non-profit 501c(3) community bike shop in Ward 5 that creates career development opportunities and teaches essential workplace skills to teenagers from underserved communities, while encouraging cycling as a practical, healthy means of transportation. Gearin' Up provides access to quality, affordable, used bicycles for those in need and hosts community outreach programs throughout the year.

D. **Miscellaneous**

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this Order, or amendment

thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

3. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-01. Within such time, an application must be filed for a building permit for the construction of the Project as specified in 11 DCMR § 2409.1. Construction of the Project must commence within three years of the effective date of Z.C. Order No. 15-01.

4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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 identification 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On June 4, 2015, upon a motion by Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On July 13, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on August 21, 2015.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-11
Z.C. Case No. 15-11
SQ700 Trust, LLC
(Capitol Gateway Overlay Review @ Square 700, Lots 43 and 866)
July 27, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on June 25, 2015, to consider an application filed by SQ700 Trust, LLC, on behalf of AG/MR SQ700 Office Owner, LLC, and AG/MR SQ700 Residential Owner, LLC ("Applicant") for review and approval of a new office building pursuant to §§ 1604, 1605 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR" or "Zoning Regulations"), which apply to new construction on any lot with frontage along South Capitol Street, M Street, S.E., and to properties within Square 700, and includes requests for area variance from the requirement of § 1604.3, which regards street wall setbacks for buildings along M Street, S.E., and from § 2115.4, which regards grouping of compact parking spaces within the garage; and special exception approval relating to penthouses for CR-zoned properties, as set forth in § 630.4(a) of the Zoning Regulations.[1] The public hearing was conducted in accordance with the provisions of § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. On April 28, 2015, the Applicant filed an application for review and approval of a new office building pursuant to §§ 1604, 1605, and 1610 of the Zoning Regulations, which apply to new construction on any lot within the Capitol Gateway ("CG") Overlay District with frontage along South Capitol Street and along M Street, S.E., as well as properties within Squares 700 and 701 north of the Ballpark site. The subject property is located in Square 700 and consists of Lots 43 and 866 ("Property"). The application included requests for area variance relief from § 1604.3, which requires that the street wall of each new building shall be set back for its entire height and frontage along M Street not less 15 feet measured from the face of the adjacent curb along M Street, S.E., and special exception approval to provide a penthouse that does not meet the 1:1 setback requirement of § 630.4(b) of the Zoning Regulations.

2. The Applicant filed a prehearing submission in support of the application on June 5, 2015 ("Prehearing Submission"). (Exhibit ["Ex."]13-13C.) The Prehearing Submission included a statement summarizing the application's compliance with the applicable provisions of the CG Overlay and justification for the requested area variance relief

[1] The Applicant originally requested special exception approval pursuant to § 630.4(b) to provide a penthouse that does not set back from all exterior walls a distance equal to its height above the roof upon which it is located; however, given concerns raised by the Office of Planning and the Commission regarding compliance with the General Height Act of 1910, the Applicant revised its penthouse design to comply with § 630.4(b) by providing a penthouse with walls of unequal height, necessitating relief, pursuant to § 411.11, from the requirement established under §§ 411.5 and 630.4(a). The Applicant also supplemented its request for area variance relief at the public hearing relating to the grouping of compact vehicle parking spaces provided within the building.

regarding the projection of the building across the required 15-foot setback along M Street, S.E., and special exception regarding the penthouse setback. The Prehearing Submission also included updated architectural drawings, a traffic impact study prepared by Gorove/Slade, and resumes of expert witnesses that might testify in support of the application.

3. The Commission held a hearing on the application on June, 25, 2015. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located. Proper notice of the hearing was provided by the Office of Zoning pursuant to § 3015 of the Zoning Regulations.

4. Witnesses appearing at the hearing on behalf of the Applicant included Amy Phillips of Monument, William Hellmuth, of HOK, and Daniel VanPelt of Gorove/Slade. Mr. Hellmuth and Mr. VanPelt were recognized by the Commission as experts in their respective fields of architecture and transportation engineering.

5. At the conclusion of the public hearing on June 25, 2015, the Commission indicated support for the overall design and materials of the office building, including the curved projection along M Street, S.E., but requested that the Applicant further study certain aspects of the project's design, including the penthouse setback and terrace-level wall articulation and submit revised materials to the record.

6. The Applicant submitted materials responsive to the Commission's comments on July 7, 2015, including an updated set of architectural drawings which replaced all earlier drawings submitted to the record ("Final Architectural Drawings") (Ex. 23A), ("Posthearing Submission") and submitted proposed findings of fact and conclusions of law, pursuant to § 3026 of the Zoning Regulations on July 13, 2015. (Ex. 25.) In its Posthearing Submission, the Applicant revised its penthouse design to comply with the setback requirement established in § 630.4(b) of the Zoning Regulations, necessitating relief, pursuant to § 411.11, from the requirement that penthouses shall have enclosing walls of equal height, established under §§ 411.5 and 630.4(a). As discussed at the public hearing, the Applicant also requested area variance relief from § 2115.4, relating to the grouping of compact vehicle parking spaces provided within the building.

7. At its July 27, 2015, public meeting, the Commission took final action to approve the application, including the requested area variance and special exception. The Commission determined that the project satisfies all applicable requirements of the CG Overlay District.

Project Overview

8. The Property, which is rectangular in shape and measures approximately 35,558 square feet, is located in the northern portion of the square, with frontage on M Street, South Capitol Street, and Van Street. It is currently unimproved and utilized as a temporary seasonal surface parking lot for baseball games.

9. The Applicant proposes to develop the northern portion of the Property with a new 10-story office building with ground-floor preferred uses. As shown in the Final Architectural Drawings, three levels of below-grade parking will be provided with access from Van Street, S.E. Overall building height will not exceed 130 feet, and gross floor area for the building will total approximately 124,362 square feet. The Applicant is currently finalizing proposed drawings for a 13-story multi-family residential building to occupy the southern portion of the Property, which will be subject to separate review by the Commission pursuant to § 1610 of the Zoning Regulations. Construction of the two buildings is contemplated to be executed simultaneously. While the two buildings will operate as separate buildings and will not be connected, they ultimately will share a single record lot once the current lots comprising the Property are consolidated by subdivision plat. Access to the parking garage for the office building will be provided under a portion of the residential building.

10. The present application replaces a long-pending and recently withdrawn application (Z.C. Case No. 09-22) related to the Property submitted by the previous owner of the Property, which application proposed a speculative 12-story office building with ground-floor preferred uses for the entire site. The ANC expressed opposition to the earlier design as not sufficiently addressing the gateway location of the Property into the neighborhood along M Street as well as its location along this stretch of South Capitol Street.

11. The building proposed in the present application has been uniquely designed for its future occupant, the National Association of Broadcasters, which is relocating its headquarters to the Property, and with a focus on the Property's unique location in this neighborhood, at the intersection of M and South Capitol Streets and opposite the historic St. Vincent De Paul Church immediately north across M Street.

12. The building presents as a 10-story, 130-foot tall, masonry and glass office building with ground-level preferred uses, stepping back along South Capitol Street above the eighth floor consistent with the requirements of the CG Overlay. The three street-facing elevations of the building, along South Capitol, M, and Van Streets, respectively, all share a strong masonry frame, in the form of dark stone at the ground level and lighter precast concrete above. Variation in the patterning of this grid, in coordination with aluminum panels and a mix of fenestration types, establish a unique cadence for each of the façades.

13. As stated by the project architect, along South Capitol Street, the combination of the required setback and the mixture of types and colors of materials, establishes a horizontality that is in keeping with the monumental focus of South Capitol Street. This approach also provides a deferential context to the historic church located immediately to the north, including patterning of the masonry framework of the office building that subtly responds to the design language of the church, particularly the tower/campanile element.

14. As further stated by the project architect, behind this monumental façade, the Applicant has attempted to "turn the corner" toward M Street through a wave-like glass curtain wall above the second level of the M Street façade. This design feature, created through a combination of projection across the M Street setback line and related recess into the building envelope, draws the attention of passers-by going south along South Capitol as well as west along M Street to this gateway into the neighborhood and to the building's lobby. At the same time, this undulating wall serves to gradually transition the building's height from South Capitol to Van Street and to mark the building's entrance.

15. As further stated by the project architect, the building's frontage along Van Street, a much narrower public right-of-way which conveys more of the personality of an alley, is presented with a pseudo-industrial architectural treatment in the form of a heavy irregular concrete grid frame, evocative of the neighborhood's history, while in keeping with the design and materiality of the primary facades. Vehicular entrances for parking and loading purposes are provided along this frontage as required under the CG Overlay.

16. As shown in the Final Architectural Drawings, the materials palette for the building includes stone, precast concrete, high-performance glazing, and aluminum panels.

17. The building will incorporate a number of elements to enhance its sustainability, and the Applicant represented that it expects the finished building would qualify for at least LEED Gold NC 2009 certification. To that end, included in the Final Architectural Drawings, the Applicant submitted a revised draft LEED checklist identifying those elements and features the Applicant may pursue in satisfaction of its sustainability commitment. The building design also satisfies the Green Area Ratio ("GAR") requirements of Chapter 34 of the Zoning Regulations.

18. The project architect testified that the building will have a broadcasting dish that will be enclosed behind a penthouse and not visible from the street. He also testified that any negative affect of the building's glazing on birds would be limited because the building is not on a migratory flight path, its glazing will not be highly reflective because of the type of glass used and the northern orientation of the glazing, and because the glazing covers only a small portion of the building.

Description of the Surrounding Area and Zoning Classification

19. The Property is located in the northern half of Square 700, which is bounded by M Street on the north, South Capitol Street on the west, Van Street on the east, and N Street on the south. The Property is bounded to its south by private property (Lot 44), which is improved with a five-story brick self-storage building. An apartment building with ground and second floor retail uses has been approved by the Commission for the southern portion of Square 700, fronting on M Street. To the east of the Property, across Van Street, in Square 701, the Commission has approved a mixed-use office, retail, and residential project spanning from M Street to N Street. Nationals Park is located to the immediate south of Square 700, across N Street, S.E.

20. The Property is zoned Capitol Gateway Overlay/Commercial Residential ("CG/CR"), as are all the adjacent properties south of M Street and west of First Street. East of First Street the properties are zoned Southeast Federal Capital Overlay Commercial Residential ("SEFC/CR"), and on the north side of M Street properties are zoned CG/C-3-C.

21. Within the CG Overlay, residential and nonresidential floor area on each individual parcel within the CR Zone District shall not exceed a maximum building density of 8.5 floor area ratio ("FAR") on parcels for which a height of 130 feet is permitted by the General Height Act of 1910 ("Act"), pursuant to § 1602.1(a). As a result of the Property's frontage on South Capitol Street, 130 feet of height is permitted under the Act.

22. Section 1602 further provides that two or more lots within the CG Overlay may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot. This allocation is accomplished by a combined lot development covenant approved by the District of Columbia and recorded in the land records.

23. In addition to the amount of density that may be transferred in accordance with § 1602.1(a), the Commission may, at its discretion, grant an additional transfer of density of 1.0 FAR maximum to or within Squares 700, 701, and 702, subject to an applicant addressing to the satisfaction of the Commission the objectives and guidelines of §§ 1601 and 1604-1607, as applicable. To that end, the Applicant submitted this application for Commission review and approval. A combined lot development covenant has been recorded in the land records involving the necessary allocations of use and density to permit non-residential construction on the Property totaling up to 9.5 FAR. As a result of the Applicant's plans to construct multiple buildings on the single record lot to be established on the Property, the office building measures far less than 9.5 FAR; however,

the Applicant includes reference to § 1602 in its request for Commission review in anticipation of the additional building to be constructed on the Property.

Capitol Gateway Overlay District Design Requirements

The Project Meets the Requirements of § 1604

24. The application must satisfy the requirements of § 1604 of the Zoning Regulations because the new building will have frontage on M Street, S.E., within the CG Overlay. The Commission finds that the project meets the requirements of § 1604.

25. The building complies with the requirement that no driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building. As shown in the Final Architectural Drawings, the below-grade parking garage and the building's loading facilities will be accessed from Van Street, S.E. (§ 1604.2.)

26. As shown in the Final Architectural Drawings, the building does not comply with the requirement that the street wall of each new building or structure located on M Street, S.E., shall be set back for its entire height and frontage along M Street not less than 15 feet measured from the face of the adjacent curb, and the Applicant has requested area variance relief from the Commission pursuant to its authority established in § 1610.7 of the Zoning Regulations. (§ 1604.3.)

27. As shown in the Final Architectural Drawings, the building complies with the requirement that each new building shall devote not less than 35% of the ground-floor gross floor area to retail, service, entertainment, and arts uses and that such preferred uses shall occupy 100% of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control. (§ 1604.4.)

28. As shown in the Final Architectural Drawings, the building complies with the requirement that not less than 50% of the surface area of the street wall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses of the building. (§ 1604.6.)

29. As shown in the Final Architectural Drawings, the building complies with the requirement that the minimum floor-to-ceiling clear height for portions of the ground level devoted to preferred uses shall be 14 feet. (§ 1604.7.)

The Project Meets the Requirements of § 1605

30. The proposed project is subject to the requirements of § 1605 of the Zoning Regulations because the new building will have frontage on South Capitol Street within the CG Overlay. The Commission finds that the project meets the requirements of § 1605.

31. As shown in the Final Architectural Drawings, the building complies with the requirement that each new building or structure located on South Capitol Street shall be set back for its entire height and frontage not less than 15 feet. (§ 1605.2.)

32. As shown in the Final Architectural Drawings, the building complies with the requirement that any portion of a building or structure that exceeds 110 feet in height shall provide an additional 1:1 setback from the building line along South Capitol Street. (§ 1605.3.)

33. The building complies with the requirement that no private driveway may be constructed or used from South Capitol Street to any parking or loading berth areas in or adjacent to a building or structure constructed after February 16, 2007. As shown in the Final Architectural Drawings, the below-grade parking garage and the building's loading facilities will be accessed from Van Street, S.E. (§ 1605.4.)

34. As shown in the Final Architectural Drawings, the building complies with the requirement that a minimum of 60% of the street wall shall be constructed on the setback line for each new building or structure located on South Capitol Street. (§ 1605.5.)

The Project Meets the Requirements of §1610

35. Subsections 1610.1(b), 1610.1(c), 1610.1(d), 1610.1(f), and 1610.2 of the Zoning Regulations provide that new construction on a lot located within Square 700 or 701, north of the ballpark site, on a lot abutting M Street or South Capitol Street, or on any lot that is the recipient of density through the combined lot provisions of § 1602, require the review and approval of the Commission. Subsection 1610.3 of the CG Overlay provisions provides that in addition to demonstrating that the proposed building meets the standards set forth in § 3104 of the Zoning Regulations, an applicant requesting approval under the CG Overlay provisions must also prove that the proposed building meets the requirements of §§ 1610.3(a) through 1610.3(f). Subsection 3104.1 of the Zoning Regulations provides that special exceptions should be granted when "the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." (11 DCMR § 3104.1.)

36. Subsection 1610.3 further provides that the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation of the proposed building must comply with the specific requirements set forth in that section, and must help achieve the objectives of the CG Overlay District as set forth in § 1600.2 of the Zoning Regulations. The Commission finds that the proposed building meets the requirements of § 1610 and is consistent with all of the applicable purposes of the CG Overlay.

37. The proposed building's height and density are allowed at this location, and the proposed use is consistent with the Property's designation on the Future Land Use Map. The commercial and retail uses contemplated by the project will help foster an appropriate mix of uses within the square and the surrounding area. (§ 1600.2(a).)

38. The proposed building is planned to include significant space devoted to preferred retail or other preferred uses on the ground floor, including approximately 14-foot floor-to-floor heights. This space will accommodate precisely the types of retail, service, and entertainment uses encouraged by the CG Overlay. (§ 1600.2(b)).

39. The CG Overlay provides for the establishment of South Capitol Street as a monumental civic boulevard. As shown in the Final Architectural Drawings, the design of the building, including the masonry façade treatment and articulation, all further the monumental focus of South Capitol Street. (§ 1600.2(g).)

40. The proposed project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the neighboring property in accordance with the Zoning Regulations and Zoning Map. The Commission finds that the project assures development of the area with a mixture of uses and a suitable height, bulk, and design. (§ 1610.3(a).)

41. The proposed building will help achieve the desired mix of uses in the CG Overlay as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses. The Commission finds that the ground-level preferred uses contemplated for the building along its M Street frontage, with expansive floor-to-floor heights and façade treatment intended to emphasize the potential preferred uses and human scale, all of which help achieve the goals of the CG Overlay. (§ 1610.3 (b).)

42. The Commission finds that the height, bulk, and architectural design of the proposed building, as shown in the Final Architectural Drawings, will be in harmony with the context of the surrounding neighborhood and will have no effect on the existing street grid. (§ 1610.3 (c).)

43. The Commission finds that the proposed building has been sited to minimize conflicts between vehicles and pedestrians. Access to the building's loading and parking facilities along Van Street will help minimize potential conflicts between vehicles and pedestrians. Further, the Applicant has stacked its loading berths so as to minimize the width of the loading access curb cut and thereby further minimize potential conflicts. The Applicant has committed to provide 48 bicycle parking spaces within the building where four spaces are currently required under the Zoning Regulations. The Applicant's traffic impact study confirms that the project minimizes negative impacts to public space. (§ 1610.3(d).)

44. The Commission finds that the proposed building's façades have been designed to minimize unarticulated walls adjacent to public spaces through façade articulation. Through building geometry along with varying material and finish palettes, the Applicant minimizes unarticulated blank walls. As shown in the Final Architectural Drawings, the Applicant responded to concerns from the Commission regarding treatment of the terrace-level wall located at the setback of the 9th and 10th floors from South Capitol Street. The Applicant provided additional descriptive materials as part of its Posthearing Submission demonstrating the articulation and materials proposed for this wall, which covers the location of this building's core at the 9th and 10th floors. (§ 1610.3 (e).)

45. The proposed project will be designed with sustainability features including at least 60 points on the conceptual LEED scorecard, which qualifies as LEED-Gold, and will have no significant adverse impacts on the natural environment. (§ 1610.3(f).)

46. This application was referred to the Office of Planning ("OP") and the District Department of Transportation ("DDOT") for review. (§ 774.6.)

Variance Requests from the Required Setback along M Street, S.E. and Compact Parking

47. Subsection 1610.7 of the Zoning Regulations states that the Commission may hear and decide any additional requests for special exception or variance relief needed for the Property and that such requests shall be advertised, heard, and decided together with the application for review and approval for compliance with the CG Overlay provisions. Pursuant to this provision, the Applicant requests area variance relief from the requirement set forth in § 1604.3 of the Zoning Regulations that the street wall of each new building shall be set back for its entire height and frontage along M Street, S.E., not less than 15 feet measured from the face of the adjacent curb along M Street, S.E., in order to provide the proposed curvilinear projection at the third level and above along M Street, S.E. The Applicant also requests variance relief from § 2115.4, which provides that parking spaces designated as "compact car" shall be placed in groups of at least five contiguous spaces with access from the same aisle. The request regarding compact

parking is a supplement to the initial application, pursuant to comment received by OP and discussed at the public hearing.

48. The test for variance relief is three-part: (1) demonstration that a particular piece of property is affected by some exceptional situation or condition; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Commission finds that variance relief is appropriate in this application.

49. The Commission finds that the Property fronts on three streets within the CG Overlay, including two primary axes which are the subject of extensive design control within the overlay. As such, the Property is exceptional in being in a very prominent location and acts as the "front door" to the near southeast neighborhood. The property is subject to multiple required setbacks, percentage of street wall requirements, ground-floor preferred uses with specialized dimensional requirements and prohibitions in terms of location of required loading and parking egress. Because of this prominent position, OP noted that it is reasonable that a building on this site could utilize additional architectural gestures to signify its importance. Further, the various setbacks and vehicle access requirements establish a structural configuration resulting in a narrow column grid.

50. The Commission finds that the strict application of the Zoning Regulations will result in a practical difficulty upon the Applicant in that it will significantly constrain the Applicant's efforts to provide an exceptional design for this prominent property, with significant frontages and related design requirements along both its primary facades, and to dynamically respond to comments received from the community to earlier design proposals for the site. The wave-shaped projection, coupled with the related wave-shaped indentation in the M Street façade, allows the design to transition from the solid linear massing provided to emphasize the monumentality along South Capitol Street to the taller, more active and pedestrian-focused M Street elevation. It also provides the Applicant a needed opportunity to highlight the building's entrance along a largely monolithic stretch of M Street. Absent relief from the setback requirement, the Applicant's efforts to provide an iconic focal point at this gateway intersection while harmoniously relating the designs of the principal façades of this corner location will be significantly compromised.

51. The Commission finds that the strict application of the compact parking space grouping requirements set forth in § 2115.4 will also result in a practical difficulty upon the Applicant in that they will result in inefficiencies within the building's parking garage. As a result of the column spacing in the building, in turn resulting from the several design requirements and prohibitions applicable to the Property, the parking garage has numerous locations where only compact parking spaces can be provided.

52. The requested relief from the M Street setback requirement can be granted without substantial detriment to the public good and without substantially impairing the zone plan. Any impacts of the grant of variance relief from the setback requirements are not experienced at a pedestrian level, as the 15-foot street wall setback is maintained at the ground and second levels. The projection will provide an interesting visual element from both vantages along M Street as well as from traffic along southbound South Capitol Street. Furthermore, given that the projection does not begin until the third level of the building and above, there will be no negative impact upon pedestrian traffic along M Street, as provided in §1600.2(e). Given that the pedestrian experience is not compromised by the proposed projection but rather enhanced by the activated streetscape, approval of the requested relief will neither harm the public good or the zone plan.

53. The requested relief relating to grouping of compact parking also can be granted without substantial detriment to the public good and without substantially impairing the zone plan. The location of the compact parking spaces within the building will allow a more efficient use of the parking garage.

Special Exception for Penthouse (§ 2108)

54. Under § 411.11 of the Regulations, the Board of Zoning Adjustment ("Board") may approve the location, design, number, or any other aspect of a roof structure even if it does not comply with the requirements of § 630.4, where it would be impractical because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly or unreasonable. The Board, and by extension the Commission pursuant to § 1610.7, has the power to approve a roof structure under § 411.11, provided that the intent and purpose of the chapter and title of the Zoning Regulations are not materially impaired by the structure, and the light and air of adjacent buildings are not affected adversely.

55. The Applicant's roof level plan is in keeping with the purpose and intent of the Zoning Regulations. As a result of the curving architectural feature, an elevator override for one of the four elevators in the building creates a situation where a small portion of the penthouse must be provided in a location that is less than 18'6" from the nearest building edge. The proposed penthouse is 18'6" above the roof of the building. The Applicant originally requested special exception approval, pursuant to §§ 3104, 411.11, and 630.4(b), to provide a penthouse that does not technically comply with the 1:1 setback for that small portion of the penthouse.

56. Given the concerns noted by the Commission regarding compliance of the original penthouse design with the Act, the Applicant revised the design of the penthouse and is now proposing a penthouse that fully complies with the required setback of the Act as

well as the Zoning Regulations. In order to satisfy the setback requirement, the Applicant is now proposing that a small portion of the penthouse be provided at a lower overall height (10'6") than the remainder of the penthouse (18'6"). This revised condition is shown in the Final Architectural Drawings in plan on Sheets 19 and 20, and in section on Sheet 24, confirming that the setback is provided at a ratio of at least 1:1. The revised condition is also shown in elevation and perspective rendering at Sheets 26, 27, 29, 36, and 37, respectively. The Applicant therefore has amended its request to the Commission for special exception approval, now requesting, pursuant to § 411.11 of the Zoning Regulations, to provide a penthouse with enclosing walls of unequal height as required under §§ 411.5 and 630.4(a). The Commission finds that special exception approval regarding the height of penthouse walls is appropriate and does not create any noncompliance issue under the Act.

Office of Planning Report

57. By report dated June 15, 2015, OP recommended approval of the application. (Ex. 15.) In its report, OP noted that the application successfully addresses most of the criteria of the CG Overlay and recommended approval of the project if additional bike parking is provided. OP also noted its support for the requested M Street setback relief and noted its belief that variance relief was required regarding the grouping of compact parking spaces within the garage, which relief OP supported. OP noted that it could not support penthouse structure setback relief because the structure is above the Act height limit for the Property.

58. As shown in the Final Architectural Drawings, the Applicant increased the number of bicycle parking spaces within the garage to a total of 48 spaces.

59. In response to OP's suggestion that variance relief regarding the grouping of compact car spaces is required, the Applicant has requested variance relief from § 2115.4.

60. With respect to OP's concerns regarding the penthouse setback request and compliance with the Act, as shown in the Final Architectural Drawings, the Applicant has revised the design of the penthouse to comply with the setback requirement of § 630.4(b), and has requested variance relief from the requirement to provide penthouse enclosing walls of equal height. OP has indicated its support for this alternative design approach.

DDOT Report

61. By report dated June 24, 2015, DDOT provided its analysis regarding the parking, loading trip generation and vehicle turning impacts of the project on the District's transportation network. (Ex. 19.)

62. DDOT noted that Transportation Demand Management ("TDM") is a set of strategies, programs, services, and physical elements that influence travel behavior by mode, frequency, time, route, or trip length in order to help achieve highly efficient and sustainable use of transportation facilities. In the District, this typically means implementing infrastructure or programs to maximize the use of mass transit, bicycle, and pedestrian facilities, and to reduce single occupancy vehicle trips during peak periods. DDOT stated that the Applicant's proposed TDM measures play a role in achieving the desired and expected mode split. The specific elements within the TDM plan vary depending on the land uses, site context, proximity to transit, scale of the development, and other factors. The TDM plan must help achieve the assumed trip generation rates to ensure that an action's impacts will be properly mitigated. Failure to provide a robust TDM plan could lead to unanticipated additional vehicle trips that could negatively impact the District's transportation network.

63. The Applicant proposed the following TDM strategies: (a) provide 12 1ong-term bicycle parking spaces for the office building; (b) unbundle the cost of residential parking from the cost of lease or purchase; (c) appoint TDM leaders (for planning, construction, and operations) at the residential and office buildings(the TDM Leaders will work with residents in the building to distribute and market various transportation alternatives and options); (d) dedicate two spaces in the residential garage for car sharing services to use with right of first refusal; (e) provide reserved spaces in the office garage for carpools and van pools; and (f) provide a public transit information screen; showing real-time information on nearby transit services, in the residential and office building lobbies.

64. DDOT did not find the Applicant's proposed TDM measures to be sufficiently robust to address the impacts expected from the project. DDOT recommended the following additional TDM measures in order to support the project: (a) install a minimum of 48 long-term secure bicycle parking spaces for access by office and retail employees or install a Capitol Bikeshare station and fund its first year of operations; (b) install a minimum of six short-term bicycle parking spaces (three racks) within the building setback or public space near the office and retail entrances; (c) provide showers and lockers to encourage bicycling among office and retail employees; and (d) prohibit office and retail employees and retail customers from parking in the residential parking garage. The Applicant agreed to DDOT's recommended additional TDM measures.

65. Since loading cannot be accessed through an alley, back-up maneuvers will occur in the public realm. To that end, DDOT has accepted the Applicant's proposed following loading management plan: (a) a loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries to the loading dock, for 30-foot trucks (not delivery vans); (b) all deliveries will be permitted between 7:00 a.m. and 4:00 p.m. seven days per week, except when events occur at Nationals Park.

Deliveries cannot be scheduled for the period between two hours when an event begins and one hour after an event is completed, including during the event itself (not including UPS/FedEx and similar deliveries); (c) trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20-Chapter 9, § 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DOOT Truck and Bus Route Map (godcgo.com/truckandbusmap).

66. In addition to the TDM and loading management measures, DDOT proposed the following mitigations as conditions of approval: (a) restrict northbound left turns on Van Street at M Street and install signage for a right-turn in, right-turn out ("RIRO"); and (b) amend the loading management plan to include the following: (1) All tenants will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20 feet in length or larger); (2) the dock manager will schedule deliveries to ensure that the docks' capacity is not exceeded (in the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time); and (3) a flagger will be present whenever a vehicle is entering or exiting the loading dock to ensure pedestrian, bicycle, and vehicle safety with truck back-in and exiting maneuvers. The Applicant agreed to these DDOT-requested mitigation measures.

67. All of the aforementioned TDM, loading management, and transportation mitigation measures, including the enhancements recommended by DDOT, have been included as conditions of this Order.

NCPC Report

68. On July 13, 2015, a report from Marcel Acosta, Executive Director of the National Capital Planning Commission ("NCPC"), was received into the hearing record. (Ex. 24.) In that report, Mr. Acosta stated that the proposed building is consistent with the intent and requirements of the CG Overlay District, but is inconsistent with the Comprehensive Plan for the National Capital and other federal interests due to a minimal violation of the penthouse setback requirements of the Height of Buildings Act. However, based upon the Applicant's revised penthouse design (see Footnote 1), NCPC submitted a supplemental report stating "the proposed building is now not inconsistent with the Comprehensive Plan for the National Capital and the requirements of the Height Act." (Ex. 27.)

ANC Report

69. By report dated June 13, 2015, ANC 6D reported that at its duly noticed meeting on June 8, 2015, it voted 5-0-1 to support the application. (Ex. 14.) The ANC noted that it supports the proposed architectural design, though it most prefers the curved glass projection portion of the design. The ANC noted its support for the project targeting the guidelines for LEED-Silver certification, but stated that it would prefer LEED-Gold or Platinum level certification. The report requested that any antennae or broadcast dishes not be visible from the street. The report requested that the Applicant reduce the glazing reflectivity on the building's glass facades and add other measures to mitigate the risk to birds. The report urged consideration of permeable and pliant paving materials around the site. The report encouraged the Applicant to work in concert with other local projects to ensure that Van Street is paved in an attractive and consistent manner. Finally, the ANC report stated that the ANC expected the Applicant to create an effective construction management plan and submit the plan to the ANC before it is enacted.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to 11 DCMR §§ 1604, 1605 and 1610 for review and approval by the Commission, and pursuant to § 1607 for variance and special exception approval. The Commission concludes that the Applicant has met its burden of proof.

2. The Commission provided proper and timely notice of the public hearing on the application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and owners of property within 200 feet of the site.

3. Pursuant to §§ 1604.1 and 1610.1 of the Zoning Regulations, the Commission required the Applicant to satisfy all applicable requirements set forth in §§ 1604.2 through 1604.9 and §§ 1610.2 through 1610.7. Pursuant to §§ 1605.1 and 1610.1, the Commission required the Applicant to satisfy all applicable requirements set forth in §§ 1605.2 through 1605.5 and §§ 1610.2 through 1610.7. Pursuant to § 1610.7, the Commission also required the Applicant to meet the requirements for variance relief set forth in §§ 3103, 1604.3, and 2115.4, and special exception approval set forth in §§ 3104, 411.5, 411.11, and 630.4(a). The Commission concludes that the Applicant has met its burden.

4. The proposed development is within the applicable height, bulk, and density standards for the CG/CR (Capitol Gateway Overlay/Commercial Residential) Zone District and will not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.

5. The Commission concludes that the proposed project will further the objectives of the CG Overlay District as set forth in § 1600.2 and will promote the desired mix of uses set forth therein. The design of the proposed building meets the purposes of the CG Overlay and meets the specific design requirements of §§ 1604 and 1605 of the Zoning Regulations excepting § 1604.3, from which the Commission has granted variance relief.

6. No person or parties appeared at the public hearing in opposition to the application.

7. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The affected ANC in this case is ANC 6D. The Commission carefully considered ANC 6D's recommendation for approval and concurs in its recommendation, and considered the issues and concerns stated in its report.

8. With respect to the ANC's issues regarding the curved glass design, preference for the Applicant to achieve a LEED-Gold rating, and request that there not be any visible antenna or broadcast dishes, the Commission notes that the Applicant has satisfied these requests. The building includes the curved glass in the final design. The Applicant has stated on the record that the project will eligible to achieve LEED-Gold, and that the broadcast dish will be enclosed behind the building's penthouse.

9. As to the ANC's requests regarding modifying the building's glazing to reduce its impact on birds, the Commission found the project architect's testimony persuasive that the potential adverse effect of the building's glazing on birds will be small because of the building's urban location, the low reflectivity of the glass, and because the glass covers only a small percentage of the building. The Commission therefore does not think it is necessary to include additional mitigation.

10. Regarding the ANC's suggestions that the Applicant use permeable and pliant paving materials, take certain actions with respect to the paving of Van Street, and enter into a construction management agreement, the Commission believes it would be inappropriate to include these as conditions of its approval. The Commission's authority in this case is limited to whether the Applicant has met the design review, special exception, and variance tests required by the Zoning Regulations, and any conditions of approval should be intended to mitigate identified adverse effects related to that review. Because these requests go beyond the scope of the Commission's review of this application, the Commission declines to include them as conditions of this Order.

11. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully

considered the OP report and, as explained in this decision, finds its recommendation to grant the applications persuasive. The Applicant included the additional bike parking that was recommended by OP, and revised its penthouse so that it conforms with the Act.

12. Based upon the record before the Commission, including witness testimony, the reports submitted by the Office of Planning, DDOT, and ANC 6D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under §§ 1604, 1605, 1607, and 1610 of the Zoning Regulations.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application consistent with this Order. The term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an Owner. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lots 43 and 866 in Square 700.

2. The project shall be built in accordance with the Final Architectural Drawings, dated July 6, 2015, as modified by the guidelines, conditions, and standards below. (Ex. 23A).

3. The overall density on the site shall not exceed 9.5 FAR as permitted pursuant to § 1602 of the Zoning Regulations, and pursuant to the Zoning Commission's approval of this application.

4. **The Applicant shall implement the following transportation mitigation measure for the life of the project**: restrict northbound left turns on Van Street at M Street and install signage for a right-turn in, right-turn out ("RIRO").

5. **The Applicant shall implement the following Transportation Demand Management ("TDM") measures for the life of the project**:

   (a) Provide 12 1ong-term bicycle parking spaces for the office building;

   (b) Unbundle the cost of residential parking from the cost of lease or purchase;

(c) Appoint TDM Leaders (for planning, construction, and operations) at the residential and office buildings. The TDM Leaders will work with residents in the building to distribute and market various transportation alternatives and options;

(d) Dedicate two spaces in the residential garage for car sharing services to use with right of first refusal;

(e) Provide reserved spaces in the office garage for carpools and van pools;

(f) Provide a public transit information screen, showing real-time information on nearby transit services, in the residential and office building lobbies;

(g) Install a minimum of 48 long-term secure bicycle parking spaces for access by office and retail employees or install a Capitol Bikeshare station and fund its first year of operations;

(h) Install a minimum of six short-term bicycle parking spaces (three racks) within the building setback or public space near the office and retail entrances;

(i) Provide showers and lockers to encourage bicycling among office and retail employees; and

(j) Prohibit office and retail employees and retail customers from parking in the residential parking garage.

6. **The Applicant shall implement the following loading management measures for the life of the project**:

(a) A loading dock manager will be designated by the building management (duties may be part of other duties assigned to the individual). He or she will coordinate with vendors and tenants to schedule deliveries to the loading dock, for 30 foot trucks (not delivery vans);

(b) All deliveries will be permitted between 7:00 a.m. and 4:00 p.m., seven days per week, except when events occur at Nationals Park. Deliveries cannot be scheduled for the period between two hours when an event begins and one hour after an event is completed, including during the event itself (not including UPS/FedEx and similar deliveries);

(c) Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20-Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's

Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DOOT Truck and Bus Route Map (godcgo.com/truckandbusmap);

(d) All tenants will be required to schedule deliveries that utilize the loading dock (any loading operation conducted using a truck 20 feet in length or larger);

(e) The dock manager will schedule deliveries to ensure that the docks' capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time; and

(f) A flagger will be present whenever a vehicle is entering or exiting the loading dock to ensure pedestrian, bicycle, and vehicle safety with truck back-in and exiting maneuvers.

7. The Applicant shall have flexibility with the design of the project in the following areas:

- To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings;

- To vary the final selection of exterior materials within the color ranges provided (maintaining or exceeding the same general level of quality) as proposed, based on availability at the time of construction;

- To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and

- To vary the exterior design and materials of the ground floor retail/service space based on the preferences of the individual tenant/occupant. The Applicant will not permit the individual tenant/occupant to modify the building footprint, or reduce the quality of the materials used on the exterior of the ground floor of the Project, as shown in the plans submitted with this application.

8. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 *et seq*. (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national

> origin, sex, age, marital status, personal appearance, sexual orientation, gender identification, 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action.

On July 27, 2015, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt; Marcie I. Cohen to approve and adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on August 21, 2015.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 15-19
(411 New York Avenue Holdings, LLC – Consolidated PUD & Related Map Amendment @ Square 3594)
August 13, 2015

THIS CASE IS OF INTEREST TO ANC 5D and 5C

On August 10, 2015, the Office of Zoning received an application from 411 New York Avenue Holdings, LLC (the "Applicant") for approval of a consolidated planned unit development ("PUD") and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lot 800 in Square 3594 in northeast Washington, D.C. (Ward 5) at 411 New York Avenue, N.E. The property is zoned C-M-1. The proposed PUD-related map amendment would rezone the property, for the purposes of this project, to C-3-C.

The site is currently improved with a four-story industrial building that is leased to various artists and includes a retail consignment shop on the ground floor. The Applicant proposes to develop a mixed-use project that will co-locate a hotel and artist/maker spaces in a unique arts-oriented hotel. The 11-story hotel will combine modern design and a reuse of elements from the existing industrial building. The project will have a density of 8.0 floor area ratio ("FAR") and a maximum height of 110 feet. It will include 47 parking spaces.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF SPECIAL PUBLIC MEETINGS

The Zoning Commission of the District of Columbia, in accordance with § 3005 of the District of Columbia Municipal Regulations, Title 11, Zoning, hereby gives notice that it has scheduled Special Meetings for **September 10 and October 22, 2015, at 6:00 P.M.**, to consider various items.

For additional information, please contact Sharon Schellin, Secretary to the Zoning Commission at (202) 727-6311.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	)	
Complainant	)	PERB Case No. 07-U-40, 08-U-28, 08-U-34, 08-U-37, 08-U-39, 08-U-50, 09-U-11 and 09-U-40
v.	)	
	)	Opinion No. 1521
District of Columbia Metropolitan Police Department	)	
Respondent	)	

DECISION AND ORDER

I. Statement of the Case

Before the Board are nine Unfair Labor Practice Complaints ("Complaints") that were filed by the Fraternal Order of Police/Metropolitan Police Department ("FOP") against Metropolitan Police Department ("MPD"). FOP alleges that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act ("CMPA") by failing to comply or fully comply with the Union's information requests that were relevant and necessary to its duties as exclusive representative for collective bargaining. MPD denied the allegations and filed a motion to dismiss, arguing that the Board did not have jurisdiction over the cases.

The nine cases were consolidated and referred to a Hearing Examiner to conduct an unfair labor practice hearing to develop the factual record.[1]

II. Discussion

A. Hearing Examiner's Application of Relevant Law

An agency has an obligation to furnish information that a union requests, which is both relevant and necessary to the union's role in processing a grievance, an arbitration proceeding, or collective bargaining. Failure to do so is an unfair labor practice.[2] The Hearing Examiner found that MPD committed unfair labor practices in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights, refusing to bargain in good faith with the Union, and failing to comply with the Union's information requests in PERB Case Nos. 07-U-40, 07-U-44, 08-U-28, 08-U-34, 07-U-50 and 09-U-11…."[3] In addition, the Hearing Examiner found that "Complainant did not meet its burden of proof in PERB Case Nos. 08-U-37, 08-U-39, and 09-U-40."[4]

In reaching her determinations, the Hearing Examiner considered PERB's case law and persuasive National Labor Relations Board ("NLRB") case law. The Hearing Examiner observed that management has a duty to supply information that is relevant and necessary to a union's statutory role under the CMPA as the employees' exclusive representative.[5] As MPD raised the affirmative defense that some of the requested information was confidential and not subject to disclosure, the Hearing Examiner considered the issue of confidentiality in regards to the information requests. The Hearing Examiner stated:

> In certain circumstances, an employer may not have to provide information that it has a legitimate interest in protecting. Using the defense of confidentiality or privacy, an employer may, therefore, limit information that a union would otherwise find useful or helpful.[6]

The Hearing Examiner observed that PERB's test for determining whether a defense of confidentiality or privacy for withholding requested information is "whether the information sought is relevant and necessary to the union's legitimate collective bargaining functions and whether this need is outweighed by privacy concerns."[7] Further, the Hearing Examiner stated that "PERB has found an agency must articulate or document a position 'which justifies a policy

[1] The hearing examiner who presided over the hearing was unable to write the Report and Recommendation for the Board. Hearing Examiner Carole Wilson reviewed the record of the proceedings and submitted a Report and Recommendation to the Board, which is under consideration by the Board.
[2] *D.C. Nurses Ass'n v. D.C. Dep't of Mental Health*, 59 D.C. Reg. 15187, Slip Op. No. 1336 at p. 3, PERB Case No. 09-U-07 (2012).
[3] HERR at 50.
[4] *Id.*
[5] *Id*. at 31-32.
[6] *Id.* at 32.
[7] *Id.* at 32 (quoting *FOP/MPD Labor Committee v. MPD*, PERB Case Nos. 07-U-49, 08-U-13 and 08-U-16 (2012) Slip Op. at 14.

of confidentiality as to records of this type…'"[8] In addition, the Hearing Examiner applied *Detroit Edison*[9] finding that:

> The key to properly restricting the disclosure of information, therefore, is the willingness of an agency to present alternatives to the initial demands made by the union. The alternatives put forward must reflect the appropriate balance between a union's valid need for necessary and relevant information to perform its obligations as the exclusive representative of an agency's employees and an agency's appropriate concerns about confidentiality and privacy.[10]

The Hearing Examiner noted that the application of the above standards under PERB case law is to be made on a case-by-case basis.[11] The Hearing Examiner in making her conclusions for each of the cases addressed:

> (1) whether the FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees; (2) if so, whether the Union's needs are not outweighed, where applicable, by MPD's specific articulated and documented confidentiality or privacy concerns as to records of this type; and (3) if so, did Respondents offer the Union an alternative solution, such as offering the information in redacted form, or under a protective order restricting its dissemination.[12]

The Board has well established precedent regarding an employer's obligation to provide information to the exclusive representative under the CMPA.[13] In addition, the Board has followed the United States Supreme Court precedent holding that the duty to bargain collectively includes a duty to provide relevant information needed by a labor union for the proper performance of its duties as the employees' bargaining representative.[14] The Board has held that the test concerning information that may be confidential is whether the information sought is relevant and necessary to the union's legitimate collective bargaining functions and whether this need is outweighed by confidentiality concerns.[15] Therefore, the Board finds that the Hearing

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[8] HERR at 33(quoting *International Brotherhood of Teamsters, Locals 639 and 730 v. D.C. Public Schools*, PERB Case No. 88-U-10 (1989), Slip Op No. at fn. 5.
[9] *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979).
[10] *Id.*
[11] HERR at 33.
[12] *Id.*
[13] *University of the District of Columbia v. University of the District of Columbia Faculty Association*, Slip Op. No. 272, *supra*.
[14] *See NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 76 S. Ct. 753, 100 L.Ed. 1027; *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 87 S.Ct. 565, 17 L.Ed.2d 495.
[15] 2012 WL 3901586. *See University of the District of Columbia Faculty Association v. University of the District of Columbia*, 36 DCR 2469, Slip Op. No. 215 at p.3, PERB Case No. 86-U16 (1989)(citing *N.L.R.B. v. Acme Industries Co.*, 385 U.S. 432 (1967)). *See also District of Columbia Nurses Association v. The Mayor of the District*

Examiner's analysis of PERB case law is reasonable and consistent with Board precedent. The Board now reviews the Hearing Examiner's findings and conclusions and the parties' exceptions in accordance with the Board's relevant case law discussed above.

B. The Board's Jurisdiction

MPD raised the affirmative defense that the Board lacked jurisdiction over the Unfair Labor Practice Complaints and moved to dismiss the Complaints, arguing that the subject was dealt with by the parties' collective bargaining agreement. Based on the pleadings, the record presented to the Hearing Examiner, and her consideration of the parties' post-hearing briefs, the Hearing Examiner concluded that the Board has jurisdiction over the Complaints, and denied MPD's motion to dismiss.[16] In reaching her determination, the Hearing Examiner applied the Board's precedent that "[w]hile PERB case law holds that the PERB lacks jurisdiction over violations that are 'strictly contractual' in nature, it is well-settled that PERB precedent does not prohibit PERB from exercising its jurisdiction over complaints merely because the alleged statutory violation could also be resolved by an application of the parties' Agreement and a grievance/arbitration procedure."[17]

The Board finds that the Hearing Examiner's findings and conclusions with respect to the Board's jurisdiction are reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's determination that the Board has jurisdiction over the parties' dispute.

C. Timeliness of MPD's Request for an Enlargement of Time to File an Answer

The Hearing Examiner recommended that the Board grant MPD's request for an enlargement of time to file its Answer in Case No. 08-U-28.[18] The Hearing Examiner relied upon Board Rule 501.1, and found that the Executive Director exercised the discretion afforded to him under Board Rule 501.1 to grant MPD a one-day extension to file its Answer.[19] Further, the Hearing Examiner found that FOP was not prejudiced by the one-day extension, and that FOP was afforded a full opportunity to present its facts and arguments at the hearing on the Complaint.

The Board has reviewed the Hearing Examiner's findings and conclusions on timeliness, and determined that they are reasonable, based on the record, and consistent with Board

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of Columbia, and District of Columbia Health and Hospitals Public Benefit Corporation, District of Columbia General Hospital, 45 D.C. Reg. 6736, Slip Op. No. 558 at pgs. 4-5, PERB Case Nos. 95-U-03, 97-U-16 and 97-U-28 (1998).

[16] HERR at 30.
[17] *Id.* (citing *American Federation of Government Employees, Local Union No. 3721 v. District of Columbia Fire Department*, PERB Case No. 90-U-11 (1991), Slip Op. at fn. 5.)
[18] *Id.*
[19] *Id.*

precedent.[20] Therefore, the Board adopts the Hearing Examiner's recommendation, and does not disturb the Executive Director's decision to provide MPD with a one-day extension of time to file its Answer in Case No. 08-U-28.

III. Analysis of Cases Involving Information Requested to Assist Particular Members

A. Case No. 07-U-40

The Hearing Examiner found, "On January 30, 2007, Sergeant Delroy A. Burton, a FOP Union Representative, sent a request for information to MPD Assistant Chief of Police ("Assistant Chief") William Ponton, who was in charge of the MPD Office of Professional Responsibility."[21] Burton requested the information for a grievance he was preparing on behalf of a union member and to determine if the member was being treated negatively when checking in at the D.C. Superior Court.[22] On February 14, 2007, Burton was directed by Ponton to submit a request for information to MPD's Office of General Counsel, Labor and Employee Relations Unit ("LERU").[23] Burton testified that he did not request the information from the LERU, and that he did not have time to request and receive information from the LERU before filing the grievance.[24] Burton filed the grievance, which was denied, and the requested information was never provided.

The Hearing Examiner recommended that PERB find that:

> (1) the FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees as the information was needed to represent Sergeant Young in finding out why he allegedly continues to receive detrimental treatment in checking into the Superior Court of the District of Columbia and to file a grievance on his behalf;
>
> (2) the MPD failed to articulate a position to support a policy of confidentiality or privacy as to the specific requested records that would outweigh its statutory duty to disclose the requested information; and
>
> (3) Respondents failed to offer any alternative solutions to the Union as to how the information could be provided to the Union, such as either in redacted form or under a protective order.[25]

[20] The Board notes that Board Rule 501.2 provides the Executive Director the discretion to grant a motion for an extension for good cause. MPD requested a one-day extension, because of a calendaring error.
[21] HERR at 10.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 11.
[25] *Id.* at 34.

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP's request for information and also in its unreasonable delay in responding to the Union's request."[26]

In reaching her conclusions, the Hearing Examiner found that the MPD Office of Professional Responsibility was the repository for the requested information, and that there was no established practice requiring FOP to go to LERU for information.[27] In addition, the Hearing Examiner rejected MPD's argument that MPD required specific authorization from the union member before releasing the information to the Union, and if MPD had an objection to FOP's authorization to receive the requested information, it did not raise it nor require FOP to receive authorization from the union member. The Hearing Examiner found that "MPD failed to introduce evidence to support a policy of confidentiality or privacy as to the specific requested records," and at the hearing, Assistant Chief Groomes, representative of MPD, "acknowledged that information considered to be confidential 'could' be provided if it is properly redacted."[28] The Hearing Examiner found that there was "no evidence that the MPD offered the Union any alternative solutions to the Union's need for the information, such as offering the information in redacted form, or under a protective order restricting its dissemination" and that "nothing in the DPM precludes redacting and providing the requested information, or providing it under a restrictive order."[29] The Hearing Examiner found that "MPD could not claim reports of investigation are private as it 'routinely' leaves them unsecured at FOP members' homes, accessible to the public."[30] The Hearing Examiner accepted the Union's testimony that MPD has in the past sent the Union to various locations to track down requested information as a delay tactic.[31]

No Exceptions were filed to the Hearing Examiner's findings and conclusions for Case No. 07-U-40. The Board finds that the Hearing Examiner's findings and conclusions are reasonable, based on the record, and consistent with the Board's precedent. Therefore, the Board adopts the Hearing Examiner's Report and Recommendation for Case No. 07-U-40.

B. Case No. 07-U-44

1. Hearing Examiner's findings and conclusions

The Hearing Examiner found that on March 19, 2007, Officer Wendell Cunningham, the Vice Chairman of the FOP, sent an information request to Michael Anzallo, the MPD Commander of the Office of the Superintendent of Detectives, for information on behalf of a union member, who had received a "below average" performance rating.[32] The Hearing

[26] HERR at 34.
[27] *Id.*at 35.
[28] *Id.*
[29] *Id.* at 35.
[30] HERR at 36.
[31] *Id.*
[32] *Id.* at 12.

Examiner observed, "Specifically, Officer Cunningham requested, among other things, the arrest statistics that correspond to each individual in the Environmental Crimes Unit (ECU) for the past three years, and the performance ratings for all other investigators in the ECU … from October 2004 to September 30, 2006."[33] In response to the information request, Anzallo provided some of the requested information to FOP, but did not provide the information requested for the arrest records and the performance ratings for the other ECU investigators and did not provide a substantive explanation as to why the information was not being provided.

The Hearing Examiner recommended that PERB find that "FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees," that "Respondents failed to articulate or document a position to support a policy of confidentiality or privacy as to the specific requested records that would outweigh its statutory duty to disclose the requested information," and that "Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided to the Union, such as either in redacted form or under a protective order."[34]

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP's request for information and in its unreasonable delay in responding to the Union's requests."[35]

In reaching her conclusion, the Hearing Examiner relied upon similar findings and conclusions as Case No. 07-U-40. In addition, the Hearing Examiner found that "as to good faith, if the Respondents had any doubt that the Union was representing the other employees in the ECU, which they asserted only at the hearing, they could have asked the Union or required the Union to seek authorization from them, which they did not" and "the facts show" that the Union represented the member in his appeal.

2. MPD's Exceptions

In its Exceptions, MPD argues that the Hearing Examiner erred when she found that MPD had a duty to provide information. MPD contends that the Union representative did not make a proper request for arrest information and performance ratings, because the Union representative did not give notice to MPD that he was authorized to represent any of the individuals whose performance information he was requesting.[36] MPD relies upon the District Personnel Manual ("DPM") § 3115.3(c). Further, MPD asks the Board to construe the DPM with the D.C. Freedom of Information Act to find that it would be impermissible for MPD to have provided the requested performance evaluation information to FOP.[37] MPD argues that had FOP sought statistical information in a manner not directly linked to individuals, or requested

[33] *Id.*
[34] HERR at 37.
[35] HERR at 37.
[36] MPD's Exceptions at 3.
[37] MPD's Exceptions at 4-5.

performance evaluation statistics without the identity of an individual, "the request would not have intruded into the area of protected personnel information, the disclosure of which would constitute a violation of personal privacy."[38]

The Board finds MPD's exceptions to be a repetition of the arguments made before, and rejected by, the Hearing Examiner. The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. The Board adopts the Hearing Examiner's findings and conclusions.

As a result, the Board adopts the Hearing Examiner's recommendation and denies MPD's Exceptions.

C. Case No. 09-U-11

1. Information concerning Crime Scene Search Officer (CSSO) selection process and duty status

Union representative Hiram Rosario sent MPD Assistant Chief Winston Robinson an information request, seeking "all documents and records used in the selection process for the position of CSSO [Crime Scene Search Officer], specifically for Vacancy Announcement MPD #08-01."[39]

The Hearing Examiner recommended that PERB find that:

> (1) the FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees to represent its members in response to their complaints that certain people had been selected for the CSSO job who were not qualified due to their duty status;
>
> (2) Respondents failed to articulate or document a position to support a policy of confidentiality or privacy as to the specific requested records that would outweigh their statutory duty to disclose the requested information; and
>
> (3) Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided to the Union, such as in redacted form or under a protective order.[40]

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights and refusing

[38] MPD's Exceptions at 6.
[39] HERR at 13.
[40] *Id.* at 39.

to bargain in good faith with the Union by failing to comply with the FOP's request for information and in its unreasonable delay in responding to the Union's request."[41]

In making her recommendation, the Hearing Examiner noted that the MPD relied upon similar arguments as in the case discussed above, and relied upon the same findings and conclusions.[42] In addition, the Hearing Examiner found that "[u]ncontradicted testimony demonstrated that MPD Chief of Police Cathy L. Lanier had disclosed the duty status of a detective on a radio news program, and had also stated, just two weeks before the hearing in these cases, in a training session, that 'if any of her officials had ever put in writing that duty status was a protected issue, that she wanted to see it….'"[43] the Hearing Examiner also observed that "undisputed testimony showed that, when MPD has officers who are involved in a shooting, the MPD 'routinely' announced their duty status to the media."

MPD repeats its arguments in Case No. 07-U-44, arguing that there was no authorization to MPD by the individuals to release the information to FOP.[44] MPD's arguments were raised before the Hearing Examiner. The Hearing Examiner rejected MPD's arguments based on the Hearing Examiner's factual findings and conclusions. The Board finds that the Hearing Examiner's findings and conclusions reasonable, supported by the record, and consistent with the Board's precedent. Therefore, the Board rejects MPD's Exceptions, and adopts the Hearing Examiner's recommendations.

2. Information Regarding In-Service Training of Officials

In addition to the information requested above, Rosario sent an information request to Commander Anzallo, seeking all documents related to in-service training of Third District officials.[45] "Commander Anzallo denied the request based on his understanding that the letter was a request for 'personnel records.'"[46]

The Hearing Examiner recommended that the Board find that:

> (1) FOP has satisfied its burden of proof to show by a preponderance of the evidence that the requested information was relevant and necessary to the Union's functions as the exclusive bargaining representative of the MPD's employees to assist with pending grievances and to ensure compliance with Article 24 of the contract;
>
> (2) Respondents failed to articulate or document a position to support a policy of confidentiality or privacy as to the specific requested records that

[41] *Id.*
[42] *Id.*
[43] *Id.* at 40.
[44] MPD's Exceptions at 14.
[45] HERR at 40.
[46] *Id.*

> would outweigh their statutory duty to disclose the requested information; and
>
> (3) Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided to the Union, such as in redacted form or under a protective order.[47]

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP's request for information and in its unreasonable delay in responding to the Union's request."[48]

In making her recommendation, the Hearing Examiner noted that MPD relied upon similar arguments as in the cases discussed above, and relied upon the same findings and conclusions.[49] In addition, the Hearing Examiner found that "it is undisputed that in-service training information had been provided in the past during at least two public forums, the Committee on the Judiciary and a newspaper article."[50]

MPD filed Exceptions, arguing that the DPM and the Department's General Order prohibited disclosure of the information. MPD's argument is based upon testimony and evidence.[51] The Hearing Examiner considered MPD's arguments and evidence, and found that there was no basis in law or practice that the requested information was prohibited from being provided to FOP as the exclusive representative. The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record, and consistent with Board precedent. The Board adopts the Hearing Examiner's findings and conclusions.

As a result, the Board adopts the Hearing Examiner's recommendation and denies MPD's Exceptions.

IV. Analysis of cases involving information requests to assist in the proper administration of the collective bargaining agreement for comparative discipline purposes

A. Case No. 08-U-28

1. Hearing Examiner's findings and conclusions

FOP representative Burton sent an information request to MPD Assistant Groomes, seeking a copy of a completed investigative report prepared by the MPD concerning a bargaining unit employee's allegation of misconduct by a non-union employee. Assistant Chief Groomes denied the request on the grounds that the information was protected under the DPM, relying on

[47] HERR at 40-41.
[48] *Id.* at 41.
[49] HERR at 41.
[50] *Id.*
[51] MPD's Exceptions at 15.

DPM § 3112.11 and § 3112.14. The Hearing Examiner found that Groomes provided a statement to FOP: "I can confirm for you that the administrative investigation in the referenced matter has been completed and was closed with a finding of 'unfounded' on October 16th, 2007."[52]

Burton made a second request to Groomes for a copy of the investigation, asserting that FOP was a "concerned party" under DPM §3113.1, because the victim of the alleged misconduct was a bargaining unit employee. Groomes denied Burton's second request for information, based on DPM § 3112.14.[53]

The Hearing Examiner recommended that PERB find that:

> (1) the Union has demonstrated by a preponderance of the evidence that the requested information was necessary and relevant to the Union in order for it to properly administer the Agreement for comparative discipline purposes between non-bargaining unit and bargaining unit employees and to ensure that investigations are done and conducted properly for its members;
>
> (2) the MPD failed to articulate or document a policy of confidentiality or privacy as to the specific requested records; and
>
> (3) Respondents failed to show that they had offered the Union any alternative solutions as to how the necessary and relevant information could be provided to the Union, such as either in redacted form or under a protective order.[54]

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) "by interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP's request for information."[55]

In making her recommendation, the Hearing Examiner found that MPD "failed to produce evidence to support a policy of confidentiality or privacy as to the specific requested records;" "there is nothing in the DPM that precludes redacting and providing the requested information, and, in fact the DPM discusses redacting only exempt portions;" and "at the hearing Assistant Chief Groomes, Respondents' representative, acknowledged that information considered to be confidential 'could' be provided if it is properly redacted." The Hearing Examiner noted that MPD offered FOP no alternatives to receive the information, that the MPD could not claim reports of investigations are confidential since MPD routinely leaves these documents at officers' front doors that are accessible to the public, MPD never notified FOP that

[52] HERR at 14.
[53] *Id.* at 14-16.
[54] HERR at 42-43.
[55] *Id.* at 43.

it required the non-bargaining unit member's specific authorization to release the document to FOP, that the Assistant Chief Groomes could not provide a reason why the information was "not relevant," and FOP was a "concerned party" entitled to personnel information.[56]

2. MPD's Exceptions

MPD asserts in its Exceptions that FOP was not a representative of the non-bargaining unit employee, and therefore, was not entitled to the information requested. In addition, MPD asserts that FOP is not a "concerned party" under DPM § 3113.10. Further, MPD argued that the investigative report requested by FOP was not one of the public disclosure exceptions outlined in DPM § 3118.8.[57]

The Board finds MPD's exceptions to be a repetition of the arguments made before, and rejected by, the Hearing Examiner. The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. The Board adopts the Hearing Examiner's findings and conclusions.

As a result, the Board adopts the Hearing Examiner's recommendation and denies MPD's Exceptions.

B. Case No. 08-U-34

1. Hearing Examiner's findings and conclusions

FOP Representative Burton requested a copy of the Report and Investigation concerning a non-bargaining unit employee ("Commander"), who was involved in an incident in which it was alleged that the Commander told a bargaining unit employee not to issue traffic tickets to a woman who identified herself as working for the Mayor.[58] The Hearing Examiner found that Assistant Chief Newsham denied the information request for the similar reasons as asserted by MPD in Case No. 08-U-28.[59] Burton made a second request to Assistant Chief Newsham for a copy of the investigation, and asserted his legal argument for receiving the final investigative report.[60] Burton asserted that the information was necessary to ensure that similar processes and similar discipline must be followed and given out for similar acts by both management and non-management employees.[61]

The Hearing Examiner recommended that the Board find that:

> (1) the Union has shown by a preponderance of the evidence that the requested information was necessary and relevant to the Union in order for

[56] *Id.*
[57] MPD's Exceptions at 7-9.
[58] HERR at 16-17.
[59] *Id.* at 17.
[60] *Id.*
[61] *Id.*

> it to properly administer the Agreement to see that non-bargaining unit and bargaining unit employees were being given similar discipline for similar acts and to ensure that investigations are conducted properly for its members;
>
> (2) the MPD failed to articulate or document how its general confidentiality and privacy concerns outweighed its statutory duty to disclose the requested necessary and relevant information; and
>
> (3) Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided, such as providing the information to the Union in redacted form or under a protective order.[62]

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by "interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP's request for information."[63] In making her recommendation, the Hearing Examiner relied upon similar findings and conclusions as set forth in Case No. 08-U-28.[64]

2. MPD's Exceptions

In its Exceptions, MPD argues that it "incorporates and reiterates all of the same arguments made above in reference to PERB Case No. 08-U-28."[65] MPD argues that it provided information to FOP that the investigation of the Commander had ended, and that he was exonerated.[66] MPD denies that it was required to provide any more information. As stated above, MPD's arguments are rejected. MPD presented these same arguments to the Hearing Examiner. The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. The Board adopts the Hearing Examiner's findings and conclusions.

As a result, the Board adopts the Hearing Examiner's recommendation and denies MPD's Exceptions.

C. Case No. 08-U-50

1. Hearing Examiner's findings and conclusions

FOP Representative Cunningham requested a copy of a misconduct investigation involving a commander from Assistant Chief Newsham. Assistant Chief Newsham denied the

[62] *Id.* at 44-45.
[63] HERR at 45.
[64] Compare HERR at 43 and 45.
[65] MPD's Exceptions at 11.
[66] MPD's Exceptions at 11.

request for the same reasons as in Case No. 08-U-28 and Case No. 08-U-34.[67] FOP asserted that the information was requested as having potential evidence that could exonerate a bargaining unit member from an Official Reprimand that the member had received.[68]

The Hearing Examiner recommended that the Board find that: "(1) the Union has established by a preponderance of the evidence that the requested information is necessary and relevant in order for it to properly administer the Agreement to:" represent a member in a disciplinary matter, to ensure a proper investigation was completed of the Commander, [to] use the information in "future comparative discipline cases," and to use the information to ensure that discipline given to its member[s] was comparatively appropriate.[69] In addition, the Hearing Examiner recommended that the Board find that "the MPD failed to articulate or document how its general confidentiality and privacy concerns outweighed its statutory duty to disclose the requested information;" and that "Respondents failed to offer any alternative solutions to the Union as to how the necessary and relevant information could be provided, such as providing the information to the Union in redacted form or under a protective order."[70]

The Hearing Examiner recommended that the Board find that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by "interfering with and restraining employee rights and refusing to bargain in good faith with the Union by failing to comply with the FOP's request for information."[71] In making her recommendation, the Hearing Examiner relied upon similar findings and conclusions as in Case No. 08-U-28.[72]

2. MPD's Exceptions

In its Exceptions, MPD asserts that it "incorporates and reiterates all of the same arguments made above in reference to PERB Case No. 08-U-28."[73] As stated above, MPD's arguments are rejected. The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent.

In addition, MPD argues that "FOP failed to sufficiently allege facts that it sought information relevant and necessary to the FOP's collective bargaining duties."[74] MPD did not argue this issue before the Hearing Examiner.[75] The Hearing Examiner found that the Union provided an adequate position as to why the information was relevant and necessary, and concluded that the information was relevant and necessary to the Union's duties as exclusive representative for collective bargaining. The Board finds that MPD's argument is a mere

[67] HERR at 17.
[68] *Id.* at 18.
[69] *Id.* at 46.
[70] *Id.*
[71] HERR at 46-47.
[72] Compare HERR at 43 and 45.
[73] MPD's Exceptions at 12.
[74] MPD's Exceptions at 12-13.
[75] HERR at 27.

disagreement with the Hearing Examiner and not grounds for rejecting the Hearing Examiner's recommendation.[76]

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's findings and conclusions, and denies FOP's Exceptions.

IV. Information requested to facilitate the role of the Union and to ensure that the Union is notified of new policies or procedures

A. Case No. 08-U-37

1. Hearing Examiner's findings and conclusions

FOP Secretary Marcello Muzzatti made an information request to MPD Lieutenant Richard Matiello in the Office of Human Resources Management. The information requested was the number of officers and sergeants that were assigned to each unit.[77] The information was requested to "assist the Union in determining whether proper weighting with regard to voting was being applied to each police district and that members were not being assigned or moved without the Union's knowledge."[78] The Hearing Examiner found that it was undisputed that the information was provided to the Union eleven (11) days after the request was made.[79] The Hearing Examiner rejected FOP's argument that the information was unresponsive, inadequate, or untimely. Therefore, the Hearing Examiner recommended that FOP's Complaint be dismissed with prejudice.

2. FOP's Exceptions

FOP asserts in its Exceptions that the testimony at the hearing and evidence presented by FOP supports a finding that MPD committed an unfair labor practice.[80] FOP's Exceptions amount to no more than a disagreement with the Hearing Examiner's findings of fact. This Board has held that a mere disagreement with the hearing examiner's findings is not grounds for reversal of the findings where they are fully supported by the record.[81] The Board has rejected

[76] This Board has held that a mere disagreement with the hearing examiner's findings is not grounds for reversal of the findings where they are fully supported by the record. *See Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools*, 54 D.C. Reg. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2003).
[77] HERR at 18.
[78] *Id.* at 47.
[79] *Id.*
[80] FOP's Exceptions at 3 and 9.
[81] *See Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools*, 54 D.C. Reg. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2003).

challenges to a Hearing Examiner's findings based on: (1) competing evidence; (2) the probative weight accorded evidence; and (3) credibility resolutions.[82]

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. The Board adopts the Hearing Examiner's findings and conclusions that FOP did not meet its burden of proof that MPD committed an unfair labor practice.

As a result, the Board adopts the Hearing Examiner's recommendation and denies FOP's Exceptions.

B. Case No. 08-U-39

1. Hearing Examiner's findings and conclusions

FOP representative Russell Mullins, Jr., requested similar information as in Case 08-U-37.[83] The information requested was "a copy of MPD's seniority list, broken down by divisions, to carry" out representational duties for filing grievances/appeals on behalf of members.[84] The Hearing Examiner found that Lieutenant Matiello responded to the information request that the information had already been requested and provided to FOP, because he mistakenly thought that the information requested was the same information requested in Case No. 08-U-37.[85]

The Hearing Examiner found that, after Chairman Baumann responded to Lieutenant Matiello and after Assistant Chief Ederheimer called Matiello, Matiello checked his email and realized that the information had not been provided to the Union.[86] The Hearing Examiner found that "it is undisputed that the requested information was provided by Lieutenant Matiello through his chain of command to MPD Assistant Chief Ederheimer, who sent the information to Union Chairman Baumann, on April 22, 2008, one day after the initial request by Union Chief Shop Steward Mullins."[87] The Hearing Examiner found that FOP did not provide any evidence that the response provided to Chairman Baumann was inadequate, insufficient or unduly delayed.[88] Therefore, the Hearing Examiner recommended that the Complaint be dismissed with prejudice, because the Union did not satisfy its burden of proof by a preponderance of the evidence.[89]

[82] *See American Federation of Government Employees, Local 2741 v. D.C. Department of Recreation and Parks*, 46 DCR 6502, Slip Op. No. 588, PERB Case No. 98-U-16 (1999); *see also American Federation of Government Employees v. District of Columbia Water and Sewer Authority*, Slip Op. 702, PERB Case No. 00-U-12 (2003).
[83] HERR at 19.
[84] *Id.*
[85] HERR at 48.
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.*

2. FOP's Exceptions

FOP asserts similar arguments in its Exceptions as in Case No. 08-U-37. FOP disputes the factual findings of the Hearing Examiner. As stated above, this is not grounds for finding that the Hearing Examiner has erred. Therefore, the Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record, and consistent with Board precedent. As a result, the Board rejects FOP's arguments and denies its Exceptions. The Board adopts the Hearing Examiner's findings and conclusions that FOP did not meet its burden of proof that MPD committed an unfair labor practice.

C. Case No. 09-U-40

1. Hearing Examiner's findings and conclusions

FOP Rosario requested from MPD Assistant Chief Michael Anzallo "a copy of the documents related to the MPD written policy stating that 'a teletype message supersedes posted schedules.'"[90] The Hearing Examiner found that Assistant Chief Anzallo responded to this request by attaching General Order 201.26.[91] According to Anzallo, there is nothing in the General Order that specifically addressed "a teletype message," but that the language of the General Order contained "dispatches," which would have covered a teletype message.[92] The Hearing Examiner found that "it is undisputed that the Union did not inform Assistant Chief Anzallo that the response that he provided was inadequate in any way, nor communicate with him further concerning this issue after the Union received Assistant Chief Anzallo's response, until it filed the unfair labor practice."[93] The Hearing Examiner recommended that the Board find that the Union did not satisfy its burden of proof by a preponderance of the evidence that MPD committed an unfair labor practice by providing the General Order to the Union in response to its request."[94]

2. FOP's Exceptions

FOP asserts similar arguments in its Exceptions as in Case No. 08-U-37.[95] FOP disputes the factual findings of the Hearing Examiner. As stated above, this is not grounds for finding that the Hearing Examiner has erred. Therefore, the Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record and consistent with Board precedent. As a result, the Board denies FOP's Exceptions. The Board adopts the Hearing Examiner's findings and conclusions that FOP did not meet its burden of proof that MPD committed an unfair labor practice.

[90] HERR at 20.
[91] *Id.* at 48.
[92] *Id.* at 49.
[93] HERR at 49.
[94] *Id.*
[95] FOP's Exceptions at 10.

V. Conclusion

Pursuant to D.C. Official Code § 1-605.02(3) and Board Rule 520.14, the Board has reviewed the findings and conclusions of the Hearing Examiner and finds them to be reasonable, supported by the record, and consistent with Board precedent. The Board adopts the findings and conclusions of the Hearing Examiner that MPD committed unfair labor practices in violation of D.C. Code § 1-617.04(a) (1) and (5) for Case Nos. 07-U-40, 07-U-44, 08-U-28, 08-U-34, 08-U-50, and 09-U-11. The Board adopts the findings and conclusions of the Hearing Examiner that FOP did not meet its burden of proof for Case Nos. 08-U-37, 08-U-39, and 09-U-40.

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's Complaints in Case Nos. 08-U-37, 08-U-39, and 09-U-40 are dismissed with prejudice.
2. MPD, its agents, and representatives shall cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by failing and refusing to respond to the information requests made by FOP that are relevant and necessary to its duty as an exclusive representative.
3. MPD shall conspicuously post, within ten (10) days of the service of this Decision and Order, a Notice where notices to bargaining unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days. Within fourteen (14) days from the issuance of this Decision and Order, MPD shall notify the Board, in writing, that the Notice has been posted accordingly.
4. MPD shall deliver to FOP within thirty (30) days of the service of this Decision and Order the information requested in Case Nos. 07-U-40, 07-U-44, 08-U-28, 08-U-34, 08-U-50, and 09-U-11 with redaction as necessary under District laws.
5. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, Member Keith Washington, and Member Donald Wasserman

Washington, D.C.

April 24, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-40, et al. was served to the following parties via File & ServeXpress and a Notice for posting via U.S. Mail to MPD on this the 28th day of April 2015:

Mark Viehmeyer, Esq.
Metropolitan Police Department
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//s/ Sheryl Harrington
Sheryl Harrington
Administrative Assistant

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NOTICE

TO ALL EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT ("MPD"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1521, PERB CASE NO. 07-U-40, et al.

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered MPD to post this Notice.

WE WILL cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 5121.

WE WILL cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA").

WE WILL NOT, in any like or related manner, interfere, restrain or coerce employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

Metropolitan Police Department

Date:_____ By:_____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024.
Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

April 24, 2015

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/ Metropolitan Police Department, Labor Committee	
Complainant	PERB Case No. 06-U-49
v.	Opinion No. 1524
District of Columbia Metropolitan Police Department	
Respondent	

DECISION AND ORDER

I. Statement of Case

On September 20, 2006, the Fraternal Order of Police/Metropolitan Labor Committee ("FOP") filed an Unfair Labor Practice Complaint against the Metropolitan Police Department ("MPD"), alleging MPD failed to bargain in violation of D.C. Official Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act ("CMPA"). The Board referred the matter to a hearing, and received a Report and Recommendation from a hearing examiner.[1] For the reasons contained in this Decision, the Complaint is dismissed with prejudice.

II. Hearing Examiner's Findings and Conclusions

On June 13, 2001, MPD entered into a Memorandum of Understanding ("MOU") with the U.S. Department of Justice, regarding MPD's use of force policy. The MOU covered a broad range of issues including standards for MPD's use of force policy, documentation, discipline, and training. It also created the Personnel Performance Management System ("PPMS") to measure personnel performance. On January 6, 2006, MPD provided official copies of its

[1] The hearing examiner who conducted the hearing was unable to write a report and recommendation. The record was referred to Hearing Examiner Bruce Rosenstein, who submitted a Report and Recommendation to the Board.

proposed General Order and Standard Operating Procedures, implementing the PPMS, to FOP's designated representative. From July 27, 2006, to September 12, 2006, MPD implemented the PPMS through the various police districts.[2]

The Hearing Examiner found that FOP was on notice of the PPMS as of January 6, 2006.[3] Despite that fact, FOP did not file its Complaint for 257 days. The Hearing Examiner applied Board Rule 520.4, prescribing that unfair labor practice complaints must be filed within 120 days of the alleged violation, and determined that FOP's Complaint was untimely filed.

In addition, the Hearing Examiner found that FOP admitted that it had never demanded bargaining nor submitted any bargaining proposals, concerning the PPMS. Even after MPD implemented the PPMS city-wide on September 12, 2006, FOP did not demand to bargain over its impact and effects.[4]

Based on his findings and conclusions, the Hearing Examiner recommended dismissing the Complaint with prejudice.

III. Discussion

Neither party filed Exceptions to the Hearing Examiner's Report and Recommendation. "Whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendation if it finds, upon full review of the record, that the hearing examiner's 'analysis, reasoning and conclusions' are 'rational and persuasive.'"[5]

A. Timeliness of the Complaint

In its Complaint, FOP asserts that, during January 2005, FOP "attempted to negotiate the PPMS protocol, but Respondent refused."[6] FOP further alleges, "By drafting General Order 120-28, Respondent has failed its obligation to negotiate the PPMS protocol in good faith."[7] The Hearing Examiner found that, on January 6, 2006, MPD provided official copies of the draft General Order. The Hearing Examiner found that the Complaint was filed 257 days after FOP knew of the draft General Order regarding the PPMS. Board Rule 520.4 provides: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." The Board has held that Board Rule 520.4 is mandatory and jurisdictional.[8] The Board adopts the Hearing Examiner's findings and conclusions, and finds that the Board does not have jurisdiction over the Complaint because it was not timely filed.

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[2] HERR at 1-2.
[3] HERR at 2.
[4] *Id*.
[5] *Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public Schools*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Association and D.C. Department of Human Services*, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).
[6] Complaint at 2.
[7] *Id*.

B. Duty to bargain

FOP alleges in its Complaint that MPD failed "to negotiate the PPMS protocol in good faith."[9] The Hearing Examiner found that the Union did not request that MPD engage in impact and effects bargaining over the PPMS. The Complaint alleged that MPD failed to bargain over the PPMS, and not specifically impact and effects bargaining. The Hearing Examiner erred in analyzing the Complaint's allegations as impact and effects bargaining, because the Board may only consider allegations contained in a complaint.[10] The Complaint did not allege impact and effects bargaining, but alleged unfair labor practices, regarding MPD's duty to bargain the PPMS's protocols.

After reviewing the record, the Board adopts the factual findings of the Hearing Examiner, but rejects his analysis of impact and effects bargaining. The Board considers FOP's Complaint that MPD failed to bargain over the PPMS protocol. At the hearing, FOP's representative admitted that he did not request bargaining over the PPMS protocol. As FOP did not request to bargain with MPD over the PPMS, the Board finds that FOP did not meet its burden of proof by a preponderance of the evidence that MPD committed an unfair labor practice.

IV. Conclusion

The Board adopts the factual findings of the Hearing Examiner, as they are based on the record. The Board finds that the Complaint is untimely. Even if FOP timely filed the Complaint, the Board finds that FOP failed to request to bargain with MPD over the PPMS. Therefore, the Complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, Member Keith Washington, and Member Donald Wasserman.

Washington, D.C.

May 21, 2015

[9] Complaint at 2.
[10] *FOP/MPD Labor Committee v. MPD*, 61 D.C. Reg. 8003, Slip Op. No. 1316, PERB Case No. 09-U-50 (2014).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 06-U-49 was served to the following parties via File & ServeXpress on May 28, 2015:

Mark Viehmeyer, Esq.
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/s/ Felice Robinson_____
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Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	
District of Columbia Public Schools,	
Petitioner,	PERB Case No. 13-A-09
v.	
Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO (on behalf of Deborah H. Williams),	Opinion No. 1525
Respondent.	

DECISION AND ORDER ON REMAND

The above-captioned arbitration review request ("Request") is before the Board on remand from an order of the D.C. Superior Court. The court reversed and vacated the decision and order of the Board in *D.C. Public Schools v. Council of School Officers, Local 4*[1] and remanded the case to the Board for proceedings consistent with its order.[2] In accordance with the order of the court, the Request of Petitioner D.C. Public Schools ("Petitioner" or "DCPS") is granted. For the reasons stated below, the Board finds that the Arbitrator exceeded his authority and that his award is contrary to law and public policy.

I. Statement of the Case

A. Arbitration

The facts as found by the Arbitrator, Joseph Sharnoff, in his Opinion and Award ("Award") are as follows. DCPS hired Deborah H. Williams ("Grievant" or "Williams") as a teacher for the 2005-2006 school year. She became principal of the Sharpe Health School at the start of the 2007-2008 school year. (Award 2.)

The Award details numerous problems that Williams had with one of the teachers at the school, Maurice Asuquo ("Asuquo"). In September 2009 Williams sent Asuquo a letter of reprimand as a result of his hostile response to her attempt to observe his class. At the start of

[1] 60 D.C. Reg. 15978, Slip Op. No. 1422, PERB Case No. 13-A-09 (2013).
[2] *D.C. Pub. Schs. v. D.C. Pub. Emp. Relations Bd.*, No. 13 CA 7322 (D.C. Super. Ct. Jan. 8, 2015).

the 2009-2010 school year, Williams was informed of the need to conduct a reduction in force and told that as part of the reduction in force principals would have an opportunity to remove individuals employed at their schools. Asuquo was laid off in October 2009 as a result of a system-wide reduction in force conducted in October 2009. The Arbitrator found that Williams acted in accordance with the Petitioner's directions with regard to the reduction in force. (Award 11.) Asuquo filed a complaint with the D.C. Office of Human Rights against Williams and Sharpe Health School. (Award 11.)

The Petitioner's EEO officer prepared a report on Asuquo's case. The report concluded that there appeared to be sufficient evidence in the record to substantiate Asuquo's allegations. Specifically, the report stated that "Principal Williams continually issued Mr. Asuquo failing . . . evaluations based upon ineffectively communicated standards." (Award 14.) Michelle A. Rhee, the former Chancellor of DCPS, issued to Williams a letter dated May 21, 2010, stating, "I am writing to you to give you notice of my decision not to reappoint you to the position of Principal with the District of Columbia Public Schools . . . for the 2010-2011 school year. **The action is effective at the close of business on June 25, 2010.**" (Award 14.) On June 18, 2010, DCPS issued Williams a notice of termination, which stated that "this letter serves as official notice that you will be terminated from your position as a Principal effective Monday, July 5, 2010." The letter stated that the grounds for termination were failure of good behavior and harassment. (Award 16.)

Respondent Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO ("Union") filed a grievance stating that "[t]he termination is not supported by just cause as required by the parties' collective bargaining agreement. Therefore, this discipline must be reversed. . . ." (Award 2.) The parties' collective bargaining agreement prohibits disciplinary action against an officer except for just cause. (Award 2.) The Arbitrator found that, with regard to the relationship between Williams and Asuquo and the actions of the two them, Williams' testimony was credible and Asuquo's was not. (Award 16-17.) The Arbitrator concluded that DCPS failed to meet its burden of demonstrating that Williams engaged in misconduct against Asuquo and failed to demonstrate that it had just cause to terminate Williams under the parties' collective bargaining agreement. (Award 25-26.) He further stated:

> The Arbitrator, based on the above findings and discussion, grants the grievance and finds that, as a remedy, the DCPS is directed: to reinstate the Grievant to her former, or fully equivalent position of Principal in the DCPS system; and to make her whole for all losses. . . . With regard to the reinstatement directive, the Arbitrator finds that the termination letter issued to the Grievant by the DCPS was intended to, and did, have the effect of making null and void the previously issued Notice of Non-Reappointment. Consequently, the only DCPS action protested in this Arbitration proceeding – as improper and without just cause under the CBA – was the Grievant's termination. The issue also included, to the

> extent a violation of the CBA was found, the appropriate remedy for that violation. . . .[3]

B. Arbitration Review by the Board

DCPS petitioned the Board for arbitration review on the ground that the Award's reinstatement of Williams to her former or fully equivalent position as a principal was contrary to law and public policy. (Request 3-4.) At the parties' request, the Board directed the parties to file briefs.[4]

Although the only statutory ground for review Petitioner asserts in its Request is that the Award is contrary to law and public policy, the Petitioner also asserts in its brief as a ground for review that the Arbitrator exceeded his authority.[5] The Petitioner does not dispute in its brief the Arbitrator's finding that the termination was not for cause.

Regarding the issue of the Arbitrator's authority, the Petitioner argues that the Chancellor's decision not to re-appoint Williams was neither rescinded by the Chancellor nor challenged by Williams. As the Arbitrator noted, Williams challenged only her termination and not her non-reappointment. (Br. for Pet'r. 8.) "The Arbitrator's decision and award exceeds his authority by going beyond the resolution of the expressed issue and rendering null and void a valid non-reappointment letter that was issued by the Chancellor and reinstating Ms. Williams to her position as a principal." (Br. for Pet'r. 8.) With regard to its contention that the Award is contrary to law and public policy, the Petitioner argued, "Title 5-E DCMR § 520.2 is clear that reappointment is at the discretion of the Chancellor; thus, the Arbitrator's directive to reinstate Ms. Williams to the position of principal, where there was no challenge to the Chancellor's decision or authority to non-reappoint Ms. Williams is contrary to law and public policy." (Br. for Pet'r 7-8.) The Petitioner also cites sections 519.1 and 520.5 of Title 5-E and Mayor's Order 2007-186 (Aug. 10, 2007) for the authority of the Chancellor. The Petitioner states that the termination letter terminated Williams' right to revert to another position at DCPS. (Br. for Pet'r 10-11.) Because the termination letter was the only action that was brought, and the only action that could have been brought, before the Arbitrator, the sole remedy the Arbitrator could award was reinstatement of Williams' right to revert to her prior DCPS position. (Br. for Pet'r 11.)

The Union, in its brief, does not deny that it did not grieve the non-reappointment and does not dispute the Chancellor's authority regarding appointments. The Union points out that

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[3] Award 26. The Award that the Arbitrator then issued is as follows: "The grievance is sustained. The District of Columbia Public Schools is directed to reinstate the Grievant, Deborah Hall Williams to her former, or fully equivalent position as a Principal in the DCPS school system and make her whole for all losses, including back pay and seniority, under the CBA, less any appropriate set offs. The Arbitrator hereby retains jurisdiction for the limited purpose of resolving any disputes concerning the remedy only."

[4] *D.C. Pub. Schs. v. Council of Sch. Officers, Local 4*, 60 D.C. Reg. 12075, Slip Op. No. 1402, PERB Case No. 13-A-09 (2013).

[5] Br. for Pet'r 8-9. The grounds for review of an arbitration award by the Board are set forth in D.C. Official Code § 1-605.02(6), which provides "that such awards may be modified or set aside or remanded, in whole or in part, only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means. . . ."

the Arbitrator found that the termination letter made the previously issued notice of non-reappointment null and void. The Union asserts that at the arbitration hearing DCPS provided neither evidence nor argument supporting its present position that the non-reappointment somehow survived the subsequent termination and could not lawfully be affected by the Award. "[I]t is the last employer action that controls here," the Union argues, "and not an interim personnel decision made prior to the ultimate termination decision." (Br. for Resp't 15.) The Union contends that DCPS "has waived it[s] ability to now suggest that the non-reappointment decision can be used to avoid the Award issued by the Arbitrator in this case." (Br. for Resp't 14.)

The Board agreed with the Union that DCPS was impermissibly raising an argument for the first time in its Request, and for that reason the Board denied the Request.[6]

C. Order of the D.C. Superior Court

On judicial review, the D.C. Superior Court reversed the Board's finding that DCPS waived the issue of non-reappointment. The court stated that the Arbitrator's finding that the termination letter nullified the notice of non-reappointment made clear that DCPS had contested Williams' right to be re-appointed and had not raised the issue for the first time before the Board.[7]

The court interpreted the termination letter differently than the Arbitrator did. The termination letter and the notice of non-reappointment have different effective dates. Despite the Chancellor's previous notice that her decision not to reappoint Williams would be effective June 25, 2010, the termination letter notified Williams that she would be terminated from her position as principal effective July 5, 2010. In view of the discrepancy between the dates, the Arbitrator determined that the letter of termination nullified the earlier notice, and the Board deferred to this finding.[8] However, the court did not defer to this finding but instead interpreted the termination letter to extend "the termination of Grievant's principal position" to July 5, 2010. The court found no evidence that the termination letter rescinded the non-reappointment letter. The court further stated,

> It is clear that the appointment and retention of a DCPS principal is at the sole discretion of the Chancellor. 5 DCM[R] 520.2. Therefore, PERB failed to consider whether the Arbitrator exceeded his authority when he adjudicated a grievance involving the non-reappointment of a principal and he reinstated Grievant to a DCPS principal position.[9]

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[6] *D.C. Pub. Schs. v. Council of Sch. Officers, Local 4*, 60 D.C. Reg. 15978, Slip Op. No. 1422 at pp. 3-4, PERB Case No. 13-A-09 (2013).
[7] *D.C. Pub. Schs. v. D.C. Pub. Emp. Relations Bd.*, No. 13 CA 7322, slip op. at 7 (D.C. Super. Ct. Jan. 8, 2015).
[8] *D.C. Pub. Schs. v. Council of Sch. Officers, Local 4*, 60 D.C. Reg. 15978, Slip Op. No. 1422 at 4, PERB Case No. 13-A-09 (2013); *D.C. Pub. Schs. v. Council of Sch. Officers, Local 4*, 60 D.C. Reg. 12075, Slip Op. No. 1402 at 3, PERB Case No. 13-A-09 (2013).
[9] *D.C. Pub. Schs. v. D.C. Pub. Emp. Relations Bd.*, No. 13 CA 7322 slip op. at 8 (D.C. Super. Ct. Jan. 8, 2015).

The court concluded that by sustaining the Award, PERB usurped the authority of the Chancellor. The court reversed and vacated the Board's decision and order and remanded the case to the Board for proceedings consistent with the court's order.

II. Analysis

The proceedings discussed above establish as the law of the case that (1) appointment and retention of a DCPS principal is at the sole discretion of the Chancellor; (2) the Chancellor did not re-appoint Williams to the position of principal, and the Chancellor's decision not to re-appoint her was not rescinded; (3) at the arbitration DCPS contested Williams' right to be re-appointed as a principal and did not raise that issue for the first time before PERB; and (4) Williams' employment with DCPS was terminated, and this termination was not for just cause. (DCPS has not suggested any statutory ground for reversing this determination of the Arbitrator, and the Superior Court did not question it.)

In light of the foregoing law of the case and the Superior Court's remand for proceedings consistent with its order, we consider again the Petitioner's contentions that (1) the Arbitrator exceeded his authority "by going beyond the resolution of the expressed issue and rendering null and void a valid non-reappointment letter that was issued by the Chancellor" (Br. for Pet'r 8) and (2) the directive to reinstate Williams to the position of principal, despite the Chancellor's decision not to re-appoint her, is contrary to law and public policy.

A. Authority of the Arbitrator

Arbitrators are required to rule on all the issues, but no more than the issues, the parties submit.[10] DCPS argues that while the grievance challenged Williams' termination, it did not challenge the decision not to re-appoint her. (Br. for Pet'r 2, 5, 7.) Williams' non-re-appointment, DCPS asserts, "was not at issue in arbitration." (Br. for Pet'r 8.)

The Award states that "[t]he union filed a grievance on behalf of Williams in protest of her termination. . . ." (Award 16.) Although the Union grieved only the termination, it did seek "as a remedy, to have the Grievant reinstated to her former position as a Principal." (Award 2.) The Arbitrator formulated the issue before him thus: "Was the decision of the District of Columbia Public Schools to terminate the Grievant, Deborah H. Williams[,] from her position of Principal at the Sharpe Health School for just cause under the Party's Agreement, at Article X.A.3 and, if not, what is the appropriate remedy?" (Award 2.) The issue stated by the Arbitrator does not include the non-reappointment, but it does describe the DCPS decision in question as a decision to terminate the Grievant "from her position of Principal." That wording was not of the Arbitrator's invention. DCPS chose the wording of the letter of termination, and DCPS worded it to notify Grievant "that you will be terminated from your position as a Principal."

The Arbitrator's resolution of the issue, however, was beyond his authority. Although "[t]he Board has held on numerous occasions that an arbitrator has the full range of equitable

[10] *Cathedral Ave. Coop., Inc. v. Carter*, 947 A.2d 1143, 1152 (D.C. 2008).

powers to fashion an appropriate remedy where the parties' contract does not specifically limit his authority,"[11] the maxim that "equity follows the law"[12] places a limit on the full range of equitable powers. Equity is ancillary and not antagonistic to the law, and where a law precludes a remedy, such as the remedy issued by the Arbitrator in this case, equity will not aid the circumvention of the law.[13]

Title 5-E of the D.C. Municipal Regulations ("DCMR") empowers the superintendent of schools to appoint principals.[14] Section 520.2 provides that retention and reappointment of a principal shall be at the discretion of the superintendent.[15] An appointment to the position of principal expires on completion of the principal's term unless the appointment has been renewed.[16]

Citing section 520.2, the Superior Court held that "the appointment and retention of a DCPS principal is at the sole discretion of the Chancellor."[17] If by law the Chancellor has the *sole* discretion to appoint a DCPS principal, then an arbitrator does not have lawful discretion to appoint a DCPS principal. As a result, appointing Williams to the position of principal was not within the equitable powers of the Arbitrator. Therefore, the Board finds that the Arbitrator exceeded his authority.

B. Law and Public Policy

The provisions of the DCMR discussed above "constitute 'applicable law and definite public policy that mandate[] that the Arbitrator arrive at a different result.'"[18] The Arbitrator's directive that DCPS "reinstate the Grievant to her former, or fully equivalent position of Principal in the DCPS system" is not permitted by the DCMR and consequently is, on its face, contrary to law and public policy.

For the foregoing reasons the Petitioner's arbitration review request is granted.

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[11] *Univ. of D.C. v. D.C. Faculty Ass'n/NEA*, 38 D.C. Reg. 1580, Slip Op. No. 262 at p. 6, PERB Case No. 90-A-08 (1990).
[12] *Jas. Stewart & Co. v. Liberty Trust Co.*, 60 App. D.C. 243, 244, 50 F.2d 1008, 1009 (1931).
[13] *Eichelberger v. Symons*, 53 App. D.C. 116, 118, 288 F. 654, 656 (1923).
[14] D.C. Mun. Regs. tit. 5-E §§ 515.1(a), 519.1.
[15] The Public Education Reform Amendment Act of 2007, D.C. Law 17-9, converted the position of superintendent to chancellor. National Resource Council of the National Academies, *A Plan for Evaluating the District of Columbia's Schools* 43 (2011). Where a provision of the DCMR refers to the superintendent, the D.C. Court of Appeals has read the provision to refer to the chancellor. *See Thompson v. District of Columbia*, 978 A.2d 1240, 1242-44 (D.C. 2009).
[16] D.C. Mun. Regs. tit. 5-E § §520.5.
[17] *D.C. Pub. Schs. v. D.C. Pub. Emp. Relations Bd.*, No. 13 CA 7322 slip op. at 8 (D.C. Super. Ct. Jan. 8, 2015).
[18] *D.C. Water & Sewer Auth. and AFGE Local 631*, 59 D.C. Reg. 4536, Slip Op. No. 931 at p. 9, PERB Case No. 07-A-05 (2008) (quoting *Metro. Police Dep't v. FOP/Metro. Police Dep't Labor Comm. (on behalf of Sims)*, 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000).

C. Modification of the Award

DCPS requested the Board "to set aside or modify the Arbitrator's award reinstating Ms. Williams to her former or fully equivalent position as principal within DCPS." (Br. for Pet'r 12.) DCPS indicates the appropriate modification by stating that "the only viable remedy that can be awarded by the Arbitrator is reinstatement of Ms. Williams' right to revert to her prior position." (Br. for Pet'r 11.) The right to revert was the only employment right that the termination notice rescinded, DCPS argues, because Williams' term as principal was ending and was not renewed. "As such," DCPS states, "upon the Arbitrator's finding of no just cause for termination, the only appropriate remedy available to Ms. Williams is reinstatement of her right to revert to a prior DCPS position." (Br. for Pet'r 11.)

The Union sought to have Williams' termination reversed on the ground that it was not supported by just cause as required by the parties' collective bargaining agreement. (Award 2.) The Arbitrator found no just cause for the termination. (Award 25-26.) Reversing the termination, as DCPS points out, reinstates Williams' right to revert to her highest prior permanent level of employment at DCPS. This right is governed by Title 5-E, section 520.3 of the DCMR, which provides:

> A person who is not retained in the position of Principal or Assistant Principal and who holds permanent status in another position in the D.C. Public Schools shall revert to the highest prior permanent level of employment upon his or her removal from the position of Principal or Assistant Principal; provided, that this right shall not include the right to any particular position or office previously held.

The Union stated that upon receiving her notice of non-reappointment from an instructional superintendent, Williams informed him as well as Mia Blankenship, a DCPS employee, that she intended to exercise her retreat rights. (Br. for Resp't 12) (citing Tr. 555-56, 562-66.) Whether Grievant notified DCPS of her intention in the manner specified in the notice of re-appointment[19] is not our concern because section 520.3 of the DCMR is mandatory. A person who is not retained as principal and who holds permanent status in another position in DCPS "shall revert to the highest prior permanent level of employment."

The record reflects that both elements prescribed by section 520.3 are present. Williams was not retained in her position as principal. (Award 14-15.) DCPS acknowledges that Williams had a "prior permanent position as a teacher." (Br. for Pet'r 11; *see also* Award 2.)

[19] Award p. 15.

Therefore, pursuant to the Board's authority under D.C. Official Code section 1-605.02(6) to modify an award where the award on its face is contrary to law and public policy or the arbitrator exceeds his or her jurisdiction, the Award is modified to order the Petitioner to reinstate Williams to her highest prior permanent level of employment rather than to her former, or fully equivalent, position as a principal.

ORDER

It is hereby ordered that:

1. The Order in Opinion No. 1422 is vacated.

2. The arbitration review request of the District of Columbia Public Schools is granted.

3. The Award is modified to read as follows:

   The grievance is sustained. The District of Columbia Public Schools is directed to reinstate the Grievant, Deborah Hall Williams, to her highest prior permanent level of employment in the DCPS school system and make her whole for all losses, including back pay and seniority, under the collective bargaining agreement, less any appropriate set-offs. The Arbitrator retains jurisdiction for the limited purpose of resolving any disputes concerning the remedy only.

4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairman Charles Murphy and Members Keith Washington, Ann Hoffman, and Yvonne Dixon

Washington, D.C.

June 25, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-A-09 was transmitted via File & ServeXpress to the following parties on this the 26th day of June 2015.

Kaitlyn A. Girard
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VIA FILE & SERVEXPRESS

Mark J. Murphy
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/s/ Felice Robinson
Felice Robinson
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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
National Association of Government Employees, Local R3-05	
Petitioner	PERB Case Nos: 15-UM-01 15-CU-02
and	
	Opinion No. 1527
Metropolitan Police Department	
and	
Department of Forensic Sciences	
Respondents	

MOTION FOR RECONSIDERATION

I. Statement of the Case

The above-captioned matter is before the Board on a Joint Motion for Reconsideration ("MFR") by the National Association of Government Employees, Local R3-05 ("NAGE") and the Department of Forensic Sciences ("DFS").[1] The parties request that the Board reconsider and clarify its Order in Opinion No. 1519, in which the Board granted a unit modification and compensation unit determination petition filed by NAGE. In Opinion No. 1519, the Board found that a group of employees who were part of a bargaining unit represented by NAGE at MPD, and who were transferred to the newly-created DFS were an appropriate unit for collective bargaining and certified NAGE as their exclusive representative.

[1] The Metropolitan Police Department did not join or oppose the MFR.

II. Discussion

The parties assert that the Board's Order in Opinion No. 1519 does not clearly indicate that employees at MPD, covered by the certification of *District of Columbia Board of Labor Relations*, Case No. 0R002[2] are still covered by the original certification.[3] The Board stated in its Order, "Nothing in this Order is to be construed as altering the scope of the bargaining unit except in the manner discussed in this Decision."[4] The Board modified the bargaining unit to reflect the change in the identity of the employing agency, DFS, for a portion of the bargaining unit. In Opinion No. 1519, the Board did not decertify NAGE as the exclusive representative for the remaining employees in the bargaining unit at MPD. Further, MPD did not file a decertification petition nor assert that NAGE was no longer the exclusive representative for the remaining employees at MPD. Therefore, NAGE remains the exclusive representative for the remaining bargaining unit employees covered by the certification for Case No. 0R002.

In addition, the parties contend that the Board's language of "the Parties do not dispute that the employees continue to share common working conditions, organizational structure, and supervision" is incorrect. The parties assert that the Board's language is incorrect, because the parties assert employees at MPD and DFS no longer share a community of interest.[5] The Board finds that the parties' argument is a result of reading the Board's language out of context. In order for the Board to modify a unit, the proposed unit must meet the Board's standards for finding a unit appropriate for collective bargaining.[6] The language reflects the Board's determination that the modified unit at DFS was appropriate, because the employees as a unit, apart from the established unit at MPD, continued to meet the Board's standards for finding a unit appropriate, including a community of interest among the proposed unit's employees arising from shared working conditions, organizational structure, and supervision at DFS. The Board did not require that the employees in the modified unit continue to also share a community of interest with their former bargaining unit.

The Board has repeatedly held that "a motion for reconsideration cannot be based upon mere disagreement with its initial decision."[7] Absent authority which compels reversal, the Board will not overturn its decision and order.[8] The Board does not find that there is authority

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[2] NAGE, Local R3-05 is the certified exclusive representatives for:

> All non-professional employees of the Metropolitan Police Department excluding wage grade employees of the Property Division and the Fleet Management Division, management executives, confidential employees, supervisors or any employee engaged in personnel work in other than a purely clerical capacity.

[3] MFR at 1-2.
[4] Opinion No. 1519 at 4.
[5] MFR at 2.
[6] See *D.C. Department of Public Works and American Federation of Government Employees, Local 631*, Slip Op. No. 614, PERB Case Nos. 99-UM-06 & 99-UCN-04, for factors that the Board considers for modification of unit.
[7] *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 59 D.C. Reg. 6013, Slip Op. No. 1004 at p. 10, PERB Case No. 09-U-26 (2009).
[8] *See Peterson v. Washington Teachers Union*, Slip Op. No. 1254 at p. 2, PERB Case No. 12-S-01 (2012); *Collins v. American Federation of Government Employees National Office and Local 1975*, 60 D.C. Reg. 2541 Slip Op. No. 1351 at p. 3, PERB Case No. 10-S-10 (2013).

which compels reversal of its Decision and Order in Opinion No. 1519. Therefore, the Board denies the motion for reconsideration.

III. Conclusion

The Joint Motion for Reconsideration is denied. Certification No. 161 will remain in effect for the modified unit found appropriate at DFS.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Joint Motion for Reconsideration is denied.
2. Certification No. 161 remains in effect, certifying NAGE Local R3-05 as the exclusive representative for the unit described below. Nothing in this Order decertifies NAGE Local R3-05 as the exclusive representative for the bargaining unit at MPD described in *District of Columbia Board of Labor Relations*, Case No. 0R002.

   Unit Description:

   > All non-professional employees of the Department of Forensic Sciences, excluding employees in the Public Health Laboratory, managers, supervisors, confidential employees, or any employee engaged in personnel work in more than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

3. The employees in the above-described unit are placed in Compensation Unit 1.
4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, and Member Keith Washington

Washington, D.C.

June 25, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-UM-01/15-CU-02 was served to the following parties via File & ServeXpress on this the 29th day of June 2015:

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of: American Federation of Government Employees, Locals 631, 383, 1000, 1403, 1975, 2725, 2741, 2978, 3444, and 3721. Complainants, v. District of Columbia Government, Office of Labor Relations and Collective Bargaining, Department of Public Works, Office of Property Management, Office of Zoning, Office of Planning, Department of the Environment, Department of Transportation, Department of Motor Vehicles, Taxi Cab Commission, Department of Parks and Recreation, Department of Employment Services, Department of Health, Department of Fire and Medical Services, Department of Consumer and Regulatory Affairs, Department of Housing and Community Development, Department of Youth Rehabilitation Services, Department of Mental Health, Department of Human Services, Martin Luther King Library, Department of Attorney General, Metropolitan Police Department (Police Garage Division), Office of the State Superintendent of Education .	PERB Case No. 09-U-31 Opinion No. 1528

DECISION AND ORDER

The instant unfair labor practice complaint was brought by ten locals of the American Federation of Government Employees[1] ("Unions" or "Complainants") against the District of Columbia Government and twenty one of its agencies[2] ("Agencies" or "Respondents"). The

[1] Locals 631, 383, 1000, 1403, 1975, 2725, 2741, 2978, 3444, and 3721.

[2] Office of Labor Relations and Collective Bargaining, Department of Public Works, Office of Property Management, Office of Zoning, Office of Planning, Department of the Environment, Department of Transportation, Department of Motor Vehicles, Taxi Cab Commission, Department of Parks and Recreation, Department of Employment Services, Department of Health, Department of Fire and Medical Services, Department of Consumer and Regulatory Affairs, Department of Housing and Community Development, Department of Youth Rehabilitation Services, Department of Mental Health, Department of Human Services, Martin Luther King Library, Department of

Unions allege that the Agencies refused to bargain over the development of a new annual electronic performance management system known as ePerformance and a drug and alcohol testing program. The Unions further allege that the Agencies failed to provide requested information regarding those two programs ("the Programs"). The case was referred to a hearing examiner, who held a hearing and issued a report and recommendation in which she found that the Agencies committed an unfair labor practice and recommended the imposition of certain remedies. The Agencies filed exceptions that raise the issue of whether D.C. Official Code § 1-613.53(b) relieves the Agencies of their obligation to engage in impact-and-effects bargaining concerning the ePerformance system. The Report and Recommendation, the Agencies' exceptions, and the Unions' opposition to the exceptions are before the Board for disposition.

I. Statement of the Case

A. Pleadings

The Unions filed their complaint ("Complaint") April 29, 2009. The Agencies filed their answer ("Answer") May 19, 2009. The Complaint alleges and the Answer admits that on March 10, 2009, the Unions submitted to Natasha Campbell of respondent Office of Labor Relations and Collective Bargaining ("OLRCB") a letter dated March 6, 2009, requesting to bargain over the development of the Programs "to extent permitted by law"[3] and that on March 17, 2009, the Unions sent Campbell a request for information.[4]

The Unions allege that they did not receive a written response to their request for bargaining nor to their request for information. The Unions "view this silence as failure to bargain" and view the failure to bargain and the failure to provide information to be a violation of the Comprehensive Merit Personnel Act ("CMPA"), specifically D.C. Official Code § 1-617.04 (a) (1), (2), (3), and (5).

To remedy the violation, the Unions request that the Board order the Agencies to (1) cease and desist from refusing to bargain, (2) negotiate with the Unions over the ePerformance evaluation system and resume using the previous evaluation system, (3) negotiate with the Unions over the drug and alcohol testing program, (4) make the Unions and their members whole for any wages or benefits lost as a result of the Agencies' violations, (5) pay the Unions' costs, and (6) post notices about the violations. Lastly, the Unions state that they "seek any additional remedy that the Public Employee Relations Board deems appropriate."[5] The Unions do not request an order related to the alleged failure to provide information.

Attorney General, Metropolitan Police Department (Police Garage Division), Office of the State Superintendent of Education

[3] Complaint ¶ 34, Ex. 1; Answer ¶ 34.

[4] Complaint ¶ 35; Answer ¶ 35.

[5] Complaint p. 9.

The Answer asserts that on May 4, 2009—subsequent to the filing of the Complaint—Campbell sent the Unions a written response to their requests. The Answer raised the affirmative defenses that the Programs were impermissible subjects of bargaining and that the bargaining request and the Complaint were untimely.

A hearing was held after which the parties submitted post-hearing briefs to the Hearing Examiner. The Agencies in their post-hearing brief acknowledged that when a subject is non-negotiable there normally remains a duty to bargain about the impact and effects of that subject, but they argued that in the case of performance evaluations the topic that is generally covered in negotiations on impact and effects—implementation—has been declared nonnegotiable by section 1-613.53(b) of the D.C. Official Code. The Agencies contended that drug and alcohol testing is a management right and contended that the Unions waived their right to bargain by unreasonably delaying their request to bargain for several months after the Programs were announced.

The Unions began their post-hearing brief with the principles that management must bargain over the impact and effects of, and procedures concerning, a management rights decision. Management has a duty to notify the union when a change in working conditions is implemented. In order to preserve its bargaining rights, the union must then demand to bargain over a change within a reasonable period of time. The Unions contended that a request to bargain is premature when the agency has not made its decision to implement a change or when the agency suspends implementation of a change. The Unions asserted that under those principles the request to bargain, as well as the Complaint, was timely in the present case. The Unions argued that section 1-613.53(b) is inapplicable to the implementation of the ePerformance system and that the Agencies had no authority for their assertion that drug and alcohol testing is an impermissible subject of bargaining. As the Programs are both negotiable, the Agencies' blanket refusal to bargain and to provide information violated the CMPA.

B. Hearing Examiner's Report and Recommendation

The Hearing Examiner issued a Report and Recommendation, which stated that the following facts are undisputed. Respondents are agencies of the District of Columbia Government. Complainants are locals of the American Federation of Government Employees and exclusive representatives of employees of the Respondents. The Respondents developed a new drug and alcohol testing program pursuant to title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, D.C. Official Code §§ 1-620.31-1-620.37. Initial ePerformance regulations were issued for comment in January 2008. The final regulations were published in June and August of 2009. The OLRCB arranged several informational meetings between labor and management concerning the Programs.[6]

[6] Report & Recommendation p. 5.

By letter dated March 6, 2009, the Unions wrote to Natasha Campbell, the OLRCB Director, to request to bargain over the development of the Programs. They asked that the Programs not be implemented until bargaining was completed. On March 17, 2009, the Unions "submitted a request for information related to their March 6th bargaining request, to Ms. Campbell."[7]

In a letter to the Unions dated May 4, 2009, Campbell replied that the development and implementation of the performance management system were nonnegotiable and that drug and alcohol testing was mandatory and therefore beyond the scope of bargaining. Campbell also took the position that the Unions had waived their right to bargain because the programs had been in effect "for some time." She added that the Agencies were willing to meet to discuss issues surrounding ePerformance and that staff of the Department of Human Resources would be available to respond to questions regarding the administration of the Programs.[8] The Hearing Examiner found that "Respondents refused to bargain with Complainants and refused to provide the requested documents."[9]

The Hearing Examiner rejected the Agencies' affirmative defenses that the Complaint was untimely and that the Unions had waived their right to bargain. The notices that the Agencies gave to the Unions about the Programs did not contain specific information regarding the intended changes or when the changes would be implemented. When the Unions became aware that the Programs were being implemented and that their members were being affected, they requested bargaining and information. Having received no response, the Unions timely filed their Complaint only a few weeks later. The Agencies' subsequent refusal to negotiate or furnish requested documents led the Hearing Examiner to conclude that it would have been futile for the Unions to renew their requests.[10]

Concerning the merits, the Hearing Examiner determined that the Programs fall within management rights as defined in the CMPA[11] and thus the Respondents were not required to bargain over the decisions to implement the Programs.[12] Because the Programs impacted the terms and conditions of employment, the Agencies were required to bargain over the impact and effects of the Programs once the Unions requested that they do so.[13] The Hearing Examiner concluded that the Unions proved the Agencies committed an unfair labor practice in violation of D.C. Official Code § 1-617.04(a) (5) "by refusing to engage in impact and effect[s] bargaining regarding the drug and alcohol testing policy and regarding ePerformance and its

[7] *Id.*
[8] Report & Recommendation p. 6.
[9] *Id.*
[10] *Id.* at 9-11.
[11] D.C. Official Code § 1-617.08(a).
[12] Report & Recommendation p. 11.
[13] *Id.* at 11-12 (citing *Teamsters Local Unions No. 639 & 730 v. D.C. Pub. Sch.*, 38 D.C. Reg. 96, Slip Op. No. 249, PERB Case No. 89-U-17 (1991)).

implementation."[14] The Hearing Examiner did not make a determination regarding the Unions' claim that the Agencies' failure to provide requested information violated the CMPA.

The Hearing Examiner recommended that the Board order some but not all of the remedies requested by the Complainants. She recommended against ordering the Agencies to return to the *status quo ante* as the Programs had been in place for a period of time and there was insufficient evidence that bargaining would have altered the Programs or their implementation. She found that the request that the Unions be made whole for any wages or benefits lost as a result of the violations was overly broad and not supported by evidence. "While there was an allegation that a bargaining unit member lost employment as the result of a positive[,] but random, drug test, there was no evidence presented to support the conclusion that removal was improper or that there had been any other monetary loss suffered by Complainants."[15] The Hearing Examiner recommended that the Board order the Agencies to cease and desist from refusing to bargain, to negotiate with the Unions regarding the Programs, and to post notices of the violations. Finally, the Hearing Examiner stated:

> With regard to the request for payment of costs, the Hearing Examiner concludes that costs should be awarded in this matter consistent with D.C. Code Section 1-618.13 and as analyzed by the Board in AFSCME District Council 20, Local 2776, AFL-CIO V. Department of Finance and Revenue, 37 DCR 5658, Slip Op. 245, PERB Case No. 89-U-02 (1990). Although not requested, the Hearing Examiner also recommends that this Board order Respondents to respond to the information request submitted by the Complainants.[16]

C. Exceptions

The Agencies filed exceptions in which they object that the Report and Recommendation ignored the basis for their position that they were under no duty to bargain over the impact and effects of the ePerformance system, i.e., their contention that section 1-613.53(b) prohibits impact-and-effects bargaining related to ePerformance. Section 1-613.53(b) provides, "Notwithstanding any other provision of law or of any collective bargaining agreement, the implementation of the performance management system established in this subchapter is a non-negotiable subject for collective bargaining."

As they had in their post-hearing brief, the Agencies argue in their exceptions that implementation is the topic that impact-and-effects bargaining generally covers and that topic has been declared nonnegotiable when it comes to a performance management system

[14] Report & Recommendation p. 12.
[15] *Id.* at 13.
[16] *Id.* at 14.

established in accordance with sections 1-613.51 *et seq*. Because ePerformance is such a system, section 1-613.53(b) prohibits bargaining over the processes and procedures of its implementation. "Since the process and procedures of implementation are the topics that would be discussed if impact and effects bargaining occurred, § 1-613.53(b) effectively prohibits such impact and effects bargaining."[17] The Agencies contend that the two decisions[18] the Board has issued concerning section 1-613.53(b) are distinguishable from the present case.[19]

The Unions filed an opposition to the exceptions. The Unions note that section 1-613.53(b) is entitled "Transition provisions" and renders nonnegotiable "the performance management system established in this subchapter," i.e., subchapter XIII-A of chapter VI of title 1 of the D.C. Official Code. The Unions argue that ePerformance is not the performance management system established in that subchapter. The Unions contend that section 1-613.53(b) gave management temporary authority to transition without bargaining to the new performance management system established in the subchapter. That temporary authority does not extend to "modifications or amendments to the performance management system *ad infinitum.*" Instead the temporary authority "has long since lapsed."[20] Further, the Unions distinguish implementation from impact and effects, arguing that "[b]y their nature impact and effects are consequences that occur in response to the implementation of a change."[21] The Unions suggest that although the Hearing Examiner did not cite section 1-613.53(b), she "was aware of this dispute" and her Report and Recommendation reflects her "findings based on competing evidence." As such findings do not provide a basis for attacking a Report and Recommendation, the Unions urge the Board to "reject the exceptions as mere disagreement with the R & R."[22]

III. Analysis

A. The Unions' Request to Bargain

We first consider whether the Unions made a sufficient and timely request for bargaining. No exceptions were filed on this issue. "Whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendation if it finds, upon full review of the record, that the hearing examiner's 'analysis, reasoning and conclusions' are 'rational and persuasive.'"[23]

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[17] Exceptions pp. 5-6.
[18] *AFGE, Local 2725 v. D.C. Dep't of Consumer & Regulatory Affairs,* 59 D.C. Reg. 5347, Slip Op. No. 930, PERB Case No. 06-U-43 (2008); *AFGE, Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709, PERB Case No. 03-N-02 (July 25, 2003).
[19] Exceptions p. 6.
[20] Opp'n pp. 7-8.
[21] Opp'n p. 6.
[22] Opp'n p. 10.
[23] Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public Schools, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08 (2010) (quoting D.C. Nurses Association and D.C. Department of Human Services, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).

1. Timeliness of the Request

The Agencies' response to the Unions' request for bargaining claimed that the Unions had waived their right to negotiate because the Programs had been in effect "for some time."[24] The Agencies argued that the Unions were notified about ePerformance at a November 2008 meeting and about drug and alcohol testing at a July 2008 meeting.[25] By waiting until March 2009 to request bargaining, the Agencies maintained, the Unions waived their right to bargain.[26]

Whether that delay results in a waiver depends upon the adequacy of the notice the Unions were given concerning the contemplated changes in employment conditions. "Under the CMPA, the employer is required to provide the exclusive bargaining representative with adequate notice of a proposed change of a term or condition of employment and an adequate opportunity to bargain. The employer must then, upon request, bargain in good faith over the proposed change."[27] Adequate notice of a proposed change triggers a union's responsibility to request bargaining over the change.[28]

A notice that lacks accurate information about the timing of a change is not adequate.[29] In addition, to be adequate, a notice must be sufficiently specific to provide the union with reasonable notice of the change.[30] The Hearing Examiner found that the notices in this case satisfied neither of those criteria:

> The only communications issued by Respondents relating to ePerformance and the new drug/alcohol testing were invitations sent to Local representatives to attend several meetings during which, to some degree, these matters were discussed. The notices did not contain specific information regarding the intended changes or when the changes would be implemented.[31]

As the notices were inadequate, they did not trigger the Unions' responsibility to request bargaining. Moreover, the Hearing Examiner found that changes to the Programs continued to be made after the dates the Agencies claim the Programs took effect. While the changes were occurring, the Unions were promised additional meetings that were never held. When local presidents became aware that the Programs were being implemented and that their members

[24] Report & Recommendation p. 6.
[25] Agencies' Post-Hearing Brief p. 10.
[26] *Id.*
[27] *AFSCME Dist. Council 20 v. Gov't of D.C.*, 36 D.C. Reg. 5990, Slip Op. No. 223 at 2, PERB Case No. 87-U-07 (1989).
[28] *U.S. Dep't of Def. Commissary Agency Peterson Air Force Base v. AFGE Local 1857*, 61 F.L.R.A. 688, 692 (2006).
[29] *Nat'l Fed'n of Fed. Employees v. FLRA*, 369 F.3d 548, 552 (D.C. 2004).
[30] *Ogden Air Logistics Center Hill Air Force Base and AFGE AFL-CIO Local 1592*, 41 F.L.R.A. 690, 698 (1991).
[31] Report & Recommendation p. 10.

were being affected, they requested bargaining and information.[32] Therefore, the Board finds that the Hearing Examiner's conclusion that the Unions did not waive their right to request bargaining by failing to initiate their request in a timely manner is reasonable, persuasive, supported by the record, and consistent with Board precedent.

2. Sufficiency of the Request

The Board has consistently held that a union's request to bargain need not specify that it was a request to bargain over impact and effects. In the leading case on that point, *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital* ("*International Brotherhood*"),[33] D.C. General Hospital informed the union of its intention to require members of the union to transport patients from the emergency room to the emergency psychiatric receiving department. The union "sent the Hospital a demand to bargain over this proposed change in policy."[34] The parties had a meeting, but "[t]he Hospital did not recognize its obligation to bargain over this issue and termed the [union]'s presence as for the purpose of input only."[35] The Board found that the decision in question was a management right. Nonetheless, the hospital had a duty to bargain upon request concerning the impact and effects of the decision. The Board held that the union had sufficiently requested impact-and-effects bargaining, even though it had not done so by name:

> Any general request to bargain over a matter implicitly encompasses all aspects of that matter, including the impact and effects of a management decision that is otherwise not bargainable. Notwithstanding our finding that no duty to bargain exists with respect to DCGH's decision, DCGH's blanket refusal, in response to IBPO's request to bargain foreclosed the opportunity for bargaining of any nature to occur, including the limited duty to bargain over that aspect of DCGH's non-bargainable management decision concerning its effects and impact.[36]

The Board has cited and reaffirmed this holding of *International Brotherhood* many times.[37] For example, in *NAGE, Local R3-06 v. D.C. Water and Sewer Authority*,[38] the Board

[32] *Id.*
[33] 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992).
[34] *Id.* at 2.
[35] *Id.*
[36] *Id.* at 3. While not requiring a specific request for impact-and-effects bargaining, the Board added that the better practice in the interest of collective bargaining is for a union to follow a refusal to bargain over any aspect of management right with "a second request to bargain with respect to the specific effects and impact of that management decision on bargaining-unit employees' terms and conditions of employment." *Id.* at 4.
[37] *AFGE Local 383 v. D.C. Dep't of Youth Rehab. Servs.*, 61 D.C. Reg. 1544, Slip Op. No. 1449 at p. 12, PERB Case No. 13-U-06 (2014); *AFSCME, Dist. Council 20, Local 2921 v. D.C. Pub. Sch.*, 60 D.C. Reg. 15987, Slip Op. No. 1424 at p. 4, PERB Case No. 10-U-49 (2013); *AFGE, Local 631 v. D.C. Dep't of Gen. Servs.*, 60 D.C. Reg. 12068, Slip Op. No. 1401 at p. 51, PERB Case No. 13-U-23 (2013); *AFSCME, Dist. Council 20, Local 2921 v. D.C.*

considered a request for bargaining in which NAGE "demanded to bargain over the implementation of new performance rating procedures and the plan to reinterview employees of the WASA-CFO's office for their positions."[39] The general manager of the agency replied that by law those employees were employed at will, and the agency went forward with the changes.[40] The hearing examiner found that "[n]otwithstanding the lack of clarity in NAGE's demands for negotiations over the reorganization, . . . under Board precedent, even a broad, general request for bargaining 'implicitly encompasses all aspects of that matter, including the impact and effect of a management decision that is otherwise not bargainable.'"[41] The Board adopted that finding as well as the hearing examiner's conclusion that NAGE's request was sufficient and timely so as to trigger the agency's duty to bargain over the impact and effects of its decision.[42]

In *F.O.P./Department of Corrections Labor Committee v. D.C. Department of Corrections*,[43] the Board paraphrased the holding of *International Brotherhood* as being "that an unfair labor practice has *not* been committed until there has been a general request to bargain and a 'blanket' refusal to bargain."[44] This paraphrase is reiterated in four recent cases.[45]

The Board has not issued any decisions to the contrary, although it is possible that the Board's decision in Slip Op. No. 1026, PERB Case No. 07-U-24,[46] could be misinterpreted. In that case the Board accepted the hearing examiner's finding that "FOP did not request impact and effect bargaining."[47] But in the same paragraph the Board states that "the Hearing Examiner found no evidence that FOP requested to bargain over an alleged change in policy." Similarly, in Slip Op. No. 1524, PERB Case No. 06-U-49,[48] the hearing examiner said that the union did not request impact-and-effects bargaining, but the union's representative admitted that he did not request bargaining.[49] Thus, the missing element in both of those unfair labor practice claims was a request to bargain and not a specification of the subject of impact and effects in the request.

Pub. Sch., 60 D.C. Reg. 2602, Slip Op. No. 1363 at pp. 6, 8, PERB Case No. 10-U-49 (2013); *NAGE, Local R3-06 v. D.C. Water Auth.*, 47 D.C. Reg. 7551, Slip Op. No. 635 at p. 6, PERB Case No. 99-U-04 (2000).

[38] 47 D.C. Reg. 7551, Slip Op. No. 635, PERB Case No. 99-U-04 (2000).

[39] *Id.* at 3.

[40] *Id.*

[41] *Id.* at 6 (quoting *Int'l Bhd. of Police Officers, Local 446 v. D.C. Gen. Hosp.*, 39 D.C. Reg. 9633, Slip Op. No. 322, at pp. 3-4, PERB Case No. 91-U-14 (1992)).

[42] *Id.* at 6, 8.

[43] 49 D.C. Reg. 8937, Slip Op. No. 679, PERB Case Nos. 00-U-36 and 00-U-40 (2002).

[44] *Id.* at 16.

[45] *AFSCME, Dist. Council 20 & Local 2921 v. Dep't of Pub. Works*, 62 DC Reg. 5925, Slip Op. No. 1514 at p.4, PERB Case No. 14-U-03 (2015); *AFGE Local 383 v. D.C. Dep't of Youth Rehab. Servs.*, 61 D.C. Reg. 1544, Slip Op. No. 1449 at p. 12, PERB Case No. 13-U-06 (2014); *AFGE, Local 631 v. D.C. Dep't of Gen. Servs.*, 60 D.C. Reg. 12068, Slip Op. No. 1401 at p. 5, 13-U-23 (2013); *AFSCME, Dist. Council 20, Local 2921 v. D.C. Pub. Sch.*, 60 D.C. Reg. 2602, Slip Op. No. 1363 at p. 6, 10-U-49 (2013).

[46] *F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 9742, Slip Op. No. 1026, PERB Case No. 07-U-24 (2010).

[47] *Id.* at 12.

[48] *F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, Slip Op. No. 1524, PERB Case No. 06-U-49 (May 28, 2015).

[49] *Id.* at 2, 3.

The Board made clear that the latter is unnecessary in two cases in which it reversed hearing examiners who insisted upon a clear or an unambiguous request for impact-and-effects bargaining. In *AFSCME, District Council 20, Local 2921 v. D.C. Public Schools*,[50] the hearing examiner claimed that "PERB's precedent requires a clear and timely demand to bargain I[mpact] [and] E[ffects] issues from the union followed by a refusal to bargain from the agency."[51] The hearing examiner found that the record did not establish that the union made a clear and timely demand, and "[i]n the absence of a clear and time[ly] demand to bargain I[mpact] [and] E[ffects] issues," the hearing examiner found no unfair labor practice. The union excepted to the "clarity" requirement, contending that "a demand for impact and effects bargaining does not require the use of the specific term 'impact and effects.'"[52] The Board agreed:

> The Hearing Examiner's conclusion that "PERB precedent requires a clear and timely demand to bargain impact and effects issues" is incorrect. *See International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992)*. The Hearing Examiner's additional element that a timely request for impact and effects bargaining must be "clear" is not established in Board precedent.[53]

The Board remanded the case with an instruction to the hearing examiner to apply the correct standard in determining whether the union made a proper and timely request to bargain. On remand, the hearing examiner found that the union had made no request at all.[54]

The Board corrected the same error in the recent case of *AFSCME, District Council 20 and Local 2921 v. Department of Public Works*,[55] Despite the Board's holding in the preceding case, the hearing examiner in *Department of Public Works* said that "PERB precedent requires a clear and timely demand to bargain impact and effects"[56] and found that the agency did not have a duty to engage in impact-and-effects bargaining because the union had not made an "unambiguous request to bargain impact and effects of the productivity goals."[57] The Board again ruled that the proposition that a request for impact-and-effects bargaining must be clear is incorrect and not established in the Board's precedent.[58]

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[50] 60 D.C. Reg. 2602, Slip Op. No. 1363, PERB Case No. 10-U-49 (2013).
[51] *Id.* at 7.
[52] *Id.*
[53] *Id.* at 8.
[54] *AFSCME, Dist. Council 20, Local 2921 v. D.C. Pub. Sch.*, 60 D.C. Reg. 15987, Slip Op. No. 1424 at p. 3, PERB Case No. 10-U-49 (2013).
[55] 62 DC Reg. 5925, Slip Op. No. 1514, PERB Case No. 14-U-03 (2015).
[56] *Id.* at 4.
[57] *Id.* at 2.
[58] *Id.* at 4.

In the instant case, the elements of a general request and a blanket denial are clearly present. The Unions' request expressly extends to all collective bargaining permissible by law:

> This is a request to bargain over the *development* of the new ePerformance system, to the extent permissible by law. In addition, we are also requesting to bargain over the drug and alcohol testing program implemented pursuant to Title 1 of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, to the extent permissible by law.[59]

The Agencies' blanket refusal of the request left no exception for impact-and-effects bargaining. Their letter stated that the "development and implementation of the performance management system are non-negotiable subjects for bargaining" and that the drug and alcohol testing was mandatory and therefore "removed from the ambit of bargaining." The Agencies also claimed that the Unions had waived their right to negotiate.[60] The Hearing Examiner found that "Respondents refused to bargain with Complainants. . . ."[61] In view of the Unions' general and comprehensive request and the Agencies' blanket refusal, the Unions' request was sufficient to encompass impact-and-effects bargaining.

B. Negotiability of the Programs

1. The ePerformance System

As the Agencies point out in their exceptions, the Hearing Examiner did not address section 1-613.53(b) or the Agencies' contention that it releases them from a duty to negotiate regarding the impact or effects of the ePerformance system. Contrary to the Unions' assertion that the Agencies' exceptions to the Report and Recommendation constitute mere disagreement with evidentiary findings, the exceptions do not turn on disputes of fact but rather on an issue of law, the interpretation of section 1-613.53(b). Therefore, pursuant to Rule 520.10 this matter can appropriately be decided on the pleadings.[62]

The Unions maintain that section 1-613.53(b) has no applicability to the ePerformance system. It is unnecessary to decide that issue because this case is only about impact-and-effects bargaining and section 1-613.53(b) is not a bar to impact-and-effects bargaining. The Agencies argue that section 1-613.53(b) makes the impact and effects of the ePerformance system nonnegotiable because it makes the implementation of a performance management system nonnegotiable. In this argument, the Agencies equate implementation, as that word is used in

[59] Complaint Ex. 1.
[60] Report & Recommendation p. 6.
[61] *Id.*
[62] *See Teamsters Local Union No. 639 and D.C. Pub. Sch.*, 59 D.C. Reg. 6162, Slip Op. No. 1021 at p. 6, PERB Case No. 08-U-42 (2010).

section 1-613.53(b), with impact and effects. The Board, however, treats the two distinctly. Implementation of a management rights decision has impacts and effects, and the impact and effects of implementation are negotiable upon request.[63] The Board has applied section 1-613.53(b) in conformity with this distinction. In *American Federation of Government Employees, Local 631 v. Government of the District of Columbia*,[64] a case decided after the parties filed their briefs in the present case, the Board held that the respondent agencies were required to bargain over the impact and effects of the implementation of a performance evaluation system "notwithstanding its designation as a non-negotiable subject of collective bargaining."[65]

The Hearing Examiner did not observe the distinction between implementation and the impact and effects of implementation. She stated that the Agencies were required "to bargain over the impact and effects of . . . ePerformance and its implementation"[66] and that the Agencies committed an unfair labor practice "by refusing to engage in impact and effect bargaining . . . regarding ePerformance and its implementation."[67] In view of the law discussed above, the pleadings, and the record, the Board finds that the Agencies were required to bargain over the impact and effects of ePerformance and that the Agencies committed an unfair labor practice by refusing to engage in impact-and-effects bargaining regarding ePerformance.

2. Drug and Alcohol Testing

Although neither party filed exceptions to the Hearing Examiner's finding that the Agencies committed an unfair labor practice by failure to bargain regarding the impact and effects of the new drug and alcohol testing policy, the Board has reviewed the findings and conclusions of the Hearing Examiner. The Board finds that the record supports the Hearing Examiner's finding that the Agencies were required to bargain over the impact and effects of the new drug and alcohol testing policy and that the Agencies committed an unfair labor practice by refusing to engage in impact-and-effects bargaining regarding that policy.

C. Request for Information

An agency is obligated to furnish requested information that is both relevant and necessary to the union's role in the processing of a grievance, an arbitration proceeding, or collective bargaining. A failure to do so is an unfair labor practice.[68] The Hearing Examiner

[63] *F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 9742, Slip Op. No. 1026 at 12, PERB Case No. 07-U-24 (2010).
[64] 59 D.C. Reg. 15175, Slip Op. 1334 at pp. 2-3, PERB Case No. 09-U-18 (2012).
[65] *Id.* at 3. *Cf. AFSCME, Dist. Council 20 v. D.C. Pub. Sch.*, 60 D.C. Reg. 2602, Slip Op. No. 1363 at p. 6, PERB Case No. 10-U-49 (2013) (finding impact-and-effects bargaining required notwithstanding the nonnegotiability of the evaluation process and the instruments for evaluating D.C. Public Schools employees) .
[66] Report & Recommendation pp. 11-12.
[67] *Id.* at 12.
[68] *D.C. Nurses Ass'n v. D.C. Dep't of Mental Health*, 59 D.C. Reg. 15187, Slip Op. No. 1336 at p. 3, PERB Case No. 09-U-07 (2012).

found that the Agency refused to provide documents requested by the Unions.[69] But the Hearing Examiner did not find, nor did the Unions allege, that the documents were relevant and necessary to the Unions' role in a grievance, an arbitration, or collective bargaining, and the Hearing Examiner did not find that the Agencies committed an unfair labor practice by failing to provide the information. Despite the absence of those findings and allegations and the absence of a request from the Unions for an order concerning the information request, the Hearing Examiner recommended that the Board order the Agencies to respond to the information request.[70]

An analogous unfair labor practice complaint filed by the Fraternal Order of Police alleged that the Metropolitan Police Department had changed its policy on the use of take-home vehicles.[71] The complaint further alleged that the Fraternal Order of Police requested information regarding the Department's decision to change its policy but did not receive the requested information. The complaint asserted that "[t]he Department committed an Unfair Labor Practice by refusing to provide relevant and necessary information regarding the Department's change in its take-home vehicle policy."[72] The Department did not deny the factual allegations, but it denied that it had committed an unfair labor practice and accordingly moved to dismiss the complaint. In granting the Department's motion to dismiss, the Board stated, "[T]he Complaint merely asserts that Respondent's actions violate the CMPA by asserting that Respondent failed to provide the requested information. FOP has not alleged facts that it sought information relevant and necessary to the Union's collective bargaining duties."[73]

The Unions' Complaint in the present case does not even allege a conclusion that the requested information is relevant and necessary to its collective bargaining duties, let alone "facts which if proven would establish" that conclusion.[74] The Board will not supply both a claim and a remedy when the Complaint neither pleads the former nor requests the latter.

D. Remedies for Failure to Bargain upon Request

We find that the Hearing Examiner's denial of a *status quo ante* remedy and an award of monetary damages for the Agencies' failure to bargain upon request is reasonable and consistent with Board precedent.

The Hearing Examiner recommended that costs should be awarded and cited the leading case of *AFSMCE District Council 20 v. Department of Finance and Revenue*.[75] But the Hearing Examiner did not indicate that any of the interest of justice criteria listed in that case was present or that some other characteristic of the instant case warranted ordering the Agencies to pay the

[69] Report & Recommendation p. 6.
[70] *Id.* at 14.
[71] *F.O.P./Metro. Police Dep't Labor Comm. v. D.C Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 6781, Slip Op. No. 1131 at p. 2, PERB Case No. 09-U-59
[72] *Id.* at 3.
[73] *Id.* at 4.
[74] *Id.* at 5.
[75] 37 D.C. Reg. 5658, Slip Op. No. 245, PERB Case No. 89-U-02 (1990).

Unions' costs.[76] A review of the interest of justice criteria listed in *Department of Finance and Revenue* reveals that they are not present. Given that at the time this case was litigated there were no cases on the question of whether section 1-613.53(b) precluded impact-and-effects bargaining on a performance evaluation system, it cannot be said that the Agencies' position was wholly without merit.[77] Further, nothing in the record suggests that the actions of the Agencies were undertaken in bad faith or that they had the foreseeable result of undermining the Unions among the employees they represent.

With the preceding exceptions, we adopt the recommended remedies of the Hearing Examiner as set forth below in the order.

[76] *See supra* p. 5.
[77] *See Teamsters Local Union No. 639 v. D.C. Pub. Sch.*, 59 D.C. Reg. 6162, Slip Op. No. 1021 at p. 11, PERB Case No. 08-U-42 (2010); *Barganier v. F.O.P./Dep't of Corrs. Labor Comm.*, 43 D.C. Reg. 2949, Slip Op. No. 464 at p. 5 n.4, PERB Case No. 95-S-02 (1996).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Agencies shall cease and desist from refusing to bargain, upon request, about the procedures for and the impact and effects of the ePerformance system and the drug and alcohol testing program.

2. The Agencies shall negotiate in good faith with the Unions, upon request, with respect to procedures for and the impact and effects of the ePerformance system and the drug and alcohol testing program.

3. Each of the Agencies shall conspicuously post within ten (10) days from the issuance of this Decision and Order the attached Notice where notices to employees are normally posted. The notice shall remain posted for thirty (30) consecutive days.

4. The Agencies shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order that the notices have been posted accordingly.

5. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairman Charles Murphy and Members Keith Washington, Ann Hoffman, and Yvonne Dixon

Washington, D.C.

June 25, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order was served upon the following parties by File and ServeXpress on this the 26th day of June 2015.

Andres M. Grajales
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/s/ Sheryl V. Harrington
Sheryl V. Harrington
Secretary

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Nurses Association,	
Petitioner,	
v.	PERB Case No. 15-N-03
District of Columbia Department of Health,	Opinion No. 1529
Respondent.	

DECISION AND ORDER

At issue in this negotiability appeal is the negotiability of two proposals giving to clinical nurses who had been separated in a reduction in force a right of first refusal for similar clinical nurse positions. We find that the proposals are nonnegotiable.

I. Statement of the Case

Petitioner District of Columbia Nurses Association ("Union") is the exclusive representative of all nonsupervisory nurses employed by the Respondent District of Columbia Department of Health ("Department"). The Union and the Department met on December 23, 2014, to negotiate on the impact and effects of an impending reduction in force ("RIF"). The RIF occurred three days later when five nonsupervisory clinical nurses were separated due to a decrease in federal funding for the Healthy Start Program, a program that had been created to improve perinatal outcomes for high-risk pregnant women and mothers. The Union made two proposals, which are as follows:

> Proposal 1 – The nurses will be given the Right of First Refusal for any additional Clinical Nurse positions that are added to the Healthy Start 3.0 Programs or any similar positions in the Department of Health.
>
> Proposal 2 – Providers that are granted funding to provide direct services through Healthy Start Program 3.0 are required to give the nurses the Right of First Refusal for clinical nurse openings for perinatal care.

On February 20, 2015, the Union filed a notice of impasse concerning the parties' negotiations over the two proposals. The notice requested that the Board seek the appointment of a mediator from the Federal Mediation and Conciliation Service. The Union attached to the notice exhibits that reflect disagreement between the parties concerning the effect on the proposals of chapter 24 of the District Personnel Manual ("Chapter 24"). The Department moved to dismiss the notice of impasse on the ground that the proposals were nonnegotiable. The Board granted the motion because it found that the case was inappropriate for impasse procedures.[1]

Deeming the Department's motion to dismiss to be a declaration of nonnegotiability, the Union filed the instant negotiability appeal on April 7, 2015. In its appeal, the Union contends that its two proposals do not interfere with the Department's right to conduct a RIF or alter the RIF procedures in Chapter 24. "Additionally," the Union argues, "Chapter 24 does not preclude negotiation over the Union's proposals. The proposals seek merely to provide alternative[] options to ensure that the 5 nurses who were displaced are able to obtain similar positions, should the positions become available."[2]

In its *Response to Union's Negotiability Appeal*, the Department makes the following argument. The Union's claim of negotiability contradicts the Board's longstanding position that, in accordance with the Abolishment Act,[3] a proposal made during impact-and-effects bargaining that would alter RIF procedures is nonnegotiable.[4] The Department maintains that the Union's proposals alter the procedures of Chapter 24. In particular, the Department notes that Chapter 24, in sections 2427-2429, "requires that all employees displaced by a RIF be placed on both the Agency Reemployment Priority Program, and the districtwide Displaced Employee Program lists." Employees on those lists are given priority consideration based upon their tenure group and their standing within their competitive level.[5] "Therefore," the Department concludes, "the Union's two proposals that their displaced members be given the 'Right of First Refusal' for any Clinical Nurse positions are most definitely, an alteration of the procedures established in Chapter 24."[6]

II. Discussion

Conducting a RIF is a management right under D.C. Official Code section 1-617.08.[7] Generally, the exercise of a management right does not relieve management of the duty to bargain over the impact and effects of, and procedures concerning, the exercise of management

[1] *D.C. Nurses Ass'n and D.C. Dep't of Health*, Slip Op. No. 1522, PERB Case No. 15-I-06 (May 21, 2015).
[2] Negotiability Appeal ¶ 7.
[3] D.C. Official Code § 1-624.08.
[4] Response pp. 1-2 (citing *Washington Teachers' Union v. D.C. Pub. Schs.*, 61 D.C. Reg. 1537, Slip Op. No. 1448 at pp. 2, 3, PERB Case No. 04-U-25 (2014); *AFGE, Local 631 v. D.C. Water & Sewer Auth.*, 59 D.C. Reg. 5411, Slip Op. No. 982 at p. 6, PERB Case No. 08-N-05 (2009)).
[5] D.C. Mun. Regs. tit. 6-B24 §§ 2428.4, 2430.
[6] Response p. 3.
[7] *Doctors' Council of D.C. v. D.C. Dep't of Youth & Rehab. Servs.*, 60 D.C. Reg. 16255, Slip Op. No. 1432 at p. 8, PERB Case No. 11-U-22 (2013).

rights decisions.[8] However, the Abolishment Act, D.C. Official Code § 1-624.08, narrowed this duty as it relates to RIFs. Congress enacted the Abolishment Act as section 2408 of the D.C. Appropriations Act of 1998.[9] The Abolishment Act was later amended to apply to fiscal year 2000 and subsequent fiscal years.[10] The Abolishment Act authorizes agency heads to identify positions for abolishment, establishes the rights of existing employees affected by the abolishment of a position, and establishes procedures for implementing and contesting an abolishment.[11] The Abolishment Act provides in Section 1-624.08(j) that "[n]otwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable."

One of the provisions of the Abolishment Act, Section 1-624.08(d), accords to employees whose positions have been abolished an entitlement to compete for retention in certain circumstances and under specified procedures:

> An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

Section 1-624.08(d) and Chapter 24, which Section 1-624.08(d) incorporates by reference, establish detailed procedures by which RIF'd employees can compete for retention.[12] Section 1-624.08(j) makes those procedures nonnegotiable. [13]

In place of those nonnegotiable procedures, Proposal 1 attempts to give the RIF'd nurses a right of first refusal for any additional clinical nurse positions that are added to Healthy Start or for any similar positions in the Department. This proposal would supersede the competition regulated by Section 1-624.08(d) and Chapter 24 with a right of first refusal. Therefore, Proposal 1 is nonnegotiable.

Under Proposal 2, the Union seeks to impose a requirement on providers that are granted funding for services through Healthy Start. Those providers must give nurses the right of first refusal for clinical nurse openings for perinatal care. This proposal conflicts with Section 2409 of

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[8] *AFGE, Local 1403 v. D.C. Office of the Corp. Counsel*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02 (July 25, 2003); *Int'l Bhd. of Police Officers v. D.C. Gen. Hosp.*, 41 D.C. Reg. 2321, Slip Op. No. 312 at p. 3, PERB Case No. 91-U-06 (1992); *Univ. of D.C. Faculty Ass'n/NEA and Univ. of D.C.*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 4, PERB Case No. 82-N-01 (1982) (holding that procedures for implementing the decision to conduct a RIF and its impact and effects are negotiable).

[9] 111 Stat. 2160 (1997).

[10] District of Columbia Appropriations Act of 2001, 114 Stat. 2457 (2000).

[11] D.C. Official Code § 1-624.08(a)-(i), (k).

[12] D.C. Mun. Regs. tit. 6-B24 §§ 2427-2430.

[13] *F.O.P./Dep't of Corrs. Labor Comm. v. D.C. Dep't of Corrs.*, 49 D.C. Reg. 11141, Slip Op. No. 692, PERB Case No. 01-N-01 (2002).

Chapter 24, which establishes the competitive areas for RIF'd employees. Each agency constitutes a single competitive area,[14] but an agency's personnel authority may establish lesser competitive areas within the agency.[15] Proposal 2 would create for the RIF'd employees a new competitive area outside the Department (providers granted funding through the Healthy Start Program), and in that new competitive area the employees would be entitled not just to competition but to a right of first refusal. As Proposal 2 augments RIF procedures, it is nonnegotiable.

Contrary to the Union's assertion, Chapter 24, through the operation of Section 1-624.08(j), does preclude negotiation over the Union's proposals. Accordingly, we find both Proposal 1 and Proposal 2 nonnegotiable.

ORDER

IT IS HEREBY ORDERED THAT:

1. The proposals of the District of Columbia Nurses Association, concerning a right of first refusal for clinical nurse positions, are nonnegotiable.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairman Charles Murphy and Members Keith Washington, Ann Hoffman, and Yvonne Dixon

Washington, D.C.

June 25, 2015

[14] *Id.* at § 2409.1.
[15] *Id.* at § 2409.2.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order was served upon the following parties via File and ServeXpress on this the 30th day of June 2015.

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