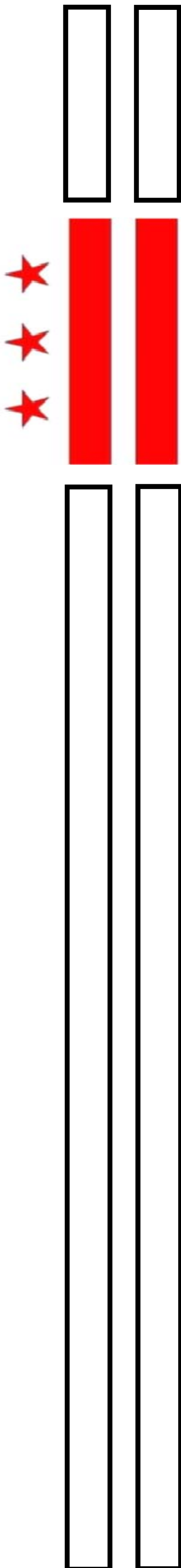


VOL. 62 – NO. 46 NOVEMBER 6, 2015

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-193, Testing Integrity Amendment Act of 2015
- D.C. Council schedules a public oversight roundtable on the Transition Plan for Families Nearing the Temporary Assistance for Needy Families Time Limit
- D.C. Council schedules a public oversight roundtable on Violence in Hospital Emergency Rooms
- Department of Energy and Environment updates engine idling regulations
- Department of Energy and Environment announces funding availability for the Grant for Boat Sewage Pumpout - Clean Vessel Act
- D.C. Taxicab Commission announces funding availability for the Coordinated Alternative to Paratransit Services Grant
- Department of Consumer and Regulatory Affairs proposes updates to the boxing and wrestling licensing and event regulations

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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

Deadlines for Submission of Documents for Publication

The Office of Documents and Administrative Issuances accepts electronic documents for publication using a Web-based portal. To submit documents for publication, agency heads, or their representatives, may obtain a username and password by email at dcdocuments@dc.gov. For guidelines on how to format and submit documents for publication, email dcdocuments@dc.gov.

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

Viewing the DC Register

The Office of Documents and Administrative Issuances publishes the *D.C. Register* ONLINE every Friday at www.dcregs.dc.gov. The Office of Documents does not offer paid subscriptions to the *D.C. Register*. Copies of the *Register* from April 2003 through July 2010 are also available online in the *D.C. Register* Archive on the website for the Office of the Secretary at www.os.dc.gov. Hardcopies of the Register from 1954 to September 2009 are available at the Martin Luther King, Jr. Memorial Library's Washingtonian Division, 901 G Street, NW, Washington, DC 20001. There are no restrictions on the republication of any portion of the *Register.* News services are encouraged to publish all or part of the *Register.*

Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. ACTS

A21-181 Extension of Time to Dispose of Property Located at Sixth and E Streets, S.W., Emergency Amendment Act of 2015 [B21-224] .... 014209 - 014210

A21-182 Contract No. DHCF-2013-C-0137 Approval and Payment Authorization Emergency Act of 2015 [B21-301] .... 014211 - 014212

A21-183 Contract No. DCPL-2O15-C-0034 Approval and Payment Authorization Emergency Act of 2015 [B21-398] .... 014213 - 014214

A21-184 Early Learning Quality Improvement Network Emergency Amendment Act of 2015 [B21-405] .... 014215 - 014217

A21-185 Extension of Time to Dispose of the Strand Theater Emergency Amendment Act of 2015 [B21-407] .... 014218 - 014219

A21-186 Closing of a Public Alley in Square 369, S.O. l3-07989, Emergency Act of 2015 [B21-429] .... 014220 - 014221

A21-187 Closing of a Public Alley in Square 197, S.O. 15-23895, Emergency Act of 2015 [B21-430] .... 014222 - 014223

A21-188 Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2015 [B21-433] .... 014224 - 014226

A21-189 Ward 5 Paint Spray Booth Conditional Moratorium Emergency Act of 2015 [B21-435] .... 014227 - 014229

A21-190 Gas Station Advisory Board Emergency Amendment Act of 2015 [B21-437] .... 014230 - 014231

A21-191 N Street Village, Inc. Tax and TOPA Exemption Clarification Emergency Amendment Act of 2015 [B21-439] .... 014232 - 014233

A21-192 Closing of a Public Alley in Square 369, S.O. 13-07989, Act of 2015 [B21-217] .... 014234 - 014235

A21-193 Testing Integrity Amendment Act of 2015 [B21-239] .... 014236 - 014239

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

D.C. ACTS CONT'D

A21-194 Closing of a Public Alley in Square 197, S.O. 15-23895, Act of 2015 [B21-240] .... 014240 - 014241

A21-195 James Bunn Way Designation Act of 2015 [B21-333] .... 014242 - 014243

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

Notice of Intent to Act on New Legislation -
Bills B21-445 through B21-447 and B21-449, B21-455, B21-459 through B21-469 Proposed Resolutions PR21-383, PR21-385, PR21-386, PR21-393, PR21-401 through PR21-407 .... 014244 - 014248

COUNCIL HEARINGS

Notice of Public Hearings -

B21-47 Educational and Instructional Animals Clarification Amendment Act of 2015 (Cancelled) 014249

B21-0361 Youth Suicide Prevention and School Climate Survey Act of 2015 (Reconvening) 014250

B21-0319 Assessment on Children of Incarcerated Parents Act of 2015 (Reconvening) 014250

B21-0420 Residential Lease Amendment Act of 2015 .... 014251 - 014252

B21-0443 Condominium Owner Bill of Rights Amendment Act of 2015 .... 014251 - 014252

Notice of Public Oversight Roundtables -

Transition Plan for Families Nearing the Temporary Assistance for Needy Families Time Limit .... 014253 - 014254

PR 21-346 Temporary Assistance for Needy Families Sanction Policy Amendment Approval Resolution of 2015 .... 014253 - 014254

Temporary Assistance for Needy Families Employment Program Performance Outcomes .... 014253 - 014254

Violence in Hospital Emergency Rooms 014255

Notice of Public Roundtables -

PR 21-237 Board of Trustees of the University of the District of Columbia George Tyrone Simpson Confirmation Resolution of 2015 (Reconvened) 014256

PR 21-0329 District of Columbia Water and Sewer Authority Board of Directors Ana Recio Harvey Confirmation Resolution of 2015 014257

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

COUNCIL HEARINGS CONT'D

Notice of Public Roundtables -

PR 21-0330 District of Columbia Water and Sewer Authority Board of Directors Matthew T. Brown Confirmation Resolution of 2015 014257

PR 21-0385 Catholic University of America Revenue Bonds Project Approval Resolution of 2015 014258

PR 21-402 Board of Trustees of the University of the District of Columbia Christopher Bell Confirmation Resolution of 2015....014259

OTHER COUNCIL ACTIONS

Consideration of Temporary Legislation -

B21-339 Plaza West Disposition Restatement Temporary Act of 2015 014260

B21-452 Foster Care Extended Eligibility Temporary Amendment Act of 2015 014260

Notice of Excepted Service Appointments -

As of October 31, 2015 014261

Notice of Intent to Consider Legislation -

PR 21-402 Board of Trustees of the University of the District of Columbia Christopher Bell Confirmation Resolution of 2015 (Abbreviated)....014262

Notice of Reprogramming Request -

21-147 Request to reprogram $475,000 of Fiscal Year 2015 Local funds budget authority from the Office of the State Superintendent of Education (OSSE) to the Pay-As-You-Go (Paygo) Capital Fund 014263

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration -

Half Smoke - ANC 1B - New....014264
Rioja Bodega - ANC 1C - Transfer to New Location 014265
Trader Joe's #622 - ANC 6B - New....014266

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PUBLIC HEARINGS CONT'D

Health, Department of / SHPDA - Notice of Information Hearing -
Application by District Hospital Partners, L.P., d/b/a George Washington University Hospital to acquire Doctors, Groover, Christie, and Merritt Imaging Facility - November 17, 2015 014267

Historic Preservation Review Board - Historic Landmark Designation Hearing -

13-22 The Scheele-Brown Farmhouse, 2207 Foxhall Road NW - ANC 3D .... 014268 - 014269

Zoning Adjustment, Board of - January 26, 2016 Hearings - Revised -

17703A Sidwell Friends School - ANC-3F .... 014270 - 014272
18895A James Walker - ANC-5D .... 014270 - 014272
19088 Jose Ayala - ANC-4C .... 014270 - 014272
19156 Brad Edwards - ANC-2B .... 014270 - 014272
19163 Cambridge Apartments Limited Partnership - ANC-2F .... 014270 - 014272
19164 Christopher J Wright - ANC-5E .... 014270 - 014272
19165 3317 16th Street LLC - ANC-6A .... 014270 - 014272
19169 311 K Street LLC - ANC-6E .... 014270 - 014272

FINAL RULEMAKING

Energy and Environment, Department of the - Amend 20 DCMR (Environment), Ch. 9 (Air Quality - Motor Vehicular Pollutants, Lead, Odors, and Nuisance Pollutants), Sec. 900 (Onroad Engine Idling and Nonroad Diesel Engine Idling) and Sec. 999 (Definitions and Abbreviations), to reduce diesel engine emissions that result from unnecessary idling and conserve fuel used by nonroad diesel engines. .... 014273 - 014277

PROPOSED RULEMAKING

Consumer and Regulatory Affairs, Dept. of -
Amend 14 DCMR (Housing), to repeal Chapters 1 through 13 to bring the Housing regulations in compliance with 12 DCMR (Construction Codes Supplement of 2013), Subtitles A-M; Third proposed rulemaking to incorporate review changes from proposed rulemaking published at 62 DCR 300 on January 9, 2015 .... 014278 - 014339

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PROPOSED RULEMAKING CONT'D

Consumer and Regulatory Affairs, Department of -
Amend 19 DCMR (Amusements, Parks, and Recreation),
Ch. 20 (Amusements, Parks, and Recreation),
Ch. 21 (Boxing Events), Ch. 22 (Wrestling Events),
Ch. 23 (Kickboxing Events), and
Ch. 24 (Mixed Martial Arts Uniform Rules), to
update the boxing and wrestling licensing and
event regulations ....014340 - 014351

Public Library, DC - Amend 19 DCMR (Amusements,
Parks, and Recreation), Ch. 8 (Public Library),
to add Sec. 820 (Permits), to provide guidelines
for issuing permits..014352 - 014354

Public Library, DC - Amend 19 DCMR (Amusements,
Parks, and Recreation), Ch. 8 (Public Library),
to add Sec. 821 (Revenue Generating Activity),
to set the rules for revenue generating activity
for DC Public Libraries ....014355 - 014356

Taxicab Commission, DC - Amend 31 DCMR
(Taxicabs and Public Vehicles for Hire), to change
the title for Ch. 5 (Taxicab Companies, Associations
and Fleets) to (Taxicab Companies and Associations),
and change the title for Sec. 517 (Liability for Conduct
of Employees) to (Liability for Conduct of
Associated Persons), and clarify liability rules ....014357 - 014358

Taxicab Commission, DC - Amend 31 DCMR
(Taxicabs and Public Vehicles for Hire),
Ch. 7 (Enforcement), Sections 700, 703, 705 -708,
And 713, to clarify enforcement rules regarding
deadlines, suspension, notices, and appeals process ....014359 - 014364

EMERGENCY AND PROPOSED RULEMAKING

Administrative Hearings, Office of -
Amend 1 DCMR (Mayor and Executive Agencies),
Ch. 28 (Office of Administrative Hearings Rules
of Practice and Procedure) and Ch. 29 (Office of
Administrative Hearings: Rules for DCPS, Rental
Housing, Public Benefits, and Unemployment Insurance
Cases), to update OAH rules of procedure..014365 - 014428

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS
MAYOR'S ORDERS

2015-233 Delegation of Authority to the Director of the Department of General Services to Execute a Lease Agreement for the Mamie D. Lee School....014429

2015-234 Appointments – District of Columbia Statewide Independent Living Council (Molly Work, David Bauer, Heyab Berhane, Regina Raye Duvall, Ronald Thomas)....014430 - 014431

2015-235 Appointments – Commission for Women (Margaret A. Hacskaylo, Camelia Mazard, Veronica Nelson, Tiffini N. Greene) 014432

2015-236 Appointment – Leadership Council for a Cleaner Anacostia River (Anthony Williams, Tommy Wells, Jim Foster, Dennis Chestnut, Chris Weiss, Walter Smith, Glen O'Gilvie, William Matuszeski, Fred Pinkney, Edward Grandis, Michael Stevens, Stephen Walz, Jon M. Capacasa, Jeffrey Corbin, Adam Ortiz, Lisa Feldt, Ben Grumbles, Mark Belton, Simeon Hahn, George Hawkins)....014433 - 014435

NOTICES, OPINIONS, AND ORDERS
BOARDS, COMMISSIONS, AND AGENCIES

Achievement Preparatory Public Charter School -
Request for Proposals - Janitorial Services 014436

Cesar Chavez Public Charter School DC -
Request for Proposals - Professional Development for School/District Leadership....014437

DC Bilingual Public Charter School -
Request for Proposals - Boiler Maintenance....014438

Elections, Board of - Certification of ANC/SMD Vacancy -
1A06 014439

Elections, Board of - Certification of Filling ANC/SMD Vacancy -
7B07 (Dexter L. Humphrey) 014440

Energy and Environment, Department of -
Funding Availability - Grants for a Boat Sewage Pumpout - Clean Vessel Act ....014441 - 014442

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
AGENCIES, BOARDS, AND COMMISSIONS CONT'D

Energy and Environment, Department of - Intent to Issue Permits -
6407-R1 through 64120-R1 U.S. General Services Administration (GSA), GSA Central Heating and Refrigeration Plant (CHRP), 13th and C Streets SW 014443

Excel Academy Public Charter School -
Request for Proposals - Commerical Copiers and Maintenance Agreement 014444

Health Benefit Exchange Authority, DC -
Executive Board Meeting - November 9, 2015 014445

Health, Department of - Board of Physical Therapy -
Notice of Change in Meeting Schedule (Next Meeting Wednesday, November 18, 2015) 014446

Ingenuity Prep Public Charter School - Request for Proposals -
Special Education Services (Counseling, Speech/ Language, Occupational and Physical Therapy) 014447

Insurance, Securities and Banking, Department of -
District of Columbia Financial Literacy Council - Public Meeting - November 19, 2015 014448

Judicial Disabilities and Tenure, Commission on -
Reappointment Evaluations of Superior Court Judges Erik P. Christian and Maurice A. Ross .... 014449 - 014450

Kingsman Academy Public Charter School - Request for Proposals -
Special Education Services and Program Consultation 014451

Latino Affairs, Office on - Funding Availability -
FY 2016 Latino Community Development Grant (RFA #22615-16) .... 014452 - 014453

Legal Counsel, Mayor's Office of - Freedom of Information Act Appeals -
2015-75 Jeremy Leval .... 014454 - 014456
2015-76 John Thrift.. 014457
2015-77 Joce Sterman 014458
2015-78 B. Selah Lee-Bey .... 014459 - 014461
2015-79 Dana Sleeper 014462
2015-80 Nabiha Syed .... 014463 - 014469
2015-81 Steven Sushner, Esq... 014470
2015-82 CJ Ciaramella .... 014471 - 014473
2015-83 Linda Flynn 014474

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
AGENCIES, BOARDS, AND COMMISSIONS CONT'D

Public Employee Relations Board Opinions - see page 014601

Public Service Commission - Notice of Proposed Tariff -
FC No. 945, in the Matter of the Investigation into Electric Services Market Competition and Regulatory Practices, and FC No. 1017, in the Matter of the Development and Designation of Standard Offer Service in the District of Columbia (Pepco's proposed tariff amendments to Electric Service rate schedules) .... 014475 - 014476

Secretary, Office of the - Recommendations for Appointment
as DC Notaries Public - Effective December 1, 2015 .... 014477 - 014484

Small and Local Business Development, Department of -
Revised Notice of Funding Availability - DC Main Streets (Congress Heights Target Areas) Grant 014485

Taxicab Commission, DC - Funding Availability -
Coordinated Alternative to Paratransit Services Grant .... 014486 - 014487

Washington Convention and Sports Authority (T/A Events DC) -
Notice of Rescheduled Public Meeting - November 19, 2015 014488

Water and Sewer Authority, DC - Committee Meetings
Environmental Quality and Sewerage Services - November 19, 2015 014489
Finance and Budget - November 20, 2015 014490
Governance - November 10, 2015 014491
Human Resources and Labor Relations - November 10, 2015 014492
Retail Water and Sewer Rates - November 17, 2015 014493
Water Quality and Water Services - November 19, 2015 014494

Zoning Adjustment, Board of - Cases -
18801-A Fort Lincoln Multifamily Housing and Fort Lincoln Joshua Barry Townhouse, LLC, Motion for Modification - ANC 5C - Order .... 014495 - 014497
19052-A Josh Green, Motion for Modification of Approval in Order No. 19052 - ANC 3C- Order .... 014498 - 014500
19063 Woinshet Mekonnen - ANC 8A - Order .... 014501 - 014503
19082 Chichest LLC - ANC 4B - Order .... 014504 - 014506
19083 Simone Management, LLC - ANC 8A - Order .... 014507 - 014510
19084 Tito Construction Company LLC - ANC 6A - Order .... 014511 - 014513
19086 Gail and Lindsay Slater - ANC 6C - Order .... 014514 - 014516
19087 Andrew Weinschenk and Rachel Cononi - ANC 6C - Order .... 014517 - 014519
19096 Mark Lawrence - ANC 2F - Order .... 014520 - 014522
19097 1626 29th Street, NW Trust - ANC 2E - Order .... 014523 - 014525
19102 Gregg Solomon and Sarah Helmstadter - ANC 3D - Order .... 014526 - 014528

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
AGENCIES, BOARDS, AND COMMISSIONS CONT'D

Zoning Adjustment, Board of - Notice of Closed Meetings -
November, 2015 014529

Zoning Commission - Cases -
08-07B Four Points, LLC - Notice of Filing 014530
15-25 Initio LP - Notice of Filing 014531
15-26 251 Massachusetts Avenue, LLC - Notice of Filing 014532
14-18 Mid-City Financial Corporation - Order .... 014533 - 014598

Public Employee Relations Board - Certification -
161 PERB Case Nos. 15-UM-01 and 15-CU-02, National Association of Government Employees, Local R3-05, V. Metropolitan Police Department and Department of Forensic Sciences .... 014599 - 014600

Public Employee Relations Board - Opinions -
1533 PERB Case No. 10-U-14(R), Metropolitan Police Department, v. Fraternal Order of Police/ Metropolitan Police Department Labor Committee (Corrected copy) .... 014601 - 014605

1535 PERB Case No. 09-U-48(R), Metropolitan Police Department, v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (Decision and Order on Remand) .... 014606 - 014609

1536 PERB Case Nos. 08-U-69, 09-U-01, 10-U-04, 10-U-05, 10-U-10, 10-U-28, and 10-U-29, Fraternal Order of Police/Metropolitan Police Department Labor Committee, v. District of Columbia Metropolitan Police Department .... 014610 - 014620

1537 PERB Case Nos. 10-S-05, 10-S-07, 10-S-08, and 10-S-09, Dancy Simpson, Pamela Chase, Ernest Durant, Shante Briscoe, et al., v. Fraternal Order of Police/Department of Corrections Labor Committee .... 014621 - 014627

1538 PERB Case No. 13-U-35, Fraternal Order of Police/Metropolitan Police Department Labor Committee, v. District of Columbia Board of Ethics and Government Accountability (Motion for Reconsideration) .... 014628 - 014632

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
AGENCIES, BOARDS, AND COMMISSIONS CONT'D

Public Employee Relations Board - Opinions - cont'd

1539 PERB Case No. 15-N-01, Service Employees International Union, Local 500, v. University of the District of Columbia....................014633 - 014657

1540 PERB Case No. 15-A-05, District of Columbia Public Schools, v. Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO (on behalf of Sharon Wells)....................014658 - 014665

1541 PERB Case No. 09-U-31, American Federation of Government Employees, Locals 631, 383, 1000, 1403, 1975, 2725, 2741, 2978, 3444, and 3721, v. District of Columbia Government, et al. (Motion for Reconsideration)....................014666 - 014674

1542 PERB Case No. 12-S-01, Candi Peterson, v. Washington Teachers' Union ....014675 - 014678

1543 PERB Case No. 13-N-04, Local 36, International Association of Firefighters, v. District of Columbia Department of Fire and Emergency Medical Services (Decision and Order) ....014679 - 014682

1544 PERB Case No. 15-CU-01, National Association of Government Employees, v. District of Columbia Homeland Security and Emergency Management Agency....................014683 - 014689

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-181

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To amend, on an emergency basis, An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes to extend the time in which the Mayor may dispose of certain District-owned real property located at the northeast corner of Sixth and E Streets, S.W., known for tax and assessment purposes as Lot 0036 in Square 0494, and to make conforming amendments to the Fourth/Sixth and E Streets, S.W., Property Disposition Resolution of 2009.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Extension of Time to Dispose of Property Located at Sixth and E Streets, S.W., Emergency Amendment Act of 2015."

Sec. 2. Section 1 of 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), is amended by adding a new subsection (d-7) to read as follows:

"(d-7) Notwithstanding subsection (d) of this section, the time period within which the Mayor may dispose of District-owned real property located at the northeast corner of Sixth and E Street, S.W., known for tax and assessment purposes as Lot 0036 in Square 0494, for the construction of a mixed-use development, which was approved by the Council pursuant to the Fourth/Sixth and E Streets, S.W., Property Disposition Approval Resolution of 2009, effective November 3, 2009 (Res. 18-290; 56 DCR 8799), as extended by the Fourth/Sixth and E Streets, S.W., Property Disposition Extension Approval Resolution of 2011, effective July 12, 2011 (Res. 19-170; 58 DCR 6589), is extended to November 3, 2017.".

Sec. 3. Section 3(a) of the Fourth/Sixth and E Streets, S.W., Property Disposition Resolution of 2009, effective November 3, 2009 (Res. 18-290; 56 DCR 8799), is amended by adding a new paragraph (4) to read as follows:

"(4) The Lessee will comply with the requirements of section 1(a-3) of 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(a-3)).".

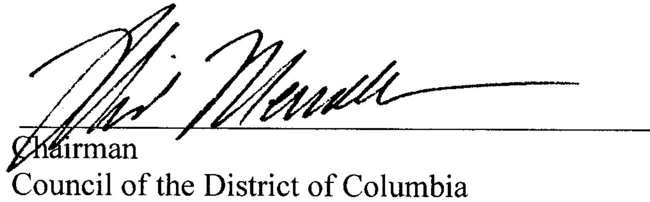
ENROLLED ORIGINAL

Sec. 4. Fiscal impact statement.

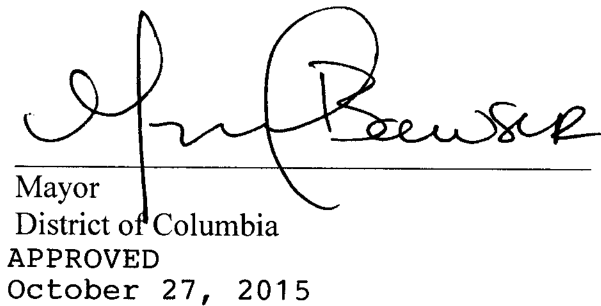
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

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 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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-182

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To approve, on an emergency basis, multiyear Contract No. DHCF-2013-C-0137 with Magellan Medicaid Administration to provide pharmacy benefit management services on behalf of the District of Columbia for eligible Medicaid beneficiaries and to authorize payment for the goods and 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 "Contract No. DHCF-2013-C-0137 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 Contract No. DHCF-2013-C-0137 with Magellan Medicaid Administration and authorizes payment in the amount of $11,576,181.22 for goods and services received and to be received under the contract for a base period of 3 years from the date of award, with 2 additional option years.

Sec. 3. Fiscal impact statement.

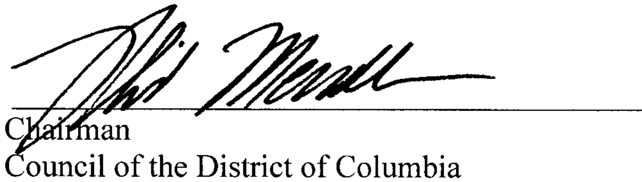
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

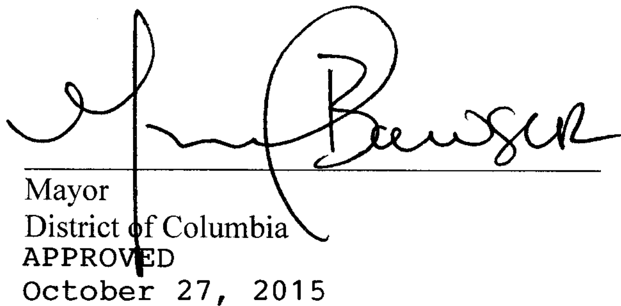
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than

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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-183

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To approve, on an emergency basis, multiyear Contract No. DCPL-2015-C-0034 with Gilbane Building Company to provide a 685-calendar-day period for the performance of design-build services for the interim and new Cleveland Park library, and to authorize payment for 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 "Contract No. DCPL-2015-C-0034 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 multiyear Contract No. DCPL-2015-C-0034 with Gilbane Building Company for the design-build services for a new Cleveland Park library and test fits for the interim Cleveland Park library for a performance period of 685 calendar days and authorizes payment in an amount not to exceed $2,674,032 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)).

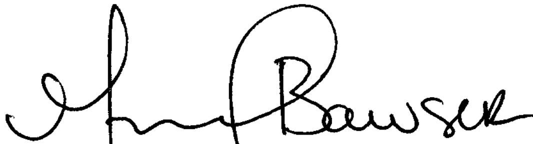
Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-184

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To amend, on an emergency basis, the Day Care Policy Act of 1979 to establish a pilot, community-based Quality Improvement Network that will allow children and families to benefit from early, continuous, intensive, and comprehensive child development and family-support engagement services, including educational, health, nutritional, behavioral, and family-support services.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Early Learning Quality Improvement Network Emergency Amendment Act of 2015".

Sec. 2. The Day Care Policy Act of 1979, effective September 19, 1979 (D.C. Law 3-16; D.C. Official § 4-401 *et seq.*), is amended by adding a new section 15a to read as follows:

"Sec. 15a. Comprehensive child development programs.

"(a) Notwithstanding sections 3 through 11, the Office of the State Superintendent of Education ("OSSE") shall establish a pilot, community-based Quality Improvement Network ("QIN") composed of:

"(1) Child development hubs, selected through a competitive process, that will provide quality improvement technical assistance and comprehensive services to licensed child development centers and licensed child development homes selected by OSSE to be partners and that agree to meet federal Early Head Start Program Performance Standards for program participation; and

"(2) Child development centers and child development homes, selected through a competitive process, to provide low-income infants and toddlers high-quality, full-day, full-year comprehensive early learning and development services and continuum of care.

"(b) Child development centers and child development homes within the QIN shall receive technical assistance from child development hubs to achieve the following within 18 months of being selected by OSSE to participate in the QIN:

"(1) Child development centers and child development homes within the QIN shall have adult-to-child ratios and group sizes that meet or exceed federal Early Head Start standards for all children from birth to 3 years of age in child development centers, or as otherwise approved by OSSE.

"(2) Child development centers and child development homes within the QIN shall have a comprehensive curriculum or program that is aligned with federal Head Start

ENROLLED ORIGINAL

Program Performance Standards and the District's early learning and development standards for serving infants, toddlers, and their families.

"(3) Staff who have direct supervision of infants and toddlers at child development centers and child development homes within the QIN shall, at a minimum, meet or exceed Early Head Start Standards for staff qualifications or credentials.

"(4) Child development centers and child development homes within the QIN shall partner with child development hubs to develop and implement a quality improvement plan, including aligning program policies and procedures to support on-site coaching, professional development, and teacher planning time.

"(5) Child development centers and child development homes within the QIN shall provide child-, family-, and program-level data to OSSE and the child development hubs as requested.

"(6) Child development centers and child development homes within the QIN shall participate in ongoing, on-site and desktop monitoring activities to ensure compliance with program requirements and Head Start Program Performance Standards required to remain in good standing with OSSE, the child development hubs, and the U.S. Department of Health and Human Services, Office of Head Start, if applicable.

"(7) Child development centers and child development homes within the QIN shall support comprehensive services for children and families by the child development hubs, including implementation of individualized family service plans.

"(8) Child development centers and child development homes within the QIN shall participate in the Child and Adult Care Food Program.

"(9) Child development centers and child development homes within the QIN shall facilitate children's and families' transitions to Pre-K or Head Start programs.

"(c) OSSE shall have authority to set payment rates and to develop policies and procedures for high-quality early learning and development services set under the authority of this section.

"(d) To be eligible for infant and toddler child development services provided by child-care partners in the QIN, a child shall be a resident of the District of Columbia and between birth and 3 years of age; provided, that a child who turns 3 years old during a program year may continue to receive services for the duration of the program year before transitioning into a pre-kindergarten or Head Start preschool program.

"(e) To the extent possible, priority enrollment shall be given to children between birth and 3 years of age whose families are living at or below the federal poverty level, who are homeless or in the foster care system, or who live with a grandparent, godparent, or relative who is receiving a grandparent caregiver subsidy pursuant to Title I of the Grandparent Caregivers Pilot Program Establishment Act of 2005, effective March 8, 2006 (D.C. Law 16-69; D.C. Official Code § 4-251.01 *et seq.).*

"(f) OSSE shall monitor the child development hubs and partner participants in the QIN for adherence to policies and procedures set under the authority of this act.

"(g) OSSE may, in whole or in part, terminate the grant provided to a hub or partner participant at any time if OSSE determines that a hub or partner participant has:

ENROLLED ORIGINAL

"(1) Substantially failed to comply with, or meet the objectives and terms of, the grant award; or

"(2) Failed to comply with applicable federal or District laws or regulations.

"(h) OSSE shall continue on-site monitoring for health and safety licensing compliance of child-care partners participating in the QIN; provided, that OSSE may delegate to the child development hubs on-site monitoring of the compliance of participating child development centers and homes with federal Head Start Program Performance Standards; provided, that relevant data collected by child development hubs is regularly reported to OSSE.".

Sec. 3. Applicability.

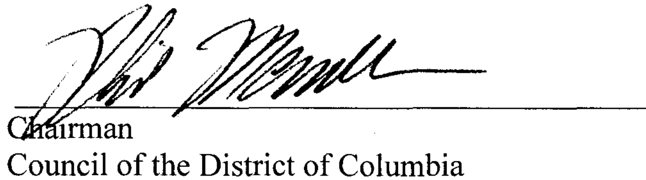
This act shall apply as of October 24, 2015.

Sec. 4. Fiscal impact statement.

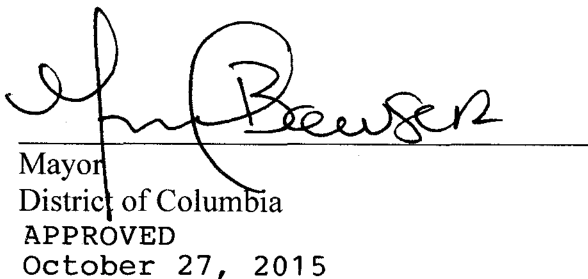
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1 206.02(c)(3)).

Sec. 5. Effective date.

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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-185

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To amend, on an emergency basis, An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes to extend the time in which the Mayor may dispose of certain District-owned real property located at 5131 Nannie Helen Burroughs Avenue, N.E., known as the Strand Theater.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Extension of Time to Dispose of the Strand Theater Emergency Amendment Act of 2015".

Sec. 2. Section 1 of 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), is amended by adding a new subsection (d-6) to read as follows:

"(d-6) Notwithstanding subsection (d) of this section, the time period within which the Mayor may dispose of the property located at 5131 Nannie Helen Burroughs Avenue, N.E., known as the Strand Theater, for which disposition was approved by the Council pursuant to the Strand Theater Disposition Approval Resolution of 2009, effective October 6, 2009 (Res. 18-0263; 56 DCR 8410), and extended by the Strand Theater Disposition Extension Approval Resolution of 2011, effective September 20, 2011 (Res. 19-246; 58 DCR 8477), is extended to October 6, 2016.".

Sec. 3. Applicability.

This act shall apply as of October 6, 2015.

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)).

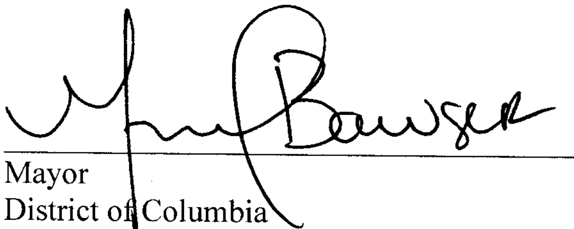
Sec. 5. Effective date.

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

ENROLLED ORIGINAL

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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-186

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To order, on an emergency basis, the closing of a portion of the public alley system in Square 369, bounded by M Street, N.W., 9th Street, N.W., L Street, N.W., and 10th Street, N.W., in Ward 2.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 369, S.O. 13-07989, Emergency Act of 2015".

Sec. 2. (a) 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 consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds the portion of the public alley system in Square 369, as shown on the Surveyor's plat filed in S.O. 13-07989, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

(b) The approval of the Council of this alley closing is contingent upon:

(1) The recordation of a covenant establishing new portions of the alley system by easement as shown on the Surveyor's plat in S.O. 13-07989 that includes an agreement by the owner of the property encumbered by the easement to maintain the new portions of the alley system; and

(2) The satisfaction of all conditions in the official file for S.O. 13-07989 before the recordation of the alley closing.

Sec. 3. Transmittal.

The Council shall transmit copies of this act, upon its adoption, to the Office of the Surveyor and the Office of the Recorder of Deeds.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Closing of a Public Alley in Square 369, S.O. 13-07989, Act of 2015, passed on 2nd reading on October 6, 2015 (Enrolled version of Bill 21-217), as the fiscal impact statement required by section

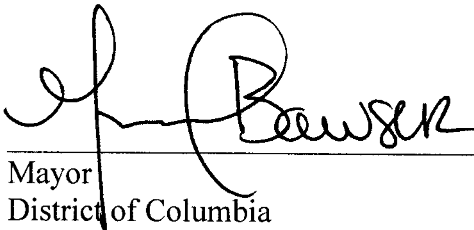
ENROLLED ORIGINAL

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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-187

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To order, on an emergency basis, the closing of a portion of the public alley system in Square 197, bounded by L Street, N.W., 15th Street, N.W., M Street, N.W., and 16th Street, N.W., in Ward 2.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 197, S.O. 15-23895, Emergency Act of 2015".

Sec. 2. (a) 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 consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds the portion of the public alley system in Square 197, as shown on the Surveyor's plat filed in S.O. 15-23895, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

(b) The approval of the Council of this alley closing is contingent upon:

(1) The recordation of a covenant establishing new portions of the alley system by easement as shown on the Surveyor's plat in S.O. 15-23895 that includes an agreement by the owner of the property encumbered by the easement to maintain the new portions of the alley system; and

(2) The satisfaction of all conditions in the official file for S.O. 15-23895 before the recordation of the alley closing.

Sec. 3. Transmittal.

The Council shall transmit copies of this act, upon its adoption, to the Office of the Surveyor and the Office of the Recorder of Deeds.

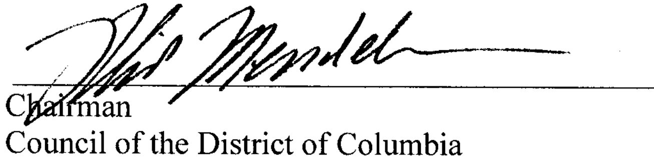
Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Closing of a Public Alley in Square 197, S.O. 15-23895, Act of 2015, passed on 2nd reading on October 6, 2015 (Enrolled version of Bill 21-240), as the fiscal impact statement required by section

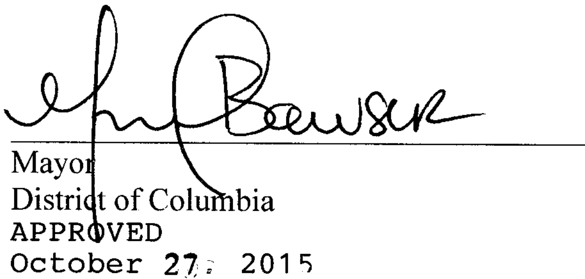
602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-188

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To amend, on an emergency basis, An Act To provide for the payment and collection of wages in the District of Columbia to clarify who may bring an action on behalf of an employee and when a general contractor and subcontractor or a general contractor and temporary staffing firm will be jointly and severally liable for violations, to revise criminal penalties for violations of the act, and to authorize the Mayor to issue rules to implement the provisions of the act; to amend the Minimum Wage Act Revision Act of 1992 to clarify the time period for retention of payroll records, when a general contractor and subcontractor or a general contractor and temporary staffing firm will be jointly and severally liable for violations, and how the Mayor shall make certain information available to employers; and to amend the Wage Theft Prevention Amendment Act of 2014 to repeal a retroactive applicability provision.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Wage Theft Prevention Correction and Clarification Emergency Amendment Act of 2015".

Sec. 2. An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code § 32-1301 *et seq.*), is amended as follows:

(a) Section 3 (D.C. Official Code § 32-1303) is amended as follows:

(1) Paragraph (5) is amended as follows:

(A) Strike the word "alleged" and insert the word "found" in its place.

(B) Strike the phrase "Act." and insert the phrase "Act, except as otherwise provided in a contract between the contractor and subcontractor in effect on the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157)." in its place.

(2) Paragraph (6) is amended by striking the phrase "District." and inserting the phrase "District, except as otherwise provided in a contract between the temporary staffing firm and the employer in effect on the effective date of the Wage Theft Prevention Amendment Act of 2014, effective Februrary 26, 2015 (D.C. Law 20-157; 61 DCR 10157)." in its place.

(b) Section 7(a) (D.C. Official Code § 32-1307(a)) is amended to read as follows:

"(a)(1) Any employer who negligently fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:

ENROLLED ORIGINAL

"(A) For the first offense, an amount per affected employee of not more than $2,500;

"(B) For any subsequent offense, an amount per affected employee of not more than $5,000.

"(2) Any employer who willfully fails to comply with the provisions of this act or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall:

"(A) For the first offense, be fined not more than $5,000, or imprisoned not more than 30 days, or both; or

"(B) For any subsequent offense, be fined not more than $10,000, or imprisoned not more than 90 days, or both.

"(3) The fines set forth in paragraphs (1) and (2) of this subsection shall not be limited by section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01).".

(c) Section 8(a) (D.C. Official Code § 32-1308(a)) is amended by striking the phrase ", or any entity a member of which is aggrieved by a violation of this act, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act".

(d) A new section 10b is added to read as follows:

"Sec. 10b. Rules.

"The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1068 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.".

Sec. 3. The Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et seq.*), is amended as follows:

(a) Section 9(a)(1) (D.C. Official Code § 32-1008(a)(1)) is amended by striking the phrase "3 years or whatever the prevailing federal standard is, whichever is greater" and inserting the phrase "3 years or the prevailing federal standard, if identified in regulations issued pursuant to this act, whichever is greater" in its place.

(b) Section 10(c) (D.C. Official Code § 32-1009(c)) is amended to read as follows:

"(c) The Mayor shall make copies or summaries of this act publicly available on the District government's website or by some other appropriate method within 60 days of the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157). An employer shall not be liable for failure to post notice if the Mayor has failed to provide to the employer the notice required by this section.".

(c) Section 12(d)(1)(C) (D.C. Official Code § 32-1011(d)(1)(C)) is amended by striking the phrase "3 years or whatever the prevailing federal standard is, whichever is greater" and inserting the phrase "3 years or the prevailing federal standard, if identified in regulations issued pursuant to this act, whichever is greater" in its place.

(d) Section 13 (D.C. Official Code § 32-1012) is amended as follows:

(1) Subsection (c) is amended by striking the phrase "act." and inserting the phrase "act, except as otherwise provided in a contract between the contract and subcontractor in

ENROLLED ORIGINAL

effect on the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157)." in its place.

(2) Subsection (f) is amended by striking the phrase "District." and inserting the phrase "District, except as otherwise provided in a contract between the temporary staffing firm and the employer in effect on the effective date of the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157)." in its place.

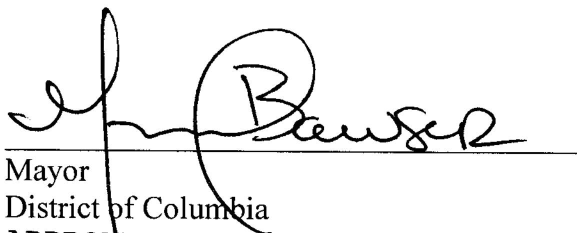
Sec. 4. Section 7 of the Wage Theft Prevention Amendment Act of 2014, enacted on September 19, 2014 (D.C. Act 20-426; 61 DCR 10157), is repealed.

Sec. 5. Applicability.
This act shall apply as of October 24, 2015.

Sec. 6. 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. 7. Effective date.
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by 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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-189

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To establish, on an emergency basis, a moratorium on the issuance of permits for the construction or operation of automobile paint spray booths in Ward 5; provided, that the moratorium shall not apply to permits for automobile paint spray booths that meet certain conditions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Ward 5 Paint Spray Booth Conditional Moratorium Emergency Act of 2015".

Sec. 2. Paint spray booth moratorium.

(a) The Mayor shall not issue a permit for the construction or operation of an automobile paint spray booth in Ward 5.

(b) The Mayor shall not issue a renewal permit for the operation of an automobile paint spray booth in Ward 5.

(c) For the purposes of this act, the term "automobile paint spray booth" means a facility related to an auto body paint shop for which the applicant must obtain a minor source air pollutant permit from the District Department of the Environment.

Sec. 3. Applicability.

(a) Section 2 shall not apply to a permit for the construction of or the operation of, or a renewal permit for the operation of, an automobile paint spray booth that contains conditions at least as restrictive as the following:

(1) Automobile coating for motor vehicle and mobile equipment non-assembly line refinishing and recoating, as applied, shall not contain volatile organic compounds in excess of the specified limit for each of the following coating types:

(A) Adhesion promoters: 540 grams per liter (4.5 pounds per gallon);

(B) Automotive pretreatment coating: 660 grams per liter (5.5 pounds per gallon);

(C) Automotive primer: 250 grams per liter (2.1 pounds per gallon);

(D) Clear coating: 250 grams per liter (2.1 pounds per gallon);

(E) Color coating, including metallic/iridescent color coating: 420 grams per liter (3.5 pounds per gallon);

ENROLLED ORIGINAL

(F) Multicolor coating: 680 grams per liter (5.7 pounds per gallon);
(G) Other automotive coating type: 250 grams per liter (2.1 pounds per gallon);
(H) Single-stage coating, including single-stage metallic/iridescent coating: 340 grams per liter (2.8 pounds per gallon);
(I) Temporary protective coating: 60 grams per liter (0.5 pounds per gallon);
(J) Truck bed liner coating: 200 grams per liter (1.7 pounds per gallon); and
(K) Underbody coating: 430 grams per liter (3.6 pounds per gallon); and
(2) Cleaning solvent used shall not exceed a volatile organic compound content of 25 grams per liter (0.21 pounds per gallon) except for:
(A) Cleaning solvent used as a bug and tar remover; provided, that the volatile organic compound content of the cleaning solvent shall not exceed 350 grams per liter (2.9 pounds per gallon), and usage shall be limited as follows:
(i) No more than 20 gallons in any consecutive 12-month period for facilities and operations using 400 gallons or more of coating during the 12-month period concluding at the end of the previous calendar month;
(ii) No more than 15 gallons in any consecutive 12-month period for facilities and operations using 150 gallons or more, but less than 400 gallons, of coating during the 12-month period concluding at the end of the previous calendar month; or
(iii) No more than 10 gallons in any consecutive 12-month period for facilities and operations using less than 150 gallons of coating during the 12-month period concluding at the end of the previous calendar month;
(B) Cleaning solvent used to clean plastic parts immediately before coating or for the removal of wax and grease; provided, that:
(i) Non-aerosol, hand-held spray bottles are used to apply the cleaning solvent;
(ii) The volatile organic compound content of the cleaning solvent shall not exceed 780 grams per liter (6.51 pounds per gallon); and
(iii) No more than 20 gallons of the cleaning solvent are used in any consecutive 12-month period in any one business location;
(C) Aerosol cleaning solvent; provided, that 160 ounces or less are used per day per business location; or
(D) Cleaning solvent with a volatile organic compound content no greater than 350 grams per liter (2.92 pounds per gallon), used at a volume equal to or less than 2.5% of the preceding calendar year's annual coating usage, up to a maximum of 15 gallons per calendar year.

(b) The limits in subsection (a)(1) of this section shall represent the weight of volatile organic compound per volume of coating, prepared to the manufacturer's recommended maximum volatile organic compound content, exclusive of water and non-volatile organic compound solvents.

ENROLLED ORIGINAL

(c) The Mayor shall refer to the Ozone Transport Commission's "Model Rule 2009-12-Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations Alternate Technical Revisions" for calculation methodologies and definitions.

Sec. 4. Repealer.
The Ward 5 Paint Spray Booth Moratorium Temporary Act of 2015, enacted on August 4, 2015 (D.C. Act 21-147; 62 DCR 10903), is repealed.

Sec. 5. Sunset.
This act shall expire upon the promulgation of rules by the Mayor that revise section 718 of Chapter 20 of the District of Columbia Municipal Regulations (20 DCMR §718).

Sec. 6. 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. 7. 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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-190

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 29, 2015

To amend, on an emergency basis, the Retail Services Station Act of 1976 to provide that certain prohibitions to discontinuing or converting to another use a full service retail service station shall not apply to a retail service station for which an application was on file with the Zoning Commission between May 2, 2015 and August 1, 2015.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Gas Station Advisory Board Emergency Amendment Act of 2015".

Sec. 2. Section 5-301(b) of the Retail Services Station Act of 1976, effective April 19, 1977 (D.C. Law 1-123; D.C. Official Code § 36-304.01(b)), is amended as follows:

(a) Designate the existing text as paragraph (1).

(b) The newly designated paragraph (1) is amended by striking the phrase "No retail station" and inserting the phrase "Except as provided in paragraph (2) of this subsection, no retail station" in its place.

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

"(2) This subsection shall not apply to any retail service station for which an application was on file with the Zoning Commission between the effective date of the New Columbia Statehood Initiative and Omnibus Boards and Commissions Reform Act of 2014, effective May 2, 2015 (D.C. Law 20-271; 62 DCR 1884), and August 1, 2015.".

Sec. 3. Fiscal impact statement.

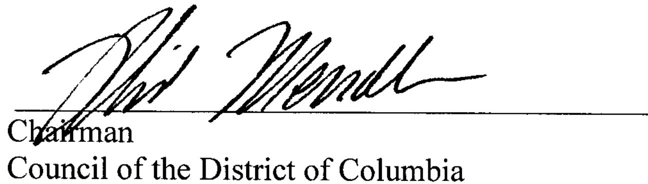
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

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 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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

UNSIGNED

Mayor
District of Columbia
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-191

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To amend section 47-1086 of the District of Columbia Official Code to clarify the exemption from the tenant opportunity to purchase requirements of the property owned by N Street Village, Inc., located at 1301 14th Street, N.W.; and to amend the N Street Village, Inc. Tax and TOPA Exemption Act of 2014 to make a conforming amendment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "N Street Village, Inc. Tax and TOPA Exemption Clarification Emergency Amendment Act of 2015".

Sec. 2. Section 47-1096 of the District of Columbia Official Code is amended as follows:

(a) Subsection (b) is amended as follows:

(1) Subparagraph (A) is amended by adding the word "and" at the end.

(2) Subparagraph (B) is amended by striking the phrase "; and" and inserting a period in its place.

(3) Subparagraph (C) is repealed.

(b) A new subsection (c) is added to read as follows:

"(c) So long as N Street Village, Inc., Lot 93, or any lots created out of Lot 93, Square 242 located at 1301 14th Street, N.W. ("Property), continues to be used for affordable housing as described in § 47-1005.02(a)(1), for supportive services for tenants of the affordable housing and other people of low income, and for offices and parking on the Property, and is not used for commercial purposes, the conveyance of the Property by a deed to an owner that meets the foregoing requirements shall be exempt from Chapter 34 of Title 42.".

Sec. 3. Section 3(a) of the N Street Village, Inc. Tax and TOPA Exemption Act of 2014, effective March 11, 2015 (D.C. Law 20-229; 62 DCR 276), is amended by striking the phrase "This act" and inserting the phrase "The amendatory subsections (a) and (b) of section 2(b)" in its place.

Sec. 4. Fiscal impact statement.

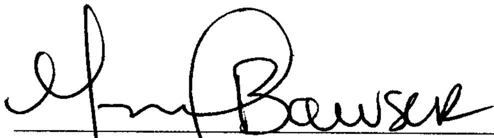
The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

ENROLLED ORIGINAL

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
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-192

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To order the closing of a portion of the public alley system in Square 369, bounded by M Street, N.W., 9th Street, N.W., L Street, N.W., and 10th Street, N.W., in Ward 2.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 369, S.O. 13-07989, Act of 2015".

Sec. 2. (a) 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 consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds the portion of the public alley system in Square 369, as shown on the Surveyor's plat filed in S.O. 13-07989, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

(b)The approval by the Council of this alley closing is contingent upon:

(1) The recordation of a covenant establishing new portions of the alley system by easement as shown on the Surveyor's plat in S.O. 13-07989 that includes an agreement by the owner of the property encumbered by the easement to maintain the new portions of the alley system; and

(2) The satisfaction of all conditions in the official file for S.O. 13-07989 before the recordation of the alley closing.

Sec. 3. Transmittal.

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

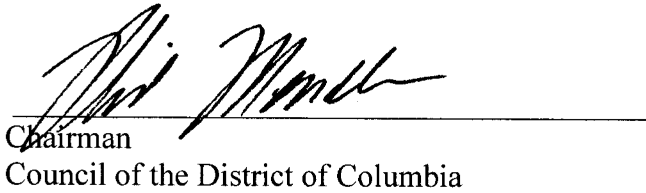
Sec. 4. Fiscal impact statement.

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

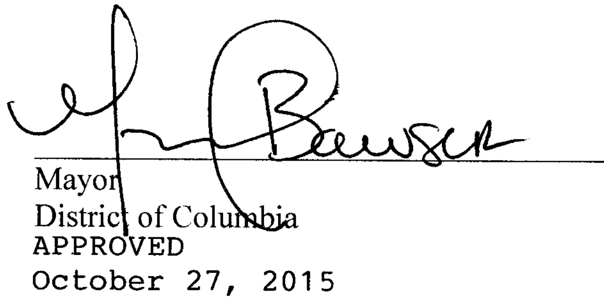
ENROLLED ORIGINAL

Sec. 5. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-193

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To amend the Testing Integrity Act of 2013 to amend the definition of Districtwide assessments to include assessments used only for accountability purposes, to require local education agencies to submit a test security plan for each school or campus under a local education agency's control at least 15 days before the administration of the first Districtwide assessment of the school year, to require that a local education agency's test integrity coordinators and test monitors submit affidavits within 10 days after the conclusion of the last Districtwide assessment of the school year, to allow for the use of approved electronic devices during the administration of Districtwide assessments, and to modify the Council review period of proposed rules related to testing integrity and Districtwide assessments; and to amend the State Education Office Establishment Act of 2000 to require the Office of the State Superintendent of Education to issue standards on securing and distributing test materials and training authorized personnel on testing integrity and security at least 45 days before the start of the first assessment of the school year, and to clarify the responsibilities that the Office of the State Superintendent of Education has relating to Districtwide assessments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Testing Integrity Amendment Act of 2015".

Sec. 2. The Testing Integrity Act of 2013, effective October 17, 2013 (D.C. Law 20-27; D.C. Official Code § 38-771.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 38-771.01) is amended as follows:

(1) Paragraph (2) is amended by striking the period and inserting the phrase "; provided, that for the purposes of this act, the term "Districtwide assessment" means assessments used only for accountability purposes." in its place.

(2) Paragraph (9) is amended to read as follows:

"(9) "Testing integrity and security notification statement" means a statement developed by OSSE that:

"(A) Sets forth requirements for ensuring integrity of Districtwide assessments pursuant to District law and regulation; and

"(B) Notifies the recipient that knowingly and willingly violating a District law, regulation, or test security plan could result in civil liability, including the loss of an OSSE-granted certification or license.".

ENROLLED ORIGINAL

(b) Section 102(b) (D.C. Official Code § 38-771.02(b)) is amended as follows:

(1) Paragraph (1) is amended to read as follows:

"(1) File the school test security plan required by section 3(b)(20) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(20), with OSSE for each school or campus under the LEA's control at least 15 days before the administration of the first Districtwide assessment of a school year;".

(2) Paragraph (5) is amended by striking the phrase "of a Districtwide assessment," and inserting the phrase "of the last Districtwide assessment of the school year," in its place.

(3) Paragraph (6) is amended to read as follows:

"(6) Within 15 days after the conclusion of the last Districtwide assessment of the school year, file with OSSE the affidavits required by paragraph (5) of this subsection.".

(c) Section 103 (D.C. Official Code § 38-771.03) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1)(B) is amended to read as follows:

"(B) Receive the testing integrity and security notification statement distributed by OSSE;".

(B) Paragraph (4) is amended as follows:

(i) Subparagraph (I) is amended by striking the word "administered" and inserting the phrase "administered and released by OSSE" in its place.

(ii) Subparagraph (K) is amended by striking the phrase "cell phones, unapproved electronics, or computer devices" and inserting the phrase "unapproved electronics" in its place.

(2) Subsection (b) is amended to read as follows:

"(b) The failure to comply with the prohibitions set forth in subsection (a)(4) of this section shall not be considered a violation of a test security plan if the action is:

"(1) Necessary to provide for an accommodation that is explicitly identified in a student's IEP or an approved accommodation plan for a ELL student; provided, that any accommodation shall be limited to the eligible student or students; or

"(2) Limited to supporting students to stay on task and focused, as defined and described as an acceptable action under OSSE regulations or guidance, and does not impact the content of students' answers.".

(d) Section 106(b) (D.C. Official Code § 38-771.06(b)) is amended by striking the phrase "45-day period" both times it appears and inserting the phrase "14-day period" in its place.

Sec. 3. Section 3(b) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)), is amended as follows:

(a) Paragraph (20) is amended as follows:

(1) Subparagraph (B) is amended to read as follows:

ENROLLED ORIGINAL

"(B) At least 45 days before the start of the first Districtwide assessment of the school year, issue standards to obtain and securely maintain and distribute secure test materials, which shall at a minimum require that:

"(i) An inventory of all secure test materials be maintained;

"(ii) All secure test materials be secured under lock and key, or other equivalent security measures for electronic secure test materials with limited access;

"(iii) Only authorized personnel have access to secure test materials; and

"(iv) All authorized personnel are notified of their test integrity and security obligations before being permitted to access secure test materials or assist in the administration of a Districtwide assessment;".

(2) Subparagraph (C) is amended by striking the phrase "submit to OSSE at least 90 days before the administration of a Districtwide assessment a test security plan that at minimum includes" and inserting the phrase "submit to OSSE at least 15 days before the administration of the first Districtwide assessment of the school year, a separate test security plan for each school and campus under the LEA's control that at minimum includes" in its place.

(3) Subparagraph (D) is amended to read as follows:

"(D) Approve a school's test security plan at least 5 days before testing and make recommendations to amend the plan when necessary;".

(4) Subparagraph (E) is amended by striking the acronym "LEA's" and inserting the word "school's" in its place.

(5) Subparagraph (I) is amended by striking the phrase "agreement to be signed by authorized personnel" and inserting the phrase "notification statement" in its place.

(6) Subparagraph (J) is amended to read as follows:

"(J) At least 45 days before the first assessment of the school year, issue standards to train authorized personnel on testing integrity and security and require that attendance be taken at such training;".

(7) A new subparagraph (K-i) is added to read as follows:

"(K-i) Collaborate with LEAs to ensure accurate reporting of any testing violation while preserving the privacy of involved students and staff;".

(8) Subparagraph (O) is amended as follows:

(A) Sub-subparagraph (ii) is amended by striking the period and inserting the phrase"; provided, that for the purposes of this paragraph, the term "Districtwide assessment" means assessments used only for accountability purposes." in its place.

(B) A new sub-subparagraph (iii-I) is added to read as follows:

"(iii-I) "Secure test materials" means test materials that might contain or provide access to assessment content, such as information about test questions or answers, including test questions, passages, or performance tasks, answer documents, and used scratch paper.".

(C) Sub-subparagraph (v) is amended to read as follows:

"(v) "Testing integrity and security notification statement" means a notification developed by OSSE that:

ENROLLED ORIGINAL

"(I) Sets forth requirements for ensuring integrity of Districtwide assessments pursuant to District law and regulation; and

"(II) Notifies the recipient that knowingly and willingly violating a District law, regulation, or a test security plan could result in civil liability, including the loss of an OSSE granted certification or license.".

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-194

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To order the closing of a portion of the public alley system in Square 197, bounded by L Street, N.W., 15th Street, N.W., M Street, N.W., and 16th Street, N.W., in Ward 2.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 197, S.O. 15-23895, Act of 2015".

Sec. 2. (a) 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 consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds the portion of the public alley system in Square 197, as shown on the Surveyor's plat filed in S.O. 15-23895, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

(b) The approval of the Council of this alley closing is contingent upon:

(1) The recordation of a covenant establishing new portions of the alley system by easement as shown on the Surveyor's plat in S.O. 15-23895 that includes an agreement by the owner of the property encumbered by the easement to maintain the new portions of the alley system; and

(2) The satisfaction of all conditions in the official file for S.O. 15-23895 before the recordation of the alley closing.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 27, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-195

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 2015

To symbolically designate the 3100 block of Esther Place, S.E., in Ward 8, as James Bunn Way.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "James Bunn Way Designation Act of 2015".

Sec. 2. Pursuant to sections 401 and 403a 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 §§ 9-204.01 and 9-204.03a) ("Act"), and notwithstanding the requirements of sections 407 and 408 of the Act (D.C. Official Code §§ 9-204.07 and 9-204. 08), the Council symbolically designates the 3100 block of Esther Place, S.E., in Ward 8, as "James Bunn Way".

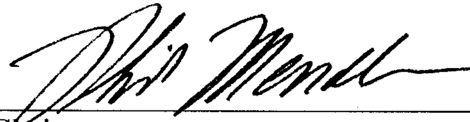
Sec. 3. Transmittal.
The Council shall transmit a copy of this act, upon its effective date, to the Director of the District Department of Transportation.

Sec. 4. Fiscal impact statement.
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

Sec. 5. Effective date.
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 27, 2015

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILLS

B21-445 Closing of Public Streets and Dedication of Land for Street and Alley Purposes in and abutting Squares 3953, 3954, 4024, 4025, and Parcel 143/45, S.O. 14-20357, Act of 2015

Intro. 10-20-15 by Councilmember McDuffie and referred to the Committee of the Whole

---

B21-446 Closing of a Public Alley in Square 342, S.O. 14-21629 Act of 2015

Intro. 10-20-15 by Councilmember Evans and referred to the Committee of the Whole

---

B21-447 Closing of a Public Alley in Square 453, S.O. 14-17847, Act of 2015

Intro. 10-20-15 by Councilmember Evans and referred to the Committee of the Whole

---

B21-449 Dedication and Designation of Land for Street Purposes in Squares 3185 and 3186, S.O. 13-11003 Act of 2015

Intro. 10-23-15 by Chairman Mendelson and referred to the Committee of the Whole

---

B21-455	Department of Motor Vehicles International Registration Plan Amendment Act of 2015 Intro. 10-29-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment
B21-459	Fire and Emergency Medical Services Memorial Designation Act of 2015 Intro. 11-3-15 by Councilmembers McDuffie, Alexander, Bonds, Cheh, Evans, Grosso, Orange, Silverman, Allen, Nadeau, Todd, and May, and Chairman Mendelson and referred to the Committee of the Whole
B21-460	Sidewalk Safety Amendment Act of 2015 Intro. 11-3-15 by Councilmembers Todd and May and referred to the Committee on Transportation and the Environment
B21-461	Targeted Ward 4 Single Sales Moratorium Amendment Act of 2015 Intro. 11-3-15 by Councilmember Todd and referred to the Committee on Business, Consumer, and Regulatory Affairs
B21-462	Minimum Wage, Living Wage, and Millennial Tiny Housing Amendment Act of 2015 Intro. 11-3-15 by Councilmember Orange and referred sequentially to the Committee on Housing and Community Development and Committee on Business, Consumer, and Regulatory Affairs
B21-463	District of Columbia Incarceration to Incorporation Entrepreneurship Program Act of 2015 Intro. 11-3-15 by Councilmember Orange and referred to the Committee on Business, Consumer, and Regulatory Affairs
B21-464	Public Schools Teachers Income Exclusion Act of 2015 Intro. 11-3-15 by Councilmember Orange and referred to the Committee on Finance and Revenue

B21-465	Pension or Other Retirement Income Exclusion from Income Tax Amendment Act of 2015 Intro. 11-3-15 by Councilmembers Orange and Evans and referred to the Committee on Finance and Revenue
B21-466	Local Business Support Amendment Act of 2015 Intro. 11-3-15 by Councilmember Grosso and referred to the Committee on Business, Consumer, and Regulatory Affairs
B21-467	Fossil Fuel Divestment Act of 2015 Intro. 11-3-15 by Councilmembers Grosso, Silverman, May, Allen, Nadeau, and Cheh and referred to the Committee of the Whole
B21-468	Youth Vote Amendment Act of 2015 Intro. 11-3-15 by Councilmembers Allen, Grosso, and Nadeau and referred to the Committee on Judiciary
B21-469	William H. Jackson Way Designation Act of 2015 Intro. 11-3-15 by Councilmember McDuffie and referred to the Committee of the Whole

PROPOSED RESOLUTIONS

PR21-383	Contract No. CFOPD-16-C-002, Delinquent Tax Collection Approval Resolution of 2015 Intro. 10-23-15 by Chairman Mendelson at the request of the Chief Financial Officer and Retained by the Council with comments from the Committee on Finance and Revenue
PR21-385	The Catholic University of America Revenue Bonds Project Approval Resolution of 2015 Intro. 10-23-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

PR21-386	Commission on Asian and Pacific Islander Community Development Benjamin Takai Confirmation Resolution of 2015 Intro. 10-26-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Community Development
PR21-393	Medicaid Primary Care Provider Rate Permanent Extension for Qualified Physicians and Advanced Practice Registered Nurses Approval Resolution of 2015 Intro. 10-29-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services
PR21-401	Zoning Commission David Franco Confirmation Resolution of 2015 Intro. 11-2-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole
PR21-402	Board of Trustees of the University of the District of Columbia Christopher Bell Confirmation Resolution of 2015 Intro. 11-2-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole
PR21-403	Not-for-Profit Hospital Corporation Board of Directors Chris G. Gardiner Confirmation Resolution of 2015 Intro. 11-2-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services
PR21-404	St. Elizabeths East Campus – Phase I Surplus Declaration and Approval Resolution of 2015 Intro. 11-2-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment
PR21-405	St. Elizabeths East Campus – Phase I Disposition Approval Resolution of 2015 Intro. 11-2-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

PR21-406	Contract Appeals Board Maxine E. McBean Confirmation Resolution of 2015 Intro. 11-2-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole
PR21-407	Contract Appeals Board Marc D. Loud Confirmation Resolution of 2015 Intro. 11-2-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004 **CANCELLED**

COUNCILMEMBER YVETTE M. ALEXANDER, CHAIRPERSON
COMMITTEE ON HEALTH AND HUMAN SERVICES

ANNOUNCES A PUBLIC HEARING ON

B21-47, THE "EDUCATIONAL AND INSTRUCTIONAL ANIMALS CLARIFICATION AMENDMENT ACT OF 2015"

THURSDAY, DECEMBER 10, 2015
11:00 A.M., ROOM 412, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health and Human Services, announces a public hearing on B21-47, the "Educational and Instructional Animals Clarification Amendment Act of 2015." The hearing will take place at 11:00 a.m. on Thursday, December 10, 2015 in Room 412 of the John A. Wilson Building. **This hearing has been cancelled.**

The purpose of this bill is to amend the Animal Control Act of 1979 which, among other things, prohibits the possession of certain animals in the District of Columbia. The bill clarifies that the prohibition is not applicable to an educational institution that possesses an animal for educational and instructional purposes and that complies with humane, sanitary, and safe treatment of the animal.

Those who wish to testify should contact Malcolm Cameron, Legislative Analyst to the Committee on Health and Human Services, at 202-741-0909 or via e-mail at mcameron@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Tuesday, December 8, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

For those unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements can be emailed to mcameron@dccouncil.us or mailed to Malcolm Cameron at the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 115, Washington, D.C., 20004. The record will close at 5:00 p.m. on Thursday, December 24, 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 RECONVENING OF A PUBLIC HEARING

on the

B21-0361, "Youth Suicide Prevention and School Climate Survey Act of 2015" and

B21-0319, "Assessment on Children of Incarcerated Parents Act of 2015"

on

Thursday, November 12, 2015
2:00 p.m., Hearing Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso announces the reconvening of a recessed public hearing of the Committee on Education on B21-361, "Youth Suicide Prevention and School Climate Survey Act of 2015" and B21-319, "Assessment on Children of Incarcerated Parents Act of 2015". The hearing will be held at 2:00 p.m. on Thursday, November 12, 2015 in Hearing Room 123 of the John A. Wilson Building.

The stated purpose of B21-361 is to require all school-based personnel of each local education agency to undergo at least two hours of suicide prevention, intervention, and postvention training each year. The bill also requires the Office of the State Superintendent of Education to develop and administer research-based school climate survey and publish certain reports on the results. The stated purpose of B21-319 is to require the Mayor to comprehensively assess children who have at least one parent that is incarcerated. The bill specifies that the assessment must: (1) evaluate the impact of parental incarceration on the child's academics; and (2) recommend policies to meet the needs of children who are struggling academically while a parent is incarcerated. The Committee first heard testimony on these bills on October 27, 2015.

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, November 10, 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 November 10, 2015.

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

COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

ANNOUNCES A PUBLIC HEARING OF THE COMMITTEE ON

B21-0420, the Residential Lease Amendment Act of 2015

and

B21-0443, the Condominium Owner Bill of Rights Amendment Act of 2015

on Monday, December 7, 2015, at 11:00 am
John A. Wilson Building, Room 120
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember Anita Bonds, Chairperson of the Committee on Housing and Community Development, will hold a public hearing on B21-0420, the Residential Lease Amendment Act of 2015 and B21-0443, the Condominium Owner Bill of Rights Amendment Act of 2015. The public hearing will be held on Monday, December 7, 2015, at 11:00 am, in room 120 of the John A. Wilson Building.

The purpose of B21-0420 is to prohibit housing providers from requiring tenants to pay fees in excess of the maximum allowable rent for services or usage of facilities; prohibit housing providers from selling a unit within 12 months after recovering possession under certain provisions of law without offering tenants an opportunity to purchase the unit; to require housing providers to mitigate damages after a tenant breaches a lease or wrongly fails to take possession; to prohibit housing providers from unreasonably withholding consent if a tenant desires to sublet or assign their lease as required by a provision in their lease; to void some notice provisions in commercial and private leases; to prohibit housing providers from entering a tenant's unit without first receiving permission or entering at unreasonable times or for unreasonable purposes; to require housing provides to provide notice contained in a capital improvement rent adjustment notification addendum before initiating a capital improvement rent adjustment; and to list penalties for violations of the provisions of the act.

The purpose of B21-0443 is to require mediation before a unit owners' association may foreclose on a unit for the recovery of condominium assessments, fees, charges, or other penalties owed by a unit owner. The bill also strengthens the ethical and fiduciary obligations of executive boards of unit owners' associations, establishes a Condominium Association Advisory Council, establishes a Condominium Association Bill of Rights, and requires that the Bill of Rights, along with a copy of the fiduciary responsibilities of members of the executive board of condominium associations, be furnished to purchasers of condominiums.

Those who wish to testify are requested to telephone the Committee on Housing and Community Development, at (202) 724-8900, or email omontiel@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any), by close of business on December 4, 2015. Persons wishing to testify are encouraged to submit 15 copies of written testimony. Oral testimony should be limited to three minutes for individuals and five minutes for organizations.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Housing and Community Development, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 112, Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, December 21, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004

COUNCILMEMBER YVETTE M. ALEXANDER, CHAIRPERSON
COMMITTEE ON HEALTH AND HUMAN SERVICES ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE

TO DISCUSS

TRANSITION PLAN FOR FAMILIES NEARING THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES TIME LIMIT

AND

PR 21-346, THE "TEMPORARY ASSISTANCE FOR NEEDY FAMILIES SANCTION POLICY AMENDMENT APPROVAL RESOLUTION OF 2015"

AND

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES EMPLOYMENT PROGRAM PERFORMANCE OUTCOMES

TUESDAY, NOVEMBER 17, 2015
5:00 P.M., LARGE MEETING ROOM
DOROTHY I. HEIGHT/BENNING NEIGHBORHOOD LIBRARY
3935 BENNING RD, NE
WASHINGTON, DC 20019

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health and Human Services, announces a public oversight roundtable to discuss the "Transition Plan for Families Nearing the Temporary Assistance for Needy Families Time Limit", PR 21-346, the "Temporary Assistance for Needy Families Sanction Policy Amendment Approval Resolution of 2015", and the "Temporary Assistance for Needy Families Employment Program Performance Outcome" The roundtable will take place at 5:00 p.m. on Tuesday, November 17, 2015 in the Large Meeting Room of the Dorothy I. Height/Benning Neighborhood Library.

The purpose of this roundtable is to discuss the Department of Human Services' transition plan for the over 6,000 families who have been on the Temporary Assistance for Needy Families (TANF) program for longer than 60 months and will lose their benefits on October 1, 2016. The Committee will also discuss the impact of PR21-346, the "Temporary Assistance for Needy Families Sanction Policy Amendment Approval Resolution of 2015" that will amend the rules setting forth the District's TANF sanction policy to: (1) clarify ambiguous language about the period of non-participation required before the sanction process is initiated; (2) change the first level of graduated sanctions from removal of the sanctioned individual from

the assistance unit to a twenty percent reduction in the assistance unit's monthly benefit; and (3) allow for case termination with notice and an opportunity for a hearing after a customer has failed to remedy a level three sanction for twelve months. Finally, this roundtable will provide TANF customers the opportunity to provide feedback on the job preparation, placement, and retention services and supports provided through the TANF Employment Program.

Those who wish to testify should contact Malcolm Cameron, Legislative Analyst to the Committee on Health and Human Services, at 202-741-0909 or via e-mail at mcameron@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Friday, November 13, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

For those unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements can be emailed to mcameron@dccouncil.us or mailed to Malcolm Cameron at the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 115, Washington, D.C., 20004. The record will close at 5:00 p.m. on Tuesday, December 1, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 PENNSYLVANIA AVE., N.W., WASHINGTON, D.C. 20004

COUNCILMEMBER YVETTE M. ALEXANDER, CHAIRPERSON
COMMITTEE ON HEALTH AND HUMAN SERVICES ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE

ON

VIOLENCE IN HOSPITAL EMERGENCY ROOMS

THURSDAY, DECEMBER 10, 2015
11:00 A.M., ROOM 412, JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health and Human Services, announces a public oversight roundtable on "Violence in Hospital Emergency Rooms." The hearing will take place at 11:00 a.m. on Thursday, December 10, 2015 in Room 412 of the John A. Wilson Building.

In response to a recent surge in violent incidences in hospital emergency rooms, the committee is holding this roundtable to explore the protocol employed when a violent or possibly-violent patient is arrives at a hospital, either in custody or not, and how different District agencies can assist in creating a safer environment for everyone involved.

Those who wish to testify should contact Malcolm Cameron, Legislative Analyst to the Committee on Health and Human Services, at 202-741-0909 or via e-mail at mcameron@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Tuesday, December 8, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

For those unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements can be emailed to mcameron@dccouncil.us or mailed to Malcolm Cameron at the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 115, Washington, D.C., 20004. The record will close at 5:00 p.m. on Thursday, December 24, 2015.

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 21-237, Board of Trustees of the University of the District of Columbia George Tyrone Simpson Confirmation Resolution of 2015

on

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

Council Chairman Phil Mendelson announces a public roundtable before the Committee of the Whole on PR 21-237, the "Board of Trustees of the University of the District of Columbia George Tyrone Simpson Confirmation Resolution of 2015." The roundtable will be held at 10:30 a.m. on Tuesday, November 10, 2015 in Hearing Room 412 of the John A. Wilson Building.

The roundtable was initially convened, pursuant to public notice, on Tuesday, October 27, 2015. That proceeding was recessed until November 10, 2015, at 10:30 a.m., to hear testimony regarding PR 21-237. The stated purpose of PR 21-237 is to confirm the appointment of George Simpson to the University of the District of Columbia (UDC) Board of Trustees. The stated purpose of this roundtable is to receive testimony from public witnesses as to the fitness of this nominee for UDC's Board of Trustees. If confirmed, Mr. Simpson would replace the seat vacated by George Vradenberg for the remainder of an unexpired term that will end on May 15, 2018.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or to email Christina Setlow, Deputy Committee Director, at csetlow@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, November 6, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Friday, November 6, 2015, the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of PR 21-237 can be obtained on http://lims.dccouncil.us, or through the Legislative Services Division (Room 10) of the Secretary of the Council's office.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on November 16, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC ROUNDTABLE ON

PR 21-0329, the District of Columbia Water and Sewer Authority Board of Directors Ana Recio Harvey Confirmation Resolution of 2015
and
PR 21-0330, the District of Columbia Water and Sewer Authority Board of Directors Matthew T. Brown Confirmation Resolution of 2015

Monday, November 16, 2015
at 11:00 a.m.
in Room 412 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Monday, November 16, 2015, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public roundtable on PR 21-0329, the District of Columbia Water and Sewer Authority Board of Directors Ana Recio Harvey Confirmation Resolution of 2015 and PR 21-0330, the District of Columbia Water and Sewer Authority Board of Directors Matthew T. Brown Confirmation Resolution of 2015. This legislation would confirm Matthew T. Brown as the cabinet-level officer member and Ana Recio Harvy as the alternate cabinet-level officer member of the DC Water and Sewer Authority's Board of Directors. The roundtable will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring 5 copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on November 23, 2015.

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

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC ROUNDATBLE ON:

PR 21-0385 - The Catholic University of America Revenue Bonds Project Approval Resolution of 2015

Friday, November 6, 2015
10:00 a.m.
Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Friday, November 6, 2015 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 21-0385 - the "Catholic University of America Revenue Bonds Project Approval Resolution of 2015" will authorize and provide for the issuance, sale, and delivery, pursuant to a plan of finance, in one or more series, in an aggregate principal amount not to exceed $150 million of District of Columbia revenue bonds, and to authorize and provide for the loan of the proceeds of such bonds to assist The Catholic University of American in the financing, refinancing or reimbursing of cost associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

The Committee invites the public to testify at the roundtable. 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 Thursday, November 5, 2015. Witnesses should bring 15 copies of their written testimony to the roundtable. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004. PR21-0385 - The Catholic University of America Revenue Bonds Project Approval Resolution of 2015

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE

on

PR 21-402, Board of Trustees of the University of the District of Columbia Christopher Bell Confirmation Resolution of 2015

on

Tuesday, November 10, 2015
11:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public roundtable before the Committee of the Whole on PR 21-402, the "Board of Trustees of the University of the District of Columbia Christopher Bell Resolution of 2015." The roundtable will be held at 11:00 a.m. on Tuesday, November 10, 2015 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of PR 21-402 is to confirm the reappointment of Christopher Bell to the University of the District of Columbia (UDC) Board of Trustees. The stated purpose of this roundtable is to receive testimony from public witnesses as to the fitness of this nominee for UDC's Board of Trustees. If confirmed, Mr. Bell would serve a five-year term that will end on May 15, 2020.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or to email Christina Setlow, Deputy Committee Director, at csetlow@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, November 6, 2015. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Friday, November 6, 2015, the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of PR 21-402 can be obtained on http://lims.dccouncil.us, or through the Legislative Services Division (Room 10) of the Secretary of the Council's office.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on November 16, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B21-339, Plaza West Disposition Restatement Temporary Act of 2015, and **B21-452**, Foster Care Extended Eligibility Temporary Amendment Act of 2015 were adopted on first reading on November 3, 2015. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on December 1, 2015.

COUNCIL OF THE DISTRICT OF COLUMBIA

EXCEPTED SERVICE APPOINTMENTS AS OF OCTOBER 31, 2015

NOTICE OF EXCEPTED SERVICE EMPLOYEES

D.C. Code § 1-609.03(c) requires that a list of all new appointees to Excepted Service positions established under the provisions of § 1-609.03(a) be published in the D.C. Register. In accordance with the foregoing, the following information is hereby published for the following positions.

COUNCIL OF THE DISTRICT OF COLUMBIA			
NAME	**POSITION TITLE**	**GRADE**	**TYPE OF APPOINTMENT**
MacNeil, John	Senior Budget Analyst	8	Excepted Service - Reg Appt
Lawson, Tiffany	Constituent Services Specialist	1	Excepted Service - Reg Appt
Nembhard, Travis	Legislative Counsel	5	Excepted Service - Reg Appt
Lesesne, Devon	Constituent Services Specialist	1	Excepted Service - Reg Appt
Jackson, Donise	Communications Specialist	1	Excepted Service - Reg Appt

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
1350 Pennsylvania Avenue, NW, Suite 410
Washington, DC 20004

ABBREVIATED NOTICE OF INTENT TO CONSIDER LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to take action in less than fifteen days on PR 21-402, the "Board of Trustees of the University of the District of Columbia Christopher Bell Confirmation Resolution of 2015," to allow for the proposed resolution to be considered at the November 17, 2015 meeting of the Council. The abbreviated notice is necessary to allow the Council to approve the reappointment of Christopher Bell to the Board of the Trustees of the University of the District of Columbia for a five-year term to end on May 15, 2020. Mr. Bell's current appointment expired on May 15, 2015, and pursuant to D.C. Official Code §1-523.01(c), "[n]o person shall serve in a holdover capacity for longer than 180 days after the expiration of the term to which he . . . was appointed, in a position that is required by law to be filled by Mayoral appointment with the advice and consent of the Council." Thus, Mr. Bell is prohibited from serving on the Board of Trustees after November 15, 2015 unless the Council approves his reconfirmation. Moreover, Mr. Bell is the Vice-Chairperson of the Board of Trustees, creating an even greater urgency for the Council to consider PR 21-402 in an expeditious manner.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Request

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

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

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

Reprog. 21-147: Request to reprogram $475,000 of Fiscal Year 2015 Local funds budget authority from the Office of the State Superintendent of Education (OSSE) to the Pay-As-You-Go (Paygo) Capital Fund was filed in the Office of the Secretary on October 30, 2015. This reprogramming ensures that OSSE will be able to support necessary upgrades to the State-wide Student Information System.

RECEIVED: 14 day review begins November 2, 2015

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 6, 2015
Petition Date: December 21, 2015
Hearing Date: January 4, 2016
Protest Date: March 2, 2016

License No.: ABRA-100855
Licensee: Half Smoke, LLC
Trade Name: Half Smoke
License Class: Retailer's Class "C" Restaurant
Address: 651 Florida Avenue, N.W.
Contact: Candace Fitch: (202) 258-8634

WARD 1 ANC 1B SMD 1B01

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 March 2, 2016 at 1:30 pm.

NATURE OF OPERATION
A Retailer's Class 'C' Restaurant serving sausages and other fast, casual menu items. Entertainment may include a DJ or live entertainment up to a 5 piece band. Total Occupancy Load of restaurant is 199 with 104 seats inside and 24 seats in Summer Garden area.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES AND SUMMER GARDEN
Sunday through Thursday 11 am – 2 am, Friday and Saturday 11 am – 3 am

HOURS OF LIVE ENTERTAINMENT
Sunday 11 am – 2 am, Monday through Thursday 6 pm – 2 am, Friday 6 pm – 3 am, Saturday 11 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 6, 2015
Petition Date: December 21, 2015
Hearing Date: January 4, 2016

License No.: ABRA-100215
Licensee: Three Brothers, LLC
Trade Name: Rioja Bodega
License Class: Retailer's Class "B" Grocery
Address: 1824 Columbia Road, N.W.
Contact: Andrew Kline: (202) 686-7600

WARD 1 ANC 1C SMD 1C03

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 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.

NATURE OF SUBSTANTIAL CHANGE
Class B Retailer transferring to a new location.

HOURS OF OPERATION
Sunday through Saturday 7am – 12am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 9am – 10pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	November 6, 2015
Petition Date:	December 21, 2015
Roll Call Hearing Date:	January 4, 2016
Protest Hearing Date:	March 2, 2016
License No.:	ABRA-100872
Licensee:	Trader Joe's East, Inc.
Trade Name:	Trader Joe's #622
License Class:	Retailer's Class "B"
Address:	750 Pennsylvania Avenue, S.E.
Contact:	Stephen J. O'Brien: 202-625-7700

WARD 6 ANC 6B SMD 6B02

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 March 2, 2016 at 4:30pm.

NATURE OF OPERATION
Full Service Grocery Store with Tasting Endorsement.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES
Sunday through Saturday 8am – 10pm

DEPARTMENT OF HEALTH

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

NOTICE OF INFORMATION HEARING

Pursuant to D.C. Official Code § 44-406(b)(4), the District of Columbia State Health Planning and Development Agency ("SHPDA") will hold an information hearing on the application by District Hospital Partners, L.P., d/b/a George Washington University Hospital to acquire Doctors, Groover, Christie, and Merritt Imaging Facility - Certificate of Need Registration No. 15-2-8. The hearing will be held on Tuesday, November 17, 2015, at 10:00 a.m., at 899 North Capitol Street, N.E., 2nd Floor, Room 216, Washington, D.C. 20002.

The hearing shall include a presentation by the Applicant, describing its plans and addressing the certifications provided pursuant to D.C. Official Code § 44-406(b)(1), and an opportunity for affected persons to testify. Persons who wish to testify should contact the SHPDA on (202) 442-5875 before 4:45 p.m., by Monday, November 16, 2015. Each member of the public who wishes to testify will be allowed a maximum of five (5) minutes. Written statements may be submitted to:

The State Health Planning and Development Agency
899 North Capitol Street, N.E.
Second Floor
Washington, D.C. 20002

Written statements must be received before the record closes at 4:45 p.m. on Tuesday, November 24, 2015. Persons who would like to review the Certificate of Need application or who have questions relative to the hearing may contact the SHPDA on (202) 442-5875.

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARING

The D.C. Historic Preservation Review Board will hold a public hearing to consider an application to designate the following properties as historic landmarks in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the property to the National Register of Historic Places:

Case No. 13-22: The Scheele-Brown Farmhouse
2207 Foxhall Road NW
Square 1341, Lot 855
Affected Advisory Neighborhood Commission: 3D

The hearing will take place at **9:00 a.m. on Thursday, December 17, 2015**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street, SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

The Board's hearing is open to all interested parties or persons. Public and governmental agencies, Advisory Neighborhood Commissions, property owners, and interested organizations or individuals are invited to testify before the Board. Written testimony may also be submitted prior to the hearing. All submissions should be sent to the address above.

For each property, a copy of the historic landmark application is currently on file and available for inspection by the public at the Historic Preservation Office. A copy of the staff report and recommendation will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

If the Historic Preservation Review Board designates the property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects

affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Eligibility for Federal Tax Provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

Qualification for Federal Grants for Historic Preservation When Funds Are Available: The National Historic Preservation Act of 1966, as amended, authorizes the Secretary of the Interior to grant matching funds to the States (and the District or Columbia) for, among other things, the preservation and protection of properties listed in the National Register.

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If an owner chooses to object to the listing of the property, the notarized objection must be submitted to the above address by the date of the Review Board meeting.

For further information, contact Tim Dennee, Landmarks Coordinator, at 202-442-8847.

BOARD OF ZONING ADJUSTMENT
REVISED PUBLIC HEARING NOTICE
TUESDAY, JANUARY 26, 2016
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

Cases added: 19088, 19169

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

TIME: 9:30 A.M.

WARD TWO

19156
ANC-2B

Application of Brad Edwards, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, the court width requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, to construct a second story rear deck addition to an existing flat in the R-5-B District at premises 1723 Swann Street N.W. (Square 152, Lot 821).

WARD FIVE

19164
ANC-5E

Application of Christopher J Wright, pursuant to 11 DCMR § 3103.2, for variances from the minimum lot size requirements under § 401.3, the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, the open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, to construct a four-story flat in the R-4 District at premises 17 U Street N.W. (Square 3117, Lot 3).

WARD SIX

19165
ANC-6A

Application of 3317 16th Street LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the off-street parking requirements under § 2101.1, the parking aisle width requirements under § 2117.5, and the loading berth requirements under § 2201.1, and a special exception from the HS Overlay requirements under § 1320.4(f), to convert a vacant church into a new four-story, mixed-use commercial and residential building in the HS-A/C-2-A District at premises 1301 H Street N.E. (Square 1027, Lot 156).

WARD FIVE

18895A
ANC-5D

Application of James Walker, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, and the rear yard requirements under § 404, to construct a two-story rear deck addition to an existing one-family dwelling in the R-4 District at premises 1107 Penn Street N.E. (Square 4059, Lot 800).

Revised on October 22, 2015

WARD THREE

17703A
ANC-3F

Application of Sidwell Friends School, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the height requirements under § 400.9, and a special exception from the private school requirements under § 206, to increase the size of an existing education campus and number of students and staff in the C-2-A/R-1-B District at premises 3825 Wisconsin Avenue N.W. (Square 1825, Lot 816 and 818).

WARD TWO

19163
ANC-2F

Application of Cambridge Apartments Limited Partnership, pursuant to 11 DCMR § 3104.1, for a special exception from the nonconforming use requirements under § 2003.1, to allow a food market/café use in the DD/R-5-E District at premises 1221 Massachusetts Avenue N.W. (Square 282, Lot 44).

WARD SIX

19169
ANC-6E

Application of 311 K Street LLC, pursuant to 11 DCMR § 3103.2, for variances from the rear yard requirements under § 774.1, and the off-street parking requirements under § 2101.1, to construct a hotel and apartment building in the DD/DD-HPA/C-2-C District at premises 303-317 K Street N.W. (Square 526, Lots 20, 21, 804, 805, 824, 825, and 829).

WARD FOUR

THIS CASE WAS POSTPONED FROM OCTOBER 27, 2015 TO JANUARY 26, 2016 AT THE APPLICANT'S REQUEST:

19088
ANC-4C

Application of Jose Ayala, pursuant to 11 DCMR § 3103.2, for variances from the rear yard requirements under § 774.1, and the off-street parking requirements under § 2101, to allow the construction of a new four-story mixed use building in the C-2-A District at premises 3701 14th Street N.W. (Square 2826, Lot 96).

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.

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

DEPARTMENT OF ENERGY & ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Nonroad Diesel Equipment Anti-Idling

The Director of the Department of Energy & Environment (DOEE or Department), pursuant to the authority set forth in Sections 5 and 6 of the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985, as amended (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 and 8-101.06 (2012 Repl.); Sections 107(4) and 110 of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.07(4) and 8-151.10 (2013 Repl.); and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the adoption of the following amendments to Chapter 9 (Air Quality – Motor Vehicular Pollutants, Lead, Odors, and Nuisance Pollutants) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking action reduces diesel engine emissions that result from unnecessary idling and conserve fuel used by nonroad diesel engines. A nonroad diesel engine subject to this regulation is operated for purposes including, but not limited to, the following: construction, landscaping, recycling, landfilling, manufacturing, warehousing, composting, moving ground support equipment at airports or heliports, industrial activities, and other operations. The rulemaking adds detail to the District's existing mobile source idling policy.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on July 17, 2015 (62 DCR 009811). In response to comments from industry, the Department revised the definition of "idling" to clarify the nature of work that may occur when running an engine, by deleting vague descriptors and adding specific examples. Also, the Department revised § 900.3 in order to codify its original intent that the rulemaking does not apply to portable generators.

Chapter 9, AIR QUALITY – MOTOR VEHICULAR POLLUTANTS, LEAD, ODORS, AND NUISANCE POLLUTANTS, of Title 20 DCMR, ENVIRONMENT, is amended as follows:

Section 900, ENGINE IDLING, is amended as follows:

By amending the title of the section to read:

900 ONROAD ENGINE IDLING AND NONROAD DIESEL ENGINE IDLING

By adding Subsections 900.2 through 900.4 to read:

900.2 No person owning, operating, leasing, or having control over a nonroad diesel engine, or the holder of the permit for the activity for which the nonroad diesel engine is being operated, shall cause or allow the idling of a nonroad diesel engine under its control or on its property for more than three (3) consecutive minutes.

900.3 Subsection 900.2 does not apply to locomotives, generator sets, marine vessels, recreational vehicles, farming equipment, military equipment when it is being used during training exercises, emergency or public safety situations, or any private use of a nonroad diesel engine that is not for compensation.

900.4 The idling limit in Subsection 900.2 does not apply to:

(a) Idling necessary to ensure the safe operation of the equipment and safety of the operator, such as conditions specified by the equipment manufacturer in the manual or an appropriate technical document accompanying the nonroad diesel engine;

(b) Idling for testing, servicing, repairing, diagnostic purposes, or to verify that the equipment is in good working order, including regeneration of a diesel particulate filter, in accordance with the equipment manufacturer manual or other technical document accompanying the nonroad diesel engine;

(c) Idling for less than fifteen (15) minutes when queuing (*i.e.*, when nonroad diesel equipment, situated in a queue of other vehicles, must intermittently move forward to perform work or a service), not including the time an operator may wait motionless in line in anticipation of the start of a workday or opening of a location where work or a service will be performed.

(d) Idling by any nonroad diesel engine being used in an emergency or public safety capacity;

(e) Idling for a state or federal inspection to verify that all equipment is in good working order, if idling is required as part of the inspection; and

(f) Idling for up to five (5) consecutive minutes to operate heating equipment when the ambient air temperature is thirty-two degrees Fahrenheit (32ºF) or below.

Section 999 DEFINITIONS AND ABBREVIATIONS, is amended as follows:

By amending the text in Subsection 999.1 to read:

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

By amending the definition of "motor vehicle" to read:

Motor vehicle – any motor vehicle, as defined in § 1(a) of title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 679; D.C. Official Code § 50-1501.01).

By adding the following definitions:

Diesel fuel – any petroleum- or biomass-based liquid fuel intended for use in the diesel engine of a highway or motor vehicle, nonroad vehicle, or piece of nonroad equipment.

Farming equipment – any appliance used directly and principally for the purpose of producing agricultural products, including horticultural products, for sale and use or consumption off the premises. This definition includes any equipment or machinery used primarily in preparation of land, planting, raising, cultivating, irrigating, harvesting, or placing in storage of farm crops. This definition also includes any equipment or machinery used primarily for the purpose of feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or bees, or for dairying and the sale of dairy products. This definition also includes any equipment or machinery used primarily in any other agricultural or horticultural use or animal husbandry or any combination thereof.

Generator set – an internal combustion engine coupled to a generator that is used as a source of electricity.

Idling – running the engine of nonroad equipment or a motor vehicle while the nonroad equipment or motor vehicle is not moving and the engine is not in use in whole or in part to perform mechanical work or an electrical operation for which it was designed (such as to power a hydraulic lift, crane, cement mixer or pump, cherry picker, air compressor, generator, or similar piece of equipment).

Locomotive – a self-propelled diesel-powered vehicle, for pulling or pushing freight or passenger cars on railroad tracks.

Marine vessel – any diesel-powered vehicle that is used or capable of being used as a means of transportation on water except amphibious vehicles.

Military equipment – equipment that meets military specifications, is owned by the U.S. Department of Defense or the U.S. military services or its allies, and is used in combat, combat support, combat service support, tactical or relief operations or training for such operations.

Nonroad diesel engine – any internal combustion engine that utilizes diesel fuel as its fuel source:

(a) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (*e.g.*, garden tractors, off-highway mobile cranes, and bulldozers);

(b) In or on a piece of equipment that is intended to be propelled while performing its function (*e.g.*, lawnmowers and string trimmers); or

(c) That, by itself or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform; and

(d) Unless:

(i) The engine is used to propel a motor vehicle or a vehicle solely for competition, or is subject to standards promulgated under Section 202 of the Clean Air Act;

(ii) The engine is regulated by a federal New Source Performance Standard promulgated under Section 111 of the Clean Air Act; or

(iii) The engine otherwise included in paragraph (c) of this definition remains or will remain at a location for more than twelve (12) consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine(s) that replaces an engine(s) at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (*i.e.*, at least two (2) years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Nonroad equipment – a piece of equipment that is powered by a nonroad diesel engine.

Power take-off equipment – a semi-permanently mounted system on a vehicle, separate from the vehicle engine that is used to transmit power to a secondary implement or accessory.

Recreational vehicle – any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, belts, cleats, tracks, skis or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ice or snow or not, where the operator sits in or on the vehicle. This definition includes snowmobiles, all-terrain vehicles (ATVs), nonroad motorcycles, or any other legally registered motor vehicle when used for nonroad recreational purposes.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF THIRD PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to authority set forth in Article III of Reorganization Plan No. 1 of 1983, effective March 31, 1983; Mayor's Order 83-92, dated April 7, 1983; Section 6(h) of An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, approved April 14, 1906 (34 Stat. 115; D.C. Official Code § 42-3131.06(h) (2012 Repl.)); and Mayor's Order 2002-33, dated February 11, 2002, hereby gives notice of the intent to adopt amendments to Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR) (the "Housing Code").

The proposed rulemaking would repeal Subtitle A (Chapters 1-13) of Title 14 and replace Subtitle A with new Chapters 1-8 to harmonize the Housing Code with the 2013 District of Columbia Construction Codes (Title 12, Subtitles A-M, of the DCMR, published March 28, 2014 at 61 DCR 2782). While maintaining the core provisions of the Housing Code relating to landlord and tenant responsibilities and obligations, the proposed rulemaking would require landlords and tenants to comply with the applicable property maintenance provisions set forth in the 2013 District of Columbia Property Maintenance Code, which carries forward unique District of Columbia property maintenance requirements in the 2013 District of Columbia Property Maintenance Code Supplement, 12 DCMR Subtitle G, as well as model code requirements published by the International Code Council. The proposed rulemaking also amends the current rules to clarify the enforcement and notification procedures for unsafe and imminently dangerous buildings, premises and equipment, and clarifies the regulation and licensing of transient housing businesses.

The Notice of Third Proposed Rulemaking supersedes the Notice of Second Proposed Rulemaking published January 9, 2015 at 62 DCR 300, and reflects changes made in response to comments submitted by the public regarding the Second Proposed Rulemaking. The substantive changes are: (1) revisions to harmonize Title 14, Chapters 1-8, with provisions of the Rental Housing Act; and (2) elimination of proposed increases in housing business fees (specifically the proactive inspection fee and the re-inspection fee) to maintain the existing fee levels.

Strike the Housing Regulations, Chapters 1-13 of Title 14 DCMR, HOUSING, in their entirety, and insert the following in their place:

TITLE 14

CHAPTER 1	**ADMINISTRATION AND ENFORCEMENT**
CHAPTER 2	**HOUSING BUSINESS LICENSES**
CHAPTER 3	**LEASES AND SECURITY DEPOSITS**
CHAPTER 4	**RESPONSIBILITIES OF HOUSING BUSINESSES**
CHAPTER 5	**TENANT RESPONSIBILITIES**
CHAPTER 6	**APARTMENTS AND APARTMENT HOUSES**
CHAPTER 7	**TRANSIENT HOUSING BUSINESSES**
CHAPTER 8	**TRANSIENT HOUSING BUSINESS LICENSES**

CHAPTER 1: ADMINISTRATION AND ENFORCEMENT

SECTION
100 GENERAL
102 REVIEW AND APPEALS
103 DUTIES AND POWERS OF CODE OFFICIAL
104 UNSAFE STRUCTURES AND EQUIPMENT
105 EMERGENCY MEASURES
106 DEMOLITION
107 NOTICES AND ORDERS
108 TRANSITORY PROVISIONS
109 [RESERVED]
110 [RESERVED]
111 REQUESTS FOR REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACT
199 DEFINITIONS

100 GENERAL

100.1 The provisions of Chapters 1-8 of this title shall apply to every residential premises or part of any premises (including those owned by the District of Columbia government) that is offered for rent, lease or occupancy, or is occupied or used, as a place for living or sleeping purposes by a person other than the owner or the owner's invitees, including, but not limited to, the rental of a dwelling unit or rooming unit in a residential building that the owner also occupies, and transitional housing as defined in 29 DCMR § 2599.1.

100.2 The provisions of the Property Maintenance Code, as defined in Section 199 of this chapter, shall apply to any residential premises or part of any premises within the scope of § 100.1, and are incorporated by this reference. These include, but are not limited to, the following provisions of the Property Maintenance Code:

(a) Exterior Property Areas (12-G DCMR § 302);

(b) Pest Elimination (12-G DCMR § 309);

(c) Light, Ventilation and Occupancy Limitations (12-G DCMR Chapter 4);

(d) Plumbing Facilities and Fixture Requirements (12-G DCMR Chapter 5);

(e) Mechanical and Electrical Requirements (12-G DCMR Chapter 6); and

(f) Fire Safety Requirements (12-G DCMR Chapter 7).

100.3 The Property Maintenance Code establishes minimum requirements and standards for the following: premises, structures, equipment, and facilities for light, ventila-

tion, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and safe and sanitary maintenance; the responsibilities of owners, operators, tenants, and occupants; and occupancy of existing structures and premises.

100.4 The purpose of the Property Maintenance Code is to ensure public health, safety and welfare insofar as they are affected by occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with the Property Maintenance Code are required to be altered or repaired to provide a minimum level of health and safety as required therein.

100.5 Repairs, alterations, additions or other work done as a result of any requirement established in Chapters 1-8 of this title or in the Property Maintenance Code shall be accomplished under permit and in the manner provided in the Construction Codes.

100.6 Nothing herein or in the Property Maintenance Code shall be deemed to negate or impair tenant rights set forth in Title 14, including, but not limited to, the right to seek a preliminary or permanent injunction to abate public nuisances (Subsection 101.11), the implied warranty of habitability (Section 301), or the void lease doctrine (Section 302).

100.7 Owners and tenants have legal responsibilities with regard to maintenance of their buildings, including structures, equipment and exterior property, and to each other as set forth in the Property Maintenance Code, Title 14 of the District of Columbia Municipal Regulations (the "Housing Code"), and other applicable statutes and regulations.

100.8 Each section and subsection of Chapters 1-8 of this title shall be independent of and severable from every other section or subsection, and the finding or holding of any section or subsection to be void, invalid, or ineffective for any cause shall not be deemed to affect any other section or subsection.

100.9 No residential premises may be occupied, or offered for occupancy, for consideration unless the applicable license has been obtained from the District.

101 ENFORCEMENT AND PENALTIES

101.1 Any person, other than a person licensed as a housing business or transient housing business under authority of D.C. Official Code § 47-2828 (2012 Repl.) and Chapters 2 and 8 of this title, who fails to comply with any applicable provision of Chapters 1-8 of this title shall, upon conviction, be punished by a fine not to exceed three hundred dollars ($300), or by imprisonment for not more than ninety (90) days, in lieu of, or in addition to, any fine, for such failure to comply.

101.2 No further penalties shall be imposed under § 101.1 for an offense during the period in which an appeal from a criminal conviction of that offense is pending.

101.3 Any person licensed as a housing business or a transient housing business under authority of D.C. Official Code § 47-2828 (2012 Repl.) and Chapters 2 and 8 of this title, who fails to comply with any applicable provision of Chapters 1-8 of this title shall, upon conviction, be punished by a fine not to exceed three hundred dollars ($300) or imprisonment for not more than ninety (90) days for each such failure to comply.

101.4 Civil fines, penalties, and fees may be imposed as additional sanctions to criminal prosecution or other civil actions for a violation of Chapters 1-8 of this title, pursuant to Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801 *et seq*. (2012 Repl.)) ("Civil Infractions Act") or, if applicable, the Rental Housing Act of 1985 as amended [D.C. Law 6-10; D.C. Official Code §§ 42-3501.01 *et seq*. (2012 Repl. & 2013 Supp.)] (the "Rental Housing Act"). Infractions of Chapters 1-8 shall be adjudicated pursuant to the Civil Infractions Act.

101.5 In addition to other penalties authorized by statute or regulation, the Code Official may serve one (1) or more notices or orders in accordance with Section 107, which may impose a fine or other penalty on any person or persons responsible for a violation of the provisions of Chapters 1-8 of this title.

101.6 Any person, including an owner, operator, occupant or tenant, who causes a violation of any provision of Chapters 1-8 of this title is subject to the penalties set forth in § 101.

101.7 In the event of any failure to comply with any provision of Chapters 1-8 of this title, each and every day such violation continues shall constitute a separate offense.

101.8 The penalties prescribed in §§ 101.1 and 101.3 shall be applicable to each separate offense, except as provided in § 101.2.

101.9 The violation of any provision of Chapters 1-8 of this title or the failure to comply with a requirement of Chapters 1-8 shall also be grounds for denial of any application for, or the institution of proceedings for suspension or revocation of, any housing business license, transient housing business license, or license endorsement issued under Chapter 2 of this title or Chapter 28 of Title 47 of the D.C. Official Code (2012 Repl. & 2014 Supp.).

101.10 Where any person violates a provision of Chapters 1-8 of this title or fails to comply therewith or with any of the requirements thereof, following notice as prescribed in Section 107 of this chapter, the Code Official may cause such condition to be corrected. The costs of any corrective action, and all expenses incident

thereto, shall be deemed a special assessment and shall be assessed as a tax against the property on which the violating condition existed, bear interest and be collected in the same manner as delinquent general taxes in the District are collected in accordance with D.C. Official Code § 47-1205 (2012 Repl.). Nothing herein shall be construed to abolish or impair existing remedies relating to abatement of nuisance property, including, but not limited to, Chapters 31 and 31A of Title 42 of the D.C. Official Code (2012 Repl. & 2014 Supp.).

101.11 Nothing herein shall be deemed to abrogate any rights an owner, operator, occupant or tenant may have to pursue resolution of any legal disputes in Superior Court or Small Claims Court, through the Rental Accommodations Division of the District of Columbia Department of Housing and Community Development, the Office of Administrative Hearings, or any other adjudicative body with jurisdiction over such disputes.

101.12 Without negating, restricting or otherwise limiting any authorized remedies or penalties, this section expressly declares a public policy in favor of speedy abatement of public nuisances that violate this title, and preliminary and permanent injunction may be sought from Courts of competent jurisdiction where:

(a) The maintenance of any habitation in violation of the provisions of Chapters 1-8 of this title or the Property Maintenance Code constitutes a danger to the health, welfare, or safety of the occupants; or.

(b) The abatement of such public nuisances by criminal prosecution or by compulsory repair, condemnation, and demolition alone has been or will be inadequate; or

(c) Such public nuisances cause specific, immediate, irreparable and continuing harm to the occupants of these habitations, and damage the quality of life and the mental development and well-being of the occupants, as well as their physical health and personal property, and this harm cannot be fully compensated for by an action for damages, rescission or equitable setoff for the reduction in rental value of the premises.

102 REVIEW AND APPEALS

102.1 The owner of a building or other structure or any person adversely affected or aggrieved by a final decision or order of the Code Official based in whole or in part upon Chapters 1-8 of this title, may appeal to the Office of Administrative Hearings (OAH), provided, that a decision or order issued pursuant to the Rental Housing Act shall be contested or appealed in accordance with Chapters 38 and 39 of this title.. Except where an expedited hearing is requested pursuant to § 102.2, the OAH appeal shall be filed within ten (10) business days after the date the person appealing the decision of the Code Official had notice or knowledge of the decision, or should have had notice or knowledge of the decision, whichev-

er is earlier.

102.2 Timely appeals of notices or orders shall stay the enforcement of the notice or order until the appeal is heard by OAH, with the following exceptions:

(a) Closure or imminent danger notices or orders issued pursuant to § 105, and related orders to vacate premises; or

(b) Closure notices or orders issued pursuant to § 104, and related orders to vacate premises, except where the tenant or occupant has requested an expedited OAH hearing in accordance with § 102.2.

102.3 Where a notice or order to close or vacate residential premises is issued pursuant to § 104, a tenant or occupant of the premises affected by the closure has a right to request an expedited hearing by OAH prior to the closure, subject to the following conditions:

(a) The tenant or occupant shall file the request for an expedited hearing with OAH no later than the date specified in the closure order for tenants or occupants to vacate the structure or unit;

(b) OAH review shall be based solely on the issue of whether the premises are unsafe or unfit for occupancy requiring a building closure under the provisions of § 104;

(c) Enforcement of the closure notice or order shall be stayed until OAH issues a written decision; and

(d) OAH shall hold a hearing within seventy-two (72) hours of receipt of a timely request, and shall issue a decision within seventy-two (72) hours after the hearing. For purposes of computing the seventy-two (72) hour period, weekends and legal holidays shall be excluded.

Nothing herein shall be construed to authorize an expedited hearing for any notices or orders issued, or actions taken, pursuant to § 105.

102.4 Appeal of a closure notice or order issued pursuant to § 105, or a request for an expedited hearing pursuant to § 102.2, shall not preclude the Code Official from issuing a notice or order pursuant to § 105 for the same premises or structure, while such appeal or hearing is pending.

103 DUTIES AND POWERS OF THE CODE OFFICIAL

103.1 The Director of the District of Columbia Department of Consumer and Regulatory Affairs, or a duly authorized representative, shall be the Code Official for purposes of enforcing the provisions of Chapters 1-8 of this title pertaining to (a) the

condition of premises, or equipment thereon, and (b) the licensing of housing businesses or transient housing businesses. The Rent Administrator, or a duly authorized representative, shall be the Code Official for purposes of enforcing the provisions of Chapters 1-8 of this title pertaining to the Rental Housing Act.

103.2 The Code Official is authorized to inspect the premises of any housing business or transient housing business, and shall make all of the required inspections or shall have authority to accept reports of inspection by approved agencies. The Code Official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise.

103.3 The Code Official is authorized to enter a structure or premises at all reasonable times to inspect and for the purpose of enforcing Chapters 1-8 of this title, subject to the provisions of this section. If entry is refused or not obtained, the Code Official is authorized to obtain an administrative search warrant issued pursuant to D.C. Official Code § 11-941 (2012 Repl.) or D.C. Superior Court Civil Rule 204, or to pursue any other recourse provided by law.

103.4 The Code Official , both prior to the issuance of a housing business license or a transient housing business license and during the license period, is authorized, at all reasonable hours, to enter and inspect the premises occupied or to be occupied by a housing business or transient housing business, except as provided in § 103.5.

103.5 If it appears that any portion of a premises is under the exclusive control of a tenant, or if the owner or operator of a housing business so claims, the Code Official shall not enter that portion of the premises without first having obtained permission from the tenant or the tenant's agent, except as provided in § 103.6 and subject to constitutional restrictions on unreasonable searches and seizures.

103.6 If a tenant of a housing business does not give permission to inspect that portion of the premises under the tenant's exclusive control, the Code Official shall not enter that portion of the premises unless the Code Official has:

(a) A valid administrative warrant permitting the inspection, issued pursuant to D.C. Official Code § 11-941 (2012 Repl.) or D.C. Superior Court Civil Rule 204; or

(b) A reasonable basis to believe that exigent circumstances require immediate entry into that portion of the premises in order to prevent any imminent danger to the public health or welfare.

103.7 When the Code Official presents a valid administrative search warrant that permits inspection of premises under a tenant's exclusive control, the tenant of a housing business who refuses to give permission to inspect that portion of the premises shall be in violation of the Property Maintenance Code and Chapters 1-8 of this title.

103.8 If the owner or operator of a housing business or transient housing business, or agent of such owner or operator, refuses to permit the Code Official to inspect the premises occupied or to be occupied by a housing business or transient housing business, such refusal shall be cause for withholding the issuance of a license for those premises until the inspection is permitted, and/or cause for the revocation of any existing license.

103.9 As a condition of receiving a housing business or transient housing business license under D.C. Official Code § 47-2828 (2012 Repl.), the owner or operator of a housing business or transient housing business must agree to:

(a) Allow access to the Department for any inspection required under the Construction Codes; and

(b) Notify any affected tenant whose unit requires inspection, where applicable.

103.10 The Code Official, and authorized representatives of the Code Official , shall carry proper credentials when inspecting structures or premises in the performance of their duties under Chapters 1-8 of this title.

103.11 The Code Official is authorized to issue all necessary notices or orders to ensure compliance with Chapters 1-8 of this title, and to institute administrative and legal actions to correct violations or infractions, including actions pursuant to An Act To provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes, approved April 14, 1906 (34 Stat. 115; D.C. Official Code §§ 42-3131.01 *et seq*. (2012 Repl.)), and the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2002, effective April 27, 2001 (D.C. Law 13-281; D.C. Official Code §§ 42-3171.01 *et seq*. (2012 Repl.)).

103.12 Whenever in the enforcement of Chapters 1-8 of this title or another code or ordinance, the responsibility of more than one Code Official of the District is involved, it shall be the duty of the Code Official s involved to coordinate their inspections and administrative orders as fully as practicable so that the owners, operators, tenants and occupants of the structure shall not be subjected to visits by numerous inspectors or multiple or conflicting orders.

104 UNSAFE STRUCTURES AND EQUIPMENT

104.1 When premises, including structures or equipment thereon, are found by the Code Official , in whole or in part, to be unsafe or dangerous, or when a structure is found unfit for human occupancy, or is found to be unlawful, such structure may be closed by the Code Official pursuant to the provisions of this section or § 108 of the Property Maintenance Code, and may be referred to the Board of Condem-

nation pursuant to An Act To create a board for the condemnation of insanitary buildings in the District of Columbia, and for other purposes, approved May 1, 1906 (34 Stat. 157; D.C. Official Code §§ 6-901 *et seq*. (2012 Repl. & 2014 Supp.)).

104.2 An unsafe structure is a building or other structure, or anything attached to or connected with a building or other structure, that is found to be unsafe or dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment, or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.

104.3 Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.

104.4 A structure is unfit for human occupancy whenever the Code Official finds that such structure is: unsafe; unlawful; or, due to the degree to which the structure is in disrepair or lacks maintenance, is unsanitary or vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by the Property Maintenance Code; or whenever the Code Official finds that the location of the structure constitutes a hazard to the occupants of the structure or to the public.

104.5 An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under the Property Maintenance Code, or erected, altered or occupied contrary to law.

104.6 For the purpose of this code, any structure or premises that has any or all of the conditions or defects described below shall be considered dangerous:

(a) Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the Construction Codes as related to the requirements for existing buildings.

(b) Any walking surface of any aisle, passageway, stairway, exit or other means of egress that is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.

(c) Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged.

(d) Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof, which is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value.

(e) The building or structure, or part of the building or structure, is likely to collapse partially or completely, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.

(f) The building or structure, or any portion thereof, is clearly unsafe for its use and occupancy.

(g) The building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance or hazard to children who might play in the building or structure or a harbor for vagrants, criminals or immoral persons, or that could enable persons to resort to the building or structure for committing a nuisance or an unlawful act.

(h) The building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the Construction Codes, or of any law or ordinance, to such an extent as to present a substantial risk of fire, building collapse or any other threat to life and safety.

(i) A building or structure, used or intended to be used for dwelling purposes, that is determined by the Code Official to be unsanitary, unfit for human habitation, or in a condition that is likely to cause sickness or disease because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system or other cause.

(j) Any building or structure that is determined by the Code Official to be a threat to life or health because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause.

(k) Any portion of a building or structure that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure or portion thereof is abandoned so as to become an attractive nuisance or hazard to the public.

104.7 Whenever the Code Official determines that the repair record on any boiler, air conditioning system, heating equipment, elevator, moving stairway or other equipment on the premises or within a structure reflects the need for replacement of the equipment, the Code Official may declare the equipment "unserviceable" and order the replacement of the equipment.

104.8 If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Code Official , after providing notice as prescribed in § 107, is authorized to post a closure placard on the premises and order the structure closed so as not to be an attractive nuisance. Upon failure of the owner to close the premises within the time specified in the order, the Code Official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement with private persons, and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any legal resource.

104.9 The provisions of § 111.3, Authority to Disconnect Service Utilities, of 12-A DCMR, shall apply to Chapters 1-8 of this title and are hereby incorporated by reference.

104.10 Whenever the Code Official has found a premises or structure to be unsafe or unfit for occupancy or has found equipment on the premises or in the structure to be unsafe or unlawful under the provisions of this section, notice shall be posted in a conspicuous place in or about the premises or structure affected by such notice and shall be served on the owner or the person or persons responsible for the premises, structure or equipment in accordance with § 107 and An Act To authorize the Commissioners of the District of Columbia to remove dangerous or unsafe buildings and parts thereof, and for other purposes, as amended, approved March 1, 1899 (30 Stat. 923; D.C. Official Code §§ 6-801 *et seq*. (2012 Repl.)). If the notice pertains to equipment, it shall also be placed on the equipment found to be unsafe or unlawful. The notice shall be in the form prescribed in § 107. The Code Official is authorized to order the owner to close and barricade the structure or dwelling unit within a specified period of time.

104.11 Whenever the Code Official has found a premises or structure to be unsafe or unfit for occupancy or has found equipment on the premises or in the structure to be unsafe or unlawful under the provisions of this section, the Code Official is authorized to order tenants or occupants of residential premises to vacate the premises within a time sufficient to allow the owner to comply with the order to close and barricade the premises, subject to the provisions of § 107.6. If any tenant or occupant fails to vacate the premises within the time period set forth in the notice or order, the Code Official is authorized to order the removal of the tenants or occupants.

104.12 The Code Official is authorized to order tenants or occupants of residential premises to vacate the premises within a time sufficient to allow the owner to comply

with the order to close and barricade the premises, provided that tenants or occupants shall be given at least five calendar days to vacate the premises. If any tenant or occupant fails to vacate the premises within the time period set forth in the notice or order, subject to the appeal provisions of § 102.3, the Code Official is authorized to order the removal of the tenants or occupants.

104.13 The removal of tenants and occupants from unsafe residential premises, or the service of an order to vacate pursuant to this chapter shall not be considered an eviction or notice to vacate by a housing provider under D.C. Official Code § 42-3505.01 (2012 Repl.) and shall not be deemed to terminate a lawful tenancy, except as provided by § 42-3505.01(n). Nothing herein shall be construed to nullify or abrogate any other rights to which a tenant or occupant may be entitled under District laws or regulations, including relocation assistance, the right to reoccupy the rental unit following rehabilitation, or the right to pursue rights and remedies under D.C. Official Code, Title 42, Chapter 34 (2012 Repl. & 2014 Supp.).

104.14 Repairs to, or removal or demolition of, a historic landmark or building or structure located within an historic district shall comply with D.C. Official Code §§ 6-801 *et seq*. (2012 Repl.).

104.15 Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the Code Official is authorized to post on the premises a closure placard bearing the words "These Premises are Unsafe and Its Occupancy Has Been Prohibited by the Code Official ," or to post the defective equipment with a placard bearing the words "Removed from Service." The placard shall include a statement of the penalties provided for occupying the premises, operating the equipment, or removing the placard.

104.16 The Code Official shall authorize removal of the applicable placards whenever the defect or defects upon which the closure or removal from service actions were based have been eliminated. Any person who defaces or removes a placard without the approval of the Code Official shall be subject to the penalties provided by § 101.

104.17 Any occupied structure, closed and placarded by the Code Official , shall be vacated as ordered by the Code Official . Any person who occupies a placarded premises or operates placarded equipment, and any owner or any person responsible for the premises who allows anyone to occupy a placarded premises or operate placarded equipment, shall be liable for the penalties provided by § 101.

104.18 The owner, operator, or occupant of a structure, premises or equipment deemed unsafe by the Code Official shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other approved corrective action. Notwithstanding any other penalties or remedies set forth in § 101, where the owner, operator or occupant of a structure, premises or equipment deemed unsafe by the Code Official fails to abate such unsafe condition follow-

ing notice as prescribed in § 104.3, the Code Official may cause such condition to be corrected and the costs of any corrective action, and all expenses incident thereto, shall be deemed a special assessment and shall be assessed as a tax against the property on which the violating condition existed, and shall bear interest and be collected in the same manner as delinquent general taxes in the District are collected in accordance with D.C. Official Code § 47-1205 (2012 Repl.). Nothing herein shall be construed to abolish or impair existing remedies relating to abatement of nuisance property, including, but not limited to, Chapters 31 and 31A of Title 42 of the D.C. Official Code.

104.19 The Code Official shall create and maintain a report on any unsafe condition. The report shall state the occupancy of the structure or building and the nature of the unsafe condition.

104.20 The Code Official is authorized to refer a building or structure determined to be unsafe under this § 104 to the Board for the Condemnation of Insanitary Buildings for issuance of an order of condemnation pursuant to D.C. Official Code § 6-903 (2012 Repl.).

105 EMERGENCY MEASURES

105.1 The Code Official is hereby authorized and empowered to order and require the tenants and occupants to vacate the premises forthwith when, in the opinion of the Code Official : there is imminent danger of failure or collapse of a building or other structure which endangers life; or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure; or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors, or the presence of toxic fumes, gases or materials; or when the health or safety of occupants of the premises or those in the proximity of the premises is immediately endangered by an unsanitary condition or by the operation of defective or dangerous equipment. The Code Official shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the [Code Official]." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

105.2 Where the Code Official posts a closure or imminent danger notice pursuant to this section, the Code Official is authorized to order all tenants or occupants to vacate the imminently dangerous structure or dwelling unit. The closure notice shall include the time by which the premises must be vacated, provided that tenants and occupants shall have at least twenty-four (24) hours to vacate unless the Code Official determines that tenants and occupants must leave the premises immediately for their personal safety. If any tenant or occupant fails to vacate the structure or unit within the time specified in the notice or order, the Code Official is authorized to order removal of the tenant or occupant from the structure or unit.

105.3 The removal of tenants and occupants from imminently dangerous premises, or the service of an order to vacate, pursuant to this section shall not be considered an eviction or notice to vacate by a housing provider under D.C. Official Code § 42-3505.01 (2012 Repl.) and shall not be deemed to terminate a lawful tenancy, except as provided by § 42-3505.01(n). Nothing herein shall be construed to nullify or abrogate any other rights to which a tenant or occupant is entitled under District laws or regulations, including relocation assistance, the right to reoccupy the rental unit following rehabilitation, or the right to pursue rights and remedies under D.C. Official Code Title 42, Chapter 34.

105.4 Emergency measures affecting a historic landmark or a building or structure located within an historic district shall comply with D.C. Official Code § 6-803(b) (2012 Repl.).

105.6 Whenever, in the opinion of the Code Official , there is imminent danger due to an unsafe condition, the Code Official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe, whether or not the legal procedure herein described has been instituted, and shall further cause such other action to be taken as the Code Official deems necessary to meet such emergency.

105.7 When necessary for the public safety, the Code Official is authorized to temporarily close sidewalks, streets, buildings, other structures, and places adjacent to such unsafe structure, and prohibit them from being used.

105.8 For the purposes of this section, the Code Official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

105.9 Where the Code Official causes emergency work to be done pursuant to § 105, the costs incurred in the performance of emergency work, and all expenses incident thereto, shall be deemed a special assessment and shall be assessed as a tax against the property on which the violating condition existed, bear interest and be collected in the same manner as delinquent general taxes in the District are collected in accordance with D.C. Official Code § 47-1205 (2012 Repl.). Nothing herein shall be construed to abolish or impair existing remedies relating to abatement of nuisance property, including, but not limited to, Chapters 31 and 31A of Title 42 of the D.C. Official Code.

105.10 If the Code Official determines that no other shelter is available to tenants or occupants removed from residential premises pursuant to § 105.6, the Code Official has discretion to assess all expenses incident to tenant relocation as a cost of emergency repairs, including, but not limited to, temporary housing, security deposits and the first month's rent if required, costs associated with cleaning the premises to comply with the Property Maintenance Code, utility removal or disconnection costs, court costs, fines, and penalties.

105.11 The Code Official is authorized to refer a building or structure determined to be imminently dangerous under § 105 to the Board for the Condemnation of Insanitary Buildings for issuance of an order of condemnation pursuant to D.C. Official Code § 6-903 (2012 Repl.).

106 DEMOLITION

106.1 The Code Official is authorized to initiate proceedings pursuant to D.C. Official Code §§ 42-3173.01 *et seq*. (2012 Repl.) to demolish or enclose a "deteriorated structure" as defined in that section.

107 NOTICES AND ORDERS

107.1 In addition to other penalties authorized by statute or regulation, whenever the Code Official determines that there has been a violation of Chapters 1-8 of this title or has reasonable grounds to believe that a violation has occurred, the Code Official is authorized to serve one or more of the following notices or orders, which may impose a fine or other penalty, on an owner or the person or persons responsible for the violation:

(a) A notice of violation;

(b) A notice of infraction;

(c) A combined notice of violation and notice of infraction; or

(d) Any other order or notice authorized to be issued by the Code Official .

107.2 Service of a notice of violation or order shall be in the manner prescribed in §§ 107.7-107.10, except as otherwise provided herein. Notices of infraction shall be issued in accordance with the procedures and fine amounts set forth in § 201 of the Civil Infractions Act and Title 16 of the DCMR.

107.3 Issuance of a notice of violation, notice of infraction, or combined notice of violation and notice of infraction pursuant to this section, prior to taking other enforcement action, is at the discretion of the Code Official . Issuance of notice of violation, notice of infraction, or combined notice of violation and notice of infraction shall not be a prerequisite to criminal prosecution, civil action, corrective action, or civil infraction proceeding based upon a violation of Title 14, Chapters 1-8.

107.4 Additional notice procedures may apply to historic buildings pursuant to D.C. Official Code §§ 6-801 *et seq*. (2012 Repl.).

107.5 A notice of violation or order shall direct the discontinuance of the illegal action or condition and/or require abatement of the illegal action or condition, and must:

(a) Be in writing;

(b) Include the name and address of the person or entity being cited;

(c) Include a description of the real estate sufficient for identification;

(d) Include a statement of the violation or violations, the code section(s) violated and why the notice or order is being issued;

(e) Include, if the notice or order affords an opportunity to abate a violation, a reasonable period of time by which the required repairs and improvements must be made;

(f) Include, if applicable, a specific time by which unsafe or imminently dangerous premises shall be closed, barricaded and/or vacated, or equipment placed out of service;

(g) Include a statement informing the property owner of the right to appeal pursuant to § 102; and

(h) Include a statement of the rights of the District of Columbia, pursuant to § 101.10, to abate the violation without the owner's consent if the owner fails to comply with the notice or file a timely appeal; to assess the costs of such abatement against the owner; and to place a tax lien on the property for the costs of such abatement.

107.6

(a) Where the Code Official issues an order to close and barricade a residential structure or dwelling unit pursuant to §§ 104 or 105, the closure order shall include all information required by § 107.5 and shall also include the following:

(i) The date by which tenants or occupants of the structure or unit are required to vacate the structure or unit; and

(ii) A statement informing tenants or occupants of the structure or unit of the right to appeal and/or request an expedited hearing pursuant to § 102.

(b) A copy of the closure order shall be provided to tenants in accordance with § 107.10.

(c) If any tenant or occupant fails to vacate the structure or unit within the time specified in the closure order, the Code Official is authorized to order removal of the tenant or occupant from the structure or unit.

107.7 The Code Official shall effect service of a notice or order (not including notices of infraction) upon the property owner or person(s) responsible for the violation or violations by one of the following methods, any of which shall be deemed proper service:

(a) Personal service on the property owner or persons responsible, or the agents thereof; or

(b) By electronic mail to the last-known electronic mail address of the person or business to be notified, provided that a copy of the notice or order is posted in a conspicuous place in or about the structure or premises affected by such notice; or

(c) Delivering the notice to the last known home or business address of the property owner or persons responsible as identified by the tax records, business license records, or corporate registration records, and leaving it with a person over the age of sixteen (16) years residing or employed therein; or

(d) Mailing the notice, via first class mail postage pre-paid, to the last known home or business address of the property owner or persons responsible or the agents thereof as identified by the tax records, business license records or corporate registration records; or

(e) If the notice is returned as undeliverable by the U.S. Post Office authorities, or if no address is known or can be ascertained by reasonable diligence, by posting a copy of the notice in a conspicuous place in or about the structure or premises affected by such notice.

107.8 After an inspection of a dwelling unit occupied by a tenant, the Code Official shall provide the tenant with a copy of any notice or order with respect to that unit issued to the owner pursuant to Chapters 1-8 of this title. This requirement will be satisfied by mailing a copy to the tenant by first-class mail, leaving a copy at the tenant's residence, or any other reasonable method in the Code Official 's discretion. Upon request to the Code Official by a person or agency acting on behalf of a tenant entitled to receive a copy of a notice or order under this section, with a written authorization from the tenant, such person or agency shall be provided with a copy of the notice or order by any reasonable method in the Code Official 's discretion.

107.9 In any instance where a violation of Chapters 1-8 of this title affect more than one tenant of a residential building or dwelling, including violations involving common space, the Code Official shall post a copy of any notice or order issued to the owner pursuant to § 107 for a reasonable time in one or more locations within the building or buildings in which the deficiency exists. The locations for posting

the notification shall be reasonably selected to give notice to all tenants affected. Any tenant directly affected by the violation(s) shall, upon request to the Code Official , be provided with a copy of the posted notification by any reasonable method in the Code Official ’s discretion. Upon request to the Director by a person or agency acting on behalf of a tenant entitled to receive a copy of a notice or order under this section, with a written authorization from the tenant, such person or agency shall be provided with a copy of the notice or order by any reasonable method in the Code Official ’s discretion.

107.10 Where closure notices or orders are issued pursuant to §§ 104 or 105 and the building or structure has multiple dwelling units, in addition to posting the notice pursuant to § 107.9, the Code Official shall leave a copy of the closure notice or order at each unit in the building or structure subject to closure

107.11 Signs, placards, tags or seals posted or affixed by the Code Official shall not be mutilated, destroyed, obstructed or tampered with, or removed without authorization from the Code Official .

107.12 The Code Official shall not be subject to any other tenant notification provisions, except as set forth in this § 107.

107.13 It shall be unlawful for the owner of any dwelling unit or structure upon whom a notice of violation or order has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another person or entity until the provisions of the notice or order have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice or order issued by the Code Official and shall furnish to the Code Official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice or order and fully accepting the responsibility without condition for making the corrections or repairs required by such notice or order.

108 TRANSITORY PROVISIONS

108.1 The laws and regulations in force on the date of adoption of this amendment to 14 DCMR shall remain in effect for the purposes specified in Subsection 108.2.

108.2 The laws and regulations in force on [the date of adoption of this amendment to 14 DCMR] (the “Transition Date”) shall apply with respect to violations or infractions committed or occurring prior to the Transition Date , whether the prosecutions or adjudications of those violations or infractions are begun before or after said date. Nothing herein shall extinguish, or be deemed to extinguish, liability for any conduct or conditions occurring prior to the Transition Date, provided, however, that where violative conduct or conditions occur or are committed for a continuous period of time, starting before and continuing after the Transition Date, the laws and regulations in force on the Transition Date shall apply with re-

spect to violations or infractions committed or occurring prior to the Transition Date.

109 REGISTRY OF DISPLACED TENANTS

109.1 If tenants are ordered to vacate a building as a result of a building closure under Sections 104 or 105, the Director shall coordinate with the Rent Administrator and the Office of the Tenant Advocate as fully as practicable to assist tenants to pursue rights to which they may be entitled under the Rental Housing Act.

110 [RESERVED]

111 REQUESTS FOR REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACT

111.1 This section implements the policy of the District of Columbia regarding requests for reasonable accommodation, as required by the Fair Housing Act, as amended, 42 U.S.C. § 3604(f)(3)(B) ("Fair Housing Act"), in its rules, policies, and procedures for handicapped individuals. The policy of the District of Columbia is to facilitate housing for individuals with disabilities and to comply fully with the spirit and the letter of the Fair Housing Act.

111.2 Individuals with disabilities seeking reasonable accommodation in housing programs provided by the District of Columbia Housing Authority (DCHA) should follow procedures set forth in 14 DCMR, Chapter 74.

111.3 Any person who is eligible under the Fair Housing Act may request a reasonable accommodation pursuant to the provisions of this chapter, as provided by 42 U.S.C. § 3604(f)(3)(B). A request for a reasonable accommodation does not affect a person's obligations to act in compliance with other applicable District laws and regulations not at issue in the requested accommodation.

111.4 All requests for reasonable accommodation under the Fair Housing Act shall be submitted to the Director, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Washington, D.C. 20014, or such office as the Mayor may assign or delegate.

111.5 All requests for reasonable accommodation shall be in writing. The Director, or his or her designee, will assist any individual with reducing a reasonable accommodation request to writing, upon request by that individual. Each reasonable accommodation request shall provide, at a minimum, the following information:

(a) Name and address of person(s) requesting accommodation;

(b) Name and address of dwelling owner;

(c) Name and address of dwelling at which accommodation is requested;

(d) Description of the requested accommodation and specific regulation or regulations for which accommodation is sought;

(e) Reason that the requested accommodation may be necessary in order for the person or persons with a handicap, as such term is defined by the Fair Housing Act, 42 U.S.C. § 3602(h), to use and enjoy the dwelling; and

(f) If the requested accommodation relates to the number of persons allowed to occupy a dwelling, the anticipated number of residents, including facility staff (if any).

111.6 The applicant shall mark as "CONFIDENTIAL" any information submitted with the application that the applicant believes should not be made public. The Director shall maintain this information in a confidential file separate from the application. Only agency personnel expressly authorized by the Director shall have access to the confidential file.

111.7 The Director, or his or her designee, or such other officer as the Director may assign or delegate, may conduct an appropriate inquiry into the request for reasonable accommodation and may:

(a) Grant the request;

(b) Grant the request subject to specified conditions; or

(c) Deny the request.

111.8 If necessary to reach a decision on the request for reasonable accommodation, the Director may request further information from the applicant consistent with the Act, specifying in detail the information required.

111.9 The Director may consult with other District agencies in assessing the impact of the requested accommodation on the rules, policies, and procedures of the District.

111.10 The Director shall issue a written final decision on the request not more than forty-five (45) days after receiving written request for reasonable accommodation; however, in the event that the Director requests further information under § 111.7, the running of this period shall be tolled from the date of the request through the date of the applicant's response.

111.11 The Director may consider the following criteria when deciding whether a request for accommodation is reasonable:

(a) Whether the requested accommodation would require a fundamental alteration of a legitimate District policy; and

(b) Whether the requested accommodation would impose undue financial or administrative burdens on the District government.

111.12 The Director shall set forth in writing the decision on the request for reasonable accommodation. If the Director denies the request in whole or in part, the Director shall explain in detail the basis of the decision, including the Director's findings on the criteria set forth in § 111.10. The Director's decision and notice shall be sent to the applicant by certified mail.

111.13 If the Director fails to render his or her decision on a request for reasonable accommodation within the time allotted by § 111.10, the request shall be deemed granted.

111.14 The Director's decision pursuant to § 111.12 shall be deemed a final decision of the District of Columbia government, and, therefore, there shall not be any further resort to administrative remedies.

111.15 The Director shall maintain a file of all requests for reasonable accommodation under the Fair Housing Act, and a file of all decisions made on such requests. The file may be reviewed in the Office of the Director upon request during regular business hours, or such other office as the Mayor may designate; provided, however, that any material identified as "CONFIDENTIAL" by the applicant as permitted by § 111.6 shall not be made available for public inspection.

111.16 Upon written notice to the Director, an applicant for a reasonable accommodation may withdraw the request without prejudice.

111.17 While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the dwelling that is the subject of the request shall remain in full force and effect.

199 DEFINITIONS

199.1 Where terms used in Chapters 1-8 of this title are not defined therein but are defined in the Construction Codes, such terms shall have the meanings ascribed to them as stated in the Construction Codes.

199.2 For the purpose of Chapters 1-8 of this title, the following words and terms shall have the meanings ascribed. Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming house," "rooming unit," "sleeping unit" or "housekeeping unit," are stated in Chapters 1-8, they shall be construed as though they were followed by the words "or any part thereof." Wherever the word or words "occupied," "is occupied," "used," or "is used" appear, such word or words

shall be construed as if followed by the words "or is intended, arranged or designed to be used or occupied".

Apartment – a dwelling unit.

Apartment house – Any building or part of a building in which there are three (3) or more dwelling units which are occupied, or offered for occupancy, for consideration.

Boarding house – Any building or part of a building where meals, or sleeping accommodations and meals, are furnished for a consideration, or offered for a consideration, to three (3) or more guests. A boarding house shall be considered a housing business if sleeping accommodations are furnished or offered on a monthly or longer basis.

Building Code – The 2012 International Building Code published by the International Code Council, and any subsequent editions thereof, as adopted by the District of Columbia with additions, insertions, deletions and changes as set forth in the 2013 District of Columbia Building Code Supplement, 12-A DCMR, or any successor thereto.

Code Official – The government official or other designated authority charged with the administration and enforcement of this code or portions thereof, or a duly authorized representative.

Construction Codes – The most recent edition of the codes published by the International Code Council, or by a comparable nationally recognized and accepted code development organization, as adopted by the District of Columbia with additions, insertions, deletions and changes as set forth in Title 12 of the District of Columbia Municipal Regulations (or any successor thereto).

Common space – Also referred to herein as "common areas." See § 202 of the Property Maintenance Code.

Director – The Director of the District of Columbia Department of Consumer and Regulatory Affairs.

Dwelling – A building that contains one (1) or two (2) dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

Dwelling (for purposes of Section 111) – Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families. See § 3604(f)(3)(B) of the Fair Housing Act, as amended (42 U.S.C. 3604(f)(3)(B)).

Dwelling, multiple – A building that contains more than two (2) dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes. A multiple dwelling may be occupied for permanent residence or transiently, as the more or less temporary abode of persons who are lodged with or without meals.

Dwelling unit – A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Existing Building Code- The 2012 International Existing Building Code published by the International Code Council, and any subsequent editions thereof, as adopted by the District of Columbia with additions, insertions, deletions and changes as set forth in the 2013 District of Columbia Existing Building Code Supplement, 12-J DCMR , or any successor thereto.

Fire Code – The 2012 International Fire Code published by the International Code Council, and any subsequent editions thereof, as adopted by the District of Columbia with additions, insertions, deletions and changes as set forth in the 2013 District of Columbia Fire Code Supplement, 12-H DCMR, or any successor thereto.

Habitation – Any building or part of any building used for living or sleeping purposes, including, but not limited to, buildings with dwelling units, sleeping units, housekeeping units or rooming units.

Hotel – A building or part of a building in which not less than thirty (30) habitable rooms or suites are reserved primarily for transient guests who rent the rooms or suites on a daily basis and where meals, prepared in a kitchen on the premises by the management or a concessionaire of the management, may be eaten in a dining room accommodating simultaneously not less than thirty (30) persons. The dining room shall be internally accessible from the lobby.

If kitchen or dining room facilities are operated by a concessionaire, the hotel licensee and its manager shall be liable for compliance with all regulations applicable to the kitchen and dining area, including the penalties under those regulations, unless otherwise specifically provided in Chapters 1-8 of this title.

Household – One (1) family related by blood, marriage, adoption, or foster agreement, or not more than six (6) persons who are not so related, living together as a single house-keeping unit; provided, that the term household shall include a religious community having not more than fifteen (15) members.

Housing Business – A business licensed, or required to be licensed, under D.C. Official Code § 47-2828 (2012 Repl.), including, but not limited to, a residential building with a dwelling unit or rooming unit offered for rent or lease, regardless of whether the housing business owner or operator also occupies the building.

A housing business shall not include any premises used for lodging.

Lodging - A building or part thereof where, for compensation, customers are provided with, or offered, temporary housing for an agreed upon term of less than thirty (30) consecutive days. Lodging includes, but is not limited to, hotels, motels, inns, and bed and breakfast establishments. Lodging also includes dwellings, or parts of dwellings, that the owner also occupies, where the owner furnishes for a consideration, or offers for a consideration, sleeping accommodations on a transient basis to three (3) or more guests. Lodging does not include emergency shelters.

Motel – a building containing at least thirty (30) non-connecting rooming units or sleeping units, reserved exclusively for transient guests. Each unit must have a private bath and at least one (1) private parking space. The term "motel" shall include motor courts, tourist courts, and motor lodges.

Occupant – See § 202 of the Property Maintenance Code.

Operator – See § 202 of the Property Maintenance Code. The term "operator" when used in Chapters 1-8 of this title also includes any agent of the operator.

Owner – See § 202 of the Property Maintenance Code. The term "owner" when used in Chapters 1-8 of this title also includes any agent of the owner or any operator appointed by the owner to conduct the business of the owner.

Person – See § 202 of the Property Maintenance Code.

Premises – See § 202 of the Property Maintenance Code.

Property Maintenance Code – The 2012 Property Maintenance Code published by the International Code Council, and any subsequent editions thereof, as adopted by the District of Columbia with additions, insertions, deletions and changes as set forth in the 2013 District of Columbia Property Maintenance Code Supplement, 12-G DCMR, or any successor thereto.

Property Manager – See 14 DCMR § 204.1.

Recyclable- as defined in the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988, effective March 16, 1989 (D.C. Law 7-226; D.C. Official Code §§ 8-1001 *et seq.* (2012 Repl.)).

Rent Administrator - The head of the Rental Accommodations Division of the Department of Housing and Community Development or the successor thereto.

Rental Housing Act - The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code §§ 42-3501.01 *et seq*. (2012 Repl. & 2014 Supp.)).

Rental unit – Any part of a building or structure which is rented or offered for rent for residential (non-transient) occupancy, including, but not limited to, an apartment, dwelling unit, rooming unit, sleeping unit, housekeeping unit, single-family house and the land appurtenant thereto, suite of rooms, or duplex.

Residential building – Any building which is wholly or partly used or intended to be used for living and sleeping by human occupants.

Residential premises – Any building wholly or partly used or intended to be used for living and sleeping by human occupants; any fences, walls, sheds, garages, or other accessory buildings or structures appurtenant to the building; and the lot, plot or parcel of land on which the building and appurtenant structures are located.

Rooming house – Any building or part of a building containing sleeping accommodations occupied for a consideration by, or offered for occupancy for a consideration to, three (3) or more persons who are not members of the household of the owner or lessee of the building or part of the building, and which accommodations are not under the exclusive control of the occupants of the accommodations. A rooming house may be a housing business or a transient housing business depending on whether or not the accommodations are occupied or furnished for occupancy by transient guests.

Rooming unit – Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

Sleeping unit – See § 202 of the Property Maintenance Code.

Structure - See § 202 of the Property Maintenance Code.

Tenant – Any person, including a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person.

Transient – less than thirty (30) consecutive days.

Transient housing business - A business licensed, or required to be licensed, under D.C. Official Code § 47-2828 (2012 Repl.) and Chapter 7 of this title, that provides or offers lodging for a consideration. Transient housing businesses include, but are not limited to, hotels, motels, inns, rooming houses, bed and breakfast establishments and boarding houses. A transient housing business also includes any building or part of a building that the owner also occupies where customers are provided with, or offered, lodging, for consideration for a period of less than thirty (30) consecutive days.

CHAPTER 2: HOUSING BUSINESS LICENSES

SECTION
200 GENERAL LICENSING REQUIREMENTS
201 APPLICABILITY
202 INSPECTION OF PREMISES
203 REGISTERED AGENT FOR NON-RESIDENT LICENSEES
204 LICENSING OF PROPERTY MANAGERS
205 RENEWAL OF HOUSING BUSINESS LICENSES
206 DENIAL, SUSPENSION AND REVOCATION OF LICENSES
207 LICENSE AND USER FEES
299 DEFINITIONS

200 GENERAL LICENSING REQUIREMENTS

200.1 The provisions of this chapter shall be applicable to residential housing businesses ("housing businesses") as defined in § 199.2.

200.2 No person shall operate a housing business, as that term is defined in § 199.2, in any premises in the District of Columbia without first receiving a business license for the premises from the Department of Consumer and Regulatory Affairs (Department).

200.3 A housing business licensee shall conspicuously post the license or a copy of the license on the premises indicated on the license, and such license shall be available for inspection by any authorized District government official or any person lawfully residing at the premises.

200.4 Each applicant for a housing business license shall, as a condition to the issuance of a license, indicate on the license application the name and contact information of the person responsible for the daily management of the premises, which includes the facilitation of maintenance and repairs. Except for property owners who manage their own premises, such person shall be a Property Manager licensed in the District of Columbia as provided in Section 204.

200.5 The appointment or employment of a person to conduct property maintenance and repairs shall be maintained during the period of time for which a license is issued; whenever any change is made in the appointment or employment of such person, or the contact information for such person, the licensee shall deliver to the Director of the Department of Consumer and Regulatory Affairs a written notice of the change not later than five (5) days after the change.

200.6 For purposes of Chapter 2, the person owning and operating a housing business shall be the owner of the premises where such business is conducted; provided, however, where premises are leased or otherwise legally transferred to another person, and such person (a) is operating a housing business on the premises, or in any part thereof, and (b) is legally responsible for maintenance and repairs of said premises, then such person shall be deemed to be the owner and operator of the housing business.

201 APPLICABILITY

201.1 Housing business licenses shall be required for all residential housing businesses, including, but not limited to, the following:

(a) Rental of a detached one-family dwelling or townhouse for a term of ninety days or more, which shall include the rental of duplexes, individual condominium units, and individual rooms (including individual rooms in a residential building that the licensee also occupies);

(b) Rental of a basement apartment, or accessory structure in a single-family home where the main residence is occupied by the property owner or another tenant;

(c) Apartment houses, which shall include the rental of buildings with three (3) or more dwelling units;

(d) Boarding houses or rooming houses where sleeping accommodations are furnished or offered to guests on a monthly or longer basis; and

(e) Any part of a building or structure which is rented or offered for residential occupancy for thirty (30) or more consecutive days.

201.2 A valid Certificate of Occupancy issued by the Department shall be required at the time of application for licensure, except that a certificate of occupancy shall not be required for a one-family dwelling.

201.3 A housing business license shall not be required for rental to one household for a term of less than ninety (90) days of (a) a detached one-family dwelling, (b) a townhouse, (c) a condominium unit, or (d) an individual room in any of the foregoing.

201.4 Each housing provider, as defined in the Rental Housing Act (D.C. Official Code § 42-3501.03(15) (2014 Supp.)), shall file a registration/claim of exemption with the Department of Housing and Community Development's Rental Accommodations Division at the time of application for licensure, in accordance with Chapter 41 of this title, unless excluded pursuant to § 42-3502.05(e) (2012 Repl.).

202 INSPECTION OF PREMISES

202.1 As a condition of licensure, the owner or operator of a housing business shall allow the Department, and any other District government agency responsible for enforcement of this title and the Construction Codes, to inspect the premises of its housing business.

202.2 The owner or operator of a housing business shall:

(a) Comply with all statutes and regulations relating to:

(1) Rodents, waste storage and disposal, and maintenance of waste containers;

(2) Maintenance of common spaces under the licensee's control so that they are free of trash and debris; and

(3) Height of grass or weeds;

(b) Maintain the premises in a manner that complies with the applicable provisions of the D.C. Official Code, the Property Maintenance Code, the Fire Code, Chapters 1-8 of this title and other applicable District of Columbia laws and regulations pertaining to fire, life safety and public welfare; and

(c) Comply with all other District of Columbia and federal statutes and regulations that govern housing businesses as applicable.

202.3 The Director shall determine whether a licensee is in compliance with all applicable provisions of the business license laws and regulations and shall require that the building or part of the building to be licensed complies with all laws and regulations.

202.4 In accordance with § 202.1, the Director may develop an inspection program establishing a regular system of inspections for housing business licensees, with more frequent inspections for any licensee found to be in violation of the applicable statutes or regulations.

203 REGISTERED AGENT FOR NON-RESIDENT LICENSEES

203.1 Any non-resident person who owns or operates a housing business in the District of Columbia, or a licensee that is a non-resident owner of at least one (1) rental unit in the District of Columbia, shall appoint and continuously maintain a registered agent for service of process.

203.2 The non-resident owner or operator shall appoint a registered agent by filing a written statement with the Director on a prescribed form.

203.3 The registered agent shall be an individual who is a resident of the District of Columbia or an organization incorporated in the District of Columbia.

203.4 The non-resident owner or operator shall, within seven (7) business days of occurrence, file a written statement notifying the Director of any change of registered agent, or any change in name, address or other information about the agent provided pursuant to § 203.2.

203.5 Pursuant to D.C. Official Code § 42-903(b)(2) (2012 Repl.) and Mayor's Order 2002-33, effective February 11, 2002, the Director shall serve as the registered agent for the non-resident owner if:

(a) A registered agent is not appointed under § 203.1; or

(b) The individual or organization appointed under § 203.1 ceases to serve as the resident agent and no successor is appointed.

203.6 Pursuant to D.C. Official Code § 42-903(d) (2012 Repl.), a non-resident owner or operator of one (1) or more rental units in the District in violation of this section shall be subject to a penalty of three hundred dollars ($300).

204 LICENSED PROPERTY MANAGER REQUIREMENT

204.1 Each housing business licensee shall designate the person responsible for the daily management of the property, which includes the facilitation of maintenance and repairs on the property, as provided in Subsections 200.4 and 200.5.

204.2 Except for property owners who manage their own buildings, the person designated under Sections 200.4 and 200.5 shall be licensed as a Property Manager in accordance with D.C. Official Code § 47-2853.01 *et seq*. (2012 Repl.), and Chapter 26 of Title 17 of the District of Columbia Municipal Regulations.

204.3 For purposes of this chapter, the term "Property Manager" means an agent for the owner of real estate in all matters pertaining to property management, as defined in D.C. Official Code § 47-2853.141 (2012 Repl.), which are under his or her direction, and who is paid a commission, fee, or other valuable consideration for his or her services.

204.4 The Property Manager shall comply with the requirements of D.C. Official Code §§ 47-2853.141 through 47-2853.143 (2012 Repl.), and any regulations issued pursuant thereto.

205 RENEWAL OF HOUSING BUSINESS LICENSES

205.1 The Director may, upon application by a licensee, issue a renewal of a housing business license subject to subsequent determination that all provisions of the applicable laws and regulations are being observed by the licensee.

205.2 The premises of each license renewal applicant shall be subject to the inspection provisions of this chapter.

206 DENIAL, SUSPENSION, AND REVOCATION OF LICENSES

206.1 Refusal to permit any authorized District of Columbia official to inspect the premises occupied or to be occupied by a housing business shall be cause for withholding the issuance of a license for the premises until such time as inspection is permitted; provided, that the refusal of any residential tenant to permit such an inspection shall not result in the revocation or suspension of the housing business license, nor shall such refusal result in the assessment of penalties against the owner or operator of a housing business.

206.2 The Director may refuse to issue or renew, or may suspend or revoke, a license issued under this chapter on any of the following grounds:

(a) Refusal to permit any authorized District of Columbia official to inspect the premises owned or operated by a licensed housing business;

(b) Conviction of the business license holder for any criminal offense involving fraudulent conduct arising out of or based on the business being licensed;

(c) Willful or fraudulent circumvention by the business operator of any provision of District statute or regulation relating to the conduct of the business;

(d) Operation of the business in violation of the District's Zoning Regulations;

(e) Failure to maintain any qualification for licensure;

(f) Employment of any fraudulent or misleading device, method, or practice relating to the conduct of the business; or

(g) The making of any false statement in the license application.

(h) Multiple, uncorrected violations of Chapters 1-8 of this title and the Property Maintenance Code.

206.3 All qualifications set forth in this chapter as prerequisite to the issuance of a license shall be maintained for the entire license period.

206.4 [RESERVED]

206.5. Revocations or suspensions of housing business licenses are proposed actions and shall become final upon occurrence of one of the following conditions:

(a) Fifteen (15) business days after service of the notice of revocation or suspension in accordance with § 206, when the license holder fails to request a hearing from the Office of Administrative Hearings within the filing period prescribed in § 206.11; or

(b) Upon issuance of an order by the Office of Administrative Hearings affirming the license revocation or suspension following a hearing requested by the license holder pursuant to § 206.11.

206.6 The license holder shall be provided written notice of the Code Official 's order to revoke or suspend the license. This notice shall include the following:

(a) A copy of the written order;

(b) A statement of the grounds for revocation or suspension of the license; and

(c) A statement advising the license holder of the right to appeal the revocation or suspension in accordance with § 206.

206.7 The Code Official shall effect service of a notice to revoke or suspend a housing business license by one of the following methods:

(a) Personal service on the license holder or the license holder's agent;

(b) Delivering the notice to the last known home or business address of the license holder as identified by the license application, the tax records, or business license records, and leaving it with a person over the age of sixteen (16) residing or employed therein;

(c) Mailing the notice, via first class mail at least ten (10) days prior to the date of the proposed action, to the last known home or business address of the license holder or the license holder's agent as identified by the license application, the tax records, or business license records; or

(d) If the notice is returned as undeliverable by the Post Office authorities, or if no address is known or can be ascertained by reasonable diligence, by posting a copy of the notice in a conspicuous place in or about the structure affected by such notice.

206.8 For the purposes of this section, respondent's agent shall mean a general agent, employee, registered agent or attorney of the respondent.

206.9 Once the initial notice has been served:

(a) The respondent shall notify the Department within five (5) days of service of all changes of address or of a preferred address to receive all future notices regarding the revocation. This notification by the respondent shall be in writing; and

(b) All other notices, orders, or any other information regarding the revocation may be sent by the Department via first class mail.

206.10 The license holder may request a hearing by the Office of Administrative Hearings (OAH) as provided in § 206.11.

206.11 The license holder may appeal a notice of revocation or suspension to the Office of Administrative Hearings (OAH) no later than ten (10) business days after service upon the license holder of written notice of the revocation or suspension, pursuant to Chapter 18A of Title 2 of the D.C. Official Code (D.C. Official Code §§ 2-1801.01 *et seq*. (2012 Repl. & 2014 Supp.)) and any regulations promulgated thereunder.

206.12 Within ten (10) business days after the revocation or suspension of a housing business license becomes final in accordance with § 206.5, DCRA shall notify the Rent Administrator of the revocation or suspension, and shall provide the Rent Administrator with a copy of the Code Official 's notice of revocation or suspension, or a copy of the OAH decision relating thereto.

206.13 The Director's refusal to issue or renew a housing business license may be appealed to OAH pursuant to the provisions of § 102.1.

207 LICENSE AND USER FEES

207.1 The Department is authorized to collect

An annual rental unit fee in the amount of twenty-one dollars and fifty cents ($21.50) per rental unit as established by the Rental Housing Act (D.C. Official Code § 42-3504.01 (2012 Repl. & 2014 Supp.)) which shall be collected at the initial issuance of the housing business license and biennially at the renewal of the license in an amount of forty-three dollars ($43) per rental unit.

207.2 The Department is authorized to establish and collect the following fees, applicable to housing businesses, in addition to the fees required for obtaining the business license:

(a) A re-inspection fee of ninety dollars ($90) pursuant to D.C. Official Code § 42-3131.01(a)(1) (2012 Repl.), for each inspection of a housing business premises to determine whether noted violation(s) of this title or of the Construction Codes including, but not limited to, Property Maintenance

Code violations, have been corrected within the time period specified in the notice, where the noted violation has not been corrected. The fee shall be collected after the re-inspection has occurred.

(b) An initial administrative fee of one hundred seventy-five dollars ($175) for any abatement undertaken by the Department to correct conditions violative of this title or the Construction Codes. This fee shall be in addition to the actual cost of the abatement or the fair market value of the abatement, whichever is higher, and all expenses incident thereto, as authorized by D.C. Official Code § 42-3131.01(d) (2012 Repl.). Where the corrective actions are undertaken by Department employees, each person-hour of labor performed on the abatement shall be assessed at the rate of sixty dollars ($60).

(c) To cover the cost of the Department's proactive inspection program, a fee of thirty-five ($35) dollars per unit on rental accommodations of three (3) units or more shall be charged at the issuance and renewal of the license. The maximum fee for each building owned or operated by the licensee shall be two thousand dollars ($2,000) every two (2) years. The Department is authorized, at the Director's discretion, to combine the proactive inspection fee with the fees for housing business license issuance and renewal in order to facilitate billing and collection of the fees.

299 DEFINITIONS

299.1 The provisions and definitions set forth in § 199 shall be applicable to this chapter.

CHAPTER 3: LEASES AND SECURITY DEPOSITS

SECTION
300 LEASE PROVISIONS
301 IMPLIED WARRANTY AND OTHER REMEDIES
302 VOIDING LEASE FOR VIOLATIONS OF PROPERTY MAINTENANCE CODE
303 SIGNED COPIED OF AGREEMENTS AND APPLICATIONS
304 PROHIBITED WAIVER CLAUSES IN LEASE AGREEMENTS
305 INSPECTION OF PREMISES AFTER BREACH OF WARRANTY OR VOIDED LEASE
306 WRITTEN RECEIPTS FOR PAYMENTS BY TENANT
307 PROHIBITION OF RETALIATORY ACTS AGAINST TENANTS
308 SECURITY DEPOSITS
309 REPAYMENT OF SECURITY DEPOSITS TO TENANTS
310 RETURN OF SECURITY DEPOSIT: INSPECTION OF PREMISES
311 INTEREST ON SECURITY DEPOSIT ESCROW ACCOUNTS
312 [RESERVED]
313 [RESERVED]
314 [RESERVED]
315 DISCLOSURES REQUIRED
399 DEFINITIONS

300 LEASE PROVISIONS

300.1 Every owner of a rental unit shall advise each tenant in writing, either in the lease between the parties or otherwise, of the maximum number of occupants permitted in the rental unit leased or rented to that tenant.

300.2 In addition to any information that must be provided to tenants under the Rental Housing Act, the owner of a rental unit shall, at the commencement of any tenancy, provide to each tenant a copy of the provisions of Chapter 3 and a copy of the following sections of Chapter 1 of this title:

(a) Section 101 (Enforcement and Penalties); and

(b) Section 107 (Copies of Notices and Orders).

301 IMPLIED WARRANTY AND OTHER REMEDIES

301.1 There shall be deemed to be included in the terms of any lease or rental agreement covering a rental unit an implied warranty that the owner will maintain the premises in compliance with the Property Maintenance Code and Chapters 1-8 of this title. Nothing herein shall be deemed to nullify or supersede any tenant maintenance responsibilities established by the Property Maintenance Code or Chapters 1-8 of this title.

301.2 The rights, remedies, and duties set forth in this chapter and the Property Maintenance Code shall not be deemed to be exclusive of one another unless expressly so declared or to preclude a court of law from determining that practices, acts, lease provisions and other matters not specifically dealt with in this chapter are contrary to public policy, unconscionable, or otherwise unlawful.

302 VOIDING LEASE FOR VIOLATION OF THE PROPERTY MAINTENANCE CODE

302.1 The leasing of any rental unit, including associated common space, which the owner knows or should reasonably know at the beginning of the tenancy is unsafe or unsanitary due to violations of the Property Maintenance Code or Chapters 1-8 of this title (whether or not those violations are the subject of a notice issued under the Property Maintenance Code or Chapters 1-8), shall render void the lease or rental agreement for the rental unit.

302.2 After the beginning of the tenancy, if the rental unit becomes unsafe or unsanitary due to violations of the Property Maintenance Code or Chapters 1-8 of this title within that unit or in the common space of the premises (whether or not the violations are the subject of a notice issued under the Property Maintenance Code or Chapters 1-8 of this title), the lease or rental agreement for the unit shall be rendered void if both of the following apply:

(a) The violations did not result from the intentional acts or negligence of the tenant or his or her invitees or guests; and

(b) The violations are not corrected within the time allowed for correction under a notice or order issued pursuant to the Property Maintenance Code or Chapters 1-8 of this title (or, if a notice or order has not been issued, within a reasonable time after the owner or operator has knowledge or reasonably should have knowledge of the violations).

303 SIGNED COPIES OF AGREEMENTS AND APPLICATIONS

303.1 In each lease or rental of a rental unit entered into after June 12, 1970, the owner or operator shall provide to the tenant upon execution (or within seven (7) days after execution) an exact, legible, completed copy of any agreement or application which the tenant has signed.

303.2 This section shall not be subject to the notice requirements of Section 107 of Chapter 1 of this title.

304 PROHIBITED WAIVER CLAUSES IN LEASE AGREEMENTS

304.1 Any provision of any lease or agreement contrary to, or providing for a waiver of, the terms of this chapter, or § 101 of Chapter 1, or § 107.7 of the Property Maintenance Code shall be void and unenforceable.

304.2 No person shall cause any provision prohibited by this section to be included in a lease or agreement respecting the use of the property in the District of Columbia, or demand that any person sign a lease or agreement containing any such provision.

304.3 No owner shall cause to be placed in a lease or rental agreement any provision exempting the owner or premises from liability or limiting the liability of the owner or the residential premises from damages for injuries to persons or property caused by or resulting from the negligence of the owner (or the owner's agents, servants, or employees) in the operation, care, or maintenance of the leased premises, or any facility upon or portion of the property of which the leased premises are a part.

304.4 No owner shall place (or cause to be placed) in a lease or rental agreement a provision waiving the right of a tenant of residential premises to a jury trial or administrative hearing, or requiring that the tenant pay the owner's court costs or legal fees, or authorizing a person other than the tenant to confess judgment against a tenant. This subsection shall not preclude a court from assessing court or legal fees against a tenant in appropriate circumstances.

304.5 The provisions of this section shall not be subject to any notice requirements of Section 107 of Chapter 1 of this title.

305 INSPECTION OF PREMISES AFTER BREACH OF WARRANTY OR VOIDED LEASE

305.1 Following a judicial determination that the owner has breached the implied warranty of habitability applying to the premises (under § 301 of this chapter), or following a judicial determination that a lease or rental agreement is void (under § 301 of this chapter), the owner shall obtain a certificate from the Director that the premises are in compliance with the Property Maintenance Code prior to the next reletting of any rental units subject to the judicial determination.

306 WRITTEN RECEIPTS FOR PAYMENTS BY TENANT

306.1 In each lease or rental of a rental unit, the owner shall provide written receipts for all monies paid to him or her by the tenant as rent, security, or otherwise, unless the payment is made by personal check.

306.2 Each receipt issued under this section shall state the following:

(a) The exact amount received;

(b) The date the monies are received; and

(c) The purpose of the payment.

306.3 Each receipt shall also state any amounts still due which are attributable to late charges, court costs, or any other such charge in excess of rent.

306.4 If payment is made by personal check, and there is a balance still due which is attributable to late charges, court costs, or any other such charge in excess of rent, the owner shall provide a receipt stating the nature of the charges and the amount due.

306.5 The provisions of this section shall not be subject to the notice requirements of § 107 of Chapter 1 of this title.

307 PROHIBITION OF RETALIATORY ACTS AGAINST TENANTS

307.1 No action or proceeding to recover possession of a rental unit may be brought against a tenant, nor shall an owner otherwise cause a tenant to quit a rental unit involuntarily, in retaliation for any of the actions listed in § 307.3.

307.2 No demand for an increase in rent from the tenant, nor decrease in the services to which the tenant has been entitled, nor increase in the obligations of a tenant shall be made in retaliation against a tenant for any of the actions listed in § 307.3.

307.3 This section prohibits retaliation by an owner or an agent of an owner against a tenant for taking any of the following actions:

(a) The making of a good faith complaint or report to the owner or a governmental authority concerning housing deficiencies, directly by the tenant or through a tenant organization;

(b) The good faith organization of a tenant organization, or membership in a tenant organization;

(c) The good faith assertion of rights under Chapters 1-8 of this title, including rights under § 301 and § 302 of this chapter, and § 101 of Chapter 1.

308 SECURITY DEPOSITS

308.1 For purposes of this chapter, the term “security deposit” shall mean all monies paid to the owner by the tenant as a deposit or other payment made as security for performance of the tenant’s obligations in a lease or rental of the property.

308.2 Any security deposit or other payment required by an owner as security for performance of the tenant's obligations in a lease or rental of a rental unit shall not exceed an amount equivalent to the first full month's rent charged to that tenant for the unit, and shall be charged only once by the owner to the tenant with regard to that unit.

308.3 All monies paid to an owner by tenants for security deposits or other payment made as security for performance of the tenant's obligations shall be deposited by the owner in an interest bearing escrow account established and held in trust in a financial institution in the District of Columbia insured by a federal or state agency for the sole purposes of holding such deposits or payments.

308.4 The owner of more than one residential building may establish one (1) escrow account for holding security deposits or other payments by the tenants of those buildings.

308.5 For each security deposit or other payment covered by this section, the owner shall clearly state in the lease or agreement or on the receipt for the deposit or other payment the terms and conditions under which the payment was made.

308.6 The owner or operator shall post in the lobby of the building and rental office at the end of each calendar year, the following information: where the tenants' security deposits are held and what the prevailing rate was for each six- month period over the past year. At the end of a tenant's tenancy, the housing provider shall list for the tenant the interest rate for each six- month period during the tenancy.

308.7 The provisions of this section shall not be applicable to Federal or District of Columbia agencies' dwelling units leased in the District of Columbia, or to units for which rents are Federally-subsidized.

308.8 The Office of Administrative Hearings (OAH) is authorized to adjudicate complaints for the non-return of tenant security deposits and for the nonpayment of interest on tenant security deposits.

309 REPAYMENT OF SECURITY DEPOSITS TO TENANTS

309.1 Within forty-five (45) days after the termination of the tenancy, the owner shall do one of the following:

(1) Tender payment to the tenant, without demand, of any security deposit and any similar payment paid by the tenant as a condition of tenancy in addition to the stipulated rent, and any interest due the tenant on that deposit or payment as provided in § 311; or

(2) Notify the tenant in writing, to be delivered to the tenant personally or by certified mail at the tenant's last known address, of the owner's intention

to withhold any security deposit or other monies and apply the monies toward defraying the cost of expenses properly incurred under the terms and conditions of the security deposit agreement.

309.2 The owner, within thirty (30) days after notifying the tenant pursuant to § 309.1 (2) of the owner's intention to withhold the security deposit or other monies, shall tender a refund of the balance of the deposit or other payment, including interest not used to defray such expenses, and at the same time give the tenant an itemized statement of the repairs and other uses to which the monies were applied and the cost of each repair or other use.

309.3 Failure by the owner to comply with § 309.1 and § 309.2 of this section shall constitute prima facie evidence that the tenant is entitled to full return, including interest as provided in § 311, of any deposit or other payment made by the tenant as security for performance of his or her obligations or as a condition of tenancy, in addition to the stipulated rent.

309.4 Failure by the owner to serve the tenant personally or by certified mail, after good faith effort to do so, shall not constitute a failure by the owner to comply with § 309.1 and § 309.2.

309.5

(a) Any housing provider violating the provisions of this section by failing to return a security deposit rightfully owed to a tenant in accordance with the requirements of this section shall be liable for the amount of the deposit withheld or, in the event of bad faith, for treble that amount.

(b) For the purposes of this paragraph, the term "bad faith" means any frivolous or unfounded refusal to return a security deposit or other similar payment, as required by law, that is motivated by a fraudulent, deceptive, misleading, dishonest, or unreasonably self-serving purpose and not by simple negligence, bad judgment, or an honest belief in the course of action taken.

310 RETURN OF SECURITY DEPOSIT: INSPECTION OF PREMISES

310.1 In order to determine the amount of the security deposit or other payment to be returned to the tenant, the owner may inspect the rental unit within three (3) days, excluding Saturdays, Sundays, and holidays, before or after the termination of the tenancy.

310.2 The owner or owner's agent shall conduct the inspection, if the inspection is to be conducted, at the time and place specified in the notice provided to the tenant pursuant to this section.

310.3 The owner shall notify the tenant in writing of the time and date of the inspection.

310.4 The notice of inspection shall be delivered to the tenant, or at the rental unit in question, at least ten (10) days before the date of the intended inspection.

311 INTEREST ON SECURITY DEPOSIT ESCROW ACCOUNTS

311.1 The interest in the escrow account described in § 308.3 on all money paid by the tenant prior to or during the tenancy as a security deposit, decorating fee, or similar deposit or fee, shall commence on the date the money is actually paid by the tenant and shall accrue at not less than the statement savings rate then prevailing on January 1st and on July 1st for each six- (6-) month period (or part thereof) of the tenancy which follows those dates. On those dates, the statement savings rate in the District of Columbia financial institution in which the escrow account is held shall be used. All interest earned shall accrue to the tenant except as provided in § 309.

311.2 Interest on an escrow account shall be due and payable by the owner to the tenant upon termination of any tenancy of a duration of twelve (12) months or more, unless an amount is deducted under procedures set forth in § 309.1 and § 309.2. Any housing provider violating the provisions of this section by failing to pay interest on a security deposit escrow account that is rightfully owed to a tenant in accordance with the requirements of this section, shall be liable to the tenant, as applicable, for the amount of the interest owed, or in the event of bad faith, for treble that amount. For the purposes of this paragraph, the term 'bad faith' means any frivolous or unfounded refusal to pay the interest on the security deposit, as required by law, that is motivated by a fraudulent, deceptive, misleading, dishonest, or unreasonably self-serving purpose and not by simple negligence, bad judgment, or an honest belief in the course of action taken. Any housing provider who willfully violates the provisions of this section by failing to pay interest on a security deposit escrow account that is rightfully owed to a tenant in accordance with the requirements of this section shall be subject to a civil fine of not more than $5,000 for each violation.

311.3 If the housing provider invests the security deposit in an account with an interest rate that exceeds that of the statement savings rate as required in § 311.1, the housing provider may apply up to thirty percent (30%) of the excess interest for administrative costs or other purposes.

311.4 Except in cases where no interest is paid to the tenant as provided in § 311.2, the owner shall not assign the account or use it as security for loans.

311.5 It is the intent of this section that the account referred to in this section and § 309 shall be used solely for the purpose of securing the lessees' performance under the lease.

311.6 Sections 309-311 shall not be subject to the notice requirements of § 107 of Chapter 1 of this title.

312 [RESERVED]

313 [RESERVED]

314 [RESERVED]

315 DISCLOSURES REQUIRED

315.1 At the time a prospective tenant files an application to lease any rental unit, and prior to the acceptance of a nonrefundable application fee or security deposit, the owner of the housing business shall provide the disclosures required by § 222 of the Rental Housing Act (D.C. Official Code § 42-3502.22(b)(1)).

315.2 A violation of this section shall be adjudicated pursuant to D.C. Official Code §42-3502.16 (2012 Repl.) or by a court of competent jurisdiction.

399 DEFINITIONS

399.1 The provisions and definitions set forth in § 199 shall be applicable to this chapter.

CHAPTER 4: RESPONSIBILITIES OF HOUSING BUSINESSES

SECTION
400 RESPONSIBILITIES OF HOUSING BUSINESSES
499 DEFINITIONS

400 RESPONSIBILITIES OF HOUSING BUSINESSES

400.1 The owner or operator of a housing business shall comply with the provisions of this title and of the Property Maintenance Code as applicable including, but not limited to, the following provisions of the Property Maintenance Code:

(a) Exterior Property Areas (12-G DCMR § 302);

(b) Exterior Structure (12-G DCMR 304);

(c) Interior Structure (12-G DCMR § 305);

(d) Pest Elimination (12-G DCMR § 309);

(e) Light, Ventilation and Occupancy Limitations (12-G DCMR Chapter 4);

(f) Plumbing Facilities and Fixture Requirements (12-G DCMR Chapter 5);

(g) Mechanical and Electrical Requirements (12-G DCMR Chapter 6); and

(h) Fire Safety Requirements (12-G DCMR Chapter 7).

400.2 The provisions of the Property Maintenance Code are intended to supersede any property maintenance provisions now or previously set forth in Title 14 applicable to housing businesses, and, any such property maintenance provisions shall be enforced pursuant to the administrative and enforcement provisions set forth in Chapter 1 of the Property Maintenance Code, without precluding any private remedies that may be available.

400.3 No owner or operator of a housing business shall rent or offer to rent or permit the occupancy of any rental unit which is in violation of the provisions of the Property Maintenance Code or Chapters 1-8 of this title.

400.4 The owner or operator of a housing business, in addition to any duties imposed upon such owner or operator by Chapters 1-8 of this title, shall be responsible for compliance with the requirements of the Property Maintenance Code, except insofar as responsibility for compliance is imposed upon the tenant alone pursuant to the provisions of the Property Maintenance Code or this title.

400.5 No person shall rent or offer for rent any part of a building or structure for residential occupancy, or operate any housing business in any building, or part of a building, in which there is another business, trade, or commercial activity from which noxious gases, fumes, mists, vapors, dusts, offensive odors, or excessive noises arise or are generated.

400.6 The owner or operator of a housing business shall provide to each tenant, when the tenant first enters into possession of a rental unit, an adequate lock and key for each door used or capable of being used as an entrance to or egress from the unit, and shall keep each lock in good repair. Each lock shall be capable of being locked from inside and outside the unit.

400.7 When furnished by the owner or operator of a housing business, mattresses shall not be made of moss, sea grass, excelsior, husks, or shoddy.

499 DEFINITIONS

499.1 The provisions and definitions set forth in § 199 shall be applicable to this chapter.

CHAPTER 5: TENANT RESPONSIBILTIES

SECTION
500 RESPONSIBILITIES OF TENANTS
599 DEFINITIONS

500 RESPONSIBILITIES OF TENANTS

500.1 A tenant shall be responsible for complying with the provisions of this title and the Property Maintenance Code that are applicable to him or her including, but not limited to, the following provisions of the Property Maintenance Code:

(a) Rubbish and Garbage (12-G DCMR § 308);

(b) Pest Elimination (12-G DCMR § 309); and

(c) Defacement of Property (12-G DCMR § 302.9).

In addition, the tenant shall be responsible for a violation of the Property Maintenance Code and this title to the extent that he or she has the power to prevent the occurrence of the violation. A tenant has the power to prevent the occurrence of a violation if the violation is caused by the tenant's intentional acts or negligence, or the intentional acts or negligence of the tenant's invitees or guests, including any and all persons occupying or visiting the tenant's habitation with the express or implied permission of the tenant.

The fact that a tenant is or may be liable for a violation of the Property Maintenance Code or any other law or is found liable for civil or criminal penalties does not relieve the owner of the obligation to keep the premises, and every part thereof, in good repair, and to comply with all applicable provisions of this title and the Property Maintenance Code.

500.2 In addition to the tenant's responsibilities under § 500.1, the tenant shall specifically be responsible for the following:

(a) Keeping the part of the premises that the tenant occupies and uses, including common areas, as clean and sanitary as the conditions of the premises permit;

(b) Disposing from the tenant's rental unit all rubbish, garbage, and other organic or flammable waste in a clean, safe, and sanitary manner;

(c) Keeping all plumbing fixtures as clean and sanitary as the condition of those fixtures permits;

(d) Properly using and operating all electrical, gas, plumbing, and heating fixtures and appliances.

(e) Providing as needed for the tenant's own use sufficient, lawful and separate receptacles for the storage of ashes, garbage, recyclable materials, and refuse in the tenant's rental unit.

(f) Placing all garbage, refuse, recyclable materials, and ashes from each rental unit in receptacles and transferring to the designated place of common storage on the premises, unless the collection and transfer is provided by the owner or operator.

500.3 A tenant shall not do, or permit any person on the premises with the tenant's permission to do, any of the following:

(a) Willfully or wantonly destroy, deface, damage, impair, or remove any part of the premises, structure or dwelling unit; or

(b) Willfully or wantonly destroy, deface, damage, impair, or remove any part of the facilities, equipment, or appurtenances to the dwelling unit.

500.4 Failure of a tenant to dispose of "recyclable materials" separately from other garbage or refuse, as set forth in §500.2, shall not constitute a violation of an obligation of tenancy for the purposes of §501(b) of the Rental Housing Act, D.C. Official Code §42-3505.01(b). Except as expressly provided, nothing herein shall supersede or abrogate housing provider or tenant responsibilities under other laws and regulations, including, but not limited to, The District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 and its implementing regulations, D.C. Code §§8-1007, 8-1017; 21 DCMR §§ 2001, 2003, 2010, 2021, 2036, 2061.

599 DEFINITIONS

599.1 The provisions and definitions set forth in § 199 shall be applicable to this chapter.

CHAPTER 6: APARTMENTS AND APARTMENT HOUSES

SECTION

600 GENERAL PROVISIONS
601 REGISTRATION OF TENANTS
602 POSTING OF INFORMATION ON BUILDING MANAGEMENT
603 DESIGNATION OF APARTMENTS
604 ELEVATOR MAINTENANCE
699 DEFINITIONS

600 GENERAL PROVISIONS

600.1 The provisions of this chapter shall be applicable to every building or part of a building occupied, used, or held out for use as an apartment house.

600.2 The provisions of the Property Maintenance Code and Chapters 1 through 6 of this title shall be applicable to premises used or held out for use as an apartment house.

600.3 No apartment house shall be operated without a valid housing business license in accordance with Chapter 2 of this title.

601 REGISTRATION OF TENANTS

601.1 The owner of an apartment house shall establish and maintain, within five (5) business days after the opening of the business, a book, books, record, or records in which shall be written in English the name of each tenant of every apartment in the apartment house together with the address of the apartment house and the number of the apartment in which the tenant is residing.

601.2 The registration book, books, record, or records shall be kept current and in good repair at all times within the District of Columbia, and shall be open for inspection by the departments of the District government responsible for enforcement of District laws and regulations.

602 POSTING OF INFORMATION ON BUILDING MANAGEMENT

602.1 The owner of an apartment house shall provide information regarding the building management in a notice framed under clear glass or plastic, and shall post the notice or cause the notice to be posted in a conspicuous place in the apartment building to which the notice applies.

602.2 The notice shall contain the name, address and the telephone number of a responsible representative of the building management who may be reached in the event of complaints or emergency situations.

602.3 The notice shall also contain information regarding the manner in which that representative or an alternate representative may be reached after normal working hours and on Sundays and holidays.

603 DESIGNATION OF APARTMENTS

603.1 Each apartment entrance door shall be distinctively numbered or lettered and all other rooms in the apartment buildings shall be distinctively identified.

603.2 The provisions of this section shall not apply to rooms in individual apartments.

603.3 The owner of each apartment house shall maintain and provide the tenants of each apartment the use of a secure mail receptacle which has been approved by the United States Postal Service.

603.4 Each receptacle, other than those in an apartment house that has twenty-four (24) hour-a-day desk clerk service, shall be required to have a lock that will enable it to be secured and the owner shall provide each tenant with a key to the lock.

603.5 Installation, security specifications, and maintenance of mail receptacles shall be consistent with the requirements of postal service laws and regulations.

603.6 The owner shall be responsible for the proper installation of mail receptacles, and shall maintain the same in safe and good working condition.

603.7 In the event of disrepair, the owner shall have a reasonable time (not to exceed seven (7) working days) to repair mail receptacles.

604 ELEVATOR MAINTENANCE

604.1 In apartment buildings equipped with passenger elevators, the owner shall maintain at least one (1) elevator in operation at all times when the building is occupied.

604.2 Alteration, repair and maintenance of existing elevators shall comply with the Construction Codes as applicable.

605 NOISE

605.1 Noise levels for construction or demolition activity shall comply with the District of Columbia Noise Control Act of 1977, effective December 30, 1977 (D.C. Law 2-53; 24 DCR 5293 (December 30, 1977)) (DCMR Title 20, Chapters 27-29).

605.2 The owner shall provide affected tenants with not less than five (5) days written notice of any construction, repair, or maintenance work where (a) the work will continue over a period of more than forty-eight (48) hours from the time the work is first initiated until the conclusion of the job (including periods of time when no work is being done); and (b) the noise from the work will exceed sixty (60) decibels. The notice shall include the dates and times that the work will occur and a description of the work to be done. Emergency work which is necessary to restore property to a safe condition following a public calamity or act of God, or work required to protect the health and safety of persons, is not subject to noise limits and shall not require advance written notice.

605.3 The notice provisions of Section 605.2 shall not supersede or abrogate the maximum noise levels otherwise established by Title 20 of the DCMR.

699 DEFINITIONS

699.1 The provisions and definitions set forth in § 199 shall be applicable to this chapter.

CHAPTER 7: TRANSIENT HOUSING BUSINESSES

SECTION

700 GENERAL PROVISIONS
701 RESIDENT MANAGER
702 REGISTRATION AND ROOM ASSIGNMENT
703 ROOM KEYS
704 VERMIN
705 BEDDING AND TOWELS
706 FOOD SAFETY PROVISIONS
707 POSTING OF RATES AND OCCUPANCY LOADS
799 DEFINITIONS

700 GENERAL PROVISIONS

700.1 The provisions of this chapter shall be applicable to every building or part of a building occupied, used, or offered for lodging.

700.2 The provisions of the Property Maintenance Code and Chapters 1, 7 and 8 of this title shall apply to premises used or held out for use as lodging.

700.3 Owners and operators of hotels, motels, inns and other lodging must obtain a transient housing business license in accordance with Chapter 8 of this title and D.C. Official Code § 47-2828 (2012 Repl.). Lodging shall not be provided in a building or part of any building, including a dwelling that the owner also occupies, without a valid transient housing business license in accordance with Chapter 8.

700.4 The owner or operator of a transient housing business shall comply with the provisions of this title and of the Property Maintenance Code as applicable including, but not limited to, the following provisions of the Property Maintenance Code:

(a) Exterior Property Areas (12-G DCMR § 302);

(b) Exterior Structure (12-G DCMR §304);

(c) Interior Structure (12-G DCMR § 305);

(d) Pest Elimination (12-G DCMR § 309);

(e) Light, Ventilation and Occupancy Limitations (12-G DCMR Chapter 4);

(f) Plumbing Facilities and Fixture Requirements (12-G DCMR Chapter 5);

(g) Mechanical and Electrical Requirements (12-G DCMR Chapter 6); and

(h) Fire Safety Requirements (12-G DCMR Chapter 7).

700.5 The provisions of the Property Maintenance Code shall supersede any conflicting property maintenance provisions now or previously set forth in Title 14 applicable to transient housing businesses, and, any such property maintenance provisions shall be enforced pursuant to the administrative and enforcement provisions set forth in Chapter 1 of the Property Maintenance Code.

700.6 For purposes of Chapters 7 and 8, the person owning and operating a transient housing business shall be the owner of the premises where such business is conducted; provided, however, if the premises used to conduct a transient housing business are leased or otherwise controlled by a person who is not the property owner, and such person is legally responsible for maintenance and repairs of said premises, then such person shall be deemed to be the owner and operator of the housing business.

701 RESIDENT MANAGER

701.1 If the owner of the premises does not reside in person on the premises and does not superintend in person the operation or conduct of the lodging, the owner shall designate a manager or other person who is responsible for the premises.

701.2 The designated manager or other person shall reside on the premises, shall superintend in person the operation or conduct of the lodging, and shall have complete charge of the premises. Notwithstanding the foregoing, the manager of a hotel or motel shall not be required to reside on the premises.

702 REGISTRATION AND ROOM ASSIGNMENT

702.1 Each person who owns or operates a transient housing business shall at all times keep a register in which there shall be maintained the following information:

(a) The name of each person occupying a room; and

(b) The date of arrival and date of departure of each person occupying a room.

702.2 Each room shall be numbered, and the number shall be indicated in the register.

702.3 No fictitious names shall knowingly be entered in the register.

702.4 No room shall be assigned to persons of different genders without their express consent, except in the case of children accompanied by parent or guardian.

702.5 The register shall be available for inspection by officials of the District of Columbia, subject to consent of the transient housing business owner or operator or where the official has an administrative warrant where required.

703 ROOM KEYS

703.1 The entrance door to each rooming, housekeeping, or sleeping unit shall be provided with a lock.

703.2 A key for each unit shall be furnished to each respective lodger.

703.3 A duplicate key or keys shall be retained by the proprietor or manager.

703.4 The owner or manager shall have access to all units at all reasonable hours.

704 VERMIN

704.1 All food in sleeping rooms shall be kept in vermin-proof containers.

704.2 All preparations used for the extermination of vermin, such as sodium fluoride, shall be conspicuously colored and kept in containers clearly labeled "POISON".

704.3 Containers of poison shall not be placed with receptacles containing spices or condiments or other food substances.

705 BEDDING AND TOWELS

705.1 It shall be the duty of the lodging owner or operator to thoroughly clean any room which has been allocated to the use of any person before allocating the use of that room to another person.

705.2 All bedding shall be kept in a clean and sanitary condition.

705.3 Each new lodger shall be provided with clean and fresh bed linens, and towels, unused by any other person or guest since the last laundering, and with sufficient soap for ordinary use.

705.4 Each lodger shall be provided with an adequate supply of clean towels, sheets and pillowcases that are changed daily, except at facilities where housekeeping is the responsibility of the lodger. Where the lodger agrees in writing, the lodging owner or operator is allowed to change linens and towels on another regular schedule, not to exceed one week between changes.

705.5 The requirements of § 705.3 and § 705.4 shall not apply if the lodger agrees in writing to furnish his or her own linens and towels.

706 FOOD SAFETY PROVISIONS

706.1 Owners and operators of transient housing businesses may be required to comply with food safety requirements including, but not limited to, the Food Safety Code, 25-A DCMR.

706.2 It shall be unlawful for any person in the District of Columbia to operate a transient housing business where meals or lunches are served to ten (10) or more persons without having received certification from a nationally recognized and accredited organization as a food protection manager or without employing or contracting the services of a certified food protection manager.

706.3 The Department of Health shall have full power and authority at any time to make any examinations and tests which may be necessary to determine whether any food handler has a disease in a communicable form or is a carrier of a communicable disease.

706.4 It shall be the duty of all food handlers to submit to examination at the request of the Department of Health, and any food handler who refuses to submit to an examination shall not be employed or continue to be employed as a food handler in any transient housing business.

706.5 No person knowing himself or herself to be afflicted with disease in a communicable form shall work as a food handler in any transient housing business.

706.6 Except with the approval of the Department of Health, no operating proprietor or manager of any transient housing business shall employ or continue to employ any person as a food handler if the operating proprietor or manager has reason to suspect the person is afflicted with disease in a communicable form.

707 POSTING OF RATES AND OCCUPANCY LOAD

707.1 The owner or operator of each hotel, motel, inn or other lodging shall post in a conspicuous place within each rooming, housekeeping or sleeping unit a card stating the maximum number of occupants permitted in that room under this title.

707.2 The owner or operator of each hotel, motel, inn or other lodging shall post in a conspicuous place within each rooming, housekeeping or sleeping unit a card stating the maximum rates charged for that unit under varying conditions of occupancy.

707.3 Occupancy of hotels, motels and other lodging shall be in accordance with the Property Maintenance Code.

799 DEFINITIONS

799.1 The provisions and definitions set forth in § 199 shall be applicable to this chapter.

CHAPTER 8: TRANSIENT HOUSING BUSINESS LICENSES

SECTION

800 GENERAL LICENSING REQUIREMENTS
801 APPLICABILITY
802 INSPECTION OF PREMISES
803 REGISTERED AGENT FOR NON-RESIDENT LICENSEES
804 LICENSING OF PROPERTY MANAGERS
805 RENEWAL OF TRANSIENT HOUSING BUSINESS LICENSES
806 DENIAL, SUSPENSION AND REVOCATION OF LICENSES
807 LICENSE AND USER FEES
899 DEFINITIONS

800 GENERAL LICENSING REQUIREMENTS

800.1 No person shall operate a transient housing business, as that term is defined in § 199.2, in any premises in the District of Columbia without first receiving a business license or license endorsement as a transient housing business for the premises from the Department, unless exempted by this Chapter 8.

800.2 A transient housing business licensee shall conspicuously post the license or a copy of the license on the premises indicated on the license, and such license shall be available for inspection by any authorized District government official or any person lawfully residing at the premises.

800.3 Each applicant for a transient housing business license shall, as a condition to the issuance of a license, indicate on the license application the name and contact information of the person responsible for the daily management of the premises, which includes the facilitation of maintenance and repairs. Except for property owners who manage their own premises, such person shall be a Property Manager licensed in the District of Columbia in accordance with § 804.

800.4 The appointment or employment of a Property Manager, as required by § 800.3, shall be maintained during the period of time for which a license is issued. If any change is made in the appointment or employment of a Property Manager, or in the contact information for such person, the licensee shall deliver to the Director of the Department of Consumer and Regulatory Affairs a written notice not later than five (5) days after the change.

801 APPLICABILITY

801.1 Transient housing business licenses shall be required for all lodging, including, but not limited to, the following:

(a) Hotels;

(b) Motels;

(c) Bed and breakfast establishments;

(d) Hostels;

(e) Rooming houses and boarding houses where sleeping accommodations are furnished or offered to transient guests; and

(f) Corporate or short-term stay apartments;

(g) Other lodging, unless exempted by this title.

801.2 A valid Certificate of Occupancy issued by the Department shall be required at the time of application for licensure, except that a certificate of occupancy shall not be required for a one-family dwelling.

801.3 Where use of residential premises for lodging is authorized as a home occupation use under the District of Columbia Zoning Regulations, 11 DCMR, the owner shall obtain a home occupation permit. The Department is also authorized to require a transient housing business license.

801.4 Operation of hotels, motels, inns, rooming houses, boarding houses, bed and breakfast establishments and other lodging may be subject to other requirements, including, but not limited to, those set forth in Chapter 7 of this title; the Food Safety Code, Title 25-A of the DCMR; and the District of Columbia Zoning Regulations, Title 11 of the DCMR.

802 INSPECTION OF PREMISES

802.1 As a condition of licensure, the owner of a transient housing business shall allow the Department, and any other District government agency responsible for enforcement of this title and the Construction Codes, to inspect the premises where the transient housing business is conducted.

802.2 Owners of transient housing businesses shall:

(a) Maintain the premises in a manner that complies with the applicable provisions of the D.C. Official Code, the Property Maintenance Code, the Fire Code, Chapters 1-8 of this title and other applicable District of Columbia laws and regulations relating to fire, life safety and public welfare; and

(b) Comply with all other District of Columbia and federal statutes and regulations that govern transient housing businesses, as applicable.

802.3 The Director shall determine whether the owner of a transient housing business is in compliance with all applicable provisions of the business license laws and regulations and shall require that the building or part of the building to be licensed complies with all laws and regulations.

802.4 In accordance with § 802.1, the Director may develop an inspection program establishing a regular system of inspections for transient housing business licensees, with more frequent inspections for any licensee found to be in violation of the applicable statutes or regulations.

803 REGISTERED AGENT FOR NON-RESIDENT LICENSEES

803.1 Any non-resident person who owns or operates a transient housing business in the District of Columbia shall appoint and continuously maintain a registered agent for service of process.

803.2 The non-resident owner or operator shall make the appointment by filing a written statement with the Director on a prescribed form.

803.3 The registered agent shall be an individual who is a resident of the District of Columbia or an organization incorporated in the District of Columbia.

803.4 The non-resident owner or operator shall, within seven (7) business days of occurrence, file a written statement notifying the Director of any change of registered agent, or any change in name, address, or other information required by § 803.2.

803.5 Pursuant to D.C. Official Code § 42-903(b)(2) (2012 Repl.), and Mayor's Order 2002-33, effective February 11, 2002, the Director shall serve as the registered agent for the non-resident owner if:

(a) A registered agent is not appointed under § 803.1; or

(b) The individual or organization appointed under § 803.1 ceases to serve as the resident agent and no successor is appointed.

804 LICENSED PROPERTY MANAGER REQUIREMENT

804.1 Each transient housing business licensee shall designate the person responsible for the daily management of the premises, which includes the facilitation of maintenance and repairs on the premises, in accordance with Subsections 800.4 and 800.5.

804.2 Except for licensees who manage their own premises, the person designated under Subsection 804.1 shall be licensed as a Property Manager in accordance with D.C.

Official Code §§ 47-2853.01 *et seq*. (2012 Repl.), and Chapter 26 of Title 17 of the District of Columbia Municipal Regulations.

804.3 For purposes of this chapter, the term "Property Manager" means an agent for the owner of real estate in all matters pertaining to property management, as defined in D.C. Official Code § 47-2853.141 (2012 Repl.), which are under his or her direction, and who is paid a commission, fee, or other valuable consideration for his or her services.

804.4 The Property Manager shall comply with the requirements of D.C. Official Code §§ 47-2853.141 through 47-2853.143 (2012 Repl.), and any regulations issued pursuant thereto.

805 RENEWAL OF TRANSIENT HOUSING BUSINESS LICENSES

805.1 The Director may, upon application by a licensee, issue a renewal of a transient housing business license subject to a determination that all provisions of the applicable laws and regulations are being observed by the licensee.

805.2 The premises of each license renewal applicant shall be subject to the inspection provisions of this chapter.

806 DENIAL, SUSPENSION, AND REVOCATION OF LICENSES

806.1 Refusal to permit any authorized District of Columbia official to inspect the premises occupied or to be occupied by a transient housing business shall be cause for withholding the issuance of a license for the premises until such time as inspection is permitted; provided, that the refusal of any occupant other than the owner, operator or Property Manager to permit such an inspection shall not result in the revocation or suspension of the transient housing business license, nor shall such refusal result in the assessment of penalties against the owner or operator of a transient housing business.

806.2 The Director may refuse to issue or renew, or may suspend or revoke, a license issued under this chapter on any of the following grounds:

(a) Refusal to permit any authorized District of Columbia official to inspect the premises occupied by a licensed transient housing business;

(b) Conviction of the business license holder for any criminal offense involving fraudulent conduct arising out of or based on the business being licensed;

(c) Willful or fraudulent circumvention by the business operator of any provision of District statute or regulation relating to the conduct of the business;

(d) Operation of the business in violation of the District's Zoning Regulations;

(e) Failure to maintain qualification for licensure;

(f) Employment of any fraudulent or misleading device, method, or practice relating to the conduct of the business; or

(g) The making of any false statement in the license application.

(h) Multiple, uncorrected violations of Chapters 1-8 of this title and the Property Maintenance Code.

806.3 All qualifications set forth in this chapter as prerequisite to the issuance of a license shall be maintained for the entire license period.

806.4 [RESERVED]

806.5 Revocations or suspensions of transient housing business licenses are proposed actions and shall become final upon occurrence of one of the following conditions:

(a) Fifteen (15) business days after service of the notice of revocation or suspension in accordance with § 806, when the license holder fails to request a hearing from the Office of Administrative Hearings within the filing period prescribed in § 806.11; or

(b) Upon issuance of an order by the Office of Administrative Hearings affirming the license revocation following a hearing requested by the license holder pursuant to § 806.11.

806.6 The license holder shall be provided written notice of the Code Official 's order to revoke or suspend the license. This notice shall include the following:

(a) A copy of the written order;

(b) A statement of the grounds for revocation or suspension of the license; and

(c) A statement advising the license holder of the right to appeal the revocation or suspension in accordance with § 806.

806.7 The Code Official shall affect service of a notice to revoke or suspend a transient housing business license by one of the following methods:

(a) Personal service on the license holder or the license holder's agent;

(b) Delivering the notice to the last known home or business address of the license holder as identified by the license application, the tax records, or

business license records, and leaving it with a person over the age of sixteen (16) residing or employed therein;

(c) Mailing the notice, via first class mail at least ten (10) days prior to the date of the proposed action, to the last known home or business address of the license holder or the license holder's agent as identified by the license application, the tax records, or business license records; or

(d) If the notice is returned as undeliverable by the Post Office authorities, or if no address is known or can be ascertained by reasonable diligence, by posting a copy of the notice in a conspicuous place in or about the structure affected by such notice.

806.8 For the purposes of this section, respondent's agent shall mean a general agent, employee, registered agent or attorney of the respondent.

806.9 Once the initial notice has been served:

(a) The respondent shall notify the Department of all changes of address or of a preferred address to receive all future notices regarding the revocation. This notification by the respondent shall be in writing; and

(b) All other notices, orders, or any other information regarding the revocation may be sent by the Department via first class mail.

806.10 The license holder may request a hearing by the Office of Administrative Hearings (OAH) as provided in Subsection 806.11.

806.11 The license holder may appeal a notice of revocation or suspension to the Office of Administrative Hearings (OAH) no later than ten (10) business days after service upon the license holder of written notice of the revocation or suspension, pursuant to Chapter 18A of Title 2 of the D.C. Official Code (D.C. Official Code §§ 2-1801.01 *et seq*. (2012 Repl. & 2014 Supp.)) and any regulations promulgated thereunder.

806.12 The Director's refusal to issue or renew a transient housing business license may be appealed to OAH pursuant to the provisions of § 102.1.

807 LICENSE AND USER FEES

807.1 The following fees shall apply to a transient housing business in addition to the fees required for obtaining the business license:

(a) Pursuant to D.C. Official Code § 42-3131.01(a)(1) (2012 Repl.), a fee of one hundred twenty dollars ($120) shall be collected for any reinspection of a transient housing business licensee's premises to determine whether noted violations of this title or the Construction Codes have been abated.

The fee shall be collected after the reinspection has occurred;

(b) An initial administrative fee of one hundred seventy-five dollars ($175) for any abatement undertaken by the Department to correct conditions violative of this title or the Construction Codes. This fee shall be in addition to the actual cost of the abatement or the fair market value of the abatement, whichever is higher, and all expenses incident thereto, as authorized by D.C. Official Code § 42-3131.01(d) (2012 Repl.). Where the corrective actions are undertaken by Department employees, each person-hour of labor performed on the abatement shall be assessed at the rate of sixty dollars ($60);

(c) To cover the cost of the Department's proactive inspection program, a fee of fifty dollars ($50) per sleeping, dwelling or rooming unit in lodging consisting of three (3) units or more shall be charged at the issuance and renewal of the license. The maximum fee per lodging shall be two thousand five hundred dollars ($2,500) every two (2) years. The Department is authorized, at the Director's discretion, to combine the proactive inspection fee with the fees for issuance and renewal of transient housing business licenses in order to facilitate billing and collection of the fees.

899 DEFINITIONS

899.1 The provisions and definitions set forth in § 199 shall be applicable to this chapter.

All persons desiring to comment on these proposed regulations should submit comments in writing to Matt Orlins, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5100, Washington, D.C. 20024, or via e-mail at Matt.Orlins @dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-4400. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar ($1.00) will be charged for each copy of the proposed rulemaking requested. Free copies of these proposed regulations are available on the DCRA website at http://dcra.dc.gov by going to the "About DCRA" tab, clicking on "News Room", and then clicking on "Rulemaking".

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
DISTRICT OF COLUMBIA BOXING AND WRESTLING COMMISSION

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Boxing and Wrestling Commission ("Commission"), pursuant to the Authority set forth in Section 7 of the District of Columbia Boxing and Wrestling Commission Act of 1975, effective October 8, 1975 (D.C. Law 1-20; D.C. Official Code § 3-606 (2012 Repl.) ("Act"), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following amendments to Chapter 20 (Boxing and Wrestling: General Rules), Chapter 21 (Boxing Events), Chapter 22 (Wrestling Events), Chapter 23 (Kickboxing Events), and Chapter 24 (Mixed Martial Arts Uniform Rules) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR).

This proposed rulemaking would update the boxing and wrestling licensing and event regulations to correct the terms of licensure, clarify the scopes of practice for licensed officials, and standardize licensure requirements for each category of licensure for boxing officials. In addition, this proposed rulemaking would amend the restrictions on complimentary tickets provided by promoters for all boxing, wrestling, kickboxing, and mixed martial arts events held in the District.

Chapter 20, BOXING AND WRESTLING: GENERAL RULES, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended as follows:

Section 2002, GENERAL LICENSING PROVISIONS, is amended to read as follows:

2002 GENERAL LICENSING PROVISIONS

2002.1 The Commission shall issue licenses for the following participants in an event:

(a) Amateur boxer;

(b) Announcer;

(c) Inspector;

(d) Judge;

(e) Manager;

(f) Matchmaker;

(g) Physician;

(h) Professional boxer;

(i) Professional kickboxer;

(j) Professional mixed martial artist;

(k) Professional wrestler;

(l) Promoter;

(m) Referee;

(n) Second; and

(o) Timekeeper.

2002.2 All licenses issued pursuant to this chapter and the Act shall expire on March 31 of each even numbered year, constituting a license cycle.

Section 2012, REFEREE'S LICENSE, is amended to read as follows:

2012 REFEREE'S LICENSE

2012.1 No person shall act as a referee for an event without a referee's license issued pursuant to this chapter.

2012.2 Except as provided in § 2012.4, in order to be licensed as a referee, an applicant shall pass a written examination administered by the Commission which tests the applicant's knowledge of the rules governing events of the type which the applicant is qualified to referee.

2012.3 To be eligible to sit for the examination required by § 2012.2, an applicant shall:

(a) Prove to the satisfaction of the Commission that he or she has obtained three (3) or more years of experience as a referee on the amateur level; or

(b) Prove to the satisfaction of the Commission that he or she has been:

(1) Actively engaged as a licensed inspector or licensed judge in the District or elsewhere for the three (3) years immediately preceding the date on which the application for a referee's license is filed; and

(2) Certified by the Association of Boxing Commissions (ABC) as having completed approved training for referees.

2012.4 An applicant who is licensed and in good standing as a referee in a jurisdiction of the United States, or licensed by an appropriate licensing authority of a foreign jurisdiction, may be permitted to obtain a license in the District of Columbia without examination if the applicant proves, to the satisfaction of the Commission, that he or she has completed experience and examination requirements for licensure in the other jurisdiction that were substantially equivalent to the requirements of this section.

2012.5 All applicants for licensure as a referee shall pass a medical examination conducted by a licensed physician approved by the Commission.

2012.6 An applicant for a license as a referee shall prove to the satisfaction of the Commission that he or she:

(a) Does not maintain, directly or indirectly, a financial or business interest in the management of a contestant;

(b) Is not an individual promoter; and

(c) Is not a stockholder or an employee of, and does not otherwise hold a financial or business interest in, a corporation, unincorporated club, partnership, or association that promotes contests under the purview of the Commission.

2012.7 Persons licensed as referees in the District are deemed to have satisfied the experience and examination requirements for licensure as a timekeeper, inspector, and judge. A licensed referee may be assigned by the Commission to serve as an official in any of these capacities.

Section 2013, TIMEKEEPER’S LICENSE, is amended to read as follows:

2013 TIMEKEEPER’S LICENSE

2013.1 No person shall act as a timekeeper for an event without a license as a timekeeper, inspector, judge, or referee issued pursuant to this chapter.

2013.2 To be eligible for licensure as a timekeeper, an applicant shall:

(a) Prove to the satisfaction of the Commission that he or she has obtained at least four (4) months of experience as a timekeeper on the amateur level; or

(b) Prove to the satisfaction of the Commission that he or she is licensed and in good standing as a timekeeper in a jurisdiction of the United States or foreign territory, with requirements that are substantially equivalent to the requirements of this section.

2013.3 An applicant for a license as a timekeeper shall prove to the satisfaction of the Commission that he or she:

(a) Does not maintain, directly or indirectly, a financial or business interest in the management of a contestant;

(b) Is not an individual promoter; and

(c) Is not a stockholder or an employee of, and does not otherwise hold a financial or business interest in, a corporation, unincorporated club, partnership, or association that promotes contests under the purview of the Commission.

Section 2014, INSPECTOR'S LICENSE, is amended to read as follows:

2014 INSPECTOR'S LICENSE

2014.1 No person shall act as an inspector for an event without a license as an inspector, judge, or referee issued pursuant to this chapter.

2014.2 Except as provided in § 2014.4, in order to be licensed as an inspector, an applicant shall pass a written examination administered by the Commission which tests the applicant's knowledge of the rules governing contests of the type for which the applicant is qualified to act as an inspector.

2014.3 To be eligible to sit for the examination required by § 2014.2, an applicant shall:

(a) Prove to the satisfaction of the Commission that he or she has obtained three (3) or more years of experience as an inspector on the amateur level; or

(b) Prove to the satisfaction of the Commission that he or she has been actively engaged as a licensed timekeeper in the District or elsewhere for the three (3) years immediately preceding the date on which the application for an inspector's license is filed.

2014.4 An applicant who is licensed and in good standing as an inspector in a jurisdiction of the United States, or licensed by an appropriate licensing authority of a foreign jurisdiction, may be permitted to obtain a license in the District of Columbia without examination if the applicant proves, to the satisfaction of the Commission, that he or she has completed experience and examination requirements for licensure in the other jurisdiction that were substantially equivalent to the requirements of this section.

2014.5 An applicant for a license as an inspector shall prove to the satisfaction of the Commission that the inspector:

(a) Does not maintain, directly or indirectly, a financial or business interest in the management of a contestant;

(b) Is not an individual promoter; and

(c) Is not a stockholder or an employee of, and does not otherwise hold a financial or business interest in, a corporation, unincorporated club, partnership, or association that promotes contests under the purview of the Commission.

Section 2016, JUDGE'S LICENSE, is amended to read as follows:

2016 JUDGE'S LICENSE

2016.1 No person shall judge an event without a license as a judge or referee issued pursuant to this chapter.

2016.2 Except as provided in § 2016.4, in order to be licensed as a judge, an applicant shall pass a written examination administered by the Commission which tests the applicant's knowledge of the rules governing contests of the type for which the applicant is qualified to act as a judge.

2016.3 To be eligible to sit for the examination required by § 2016.2, an applicant shall:

(a) Prove to the satisfaction of the Commission that he or she has obtained three (3) or more years of experience as a judge on the amateur level; or

(b) Prove to the satisfaction of the Commission that he or she has been:

(1) Actively engaged as a licensed inspector in the District or elsewhere for the three (3) years immediately preceding the date on which the application for a judge's license is filed; and

(2) Certified by the Association of Boxing Commissions (ABC) as having completed approved training for boxing judges.

2016.4 An applicant who is licensed and in good standing as a judge in a jurisdiction of the United States, or licensed by an appropriate licensing authority of a foreign jurisdiction, may be permitted to obtain a license in the District of Columbia without examination if the applicant proves, to the satisfaction of the Commission, that he or she has completed experience and examination requirements for licensure in the other jurisdiction that were substantially equivalent to the requirements of this section.

2016.5 An applicant for a license as a judge shall prove to the satisfaction of the Commission that he or she:

(a) Does not maintain, directly or indirectly, a financial or business interest in the management of a contestant;

(b) Is not an individual promoter; and

(c) Is not a stockholder or an employee of, and does not otherwise hold a financial or business interest in, a corporation, unincorporated club, partnership, or association that promotes contests under the purview of the Commission.

Chapter 21, BOXING EVENTS, is amended as follows:

Section 2123, TICKETS, is amended to read as follows:

2123 TICKETS

2123.1 The promoter shall provide to the Commission, prior to the commencement of an event at which admission is charged, a manifest or report on the number, kind, and price of tickets printed for the contest.

2123.2 Each ticket shall have the price, name of the promoter, date, and place of the event printed plainly on it.

2123.3 No promoter shall sell a ticket at a price other than the price which appears on the ticket.

2123.4 No promoter shall change a ticket price, or the place or date of an event, without the approval of the Commission.

2123.5 Tickets of different prices shall be printed on cardstock of different colors.

2123.6 The total of all complimentary tickets to a contest shall not exceed six percent (6%) of the seating capacity of the venue.

2123.7 Complimentary tickets may be designated as follows:

(a) A maximum of three percent (3%) of the tickets to a contest may be designated as complimentary for distribution to the general public, including, but not limited to, sponsors, friends and family members of the promoter, a contestant, or other participant.

(b) Additional tickets to a contest, up to the maximum limit established by § 2123.6, may be designated as complimentary for distribution to at-risk youth, active members of the military, veterans, and their family members.

2123.8 The promoter of an event shall be subject to a penalty equaling five percent (5%) of the average ticket price, as determined by the Commission, for any complimentary tickets that exceed the maximum limits established by § 2123.6 and § 2123.7.

2123.9 Each complimentary ticket shall be marked "Complimentary" and be clearly marked to reflect whether it has been designated as a military, youth, or general complimentary ticket.

2123.10 No person, except members of the Metropolitan Police Department, the working press, Commission officials and employees, and official photographers who have been assigned to duty at an event, may be admitted without a ticket.

2123.11 Each ticket collected at the gate shall be separated from the stub when an attendee enters through the admission gate.

2123.12 All tickets collected at the gate shall be deposited in a locked box.

2123.13 An official of the Commission shall check the number and location of ticket boxes at the gates, ensure that the ticket boxes are sealed and locked in accordance with § 2123.12, and open the ticket boxes and count the tickets after the event.

2123.14 At each event, representatives of the promoter and the inspector assigned by the Commission shall supervise the gates and the gate receipts.

2123.15 After each event where an admission fee is charged, the promoter and the designated Commission official shall submit and sign a detailed report on the results of the contest, attendance, number of tickets sold at various prices, and total gate receipts.

Chapter 22, WRESTLING EVENTS, is amended as follows:

Section 2210, TICKETS, is amended to read as follows:

2210 TICKETS

2210.1 The promoter shall provide to the Commission, prior to the commencement of an event at which admission is charged, a manifest or report on the number, kind, and price of tickets printed for the contest.

2210.2 Each ticket shall have the price, name of the promoter, date, and place of the event printed plainly on it.

2210.3 No promoter shall sell a ticket at a price other than the price which appears on the ticket.

2210.4 No promoter shall change a ticket price, or the place or date of an event, without the approval of the Commission.

2210.5 Tickets of different prices shall be printed on cardstock of different colors.

2210.6 The total of all complimentary tickets to a contest shall not exceed six percent (6%) of the seating capacity of the venue.

2210.7 Complimentary tickets may be designated as follows:

(a) A maximum of three percent (3%) of the tickets to a contest may be designated as complimentary for distribution to the general public, including, but not limited to, sponsors, friends and family members of the promoter, a contestant, or other participant.

(b) Additional tickets to a contest, up to the maximum limit established by §2210.6, may be designated as complimentary for distribution to at-risk youth, active members of the military, veterans, and their family members.

2210.8 The promoter of an event shall be subject to a penalty equaling five percent (5%) of the average ticket price, as determined by the Commission, for any complimentary tickets that exceed the maximum limits established by § 2210.6 and § 2210.7.

2210.9 Each complimentary ticket shall be marked "Complimentary" and be clearly marked to reflect whether it has been designated as a military, youth, or general complimentary ticket.

2210.10 No person, except members of the Metropolitan Police Department, the working press, Commission officials and employees, and official photographers who have been assigned to duty at an event, may be admitted without a ticket.

2210.11 Each ticket collected at the gate shall be separated from the stub when an attendee enters through the admission gate.

2210.12 All tickets collected at the gate shall be deposited in a locked box.

2210.13 An official of the Commission shall check the number and location of ticket boxes at the gates, ensure that the ticket boxes are sealed and locked in accordance with § 2210.12, and open the ticket boxes and count the tickets after the event.

2210.14 At each event, representatives of the promoter and the inspector assigned by the Commission shall supervise the gates and the gate receipts.

2210.15 After each event where an admission fee is charged, the promoter and the designated Commission official shall submit and sign a detailed report on the results of the contest, attendance, number of tickets sold at various prices, and total gate receipts.

Chapter 23, KICKBOXING EVENTS, is amended as follows:

Section 2323, TICKETS, is amended to read as follows:

2323 TICKETS

2323.1 The promoter shall provide to the Commission, prior to the commencement of an event at which admission is charged, a manifest or report on the number, kind, and price of tickets printed for the contest.

2323.2 Each ticket shall have the price, name of the promoter, date, and place of the event printed plainly on it.

2323.3 No promoter shall sell a ticket at a price other than the price which appears on the ticket.

2323.4 No promoter shall change a ticket price, or the place or date of an event, without the approval of the Commission.

2323.5 Tickets of different prices shall be printed on cardstock of different colors.

2323.6 The total of all complimentary tickets to a contest shall not exceed six percent (6%) of the seating capacity of the venue.

2323.7 Complimentary tickets may be designated as follows:

(a) A maximum of three percent (3%) of the tickets to a contest may be designated as complimentary for distribution to the general public, including, but not limited to, sponsors, friends and family members of the promoter, a contestant, or other participant.

(b) Additional tickets to a contest, up to the maximum limit established by § 2323.6, may be designated as complimentary for distribution to at-risk youth, active members of the military, veterans, and their family members.

2323.8 The promoter of an event shall be subject to a penalty equaling five percent (5%) of the average ticket price, as determined by the Commission, for any

complimentary tickets that exceed the maximum limits established by § 2323.6 and § 2323.7.

2323.9 Each complimentary ticket shall be marked "Complimentary" and be clearly marked to reflect whether it has been designated as a military, youth, or general complimentary ticket.

2323.10 No person, except members of the Metropolitan Police Department, the working press, Commission officials and employees, and official photographers who have been assigned to duty at an event, may be admitted without a ticket.

2323.11 Each ticket collected at the gate shall be separated from the stub when an attendee enters through the admission gate.

2323.12 All tickets collected at the gate shall be deposited in a locked box.

2323.13 An official of the Commission shall check the number and location of ticket boxes at the gates, ensure that the ticket boxes are sealed and locked in accordance with § 2323.12, and open the ticket boxes and count the tickets after the event.

2323.14 At each event, representatives of the promoter and the inspector assigned by the Commission shall supervise the gates and the gate receipts.

2323.15 After each event where an admission fee is charged, the promoter and the designated Commission official shall submit and sign a detailed report on the results of the contest, attendance, number of tickets sold at various prices, and total gate receipts.

Chapter 24, MIXED MARTIAL ARTS UNIFORM RULES, is re-named and amended as follows:

Chapter 24 MIXED MARTIAL ARTS EVENTS AND UNIFORM RULES

Section 2418, [RESERVED], is amended as to read follows:

2418 TICKETS

2418.1 The promoter shall provide to the Commission, prior to the commencement of an event at which admission is charged, a manifest or report on the number, kind, and price of tickets printed for the contest.

2418.2 Each ticket shall have the price, name of the promoter, date, and place of the event printed plainly on it.

2418.3 No promoter shall sell a ticket at a price other than the price which appears on the ticket.

2418.4 No promoter shall change a ticket price, or the place or date of an event, without the approval of the Commission.

2418.5 Tickets of different prices shall be printed on cardstock of different colors.

2418.6 The total of all complimentary tickets to a contest shall not exceed six percent (6%) of the seating capacity of the venue.

2418.7 Complimentary tickets may be designated as follows:

(a) A maximum of three percent (3%) of the tickets to a contest may be designated as complimentary for distribution to the general public, including, but not limited to, sponsors, friends and family members of the promoter, a contestant, or other participant.

(b) Additional tickets to a contest, up to the maximum limit established by § 2418.6, may be designated as complimentary for distribution to at-risk youth, active members of the military, veterans, and their family members.

2418.8 The promoter of an event shall be subject to a penalty equaling five percent (5%) of the average ticket price, as determined by the Commission, for any complimentary tickets that exceed the maximum limits established by § 2418.6 and § 2418.7.

2418.9 Each complimentary ticket shall be marked "Complimentary" and be clearly marked to reflect whether it has been designated as a military, youth, or general complimentary ticket.

2418.10 No person, except members of the Metropolitan Police Department, the working press, Commission officials and employees, and official photographers who have been assigned to duty at an event, may be admitted without a ticket.

2418.11 Each ticket collected at the gate shall be separated from the stub when an attendee enters through the admission gate.

2418.12 All tickets collected at the gate shall be deposited in a locked box.

2418.13 An official of the Commission shall check the number and location of ticket boxes at the gates, ensure that the ticket boxes are sealed and locked in accordance with § 2418.12, and open the ticket boxes and count the tickets after the event.

2418.14 At each event, representatives of the promoter and the inspector assigned by the Commission shall supervise the gates and the gate receipts.

2418.15 After each event where an admission fee is charged, the promoter and the designated Commission official shall submit and sign a detailed report on the results of the contest, attendance, number of tickets sold at various prices, and total gate receipts.

All persons desiring to comment on these proposed regulations should submit comments in writing to Matt Orlins, Legislative and Public Affairs Officer, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, S.W., 5th Floor, Washington, D.C. 20024, or via e-mail at matt.orlins@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. The agency can be reached by telephone at 202-442-4400. A copy fee of one dollar ($1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at dcra.dc.gov by going to the “About DCRA” tab, clicking “News Room”, and clicking on “Rulemaking.”

DISTRICT OF COLUMBIA PUBLIC LIBRARY

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Public Library Board of Trustees, pursuant to the authority set forth in An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896, as amended (29 Stat. 244, ch. 315, § 5; D.C. Official Code § 39-105 (2012 Supp.)); Section 3205 (jjj) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 39-105 (2012 Supp.)); Section 2 of the District of Columbia Public Library Board of Trustees Appointment Amendment Act of 1985, effective September 5, 1985 (D.C. Law 6-17; D.C. Official Code § 39-105 (2012 Supp.)); the Procurement Reform Amendment Act of 1996, effective April 12, 1997, as amended (D.C. Law 11-259; 44 DCR 1423 (March 14, 1997)); and Section 156 of An Act Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, approved October 21, 1998 (112 Stat. 2681, Pub. L. 105-277; codified at D.C. Official Code § 39-105 (2012 Repl.)); hereby gives notice of its intent to amend Chapter 8 (Public Library) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR) by adding a new Section 820.

The Board of Library Trustees through D.C. Official Code §39-105 (2011 Supp.) designated the Chief Librarian/Executive Director to establish rules and manage the day-to-day operations of the library. On June 29, 2015, the Chief Librarian/Executive Director of the District of Columbia Public Library ("DCPL") approved to adopt the proposed new Section 820 to the District of Columbia Public Library Regulations regarding permits, to Chapter 8, Title 19 DCMR. The proposed section will provide the DCPL the ability to issue permits in accordance with Fiscal year 2016 Budget Support Act of 2015.

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

Section 820, PERMITS, is amended to read as follows:

820 PERMITS

820.1 The Board of Library Trustees or designee may issue permits to members of the public for private use of DCPL property after payment of a fee reasonably determined to cover the costs that will be incurred by DCPL.

820.2 The Chief Business Officer or designee may issue permit conditions, guidelines or policies and require their acceptance by the permit holder prior to the issuance of a permit, provided that the conditions are:

(a) Approved by the Board of Library Trustees or designee;

(b) Made available to the public on DCPL's website; and,

(c) Included on the permit application.

820.3 The Chief Business Officer or Designee shall be responsible for keeping records and compiling reports detailing the permits issued.

820.4 Revenue generated from the issuance of permits shall be deposited into the DCPL Revenue Generating Activities Fund, and spent prior to the end of the fiscal year in which it was received.

820.5 Permits are non-transferable and cannot be resold or reassigned.

820.6 Permit holders are required to obtain and maintain liability insurance in an amount determined by the DCPL Risk Manager.

820.7 The following activities are prohibited on DCPL property:

(a) Campaign events and activities;

(b) Gambling;

(c) Possession or use of illegal substances;

(d) Possession or use of explosives, firecrackers or firearms;

(e) Weapons of any type;

(f) Use of alcohol without prior written consent from the Chief Librarian/ Executive Director or use of alcohol that violates DCPL Order No. 404-07-2015.

820.8 Permit holders may solicit donations subject to the District of Columbia Charitable Solicitation Act, approved July 10, 1957 (71 Stat 278; D.C. Official Code §§ 44-1701 *et seq.*)

820.9 DCPL reserves the right to revoke or temporarily suspend a permit, or change a permit location. DCPL may deny, cancel or revoke a permit in cases where a permit holder:

(a) Violates District law or DCPL rules and policies;

(b) Poses a risk to the health, safety or welfare of the public; or,

(c) Disrupts DCPL operations.

Any person 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 the publication of this notice in the *D.C. Register*. Comments should be submitted to Grace Perry-Gaiter, General Counsel, DCPL, Martin Luther King Jr. Memorial Library, 901 'G' Street, N.W., 4th Floor, Washington, D.C. 20001. Telephone: (202) 727-1134. Copies of the proposed rulemaking may be obtained by writing to the address stated above.

DISTRICT OF COLUMBIA PUBLIC LIBRARY

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Public Library Board of Trustees, pursuant to the authority set forth in An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896, as amended (29 Stat. 244, ch. 315, § 5; D.C. Official Code § 39-105 (2012 Supp.)); Section 3205 (jjj) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 39-105 (2012 Supp.)); Section 2 of the District of Columbia Public Library Board of Trustees Appointment Amendment Act of 1985, effective September 5, 1985 (D.C. Law 6-17; D.C. Official Code § 39-105 (2012 Supp.)); the Procurement Reform Amendment Act of 1996, effective April 12, 1997, as amended (D.C. Law 11-259; 44 DCR 1423 (March 14, 1997)); and Section 156 of An Act Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, approved October 21, 1998 (112 Stat. 2681, Pub. L. 105-277; codified at D.C. Official Code § 39-105 (2012 Repl.)); hereby gives notice of its intent to amend Chapter 8 (Public Library) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR) by adding a new Section 821.

The Board of Library Trustees through D.C. Official Code §39-105 (2011 Supp.) designated the Chief Librarian/Executive Director to establish rules and manage the day-to-day operations of the library. On June 29, 2015, the Chief Librarian/Executive Director of the District of Columbia Public Library ("DCPL") approved to adopt the proposed new Section 821 to the District of Columbia Public Library Regulations regarding revenue generating activity, to Chapter 8, Title 19 DCMR. The proposed section will provide the DCPL the ability to conduct revenue generating activity in accordance with Fiscal year 2016 Budget Support Act of 2015.

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

Section 821, REVEUNE GENERATING ACTIVITY, is amended to read as follows:

821 REVENUE GENERATING ACTIVITY

821.1 For the purpose of this section, "revenue generating activity" shall be defined as operations conducted by DCPL that produce income by providing services that benefit the public, but need not relate to library services.

821.2 Revenue generating activities shall be approved by the Board of Library Trustees or designee in writing prior to execution of the activity.

821.3 Revenue from revenue generating activities shall be deposited in the DCPL Revenue Generating Activities Fund established pursuant to D.C. Official Code § 39-105(a)(15).

821.4 All funds deposited into the Revenue Generating Activities Fund shall be spent prior to the end of the fiscal year in which it was received.

Any person 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 the publication of this notice in the *D.C. Register*. Comments should be submitted to Grace Perry-Gaiter, General Counsel, DCPL, Martin Luther King Jr. Memorial Library, 901 'G' Street, N.W., 4th Floor, Washington, D.C. 20001. Telephone: (202) 727-1134. Copies of the proposed rulemaking may be obtained by writing to the address stated above.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth in Sections 8 (c) (2), (3), (5), (7), (12), (15), and (19), 14, and 20 of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307 (c) (2) (3), (5), (7), (12), (15), and (19), 50-313, and 50-319 (2014 Repl.)), and D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Repl. & 2014 Supp.), hereby gives notice of its intent to adopt amendments to Chapter 5 (Taxicab Companies, Associations and Fleets) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

This proposed rulemaking would clarify the existing rule in § 517, which is not intended by the Commission to provide a basis for the civil liability of a taxicab company or association to any person. No substantive change is intended by this clarification. The proposed rulemaking would also change the title of this chapter.

The Commission also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice of proposed rulemaking in the *D.C. Register*. Directions for submitting comments may be found at the end of this notice.

Chapter 5, TAXICAB COMPANIES, ASSOCIATIONS AND FLEETS, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

The title of Chapter 5 is amended to read as follows:

TAXICAB COMPANIES AND ASSOCIATIONS

Section 517, LIABILITY FOR CONDUCT OF EMPLOYEES, is amended to read as follows:

517 LIABILITY FOR CONDUCT OF ASSOCIATED PERSONS

517.1 For purposes of enforcement of and compliance with this title, each taxicab company and association shall be responsible for the conduct of its employees, contractors, agents, associated operators (where applicable), and associated owners (where applicable). The conduct for which each taxicab company and association shall be responsible includes ensuring that taxicabs are operated:

(a) With the licenses required by this title and other applicable law;

(b) With the insurance required by this title and other applicable law;

(c) In a safe and lawful manner; and

(d) By an operator who is not impaired by lawful or unlawful intoxicants.

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting the Secretary to the Commission, District of Columbia Taxicab Commission, 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020. All persons wishing to file comments on the proposed rulemaking action should submit written comments via email to dctc@dc.gov or by mail to the DC Taxicab Commission, 2235 Shannon Place, S.E., Suite 3001, Washington, DC 20020, Attn: Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C. Register*.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth in Sections 8(c) (2), (3), (7), (14), (16), (17) and (19), 14, and 20j of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2), (3), (7), (14), (16), (17), and (19), 50-313 and 50-329 (2014 Repl.)), hereby gives notice of its intent to adopt amendments to Chapter 7 (Enforcement) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR).

The proposed rulemaking would amend Chapter 7 to clarify: (1) that the Office of Taxicab's ("Office") failure to comply with Title 31 deadlines which do not violate a Respondent's substantial legal rights shall not result in the dismissal of an enforcement action; (2) the requirements for the issuance of notices of proposed suspensions and revocations; and (3) that an action taken by the Office may be appealed to the Commission, a hearing examiner of the Office, or the Office of Administrative Hearings, at the discretion of the Office.

The Commission also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice of proposed rulemaking in the *D.C. Register*. Directions for submitting comments may be found at the end of this notice.

Chapter 7, ENFORCEMENT, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 700, APPLICATION AND SCOPE, is amended as follows:

Subsection 700.5 is amended to read as follows:

700.5 The provisions of this chapter shall apply to all matters and contested cases pending on the date of publication of the final rulemaking in the *D.C. Register,* respectively, to the extent allowed by the District of Columbia Administrative Procedure Act ("DCAPA") effective October 8, 1975 (D.C. Law 1-19; D.C. Official Code §§ 2-501 *et seq.*) and other applicable law.

A new subsection 700.6 is added to read as follows:

700.6 The Office's failure to comply with a deadline established by a provision of this title shall not be a basis for the dismissal of an enforcement action except where the Respondent proves that the Respondent's substantial legal rights would be violated in the absence of a dismissal, and that no reasonable procedural remedy, such as a continuance or enlargement of time, can be fashioned to cure the violation.

Section 703, ENFORCEMENT ACTIONS, is amended as follows:

Subsections 703.5 and 703.6 are amended to read as follows:

703.5 The enumeration of enforcement actions in this section shall not limit or proscribe any legal remedy available to the Commission or the Office in a court proceeding at law or in equity, including, but not limited to, entering into consent decrees and settlements, and enforcing the terms thereof.

703.6 The Office may, through the Office of the Attorney General, petition the District of Columbia Superior Court for injunctive relief, or take any other action authorized by law to enforce compliance with a provision of this title or other applicable law including, but not limited to, consent decrees and settlements.

New Subsections 703.9-703.11 are added to read as follows:

703.9 An appeal from any enforcement action under this chapter may be referred to the Commission, to a hearing examiner of the Office, or to OAH, as designated by the Office in its sole discretion.

703.10 In computing any applicable time period measured in days under this chapter:

(a) The day of the act, event, or default from which the period begins to run shall not be included;

(b) The last day of the period shall be included; and

(c) Unless otherwise specified, any reference to "days" means calendar days including holidays and weekends.

703.11 An appeal to OAH from any of the following appellate decisions of the Commission shall be limited to the administrative record:

(a) A decision on appeal from a cease and desist order pursuant to § 705.4;

(b) A decision on appeal from a denial of a license pursuant to § 709.3.

Section 705, CEASE AND DESIST ORDERS, is amended as follows:

Subsection 705.2 (d) is amended to read as follows:

(d) A statement that the respondent has a right to request a hearing, in writing, within fifteen (15) calendar days of service of the order.

Subsection 705.2 is amended to add a new subparagraph (g) to read as follows:

(g) A statement of the requirements, terms, and conditions of the cease and desist order, if any.

Subsection 705.4 is amended to read as follows:

705.4 Upon receipt of a timely request for a hearing, the Commission, hearing examiner of the Office, or OAH, as designated by the Office, shall conduct a

hearing within fifteen (15) calendar days after the date of receipt of the request for a hearing and shall issue a decision within thirty (30) calendar days after the close of the record of the hearing.

Subsection 705.5 is amended to read as follows:

705.5 If the respondent does not request a hearing, in writing, within fifteen (15) calendar days after service of the cease and desist order, the Order shall become final and shall incorporate the requirements, terms, and conditions of the cease and desist order.

Existing Subsection 705.7 is renumbered as Subsection 705.8.

A new Subsection 705.7 is added to read as follows:

705.7 The following civil fines for failure to comply with a cease and desist order shall apply where no other provision of this title or other applicable law establishes a civil fine for the same conduct, or where another provision of this title or other applicable law establishes a lower civil fine, in lieu of such lower civil fine:

(a) Where an individual fails to timely and fully comply with a cease and desist order: a civil fine not to exceed one thousand dollars ($1,000) per day based on the circumstances; and

(b) Where an entity fails to timely and fully comply with a cease and desist order: a civil fine not to exceed five thousand dollars ($5,000) per day based on the circumstances.

Section 706, IMMEDIATE SUSPENSION OF A VEHICLE OPERATOR'S LICENSE, is amended as follows:

Subsections 706.8 through 706.9 are amended to read as follows:

706.8 Any review by OAH of an order of immediate suspension, at a preliminary hearing held pursuant to § 706.7, or at any subsequent hearing, shall be limited to a determination of whether the Office has sufficient evidence to conclude that reasonable grounds exist to believe that the respondent poses an imminent danger to the health, safety, or welfare of an operator, a passenger, or the public, as provided in § 706.2.

706.9 If OAH determines, after a review pursuant to § 706.8, that the Office has sufficient evidence to conclude that reasonable grounds exist to believe that the respondent poses an imminent danger to the health, safety, or welfare of an operator, a passenger, or the public, as provided in § 706.2, the order of immediate suspension shall remain in effect without modification by OAH through the end of the immediate suspension as stated in the order, or until a final ruling on the merits of any related notice of proposed suspension or revocation issued by the Office pursuant to § 708, whichever is later.

A new Subsection 706.10 is added to read as follows:

706.10 Each order of immediate suspension issued pursuant to this section shall be issued concurrently with a notice of proposed suspension or revocation issued pursuant to § 708.

Section 707, IMMEDIATE SUSPENSION OF A LICENSE OTHER THAN A VEHICLE OPERATOR'S LICENSE, is amended as follows:

Subsection 707.2 is amended to read as follows:

707.2 A determination under § 707.1 shall be based on evidence that the respondent:

(a) Has committed a willful or repeated violation of any provision of this title or other applicable law which carries a civil penalty of at least five hundred dollars ($500) for the current or most recent violation or for which license suspension is stated as an available civil penalty;

(b) Has allowed or suborned activity by another person which would provide a ground for such person's suspension or revocation under this chapter;

(c) Poses an imminent or significant threat to the health or safety of passengers, operators, or the public, consumer protection, or passenger privacy; or

(d) Is using the license to engage in an activity prohibited by a provision of this title or other applicable law.

Section 708, NOTICE OF PROPOSED SUSPENSION OR REVOCATION OF A LICENSE, is amended as follows:

Subsection 708.1 is amended to read as follows:

708.1 Proposed suspension. The Office may issue a notice of proposed suspension of a license issued under this title based on any of the following grounds:

(a) A material misrepresentation, fraud, or concealment of material information in a communication with the Commission or the Office in a document provided to the Commission or the Office, or in connection with an activity for which the respondent is licensed;

(b) A determination that the respondent no longer meets the requirements for the license it was issued by the Office;

(c) A determination that a basis for suspension exists pursuant to a provision of another chapter of this title;

(d) The existence of one or more grounds for suspension of a license pursuant to § 706.2 or § 707.2, without regard to whether the Office has issued an order of immediate suspension;

(e) A criminal conviction involving fraudulent conduct, or in the case of an entity, a determination that an employee, agent, or independent contractor associated with the entity has been convicted of such conduct in connection with any activity regulated by this title;

(f) The use or subornation of a fraudulent or misleading device, method, or practice relating to any activity regulated by this title;

(g) A willful or repeated failure to obey one or more compliance orders issued by the Office;

(h) A willful or repeated failure to comply with one or more orders issued by OAH;

(i) A willful or repeated failure to pay one or more civil fines imposed by the Office;

(j) A willful or repeated failure to comply with one or more provisions of this title or applicable law; or

(k) Where identified as a civil penalty in a provision of this title.

Subsections 708.3 and 708.5 are amended to read as follows:

708.3 A notice of proposed suspension or proposed revocation may be issued concurrently with an order of immediate suspension or at any time at least fourteen (14) days prior to a hearing on the merits, provided however, that such notice shall not be issued fewer than fourteen (14) days prior to a hearing on the merits without good cause shown by the Office, including access to new evidence, and a change in the law or regulations applicable to the action.

708.5 A proposed suspension shall not exceed the current licensing period.

Subsection 708.6 is amended to read as follows:

708.6 A proposed revocation shall exceed the current licensing period and shall contain a requirement that the respondent is not permitted to re-apply for a new license until after a specific date following the date on which the revocation becomes final.

New Subsections 708.7 and 708.8 are added to read as follows:

708.7 The revocation of a license and the circumstances giving rise thereto may be considered by the Office at the time of a renewal of a license issued under this title.

708.8 Each notice of proposed suspension or proposed revocation shall be served and filed in the manner prescribed by § 712.

Section 713, MEDIATION, is amended as follows:

Subsection 713.4 is amended to read as follows:

713.4 Mediation shall be scheduled by the Office to occur within a reasonable period, provided, however, that where the Office is considering an immediate suspension, the mediation shall be scheduled for not later than three (3) business days following service of the invitation.

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting the Secretary to the Commission, District of Columbia Taxicab Commission, 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by mail to the DC Taxicab Commission, 2235 Shannon Place, S.E., Suite 3001, Washington, DC 20020, Attn: Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C. Register*.

OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in Sections 8(a)(7) and 8(b)(7) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code §§ 2-1831.05(a)(7) and (b)(7)), hereby gives notice of the adoption of the following emergency rulemaking to amend Chapter 28 (Office of Administrative Hearings Rules of Practice and Procedure) and Chapter 29 (Office of Administrative Hearings: Rules Applicable in Specific Classes of Cases) of Title 1 (Mayor and Executive Agencies) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules are a comprehensive revision of the existing OAH Rules of Procedure. They simplify and standardize the language of the previous OAH rules and make several changes to existing OAH practices. Those changes include: new provisions regarding papers filed by e-mail and the use of electronic signatures; clarified procedures regarding motions for reconsideration, relief from a final order, or a new hearing, including specific revisions for District of Columbia Public Schools (DCPS) Student Discipline and Rental Housing cases; elimination of the procedure for requesting review by a panel of Administrative Law Judges; new rules regarding the amendment of petitions in Rental Housing cases; amended rules regarding motions for attorney's fees in Rental Housing cases; new rules regarding appeals from the Department of Disability Services, Rehabilitation Services Administration; and new rules providing that a party in a Homeless Services Reform Act case may provide an e-mail address as an official address for service.

These emergency rules were adopted on October 13, 2015, and became effective on that date. The emergency rules will remain in effect for up to one hundred twenty (120) days after the date of adoption, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. Directions for submitting comments may be found at the end of this notice.

Chapter 28, OFFICE OF ADMINISTRATIVE HEARINGS RULES OF PRACTICE AND PROCEDURE of Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, is repealed in its entirety and replaced with:

CHAPTER 28 OFFICE OF ADMINISTRATIVE HEARINGS RULES OFPRACTICE AND PROCEDURE

Sections

2800 Scope of Chapter
2801 Applicability of District of Columbia Superior Court Rules of Civil Procedure
2802 Beginning a Case at OAH
2803 Beginning a Civil Fine Case
2804 Answers in Civil Fine Cases
2805 Defaults in Civil Fine Cases

2806 Payment Plans in Civil Infractions Act Cases
2807 Abatement Cost Requests
2808 Beginning a Case By Requesting a Hearing
2809 Filing of Papers
2810 Identification of Parties
2811 How to Serve a Paper
2812 Calculating Deadlines
2813 Motions Procedure
2814 Representations to OAH
2815 Mediation
2816 Substitution, Addition, and Intervention of Parties
2817 Voluntary Dismissals of Cases
2818 Involuntary Dismissals and Defaults
2819 Summary Adjudication
2820 Consolidation and Separate Hearings
2821 Hearings and Evidence
2822 Burden of Proof
2823 Language Interpretation
2824 Subpoenas For Witnesses and For Documents at Hearings
2825 Discovery
2826 Sanctions
2827 Transcripts; Citation and Costs
2828 Requesting Reconsideration, A New Hearing, or Relief from a Final Order
2829 Clerical Mistakes
2830 Appeals
2831 Inability of an Administrative Law Judge to Proceed
2832 Recusal; Ethics Compliance
2833 Representation by Attorneys and Law Students
2834 Withdrawal of Appearance by an Attorney
2835 Representation by Non-Attorneys
2836 A Panel of Three Administrative Law Judges
2837 Amicus Curiae or "Friend of the Court" Submissions
2838 Courtroom Procedure
2839 Agency Caseload Projections
2840 Chief Administrative Law Judge Responsibilities
2841 Filing and Service by E-Mail; Other Electronic Submissions
2899 General Definitions

2800 SCOPE OF CHAPTER

2800.1 This Chapter contains general rules of procedure for the Office of Administrative Hearings (OAH). Chapter 29 of these Rules contains rules for rental housing, public benefits, and unemployment insurance cases.

2800.2 These Rules do not extend or limit the jurisdiction of OAH.

2800.3 These Rules shall be used to secure the fair, speedy, and inexpensive determination of every case.

2800.4 No Administrative Law Judge shall maintain standing, chamber, or other individual rules. However, an Administrative Law Judge may issue procedural orders in individual cases.

2800.5 These Rules (Chapters 28 and 29) may be cited as "OAH Rule ______," without reference to the District of Columbia Municipal Regulations (DCMR).

2800.6 These Rules control all procedures at OAH. No procedural rules adopted by any other District of Columbia government agency apply in cases at OAH.

2800.7 These Rules apply to all cases filed on or after January 1, 2011. If it is just and practical, these Rules also apply in any case pending on that date.

2801 APPLICABILITY OF DISTRICT OF COLUMBIA SUPERIOR COURT RULES OF CIVIL PROCEDURE

2801.1 Where these Rules do not address a procedural issue, an Administrative Law Judge may be guided by the District of Columbia Superior Court Rules of Civil Procedure to decide the issue.

2802 BEGINNING A CASE AT OAH

2802.1 The Government may begin a case at OAH by filing a Notice of Infraction or Notice of Violation as described in Section 2803.

2802.2 Any party also may begin a case at OAH by filing a request for a hearing as described in Section 2808.

2802.3 Rules for how to begin rental housing, public benefits and unemployment insurance cases are in Chapter 29.

2803 BEGINNING A CIVIL FINE CASE

2803.1 Sections 2803 through 2807 establish procedures for cases in which the Government seeks payment of a civil fine.

2803.2 When the Government is seeking a civil fine, it must file a Notice of Infraction or a Notice of Violation, as authorized by law, at the OAH. The Government may not file a Notice of Infraction, under the Civil Infractions Act, without complying with Subsection 2803.5, and may not file a Notice of Violation, under the Litter Control Administration Act, without complying with Subsection 2803.8.

2803.3 The Government must provide a copy of the Notice of Infraction or Notice of Violation to the Respondent (the person or entity that the Government wants to pay the fine) in the manner specified in the Civil Infractions Act, the Litter Control Administration Act, the District of Columbia Taxicab Commission Establishment Act of 1985 (DCTC Act), or other applicable law.

2803.4 If a Respondent files an answer before the Government files a Notice of Infraction or a Notice of Violation, OAH will open a case. The Administrative Law Judge may require the Government to file the original Notice of Infraction or Notice of Violation.

2803.5 In a Civil Infractions Act case filed on or after October 1, 2010, if the Government sends a Notice of Infraction to the Respondent by first-class mail, the Government may not file the Notice of Infraction until at least fifteen (15) calendar days after the date that it mailed the Notice of Infraction. When it files the Notice of Infraction, the Government also must file an affidavit, on a form approved by the Chief Administrative Law Judge, verifying that the United States Postal Service (USPS) did not return the Notice of Infraction to the Government.

2803.6 If the USPS returns a Notice of Infraction to the Government after it has filed the affidavit required by Subsections 2803.5 or 2803.11(b), the Government must notify OAH by filing a new affidavit, on a form approved by the Chief Administrative Law Judge.

2803.7 If the USPS returns the Notice of Infraction to the Government, the Government may file proof of any alternative service of the Notice of Infraction.

2803.8 In a Litter Control Administration Act case, if the Government sends a Notice of Violation to a Respondent by certified mail, the Government must file a copy of a signed certified mail receipt or other proof that the USPS delivered the Notice of Violation to the Respondent's address. If the USPS returns the certified mail to the Government, the Government may file proof of any alternative service of the Notice of Violation.

2803.9 When it files a Notice of Infraction or a Notice of Violation, the Government must file a copy of all exhibits it expects to offer at any hearing in the case and must provide a copy of each exhibit to the Respondent. An Administrative Law Judge may allow the Government to use exhibits that it did not file or provide in accordance with this subsection if there is no prejudice to the Respondent.

2803.10 OAH may dismiss or may refuse to accept for filing any Notice of Infraction or Notice of Violation that does not comply with the applicable law or these Rules.

2803.11 When the District of Columbia Taxicab Commission (DCTC) is seeking civil fines or sanctions under the "District of Columbia Taxicab Commission Establishment Act of 1985," effective March 25, 1986, as amended (D.C. Law 6-97; D.C. Official Code §§ 50-301 *et seq.*) ("DCTC Act"),

(a) DCTC may file a Notice of Infraction by entering it in the automatic ticket database presently maintained by the Department of Motor Vehicles (DMV). The day the Notice of Infraction data is entered into the DMV database shall be deemed the date of filing of the Notice of Infraction with OAH;

(b) If DCTC serves a Notice of Infraction by first-class mail, DCTC may not file the Notice of Infraction with OAH until at least 15 calendar days after the date it mailed the Notice of Infraction. When it files the Notice of Infraction with OAH, DCTC must also file an affidavit, on a form approved by the Chief Administrative Law Judge, verifying that the USPS did not return the Notice of Infraction to DCTC;

(c) If DCTC issues a Notice of summary or proposed denial, revocation, suspension or modification of a license, a Notice to cease and desist, or a Notice to take action, DCTC shall file the Notice with OAH promptly and serve it in the manner provided under the DCTC Act and implementing regulations. OAH will schedule a hearing as required by law or on the request of the Respondent;

(d) If DCTC takes other actions under the DCTC Act or implementing regulations appealable to OAH, DCTC shall file the relevant Notice, Order, or Action with OAH and serve it in the manner provided under the DCTC Act and implementing regulations. If the DCTC Act and implementing regulations do not specify a manner of service, DCTC shall follow Subsection (b) above.

2803.12 When a Notice of Infraction is issued from a hand-held electronic device, no signature of an issuing officer shall be required; provided, that the officer's printed name, department, and badge number appear legibly on the face of the Notice of Infraction.

2804 ANSWERS IN CIVIL FINE CASES

2804.1 To answer a Notice of Infraction or a Notice of Violation (both “Notice”), a Respondent should file the Respondent’s copy of the Notice at OAH, or in DCTC cases filed in the DMV automatic ticket database, the Respondent shall answer according to the instructions on the back of the Notice of Infraction. The Respondent shall indicate on the Notice whether the Respondent’s answer is Admit, Admit with Explanation, or Deny.

2804.2 If a Respondent does not file the Respondent’s copy of the Notice, a written answer will be sufficient if it contains both the number of the Notice and a statement whether the Respondent’s answer is Admit, Deny, or Admit with Explanation.

2804.3 A Respondent is not required to send a copy of the answer to the Government. OAH will send the Government a copy of every answer of Deny or Admit with Explanation. In DCTC cases filed in the DMV automatic ticket database, the Government has access to answers of Deny or Admit with Explanation in that database.

2804.4 A Respondent whose answer is Admit shall pay the fine specified on the Notice when filing the answer.

2804.5 If a Respondent's answer is Deny, OAH ordinarily will schedule a hearing and will notify the Respondent and Government, in writing, of the hearing date and time. The hearing order will contain additional information about procedures for the hearing. In DCTC cases filed in the DMV automatic ticket database, OAH will notify DCTC in writing of the hearing date and time selected by Respondent or by calendaring the hearing in the DMV database. In DCTC cases filed in the DMV database, if Respondent did not select the date and time of the hearing, OAH shall notify the Respondent in writing of the date and time of the hearing.

2804.6 If a Respondent's answer is Deny, after notice and opportunity to respond, an Administrative Law Judge may decide a case based on the papers submitted, without an in-person hearing, if a hearing is unnecessary.

2804.7 At least five calendar days before any hearing date, the Respondent shall file at OAH copies of all exhibits that the Respondent intends to ask the Administrative Law Judge to consider at the hearing. At the same time, the Respondent shall send copies of those exhibits to the Government. In DCTC cases filed in the DMV automatic ticket database, the Respondent may file copies of all such exhibits in the DMV database without sending copies to DCTC. An Administrative Law Judge may allow a Respondent to use exhibits at a hearing that the Respondent did not file or provide to the Government before the hearing if there is no prejudice to the Government.

2804.8 If a Respondent's answer is Admit with Explanation, a Respondent shall submit a written explanation stating why the Respondent believes the Administrative Law Judge should reduce or suspend the fine or any penalty. The Respondent also shall submit any papers, photographs, or other materials supporting the Respondent's explanation. In DCTC cases filed in the DMV automatic ticket database, Respondent may file any materials supporting the answer of Admit with Explanation through the DMV database.

2804.9 OAH will send a copy of an answer of Admit with Explanation and supporting materials to the Government, and will allow the Government twenty-one (21) calendar days to reply. The Government must send the Respondent a copy of everything the Government files in reply. In DCTC cases filed in the DMV automatic ticket database, the Government has access to the answer of Admit with Explanation and Respondent's supporting materials through the DMV database.

Any reply by DCTC must be filed in the DMV database and also provided to the Respondent.

2804.10 The Administrative Law Judge shall decide Admit with Explanation cases by considering all the materials filed by the parties, including the exhibits filed with the Notice, Respondent's explanation and supporting materials, and the Government's reply and supporting materials. The Administrative Law Judge will not hold a hearing, unless the parties' materials are not sufficient to allow him or her to decide the case.

2804.11 In an Admit with Explanation case, the Administrative Law Judge shall dismiss the Notice if he or she determines that the Respondent did not commit or is not responsible for the violation charged.

2804.12 In all civil fine cases, an Administrative Law Judge shall not impose a fine that exceeds the fine amount the Government requests.

2804.13 In a case involving (a) a denial, revocation, suspension, or modification of a license issued under the DCTC statute; or (b) any other order or action authorized under the DCTC Act, other than a Notice of Infraction, OAH will schedule a hearing as required by law or on the request of the Respondent. If the Respondent requests a hearing, OAH shall schedule the hearing as required by law or as soon as practicable. If the Respondent does not appear for a hearing, the Administrative Law Judge may suspend the hearing and close the case.

2805 DEFAULTS IN CIVIL FINE CASES

2805.1 This section contains rules for deciding civil fine cases in which the Respondent does not file an answer. There are separate procedures for Civil Infractions Act cases, Litter Control Administration Act cases, and other cases, because the law establishes different requirements for each of those cases.

2805.2 In a Civil Infractions Act case filed on or before September 30, 2010, if a Respondent fails to answer a Notice of Infraction within the time allowed by law, the Government must issue a second Notice of Infraction, as required by the Civil Infractions Act. OAH also may issue a notice of default. The notice of default shall inform the Respondent of any penalty provided by law, and shall direct the Government to issue a second Notice of Infraction.

2805.3 In a Civil Infractions Act case filed on or before September 30, 2010, if the Government fails to file a second Notice of Infraction within thirty (30) calendar days after a notice of default is served, an Administrative Law Judge may dismiss the charge against the Respondent.

2805.4 In a Civil Infractions Act case filed on or before September 30, 2010, if a Respondent fails to answer a second Notice of Infraction within the time allowed by law, an Administrative Law Judge shall determine whether:

(a) The Government has submitted evidence of proper service; and

(b) Each Notice of Infraction meets all legal requirements on its face.

If so, the Administrative Law Judge shall find the Respondent in default and shall impose the legally authorized fine and penalty. If not, the Administrative Law Judge shall dismiss both Notices of Infraction without prejudice.

2805.5 In a Civil Infractions Act case filed on or after October 1, 2010, and in a Litter Control Administration Act case, if a Respondent fails to answer within the time allowed by law, an Administrative Law Judge shall determine whether:

(a) The Government has submitted evidence of proper service; and

(b) The Notice of Infraction or Notice of Violation meets all legal requirements on its face.

If so, the Administrative Law Judge shall find the Respondent in default and shall impose the legally authorized fine and penalty. If not, the Administrative Law Judge shall dismiss the Notice of Infraction or Notice of Violation without prejudice.

2805.6 In a Civil Infractions Act case filed on or after October 1, 2010, or in DCTC cases filed under Subsection 2803.11(b), if the USPS returns an order finding the Respondent in default to the Clerk's Office, for reasons that call into question the accuracy of any affidavit filed under Subsection 2803.5 or Subsection 2803.11(b), (for example, "no such address," "addressee unknown"), an Administrative Law Judge shall issue an order requiring the Government to show why the default order should not be vacated. If the Government does not respond with sufficient evidence showing that it mailed the Notice of Infraction to a valid address for the Respondent, the default order shall be vacated and the Notice of Infraction shall be dismissed.

2805.7 In default cases brought under the DCTC Act or acts other than the Civil Infractions Act or the Litter Control Administration Act, the procedure shall be consistent with the applicable law and shall ensure that:

(a) There is sufficient evidence of proper service on the Respondent; and

(b) The charging document meets all legal requirements on its face.

A Respondent who fails to answer shall be held in default and must pay the legally authorized fine and penalty. If the Administrative Law Judge does not find the Respondent in default, the Administrative Law Judge shall dismiss the Notice without prejudice.

2806 PAYMENT PLANS IN CIVIL INFRACTIONS ACT CASES

2806.1 If an Administrative Law Judge has imposed monetary sanctions under the Civil Infractions Act, a Respondent may request to pay the monetary sanctions in installments. An Administrative Law Judge may permit installment payments for no more than six months beyond the date of the final order and may charge a fee of 1 percent per month of the outstanding amount.

2806.2 In requesting a payment plan under this section, a Respondent shall state, in writing, the reasons for seeking a payment plan, the length of time requested, and why Respondent cannot afford to pay the entire monetary sanction in a lump sum.

2806.3 A Respondent must file with OAH and serve on the Government a request for a payment plan within thirty (30) calendar days of the service of the final order.

2806.4 The Government may file with OAH a response to a request for a payment plan within five (5) calendar days of the service of the request.

2807 ABATEMENT COST REQUESTS

2807.1 Before or after an Administrative Law Judge has issued a final order finding a Respondent liable for a violation of the Litter Control Administration Act, the Government may file a motion to require the Respondent to pay abatement costs. The Government must file the motion, with an itemization, not later than one hundred twenty (120) calendar days after service of a final order.

2807.2 A Respondent may request a hearing on the Government's motion. The request must be in writing and must be filed within thirty (30) calendar days after the Government serves its motion.

2807.3 If a Respondent timely requests a hearing on the Government's motion, the presiding Administrative Law Judge shall hold a hearing on the issue of abatement costs, which may be consolidated with any hearing on the violation. If an Administrative Law Judge has held a separate hearing on the violation and found the Respondent liable for the violation, or if the Respondent has admitted liability, or if an Administrative Law Judge has found the Respondent in default, the Respondent may not have another hearing on liability for the violation.

2807.4 If a Respondent does not file a timely request for a hearing on the Government's motion, the Administrative Law Judge may:

(a) Decide, based on the papers filed, whether the Government is entitled to recover abatement costs and their amount; or

(b) Before deciding the issue, order the Government and the Respondent to appear for a hearing on the issue.

2808 BEGINNING A CASE BY REQUESTING A HEARING

2808.1 Unless a statute or these Rules describe a different way to begin a case, a party seeking a hearing at OAH must file a request for hearing in writing.

2808.2 The request for hearing need not follow any specific format, although blank forms are available from the Clerk's office. A request for hearing should contain the following information:

(a) A short description of your dispute;

(b) A description of what you want the judge to do;

(c) Any key dates that are involved;

(d) A copy of any ruling or decision that you are disputing or appealing;

(e) Your full name, address, and telephone and fax numbers; and

(f) If known, the full name, address, and telephone and fax numbers of every other party involved in the dispute.

2808.3 Parties must pay close attention to any deadlines for filing hearing requests. The deadlines are set by statute, regulations, or agency rules other than these Rules, and not by OAH.

2808.4 A party requesting a hearing in a Child Support Services Division (CSSD) enforcement action must file a copy of the Order of Condemnation or other proof that CSSD has issued an Order of Condemnation.

2808.5 Any hearing request to appeal a proposed tax assessment, other than a proposed real property tax assessment, must be filed with OAH and sent to the District of Columbia Office of Tax and Revenue. The hearing request should state the type of tax (for example, personal, business, or franchise), tax year(s), and amount of tax appealed. The hearing request should include a copy of the proposed tax assessment.

2808.6 Any hearing request to appeal a decision concerning a Certificate of Need must be filed with OAH and sent to the Director of the State Health Planning and Development Agency (SHPDA) in the Department of Health. SHPDA must

transfer the agency record of the proceedings to OAH within thirty (30) calendar days of service of the request for hearing.

2809 FILING OF PAPERS

2809.1 A "paper" means any pleading, motion, exhibit or witness list, or any other written submission filed with OAH.

2809.2 Any paper filed at OAH must be legible and signed by a party or a party's representative. A conformed signature, as defined in Section 2899, will only be accepted on a paper filed by email as authorized by Section 2841.

2809.3 To file any paper at OAH, a person must bring, mail, fax, email, or have the paper delivered to the Clerk's office during regular business hours from 9:00 a.m. to 5:00 p.m. on a business day. A paper is filed on the day the Clerk's office receives it during business hours, except as provided in Subsection 2809.5 below. Any paper filed by email must comply with Section 2841.

2809.4 The filing date of a fax transmission will be determined as follows:

(a) The filing date is the date on which the fax is received in the Clerk's office between the hours of 9:00 a.m. and 5:00 p.m. If a paper is received on a date or at a time when the Clerk's office is not open, the paper shall be deemed to have been filed when the Clerk's office is next open.

(b) A party filing a paper by fax is responsible for delay, disruption, interruption of electronic signals, and legibility of the paper, and accepts the risk that the paper may not be filed.

(c) Any incomplete or illegible fax will not be considered received unless a hard copy of the fax is filed or a complete and legible fax is received within three (3) calendar days of the first transmission. In a response to a motion, the Administrative Law Judge may extend this time.

2810 IDENTIFICATION OF PARTIES

2810.1 Any paper filed at OAH should contain the name, address, telephone number, and fax number, if any, of the person who files it.

2810.2 Any paper filed at OAH by an attorney or other representative must identify the represented party and must contain the District of Columbia Bar number, if any, of the attorney.

2810.3 A party, attorney, or representative must notify the Clerk and all other parties in writing of any change in address, telephone number, or fax number within three (3) calendar days of the change.

2810.4 The most recent contact information provided by a party, attorney, or other representative under this Section shall be considered correct. A party or representative who does not keep an address current may fail to receive orders and may lose the case as a result.

2810.5 The Clerk may reject, or an Administrative Law Judge may strike, any paper that does not comply with this Section.

2811 HOW TO SERVE A PAPER

2811.1 "Service" of a paper or to "serve" a paper means to send or deliver it as set forth in this Section.

2811.2 Every paper filed at OAH shall be served on the other parties or their attorneys or representatives no later than the day it is filed with OAH. Exceptions may be identified in these Rules, by statute, or by OAH order.

2811.3 Unless otherwise ordered by an Administrative Law Judge or agreed by the parties, service shall be by delivering a copy, mailing a copy, faxing a copy, or sending a copy by commercial carrier.

2811.4 Service by delivery means:

(a) Handing a copy to the party or a representative;

(b) Leaving it at the party's or representative's place of business with an employee; or

(c) Leaving it at the party's residence with an adult who lives there.

2811.5 Service by mail means mailing a properly addressed copy with first-class postage by depositing it with the United States Postal Service.

2811.6 Service by fax means faxing a legible copy to the correct fax number and receiving confirmation of transmission.

2811.7 Service by commercial carrier means giving a copy properly addressed to the commercial carrier with the cost of delivery pre-paid for delivery within three (3) calendar days.

2811.8 Parties may agree, in writing, to other means of service and may withdraw their agreement in writing.

2811.9 Any paper filed must include a signed statement that the paper was served on the parties. Such a statement is known as a "certificate of service." The certificate of

service shall identify the individual serving the paper, the parties served and their addresses, the way it was served, and the date served.

2811.10 The Clerk may reject, or an Administrative Law Judge may strike, a paper if a party fails to file a certificate of service with the paper.

2811.11 Actual receipt of a paper shall bar any claim of defective service except for a claim of late service.

2812 CALCULATING DEADLINES

2812.1 This Section applies to all time periods established by these Rules, by an order, or by any applicable law.

2812.2 In computing any time period measured in days, the day of the act, event, or default from which the period begins to run shall not be included.

2812.3 For any time period measured in days, the last day of the period shall be included unless OAH is closed on that day. In that case, the period runs until the end of the next day on which OAH is open.

2812.4 In computing any time period measured in hours, no hours shall be excluded from the computation, except as provided in this Subsection:

(a) If any period expires before 10:00 a.m. on any day OAH is open, the period shall be extended to 10:00 a.m. on that day.

(b) If any period expires after 4:00 p.m. on any day, the period shall be extended to 10:00 a.m. on the next day OAH is open.

(c) If any period expires on a day OAH is closed, the period shall be extended to 10:00 a.m. on the next day OAH is open.

2812.5 When a party may or must act within a specified time period after service, and service is made by United States mail, commercial carrier, or District of Columbia Government inter-agency mail, five (5) calendar days are added after the period would otherwise expire, unless a statute or regulation provides otherwise.

2812.6 When a party may or must act within a specified time period, an Administrative Law Judge for good cause shown may reduce the time or extend it, even after the period has expired, except for any period prescribed by law, or any period provided under Sections 2806 and 2828.

2812.7 Any reference to "days" in an OAH order means calendar days unless specifically designated as business days in the order.

2813 MOTIONS PROCEDURE

2813.1 A "motion" is a request for an Administrative Law Judge to take some action.

2813.2 Unless made during a hearing, all motions shall be in writing. Without permission from an Administrative Law Judge, no motion or brief shall exceed twenty (20) double-spaced typed pages in length, excluding exhibits. The font size shall be a minimum of twelve (12) points, with no less than one-inch (1") margins. The first page of every motion should contain: the parties' names, the case number, and the name of the presiding Administrative Law Judge, if known. Every motion shall state the legal and factual reasons for the motion and shall say what the party wants the Administrative Law Judge to do.

2813.3 When a motion is based on information not on the record, a party may support or oppose the motion with affidavits, declarations, or other papers. An Administrative Law Judge may order a party to file supporting affidavits, declarations, or other papers.

2813.4 Except as otherwise ordered by an Administrative Law Judge, a separate memorandum of points and authorities need not be filed with a motion.

2813.5 Before filing any motion (except a motion for summary adjudication, to dismiss, for reconsideration, relief from final order, or for sanctions), a party must make a good faith effort to ask all other parties if they agree to the motion.

(a) A "good faith effort" means a reasonable attempt, considering all the circumstances, to contact a party or representative in person, by telephone, by fax, by email, or by other means.

(b) Contact by mail is a good faith effort only if no other means is reasonably available (for example, not having another party's telephone number or email address).

(c) By itself, serving a party with the motion is not a good faith effort.

(d) When this subsection requires a good faith effort, the motion must describe that effort and say whether all other parties agreed to the motion.

(e) If a party fails to comply with this Subsection, an Administrative Law Judge may deny the motion without prejudice.

2813.6 Unless otherwise provided by these rules or ordered by an Administrative Law Judge, all parties opposing a motion shall have eleven (11) calendar days from the service of the motion to file and serve a response. No further filings related to the motion are permitted unless ordered by an Administrative Law Judge.

2813.7 The Administrative Law Judge may decide any motion without holding a hearing.

2813.8 Parties and counsel should not assume that a motion to extend time, to continue a hearing, or to seek other relief will be granted. If a party does not receive notice from OAH, it is the party's obligation to contact OAH to determine whether an Administrative Law Judge has acted on the motion.

2814 REPRESENTATIONS TO OAH

2814.1 A party or representative who files a paper with OAH certifies in good faith that:

(a) The party or representative has read the paper;

(b) The party or representative is not presenting it for any improper purpose, such as to harass, to cause unnecessary delay, or to increase the cost of litigation needlessly;

(c) Any legal claims are consistent with existing law or a good faith argument to change existing law; and

(d) Any factual claims have or are likely to have evidentiary support.

2814.2 If, after notice and an opportunity to respond, an Administrative Law Judge determines that an attorney or representative has violated this section, the Administrative Law Judge may impose sanctions, including those authorized by Subsections 2833.7 and 2835.12.

2815 MEDIATION

2815.1 Mediation is a process of assisted, informal negotiation which uses a neutral third party, the mediator, to aid the parties in exploring the possibility of settlement. No party may be compelled to accept a settlement or other resolution of the dispute in mediation.

2815.2 At any time during case proceedings, an Administrative Law Judge may refer a case for mediation to a qualified mediator with or without the consent of the parties. Any party may request an Administrative Law Judge to refer a case for mediation.

2815.3 Mediations are confidential and closed to the public. Mediations may not be recorded electronically or in any other manner, with or without the consent of the parties. Evidence of anything that occurs during mediation sessions and documents prepared exclusively for or during mediation, may not be introduced into evidence or otherwise disclosed to the presiding Administrative Law Judge. Nothing in this subsection prohibits the introduction or disclosure of information or evidence that any party obtained outside of mediation.

2815.4 The mediator may speak privately with any party or any representative during the mediation process.

2815.5 The mediator shall not disclose anything that occurs at mediation to the presiding Administrative Law Judge except to report without elaboration:

(a) Whether the parties reached an agreement; and, if not

(b) Whether he or she believes further mediation would be productive.

2815.6 The mediator may not be called to testify, participate in discovery, or otherwise provide information in any subsequent proceeding related to the mediation.

2815.7 An Administrative Law Judge who conducts mediation may not be the Administrative Law Judge in any subsequent proceedings for the case, but, with the consent of the parties, may issue an order on procedural matters concerning the mediation or reflecting any agreement reached during the mediation.

2815.8 All parties or their representatives must appear for any mediation session. Any representative who appears must have authority to resolve the case.

2815.9 If a party or representative fails to appear at a scheduled mediation session without good cause, the mediator shall notify the presiding Administrative Law Judge who may impose sanctions.

2816 SUBSTITUTION, ADDITION, AND INTERVENTION OF PARTIES

2816.1 After proper notice and an opportunity to be heard, an Administrative Law Judge may substitute a person or entity for a named party, or may add parties to a case.

2816.2 Anyone who has an interest in the subject matter of a pending case and contends that the representation of his or her interest is inadequate may file a motion to intervene. After proper notice and an opportunity to be heard, an Administrative Law Judge may allow an interested person or entity to intervene.

2816.3 If an Administrative Law Judge grants a motion for leave to intervene, the intervenor may participate to the extent allowed by the Administrative Law Judge.

2816.4 No person or entity may intervene as a co-Petitioner with the Government in any enforcement action where the Government seeks a fine unless a statute allows it.

2816.5 A person or entity to which the Government has properly delegated a governmental function may request to intervene, but may not be substituted for the Government.

2817 VOLUNTARY DISMISSALS OF CASES

2817.1 The party initiating the case may move to dismiss the case at any time, and the Administrative Law Judge may grant the motion without waiting for a response from the opposing side.

2817.2 An opposing party who objects to the voluntary dismissal of a case may file a motion for reconsideration as provided in Subsection 2828.

2817.3 The parties may file a joint motion for dismissal of a case with or without prejudice.

2817.4 Dismissal under this Section shall be without prejudice, unless an Administrative Law Judge orders otherwise. A dismissal with prejudice may occur:

(a) If the party requesting dismissal has previously dismissed the claim;

(b) If the motion for dismissal is made pursuant to a settlement that does not specifically require dismissal without prejudice; or

(c) In order to prevent harm to the other side.

2818 INVOLUNTARY DISMISSALS AND DEFAULTS

2818.1 Except as provided in Subsection 2818.2, if the party initiating a case fails to comply with an Administrative Law Judge's order or these Rules or otherwise fails to prosecute the case, the Administrative Law Judge may, on his or her own motion or on the motion of the opposing party, dismiss all or part of the case. Dismissal will ordinarily be with prejudice unless the Administrative Law Judge finds good cause to dismiss without prejudice.

2818.2 Dismissals for defective service will ordinarily be without prejudice, unless the Administrative Law Judge decides otherwise.

2818.3 If an attorney, representative, or unrepresented party fails, without good cause, to appear at a hearing, the Administrative Law Judge may dismiss the case, enter an order of default, decide the case on the merits, or impose other sanctions.

2818.4 If an attorney, representative, or unrepresented party fails, without good cause, to appear at a pretrial, settlement, or status conference, the Administrative Law Judge may determine the appropriate sanction, which may include dismissal or entry of default.

2819 SUMMARY ADJUDICATION

2819.1 A party may request that an Administrative Law Judge decide a case summarily, without an evidentiary hearing. Such a motion must include sufficient evidence of undisputed facts and citation of controlling legal authority.

2820 CONSOLIDATION AND SEPARATE HEARINGS

2820.1 When cases involve a common question of law or fact, or when multiple Notices of Violation or Notices of Infraction have been issued to the same Respondent, an Administrative Law Judge may, in his or her discretion:

(a) Consolidate the cases for all or any purposes; or

(b) Order a joint hearing on all or any issues.

An Administrative Law Judge may do so on motion of a party or on his or her own motion.

2820.2 An Administrative Law Judge may order a separate hearing on any issue in a case where appropriate.

2821 HEARINGS AND EVIDENCE

2821.1 The presiding Administrative Law Judge shall determine whether a hearing is required by law in any case.

2821.2 At least five (5) calendar days before any evidentiary hearing (except in unemployment compensation cases governed by Subsection 2983.1), a party shall serve on all other parties and file with the Clerk the following:

(a) A list of the witnesses, other than a party or a charging inspector, whom the party intends to call to testify; and

(b) A copy of each exhibit that the party intends to offer into evidence, other than exhibits that were served with the Notice of Violation, Notice of Infraction, or Answer or are to be used solely for impeachment or rebuttal.

2821.3 The Administrative Law Judge may exclude any witnesses or exhibits not disclosed under Subsection 2821.2 if he or she finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.

2821.4 Hearings ordinarily will be held only in an OAH courtroom. Hearings may be held in any other location only as required by law or in exceptional circumstances with approval of the Chief Administrative Law Judge. For good cause shown, and subject to appropriate safeguards, an Administrative Law Judge may permit a

party to appear at a hearing from a remote location by telephone, videoconferencing, or similar means.

2821.5 Parties shall have the following rights at a hearing:

(a) To testify and to have other witnesses testify for them;

(b) To cross-examine witnesses called by another party;

(c) To request that any prospective witness be excluded from the courtroom;

(d) To examine all exhibits offered into evidence by another party;

(e) To object to the admission of any testimony or other evidence;

(f) To subpoena witnesses, as provided in Section 2824; and

(g) To appear with a representative, as provided in Sections 2833 and 2835.

2821.6 At a hearing, all parties may present evidence. "Evidence" includes testimony by the parties and by any witnesses that a party may present. Evidence also includes papers, photographs, or any other items that a party believes may help the Administrative Law Judge decide the case. The Administrative Law Judge shall decide what evidence shall become part of the record.

2821.7 Testimony in any hearing ordinarily will be given in open court. An Administrative Law Judge may exclude testimony given by any other means, unless otherwise permitted by statute or these Rules.

2821.8 For good cause shown, and subject to appropriate safeguards, an Administrative Law Judge may permit witness testimony from a remote location by telephone, videoconferencing, or similar means. Requests for such testimony will ordinarily be granted where the witness does not reside or work in the greater District of Columbia Metropolitan area.

2821.9 For good cause shown, an Administrative Law Judge may permit a witness to submit written testimony in advance of the hearing, subject to cross-examination and redirect examination at the hearing.

2821.10 For good cause shown, an Administrative Law Judge may allow parties to submit pre-recorded testimony subject to appropriate safeguards including cross-examination.

2821.11 All witnesses must testify under oath or under penalty of perjury. Nothing in this Subsection forbids the admission of an affidavit or other sworn written statement.

2821.12 Hearsay evidence (generally, a statement by a person not present in the courtroom) is admissible. When hearsay evidence is admitted, the Administrative Law Judge shall assess the reliability of the evidence to determine the weight it should be assigned. An Administrative Law Judge shall consider the speaker's absence in evaluating the evidence.

2821.13 In determining the admissibility and weight of evidence, an Administrative Law Judge may use the Federal Rules of Evidence for guidance, but they shall not be binding.

2821.14 An Administrative Law Judge may limit or exclude testimonial or documentary evidence to avoid surprise or prejudice to other parties, repetition, or delay.

2821.15 Whenever any applicable law or order requires or permits the filing of an affidavit or other writing signed under oath, the signer may submit a written declaration in substantially the following form:

"I declare under penalty of perjury, that the foregoing is true and correct. Signed on (date)."

"Signature"

2821.16 All Administrative Law Judges and the Clerk are authorized to administer oaths.

2822 BURDEN OF PROOF

2822.1 Unless otherwise established by law, the proponent of an order shall have the burden of proof, that is, the requirement to persuade the Administrative Law Judge on every contested factual issue.

2822.2 Unless otherwise established by law, the burden of production, that is, the requirement to introduce evidence first, shall be as follows:

(a) Whenever a party challenges the Government's denial of an application for a license, permit, or public benefit, the Government shall have the burden of producing sufficient evidence to establish the reasons for the denial;

(b) Whenever the Government suspends, revokes, or terminates a license, permit, or public benefit, or proposes to do so, the Government shall have the burden of producing sufficient evidence to establish the reasons for its action;

(c) The party asserting an affirmative defense identified in District of Columbia Superior Court Civil Rule 8(c) shall have the burden of producing sufficient evidence to establish that defense; and

(d) The party asserting an exception to the requirements or prohibitions of any statute or rule shall have the burden of producing sufficient evidence to establish that exception.

2822.3 Otherwise, an Administrative Law Judge shall allocate the burden of producing evidence to promote fairness, equity, substantial justice, and sound judicial administration.

2822.4 If the party with the burden of production fails to appear, the party with the burden of proof still must meet its burden, unless otherwise provided by law.

2822.5 If a party has presented all of its evidence on an issue on which it has the burden of proof, and the presiding Administrative Law Judge concludes that the party has failed to meet its burden, the Administrative Law Judge may find against that party on that issue without awaiting the close of all the evidence in that case.

2823 LANGUAGE INTERPRETATION

2823.1 OAH will provide oral or sign language interpretation services upon request for persons seeking information or participating in a hearing. An Administrative Law Judge may order the use of such services at a hearing.

2823.2 A person who needs those services for a hearing shall request them as early as possible to avoid delay.

2823.3 Upon request by a party with impaired vision, OAH will provide official documents in Braille or large print within seven business days.

2823.4 An interpreter at a hearing shall swear or affirm under penalty of perjury to interpret accurately, completely, and impartially.

2824 SUBPOENAS FOR WITNESSES AND FOR DOCUMENTS AT HEARINGS

2824.1 Except as provided in Subsection 2824.5 below (unemployment compensation and rental housing cases), a subpoena for the appearance of witnesses and production of documents at a hearing shall only be issued by an Administrative Law Judge.

2824.2 A party may request a subpoena in writing or an Administrative Law Judge may issue a subpoena without a party's request.

2824.3 Any request that an Administrative Law Judge issue a subpoena should include a copy of the proposed subpoena and shall state the relevance of the requested testimony or documents. Subpoenas and forms to request a subpoena are available from the Clerk.

2824.4 Unless otherwise provided by law or order of an Administrative Law Judge, any request for a subpoena shall be filed no later than five calendar days prior to the hearing.

2824.5 In unemployment compensation and rental housing cases, the Clerk shall, without an order of the Administrative Law Judge, issue certain subpoenas at the request of a party as follows:

(a) For subpoenas in unemployment compensation cases, refer to Section 2984.

(b) For subpoenas in rental housing cases, refer to Section 2934.

(c) When the Clerk issues a subpoena authorized by this Subsection, the Clerk shall sign it, but otherwise leave it blank. The party requesting the subpoena shall fill in the remaining information on the subpoena form.

(e) If a party in an unemployment insurance or rental housing case wants to obtain any subpoena not authorized by this Subsection, the party shall request an Administrative Law Judge to issue that subpoena in accordance with Subsections 2824.1 through 2824.4.

2824.6 It is the responsibility of the requesting party to serve a subpoena in a timely fashion. Any person, including a party, who is at least eighteen (18) years of age, may serve a subpoena.

2824.7 Service of a subpoena for a witness to appear at a hearing shall be made by personally delivering the subpoena to the witness. Unless otherwise ordered by an Administrative Law Judge, service shall be made at least four (calendar days before the hearing.

2824.8 A subpoena for the production of documents at a hearing shall be directed to either an individual, a corporation, the Government, or another entity.

2824.9 A subpoena for the production of documents at a hearing shall be served by any of the following means:

(a) Handing it to the person or to a representative of the person or entity;

(b) Leaving it at a person's office with a responsible adult, or if no one is available, leaving it in a conspicuous place in the office;

(c) Leaving it with a responsible adult at an entity's office that is connected to the case;

(d) Mailing it to the last known address of the person;

(e) Mailing it to the last known address of an entity's office connected to the case; or

(f) Delivering it by any other means, including electronic means, if consented to in writing by the person or entity served, or as ordered by an Administrative Law Judge.

2824.10 A person or entity ordered to produce documents at a hearing:

(a) Need not appear in person at the hearing unless ordered by an Administrative Law Judge to do so;

(b) Shall produce the documents as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena; and

(c) Shall expressly make any claims of privilege or protection with a description of the documents not produced that is sufficient to enable the requesting party to contest the claim.

2824.11 A subpoena may be served at any place within the District of Columbia, or at any place outside the District of Columbia that is within twenty-five (25) miles of the place of the hearing.

2824.12 To prove service of a subpoena, a party shall file a written statement or shall provide in-court testimony describing the date and manner of service, and names of the persons served.

2824.13 An Administrative Law Judge may quash or modify a subpoena if it:

(a) Was issued under Subsections 2824.5, 2934.1 or 2984.1, but does not meet the requirements of those subsections;

(b) Was improperly served;

(c) Fails to allow reasonable time for compliance;

(d) Requires a person who is not a party or an officer of a party to travel to a hearing more than twenty-five (25) miles from where that person resides, is employed, or regularly transacts business, except that such a person may be ordered to appear by telephone;

(e) Requires disclosure of a privileged or other protected information; or

(f) Subjects a person or entity to undue burden or expense.

2824.14 If a person or entity disobeys a subpoena, an Administrative Law Judge may order compliance with the subpoena. If a person subject to the order fails to comply, the Administrative Law Judge may impose monetary sanctions. In addition, a party may apply to the Superior Court of the District of Columbia for an order to show cause why that person should not be held in civil contempt.

2825 DISCOVERY

2825.1 Discovery is generally not permitted. An Administrative Law Judge may authorize discovery for good cause shown, but interrogatories and depositions are disfavored.

2825.2 A party may move for an Administrative Law Judge to issue a subpoena to require any non-party to provide documents prior to the hearing.

2825.3 Any motion for discovery shall explain the relevance of the information that is sought and shall describe all attempts to obtain consent from the opposing party, including a description of all discovery to which the opposing party has agreed.

2825.4 Unless otherwise ordered by an Administrative Law Judge, any motion for discovery must be filed at least twenty (20) calendar days before the date of any scheduled evidentiary hearing.

2825.5 An Administrative Law Judge may impose appropriate sanctions if a party fails to comply with a discovery request, including prohibiting the party from offering evidence and ordering that specific facts are established.

2826 SANCTIONS

2826.1 Before issuing an order imposing any sanctions under the Act, the presiding Administrative Law Judge shall allow the party subject to the sanction an opportunity to be heard. Any order imposing a sanction shall be in writing.

2827 TRANSCRIPTS; CITATION AND COSTS

2827.1 All proceedings, except for mediations, shall be recorded. The recording is the official record of what occurred at the proceeding.

2827.2 Any party may obtain a copy of the recording of a hearing at the party's expense.

2827.3 Transcripts of the recording of the proceedings shall be prepared by a qualified reporter or transcriber who shall personally certify that he or she is not a party or counsel to a party or otherwise related to or employed by a party or counsel in the case; that he or she has no material interest in the outcome of the case; and that the transcript represents the testimony and proceedings of the case as recorded.

2827.4 In filings, a party may only rely upon a transcript prepared according to this Section.

2827.5 Unless otherwise stipulated by the parties or ordered by an Administrative Law Judge, if a party cites to a portion of a transcript, the entire transcript of the case must be filed at OAH, and a copy must be served on all parties.

2827.6 OAH only provides transcripts to appellate tribunals. In any case in which a party files a petition for review in the District of Columbia Court of Appeals, OAH will arrange for the preparation and filing of a transcript without charge only if the Court of Appeals has permitted the Petitioner to proceed *in forma pauperis*. In all other cases, OAH will arrange for preparation and filing of a transcript only after OAH receives payment for the cost of preparing the transcript.

2828 REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER

2828.1 This Section contains Rules about how to ask an Administrative Law Judge to change a final order after it has been issued or to request a new hearing whether or not a final order has been issued. Errors or omissions are not a sufficient basis for a new hearing or to change an order if the errors are harmless.

2828.2 No motion filed under this Section stays the final order or otherwise affects a party's obligations to comply with the final order, unless an Administrative Law Judge orders otherwise.

2828.3 Within ten (10) calendar days after a final order has been served, any party may file a motion asking the Administrative Law Judge to change the final order. Such a motion is a "motion for reconsideration or for a new hearing." The movant shall state whether an appeal has been filed. If an appeal has been filed, OAH has no jurisdiction to decide the motion absent a remand for that purpose.

2828.4 If any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline, the time for seeking judicial review of a final order does not start to run until the Administrative Law Judge rules on the motion, or the motion is denied as a matter of law under Subsection 2828.15.

2828.5 If any party files a motion for reconsideration or for a new hearing before a final order is issued or within the ten (10) calendar day deadline of Subsection 2828.3, and where substantial justice requires, the Administrative Law Judge may change the final order or schedule a new hearing for any reason including, but not limited to, the following:

(a) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;

(b) The party filing the motion did not file a required answer to a Notice of Infraction or Notice of Violation or did not file some other required document, has a good reason for not doing so, and states an adequate claim or defense;

(c) The final order contains an error of law;

(d) The final order's findings of fact are not supported by the evidence; or

(e) New evidence has been discovered that previously was not reasonably available to the party filing the motion.

2828.6 An Administrative Law Judge shall treat any motion asking for a change in a final order as a motion for reconsideration or for a new hearing if it is filed within the ten (10) calendar day deadline specified in Subsection 2828.3, regardless of the title that a party gives to that motion.

2828.7 After the ten (10) calendar day deadline, a party may file a motion asking the Administrative Law Judge to change the final order. A motion filed under this Subsection is a "motion for relief from the final order." The movant shall state whether an appeal has been filed. If an appeal has been filed, OAH has no jurisdiction to decide the motion absent a remand for that purpose.

2828.8 Any motion for relief from the final order has no effect on the deadline for seeking judicial review of the final order.

2828.9 Any motion for relief from the final order must be filed within one hundred twenty (120) calendar days after service of the final order.

2828.10 On a motion for relief from the final order, an Administrative Law Judge may change the final order only if no appeal has been filed, and only for one or more of the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly discovered evidence that by due diligence could not have been discovered in time to file a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline;

(c) Fraud, misrepresentation, or other misconduct of an adverse party;

(d) The final order is void;

(e) A prior judgment on which the final order is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(f) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;

(g) The party filing the motion did not file a required answer to a Notice of Infraction, or Notice of Violation or did not file some other required document, has a good reason for not doing so, and states an adequate claim or defense; or

(h) For good cause shown, the Government may ask that a final order issued in its favor be set aside.

2828.11 An Administrative Law Judge shall treat any motion asking for a change in a final order as a motion for relief from the final order, if the motion is not filed within the ten (10) calendar day deadline specified in Subsection 2828.3, regardless of the title that a party gives to that motion.

2828.12 Any party filing any motion under this Section must include a short and plain statement of all the reasons why the Administrative Law Judge should change the final order.

2828.13 An opposing party is not required to file a response to any motion under this Section, unless an Administrative Law Judge orders a response. Before granting any motion under the Section, an Administrative Law Judge must issue an order allowing the opposing party an opportunity to respond to the motion.

2828.14 If an Administrative Law Judge grants a motion filed under this section, he or she may:

(a) Order further submissions from the parties;

(b) Order the parties to appear for a hearing; or

(c) Issue a new final order that may or may not change the result in the case.

2828.15 An Administrative Law Judge should rule on any motion filed under this Section within forty-five (45) calendar days of its filing. If an Administrative Law Judge has not done so, the motion is denied as a matter of law. An Administrative Law Judge may extend the period once for an additional thirty (30) calendar days by issuing an order before the first 45 day period expires. After expiration of any applicable deadline, the Administrative Law Judge, in his or her discretion, may

issue a statement of reasons for denying the motion, but any such statement has no effect on the time for seeking judicial review or filing any other appeal.

2828.16 If the motion has been denied as a matter of law under Subsection 2828.15, OAH shall send written notice to the parties.

2829 CLERICAL MISTAKES

2829.1 At any time, an Administrative Law Judge or the Clerk, in consultation with an Administrative Law Judge, may correct clerical, typographical, numerical, or technical mistakes in the record and errors from oversight or omission.

2829.2 An Administrative Law Judge may order that notice of such corrections be given to the parties.

2829.3 If a party has filed a request for appellate review, such mistakes may be corrected before the record is transmitted to the reviewing court, and thereafter may be corrected with leave of the reviewing court.

2830 APPEALS

2830.1 Every appealable order shall include a statement of appeal rights and shall be served on the parties and their representatives.

2830.2 The filing of an appeal or a petition for review does not stay (or delay) the date a final order goes into effect.

2830.3 Any party may file a motion to stay a final order pending appeal. A motion for a stay must include the reasons for granting the stay. Any party may file a motion to stay the effective date of a final order.

2830.4 In determining whether to grant a stay, the Administrative Law Judge may consider the following factors: whether the party filing the motion is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether and to what degree granting the stay will harm other parties, and whether the public interest favors granting a stay.

2831 INABILITY OF AN ADMINISTRATIVE LAW JUDGE TO PROCEED

2831.1 If a hearing has commenced or is completed and the assigned Administrative Law Judge is unable to proceed, another Administrative Law Judge may proceed in the case. The successor Administrative Law Judge must certify that he or she is familiar with the record.

2831.2 If a recording of the hearing is unavailable, the successor Administrative Law Judge shall, if requested by any party, recall a witness whose testimony is material and disputed.

2831.3 The successor Administrative Law Judge shall serve the parties with a proposed final order and allow the parties to file exceptions and present argument before issuing a final order.

2832 RECUSAL; ETHICS COMPLIANCE

2832.1 An Administrative Law Judge shall recuse himself or herself in accordance with the standards applicable to judges of the Superior Court of the District of Columbia.

2832.2 Administrative Law Judges shall at all times be in compliance with the OAH Code of Judicial Ethics, which shall be available to the public.

2833 REPRESENTATION BY ATTORNEYS AND LAW STUDENTS

2833.1 An attorney may represent any party before OAH. Unless otherwise provided by statute or these Rules, only attorneys who are active members in good standing of the District of Columbia Bar, or who are authorized to practice law in the District of Columbia pursuant to Rules 49(c)(1), (4), (8), or (9) of the District of Columbia Court of Appeals, may appear before OAH as a representative of a party.

2833.2 An attorney who is not a member of the District of Columbia Bar, and who is not authorized to practice law in the District of Columbia pursuant to Rules 49(c)(1), (4), (8), or (9) of the District of Columbia Court of Appeals, may appear before OAH after the filing and granting of a motion to appear *pro hac vice*, in which the attorney shall declare under penalty of perjury that:

(a) I have not applied for admission *pro hac vice* in more than five (5) cases in OAH or in the courts of the District of Columbia during this calendar year. I have applied for admission *pro hac vice* in OAH and in the courts of the District of Columbia ______ (list number) times previously in this calendar year;

(b) I am a member in good standing of the bar of the highest court(s) of the State(s) of ______ (list all states);

(c) There are no disciplinary complaints pending against me for violation of the rules of the courts of those states;

(d) I am not currently suspended or disbarred from practice in any court;

(e) I do not practice or hold out to practice law in the District of Columbia;

(f) I am familiar with OAH's Rules found at 1 DCMR 28 and 29;

(g) I am applying for admission *pro hac vice* for the following reason(s): ______ (list all reasons);

(h) I acknowledge the jurisdiction of OAH and the courts of the District of Columbia over my professional conduct, and agree to be bound by the District of Columbia Court of Appeals Rules of Professional Conduct, in this matter, if I am admitted *pro hac vice*; and

(i) I have informed my client that I am not a member of the District of Columbia Bar, and my client has consented to my representation in this case.

2833.3 For good cause shown, the presiding Administrative Law Judge may revoke the *pro hac vice* admission of any attorney.

2833.4 Current law students who have successfully completed forty-two (42) credit hours of law school may appear before OAH, except that a law student who has been denied admission to practice before the District of Columbia Court of Appeals pursuant to its Rule 48 may not appear before OAH. An Administrative Law Judge may terminate a law student's representation under this Subsection at any time, for any reason, without notice or hearing. A law student practicing under this Subsection shall:

(a) Be enrolled in a law school approved by the American Bar Association;

(b) Have the consent and oversight of a supervising attorney assigned to the law student;

(c) Sign and file a Notice of Appearance in the case with the supervising attorney;

(d) Have the written permission of the client, which must be filed in the record;

(e) Not file any paper unless the law student and supervising attorney sign it;

(f) Not appear at any proceeding without the supervising attorney;

(g) Neither ask for nor receive a fee of any kind for any services provided under this rule, except for the payment of any regular salary made to the law student; and

(h) Comply with any limitations ordered by the presiding Administrative Law Judge.

2833.5 An attorney supervising a law student who appears pursuant to Subsection 2833.4 shall:

(a) Be an active member in good standing of the District of Columbia Bar;

(b) Assume full responsibility for supervising the law student;

(c) Sign and file a Notice of Appearance in the case with the law student;

(d) Assist the law student in preparation of the case, to the extent necessary in the supervising lawyer's professional judgment to insure that the law student's participation is effective on behalf of the person represented;

(e) Appear at all proceedings with the law student; and

(f) Review and sign any paper filed by the law student.

2833.6 In addition to these Rules, the District of Columbia Rules of Professional Conduct shall govern the conduct of all attorneys and law students appearing before OAH.

2833.7 The Chief Administrative Law Judge or presiding Administrative Law Judge may enter an order restricting the practice of any attorney appearing before OAH for good cause. Such restrictions may include, without limitation:

(a) Disqualification from a particular case;

(b) Suspension or disqualification from practice before OAH;

(c) A requirement that an attorney obtain ethics or other professional training or counseling; or

(d) A requirement that an attorney appear only when accompanied by another attorney with particular skills or a particular level of experience.

2833.8 The attorney shall be given notice and opportunity to be heard either before the imposition of a restriction, or as soon thereafter as is practicable.

2833.9 An Administrative Law Judge's authority under Subsection 2833.7 is limited to restricting the practice of an attorney in a pending case based on the conduct of the attorney in that case. Nothing in this Section limits the authority of the Chief Administrative Law Judge to enter a separate order restricting an attorney's practice before OAH.

2833.10 Any attorney appearing before OAH in a representative capacity under this Section shall provide under his or her signature, the attorney's District of

Columbia bar number, office address, and telephone and fax numbers. Conformed signatures shall not be accepted under this subsection. Persons appearing (or applying to appear) under Subsections 2833.2 or 2833.4 shall state, immediately under their signature, the Subsection under which they are appearing (or applying to appear), their office address, and telephone and fax numbers. Persons appearing under Subsection 2833.2 shall state the jurisdiction of their admission and shall provide the bar number, if any, from that jurisdiction, and their office address, and telephone and fax numbers.

2833.11 A member of any bar may not qualify as a non-attorney representative under Section 2835. An attorney representing a party may testify only as permitted by Rule 3.7 of the District of Columbia Rules of Professional Conduct.

2833.12 Notwithstanding anything to the contrary in these Rules, no person who has been punished for unauthorized practice of law or who is subject to an injunction pursuant to Rule 49(e)(2) of the Rules of the District of Columbia Court of Appeals may represent a party.

2834 WITHDRAWAL OF APPEARANCE BY AN ATTORNEY

2834.1 An attorney may withdraw an appearance before a hearing date has been set if:

(a) Another attorney simultaneously enters or has already entered an appearance on behalf of the client; and

(b) The attorney files a consent to the withdrawal that the client has signed.

2834.2 If a hearing date has been set, or if the client's written consent is not obtained, or if the client is not represented by another attorney, an attorney must move to withdraw an appearance and receive permission from the presiding Administrative Law Judge to withdraw from the case. Unless the client is represented by another attorney or the motion is made orally in front of the client and the Administrative Law Judge, the attorney shall certify that:

(a) The attorney has served the client a notice advising the client to obtain other counsel, or if the client intends to represent himself or herself, or intends to object to the withdrawal, to notify the Administrative Law Judge in writing within fifteen (15) days of service of the notice or before the next hearing date, whichever is earlier; and

(b) The attorney has served the client with a copy of the motion with a certificate of service listing the client's last known address.

2834.3 Except when an Administrative Law Judge has granted an oral motion to withdraw in the presence of the client, the order granting permission for the attorney to withdraw shall be served on the client. If no new counsel has entered

an appearance or the client has not notified the Administrative Law Judge of an intention to represent himself or herself, the order shall instruct the client to arrange promptly for new counsel or be prepared to represent himself or herself.

2834.4 The presiding Administrative Law Judge may deny an attorney's motion to withdraw if the withdrawal would unduly delay the case, be unduly prejudicial to any party, or otherwise not be in the interests of justice.

2835 REPRESENTATION BY NON-ATTORNEYS

2835.1 An individual may represent himself or herself in proceedings before OAH.

2835.2 Any person representing a party as permitted by this section shall obtain the consent of the party.

2835.3 A family member or domestic partner may represent a party provided that person does not accept compensation in any form.

2835.4 In addition to an attorney authorized by Section 2833, an authorized agency employee may represent an agency before OAH.

2835.5 If required by law, an Administrative Law Judge shall permit a party to be represented by another person who is not an attorney.

2835.6 An authorized officer, director, partner, or employee may represent a corporation, partnership, limited partnership, or other private legal entity before OAH.

2835.7 An individual or any representative of any entity listed in Subsection 2835.6 may represent a party if the party has or had a contractual relationship with that individual or entity that is substantially related to the subject matter of the case (such as a landlord/tenant relationship in a civil fine case or owner/property manager relationship) and that relationship existed before the case arose.

2835.8 In unemployment compensation cases, additional Rules for representation can be found in Section 2982.

2835.9 In public benefits cases, additional Rules for representation can be found in Section 2972.

2835.10 In rental housing cases, additional Rules for representation can be found in Section 2935.

2835.11 Any person authorized by the United States Tax Court to represent a party before that court may represent a party before OAH in any case arising under D.C. Official Code § 2-1831.03(b)(4), and on the same basis as would be permitted by the United States Tax Court.

2835.12 The Chief Administrative Law Judge or presiding Administrative Law Judge may enter an order restricting the practice of any non-attorney representative appearing at OAH.

2835.13 The non-attorney representative shall be given notice and opportunity to be heard either before the imposition of a restriction, or as soon thereafter as is practicable.

2835.14 An Administrative Law Judge's authority under Subsection 2835.12 is limited to restricting the practice of a non-attorney representative in a pending case based on the conduct of the non-attorney representative in that case. Nothing in this section limits the authority of the Chief Administrative Law Judge to enter a separate order restricting a non-attorney representative's practice before OAH.

2837 AMICUS CURIAE OR "FRIEND OF THE COURT" SUBMISSIONS

2837.1 Any non-party having an interest in the issues in a case pending before OAH may move for leave to file an *amicus curiae* submission, or an Administrative Law Judge may invite such a submission. The motion shall explain why the *amicus curiae* submission would be helpful to OAH.

2838 COURTROOM PROCEDURE

2838.1 Unless otherwise prohibited by law or duly ordered by an Administrative Law Judge, proceedings at OAH shall be open to the public.

2838.2 Administrative Law Judges and OAH non-judicial staff may observe any proceedings at OAH. They must preserve any confidential information that may arise in those proceedings.

2838.3 Electronic devices that make noise, including cell phones, are prohibited unless set for silent operation.

2838.4 Audio and video recording, broadcasting, and photography are prohibited anywhere at OAH unless authorized by the Chief Administrative Law Judge. The presiding Administrative Law Judge may allow anyone to draw during proceedings in a hearing room so long as it does not disrupt those proceedings.

2838.5 Weapons, dangerous implements, and illegal drugs are prohibited at OAH and are subject to confiscation. The prohibition against weapons does not apply to authorized service weapons carried by law enforcement officers unless they are parties to a case.

2838.6 Dangerous or toxic items, including but not limited to chemicals and sharp objects, that pose a threat to health or safety are prohibited at OAH. Any party who wants to use such an item as evidence must file a motion and obtain the

approval of the presiding Administrative Law Judge prior to the hearing before bringing the item to OAH.

2838.7 Except for those animals assisting persons with disabilities, animals are prohibited at OAH.

2838.8 Any person who presents a threat to safety or who is disrupting OAH operations or proceedings may be removed.

2839 AGENCY CASELOAD PROJECTIONS

2839.1 To measure changes in an agency's caseload as required by Section 16(e) of the Act, the agency shall compare the number of cases reported in the Chief Administrative Law Judge's annual summary to the number of cases it anticipates filing at OAH in the current or following fiscal year.

2840 CHIEF ADMINISTRATIVE LAW JUDGE RESPONSIBILITIES

2840.1 The Chief Administrative Law Judge or his or her designee may administer an oath of office to an Administrative Law Judge or other OAH employee.

2840.2 The Chief Administrative Law Judge shall review these Rules within thirty-six (36) months of their final promulgation, and, in his or her discretion, may issue revised rules for public comment and promulgation after the review.

2841 FILING AND SERVICE BY E-MAIL; OTHER ELECTRONIC SUBMISSIONS

2841.1 This section permits any party to file papers by e-mail with OAH and the Government to file data electronically. It also permits OAH to serve orders and notices by e-mail.

2841.2 The filing of any paper by e-mail following the procedures set forth in this section constitutes filing for all purposes under these Rules.

2841.3 All papers to be filed by e-mail should be in portable document format (PDF). The papers should be attached to an e-mail, and not contained in the body of the e-mail itself.

2841.4 No party may file by email a motion, brief, or memorandum exceeding forty (40) pages, including attachments. No party may file exhibits exceeding forty (40) pages by one or more emails. OAH may reject any email filings that do not conform to this subsection.

2841.5 A party filing any paper by e-mail is responsible for any delay, disruption, interruption of electronic signals, legibility and completeness of the paper, and accepts the risk that the paper may not be filed.

2841.6 Pursuant to Section 2810, every paper filed by e-mail must contain:

(a) The name, mailing address, telephone number, and e-mail address of the person filing it;

(b) The case number assigned by OAH, or a statement that a case number has not yet been assigned;

(c) A brief description of the paper (for example, "request for hearing in a Medicaid matter," "motion for new hearing date for an unemployment hearing," "exhibits/documents for hearing in rental housing case"); and

(d) A filing that does not contain this information is subject to rejection. A cover page that can be used to satisfy this requirement is available from the Clerk's Office. The brief description of the paper also should be placed in the "subject" line of the e-mail.

2841.7 Every filing made by email must contain a signature, which can be either a signature image or a conformed signature. No party or party's representative may file any paper with a conformed signature unless that party or representative has previously filed a paper with an original signature or signature image in the same case. A paper filed by email by an unrepresented party, that does not contain a signature as required by this subsection, shall not be rejected on that basis alone.

2841.8 Once an original signature or signature image is on file in a case, any subsequently filed paper in that case with a conformed signature shall be treated as having an original signature for all purposes.

2841.9 Filings must be e-mailed to oah.filing@dc.gov.

2841.10 The filing date for an e-mail filing received between 9:00 a.m. and 5:00 p.m. on any OAH business day will be the date it is received in the correct OAH electronic mailbox. The filing date for an e-mail filing received at other times will be the next day that the Clerk's Office is open for business. The date and time recorded in the correct OAH electronic mailbox shall be conclusive proof of when it was received.

2841.11 The certification requirement of Section 2814 applies to all papers filed by e-mail.

2841.12 A party must send a copy of anything filed by e-mail (except a request for a hearing that begins a case) to all other parties, and must include a certificate of service as required by Subsection 2811.9. A party may not send the copy by e-mail unless the other party consents, pursuant to Section 2811.

2841.13 The five (5) additional days added to the response times by Subsection 2812.5 does not apply to orders, notices, or papers served by e-mail, even if they are also served by other means.

2841.14 Unless otherwise ordered, a party who files or serves any paper by e-mail shall keep the original until after the case is concluded and the time for any appeals has expired. The party shall make the originals available for inspection upon request of another party after prior reasonable notice filed with OAH. This section does not limit the authority of an Administrative Law Judge to order production of the original.

2841.15 Parties agreeing to service by e-mail are responsible for monitoring their e-mail accounts and for opening the e-mails.

2841.16 The Clerk may serve orders and notices by e-mail to any party who provides an email address and consents, in writing or on the record, to receiving papers by e-mail. The party is responsible for ensuring that the Clerk has an accurate, up-to-date e-mail address. In an emergency, without a party's advance consent, the Clerk may serve orders and notices by e-mail in addition to any other authorized method of service.

2841.17 If the Government seeks to begin a case at OAH by filing a Notice of Infraction or a Notice of Violation pursuant to Section 2803, the Government may transfer to OAH data from the Notice of Infraction or the Notice of Violation by electronic means, pursuant to prior technical arrangements with OAH. Such electronic transfer by itself neither begins a case nor satisfies the Government's obligations under Section 2803. The Government shall file the Notice of Infraction or Notice of Violation and its attachments, substantially in the form provided to the Respondent, as well as the proof of service.

2899 GENERAL DEFINITIONS

For the purposes of this chapter the term:

Act means the Office of Administrative Hearings Establishment Act of 2001, D.C. Official Code §§ 2-1831.01, *et seq*.

Agency shall have the meaning provided that term in D.C. Official Code § 2-502(3).

Civil Infractions Act means the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01, *et seq*.

Clerk means the OAH Clerk of Court or authorized designee.

Commercial carrier means a business that accepts and delivers parcels, such as Federal Express or the United Parcel Service.

Conformed Signature means that a typed substitution for a signature is being used with the understanding that the original version of the document contains one or more authentic, original signatures. A conformed signature appears as:

/S/ *(name of person who signed the document)*

Example 1: /S/ John Doe

- or -

Example 2: /S/
John Doe

Electronic Signature means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Government means the District of Columbia, or any government agency authorized by law to prosecute cases before OAH and whose administrative litigation falls under the jurisdiction of OAH, but does not include OAH.

Litter Control Administration Act means the Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801, *et seq*.

Paper means pleadings, motions, exhibit and witness lists, or any other written submission filed with OAH.

Party means persons or entities who begin a case at OAH or the persons or entities on the other side.

Presiding Administrative Law Judge means an Administrative Law Judge assigned to a particular case.

Signature Image means that a scanned version of an original signature has been copied and pasted into a PDF document.

Chapter 29, OFFICE OF ADMINISTRATIVE HEARINGS: RULES APPLICABLE IN SPECIFIC CLASSES OF CASES, of Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, is repealed in its entirety and replaced with:

CHAPTER 29 OFFICE OF ADMINISTRATIVE HEARINGS: RULES FOR

DCPS, RENTAL HOUSING, PUBLIC BENEFITS, AND UNEMPLOYMENT INSURANCE CASES

Sections

2900 DCPS Hearings – Scope
2901 DCPS Student Discipline Cases – Referrals
2902 DCPS Student Discipline Cases – Hearings
2903 DCPS Student Discipline Cases – Decisions
2904 DCPS Student Discipline Cases – Reconsideration
2905 DCPS Contested Residency Cases – Referrals
2906 DCPS Contested Residency Cases – Beginning a Case
2907 DCPS Contested Residency Cases – Hearings
2908 DCPS Contested Residency Cases – Final Orders
2909 DCPS Cases – Confidentiality of the Record
2920 Rental Housing Cases – Scope
2921 Rental Housing Cases – Beginning a Case
2922 Rental Housing Cases – Parties
2923 Rental Housing Cases – Sending Notice
2924 Rental Housing Cases – Service
2925 Rental Housing Cases – Calculating Deadlines
2926 Rental Housing Cases – Conciliation, Arbitration, and Mediation
2927 Rental Housing Cases – Substitution or Addition of Parties
2928 Rental Housing Cases – Intervenors
2929 Rental Housing Cases – Consolidation of Petitions and Expanding the Scope of a Proceeding
2930 Rental Housing Cases – Hearings
2931 Rental Housing Cases – Rent Administrator's Show Cause Orders
2932 Rental Housing Cases – Burden of Proof
2933 Rental Housing Cases – Papers Filed with the RAD or Other Agencies
2934 Rental Housing Cases – Subpoenas
2935 Rental Housing Cases – Representation
2936 Rental Housing Cases – Appeals Before A Final Order
2937 Rental Housing Cases – Final Orders
2938 Rental Housing Cases – Requesting Reconsideration, A New Hearing, or Relief From A Final Order
2939 Rental Housing Cases – Official Record of a Proceeding
2940 Rental Housing Cases – Attorney's Fees
2941 Rental Housing Cases – Interest on Security Deposits
2970 Public Benefits Cases – Scope
2971 Public Benefits Cases – Beginning a Case
2972 Public Benefits Cases – Representatives
2973 Public Benefits Cases – Administrative Reviews
2974 Public Benefits Cases – Subpoenas
2975 Public Benefits Cases – Hearing Dates
2976 Public Benefits Cases – Hearings and Evidence
2977 Public Benefits Cases – Deadlines

2978 Public Benefits Cases – Requesting Reconsideration, A New Hearing, or Relief from A Final Order
2980 Unemployment Insurance Cases – Scope
2981 Unemployment Insurance Cases – Beginning a Case
2982 Unemployment Insurance Cases – Representatives
2983 Unemployment Insurance Cases – Filing of Papers
2984 Unemployment Insurance Cases – Subpoenas
2985 Unemployment Insurance Cases – Hearings and Evidence
2986 Unemployment Insurance Cases – Requesting Reconsideration, A New Hearing, or Relief from a Final Order
2999 Definitions

2900 DCPS HEARINGS – SCOPE

2900.1 Sections 2900 through 2909 govern procedures in cases referred to OAH by the District of Columbia Public Schools (DCPS).

2900.2 For procedural issues not covered in Sections 2900 through 2909, the rules in Chapter 28 apply.

2900.3 OAH is not required to follow any other procedural rules adopted by DCPS in cases referred to OAH by DCPS.

2901 DCPS STUDENT DISCIPLINE CASES – REFERRALS

2901.1 DCPS may refer a student discipline case to OAH, for an Administrative Law Judge to hold a hearing and to decide:

(a) The material facts;

(b) Whether required due process procedures, including notice and the opportunity to respond to the charges, have been followed or have been waived, including whether there was prejudicial failure to follow procedures identified in 5-B DCMR § 2505; and

(c) Whether the facts show that the student committed any of the violations upon which a proposed disciplinary action is based and the proper Tier for any violation, as specified in 5-B DCMR § 2502.

2901.2 DCPS shall refer a student discipline case by filing with OAH a copy of the notice of recommended action provided to the adult student, or a minor student's parent or guardian. DCPS shall provide the adult student or minor student's parent or guardian with a hearing notice that states the date, time and location for the hearing and shall include the parent's rights at the hearing. The notice shall include the parent's rights at the hearing and state the consequences of failing to attend the hearing.

2902 DCPS STUDENT DISCIPLINE CASES – HEARINGS

2902.1 An adult student, or a minor student's parent or guardian, may request DCPS or OAH to postpone the hearing for not more than five school days if necessary to prepare for the hearing or provide for the attendance of necessary parties or witnesses.

2902.2 The parties may, but are not required, to file exhibits and witness lists in advance of the hearing.

2902.3 DCPS shall allow an adult student, or a minor student's parent or guardian, or a student's attorney, to inspect and copy the student's disciplinary file before the hearing upon request and consistent with any applicable laws or regulations.

2902.4 DCPS shall make the student's disciplinary file electronically available to OAH. OAH shall make copies of the disciplinary file available at the hearing to DCPS and the adult student or the minor student's parent or guardian. Either party may move to introduce all or part of the disciplinary file into evidence at the hearing.

2902.5 The parties shall have all rights set forth in Subsection 2821.5 at a hearing.

2902.6 In addition to the representatives listed in Sections 2833 and 2835, an adult student or a minor student's parent or guardian may select another person to represent a student at a hearing. Such a representative is subject to Subsections 2835.12 through 2835.14.

2902.7 The hearing shall be closed to the public unless the adult student or the minor student's parent or guardian requests the hearing be open to the public.

2902.8 A party who fails to appear for a scheduled hearing may ask OAH, in writing, for a new hearing date. The request must be filed within one (1) school day after the scheduled hearing date. The Administrative Law Judge may grant a new hearing date for good cause shown.

2903 DCPS STUDENT DISCIPLINE CASES – DECISIONS

2903.1 After the close of the record in a student discipline case, the Administrative Law Judge shall issue Findings of Fact and Conclusions of Law on the issues identified in Subsection 2901.1.

2903.2 The Administrative Law Judge shall issue the findings of fact and conclusions of law within one school day after the close of the record. OAH shall provide a copy to DCPS, and to the adult student or minor student's parent, and any authorized representative.

2903.3 In all student discipline cases, DCPS shall be bound by the Administrative Law Judge's Findings of Fact and Conclusions of Law and shall have no authority to reverse or modify the findings of fact and conclusions of law.

2903.4 If the Administrative Law Judge concludes that the student committed any of the violations upon which the disciplinary action is based, the Administrative Law Judge shall make a recommendation for the appropriate discipline within the Tier found to be proper considering the factors in 14 DCMR § 2500.9. OAH will return the case to DCPS for it to decide the appropriate discipline.

2903.5 If the Administrative Law Judge concludes that due process was denied or that the student did not commit any of the violations upon which the disciplinary action is based, OAH will return the case to DCPS for appropriate action.

2903.6 Because OAH must return these cases to DCPS for further action, the Administrative Law Judge's decision is not a final disposition of the matter, and a statement of appeal rights is not required by Subsection 2830.1.

2904 DCPS STUDENT DISCIPLINE CASES – RECONSIDERATION

2904.1 Section 2828 of these rules shall not apply to DCPS cases. Any party may file a written motion to reconsider the findings of fact and conclusions of law no later than one school day of the date the decision is issued if DCPS has not issued a final notice of disciplinary action. A copy of any such motion must be served on the opposing party. The presiding ALJ shall decide the motion within one school day.

2904.2 If any party files a motion for reconsideration or for a new hearing the Administrative Law Judge may change the findings of fact and conclusions of law or grant a new hearing where substantial justice requires, or for any reason including, but not limited to, the following:

(a) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;

(b) The findings of fact and conclusions of law contain an error of law;

(c) The findings of fact and conclusions are not supported by the evidence; or

(d) New evidence has been discovered that previously was not reasonably available to the party filing the motion.

2904.3 If the adult student or minor student's parent or guardian did not receive actual notice of the hearing and DCPS has issued a final notice of disciplinary action, the adult student or minor student's parent or guardian may file a request for reconsideration with DCPS and request that DCPS vacate the final notice and

refer the case back to OAH for a hearing and to vacate the Findings of Fact and Conclusions of Law. When it decides such a request, DCPS may order a new hearing or DCPS may ask for OAH to decide whether to grant a new hearing.

2905 DCPS CONTESTED RESIDENCY CASES – REFERRALS

2905.1 DCPS may refer a contested residency case to OAH for a final decision.

2906 DCPS CONTESTED RESIDENCY CASES – BEGINNING A CASE

2906.1 DCPS shall refer a contested residency case to OAH by filing a copy of the exclusion letter given to the parent or guardian and the request for review that it received, along with a statement that DCPS requests OAH to hear and to decide the case.

2907 DCPS CONTESTED RESIDENCY CASES – HEARINGS

2907.1 In all contested residency cases, OAH shall set the hearing date and issue the hearing notice.

2907.2 The rules in Chapter 28 apply to all hearings in contested residency cases, except that parties should file and serve the witness lists and exhibit lists required by Subsection 2821.2 no later than five (5) days before the hearing date. All exhibits filed by DCPS shall be marked with numbers for identification beginning with 200.

2907.3 In contested residency cases, the parent, custodian, or guardian who is claiming District of Columbia residency has the burden of proving their residency status for the purpose of deciding whether the student may enroll in a District of Columbia public school tuition free.

2908 DCPS CONTESTED RESIDENCY CASES – FINAL ORDERS

2908.1 The presiding Administrative Law Judge shall issue a final order in all contested residency cases, which shall include the statement of appeal rights required by Subsection 2830.1.

2909 DCPS CASES – CONFIDENTIALITY OF THE RECORD

2909.1 The OAH record in any case referred by DCPS is confidential. Only the following persons may have access to that record:

(a) The adult student;

(b) The minor student's parent, guardian, or representative;

(c) Any person who has the written consent of the adult student or the minor student's parent or guardian; and

(d) School officials with a legitimate interest.

2920 RENTAL HOUSING CASES – SCOPE

2920.1 Sections 2920 through 2941 govern procedures in rental housing cases at OAH.

2920.2 For procedural issues not covered in Sections 2920 through 2941, the Rules in Chapter 28 apply.

2921 RENTAL HOUSING CASES – BEGINNING A CASE

2921.1 A party may begin a rental housing case by filing a petition with the Rent Administrator in accordance with 14 DCMR § 3901.

2921.2 The timeliness of the filing of any petition shall be measured from the date the Rent Administrator accepts it for filing.

2921.3 The Rent Administrator may refuse to accept a petition for filing as provided in 14 DCMR § 3901.

2921.4 After filing, the Rent Administrator shall forward the petition and all accompanying papers to OAH, together with a copy of the registration statement for the housing accommodation.

2921.5 When OAH receives a petition from the Rent Administrator, OAH shall open the case. The parties then shall file all papers and attachments at OAH in accordance with Section 2809.

2922 RENTAL HOUSING CASES – PARTIES

2922.1 Any petition that is filed on behalf of more than one person or entity shall individually name each person or entity.

2922.2 Any tenant association may file and shall be granted party status to prosecute or defend a petition on behalf of any one or more of its members who have provided the association with written authorization to represent them in the action, or to seek on behalf of all members any injunctive relief available under the Rental Housing Act. No further inquiry into the membership of the association shall be permitted.

2922.3 Any tenant association that is a party to the action pursuant to Subsection 2922.2 shall be listed in the caption.

2922.4 The housing provider as listed on the registration statement, if any, shall be a party, and shall be named in the caption. If a managing agent represents the housing provider in the proceeding, the managing agent also shall be a party, and shall be identified as the managing agent and named in the caption.

2923 RENTAL HOUSING CASES – SENDING NOTICE

2923.1 OAH shall notify the parties by first-class mail of proceedings.

2923.2 OAH shall mail a copy of any tenant petition, by first-class mail, to any adverse party named in the tenant petition and to the housing provider listed on the registration statement for the housing accommodation.

2923.3 A housing provider who files a petition shall provide for each tenant in the housing accommodation one copy of the petition and one envelope addressed to each tenant by name, address, and rental unit, with first class mail postage prepaid. The envelope shall bear OAH's return address unless the housing provider files a hardship petition or voluntary agreement. The envelopes for those petitions shall bear the return address of the Rent Administrator.

2923.4 If a housing provider files a petition for a building with ten (10) or more rental units, the housing provider shall provide a hard copy and computer file of a service list containing the name, address, and rental unit for each tenant. The computer file shall be in Microsoft Word format, arranged so that the list may be printed onto labels measuring one inch (1") by two and five-eighths inches (2 5/8").

2924 RENTAL HOUSING CASES – SERVICE

2924.1 Every paper filed at OAH in a rental housing case must be served in accordance with § 904 of the Rental Housing Act, D.C. Official Code § 42-3509.04, which allows papers to be served by one of the following methods:

(a) By handing the paper to the person, by leaving it at the person's place of business with some responsible person in charge, or by leaving it at the person's usual place of residence with a person of suitable age and discretion;

(b) By telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid;

(c) By mail or deposit with the United States Postal Service properly stamped and addressed; or

(d) By any other means that is in conformity with an order of the Rental Housing Commission or OAH in any proceeding.

2925 RENTAL HOUSING CASES – CALCULATING DEADLINES

2925.1 The Rules governing calculating deadlines are found in Section 2812. The timeliness of any appeal to the Commission shall be governed by the Rental Housing Commission Rules in 14 DCMR § 3802.

2926 RENTAL HOUSING CASES – CONCILIATION, ARBITRATION, AND MEDIATION

2926.1 The parties may request conciliation or arbitration of any dispute by the RAD in accordance with its regulations.

2926.2 The parties may request, or an Administrative Law Judge may order, mediation of any dispute pursuant to Section 2815.

2927 RENTAL HOUSING CASES – SUBSTITUTION OR ADDITION OF PARTIES

2927.1 An Administrative Law Judge may substitute or add a party under Subsection 2816.1 if: a party dies; a party entity is dissolved or reorganized; a party entity's ownership or interest changes; or an amended registration statement for the housing accommodation is filed under 14 DCMR § 4103.

2927.2 If a party has been incorrectly named, the Administrative Law Judge may substitute or add the correct party under Subsection 2816.1.

2928 RENTAL HOUSING CASES – INTERVENORS

2928.1 Motions for intervention are governed by Subsections 2816.2 and 2816.3.

2929 RENTAL HOUSING CASES – AMENDMENT OF PETITIONS, CONSOLIDATION OF PETITIONS AND EXPANDING THE SCOPE OF A PROCEEDING

2929.1 An Administrative Law Judge may consolidate (join) two (2) or more petitions if they present identical or similar issues, involve the same rental unit or housing accommodation, or involve other circumstances in which consolidation would be expedient and would not prejudice the parties. A party may file a motion to consolidate or an Administrative Law Judge may consolidate cases on his or her own motion.

2929.2 If the Administrative Law Judge determines that the issues raised in a tenant petition may affect other tenants or all tenants in the housing accommodation, the Administrative Law Judge may expand the scope of the proceeding to include all affected tenants.

2929.3 Before expanding the scope of the proceeding, the Administrative Law Judge shall provide notice to the affected tenants and the housing provider.

2929.4 That notice shall state the issues to be decided and shall advise the tenants that they have a right to participate in the proceedings and that any decision shall be binding on them.

2929.5 Tenants and the housing provider may present any arguments in support of or opposition to expanding the scope of the proceeding.

2929.6 A party may amend a petition to add additional allegations after the petition has been transferred to OAH, but before the hearing concludes, by moving to amend the petition with the presiding administrative law judge. The movant shall set forth the allegations to be added and the factual basis for those allegations. No written motion to amend will be considered unless it recites that the movant sought to obtain the consent of parties affected, and that such consent was granted or denied, including the identity of the party or parties who declined to consent. If the movant does not obtain a response from the opposing party, the movant must demonstrate that the movant made a good faith effort in accordance with Rule 2813.5.

2929.7 In determining whether a motion to amend a petition should be granted, the Administrative Law Judge will consider: (1) the number of requests to amend; (2) the length of time that the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amendment; (5) any prejudice to the non-moving party; and (6) the orderly administration of justice.

2930 RENTAL HOUSING CASES – HEARINGS

2930.1 A petition received by OAH will be treated as a request for a hearing. OAH will schedule a status conference, a hearing, or mediation. OAH shall notify the parties of the hearing date and of their right to obtain a lawyer at least fifteen (15) calendar days before a hearing.

2930.2 An Administrative Law Judge may dismiss any petition or any claim in a petition without holding a hearing if the Rental Housing Act does not provide relief for the claim(s). The Administrative Law Judge shall first give the parties notice and an opportunity to respond.

2931 RENTAL HOUSING CASES – RENT ADMINISTRATOR'S SHOW CAUSE ORDERS

2931.1 If the Rent Administrator concludes after investigation that a housing provider has violated the Rental Housing Act, the Rent Administrator may file an order to

show cause with OAH and shall serve the housing provider with a copy of the order to show cause.

2931.2 The order to show cause shall specify the Sections of the Rental Housing Act or rules that the housing provider has allegedly violated, and shall describe the evidence that supports the Rent Administrator's assertions and the proposed corrective action or sanction.

2931.3 Once the Rent Administrator files the order to show cause, the case shall proceed under this chapter.

2932 RENTAL HOUSING CASES – BURDEN OF PROOF

2932.1 The proponent of an order shall have the burden of proof. The tenant has the burden to prove the claims alleged in the tenant petition except that the housing provider has the burden to prove entitlement to any exemption under the Rental Housing Act. When the housing provider files a petition, the housing provider has the burden to prove the claims.

2932.2 Unless otherwise provided by law, a party must prove each fact essential to his or her claim by a preponderance of the evidence so that the Administrative Law Judge finds that it is more likely than not that each fact is proven.

2932.3 In show cause hearings, the burden of proof shall rest on the Rent Administrator.

2932.4 In retaliation cases, the tenant has the burden of proving that retaliation occurred or that a presumption applies. If a presumption applies, then the housing provider has the burden to rebut the presumption by clear and convincing evidence.

2932.5 In security deposit cases, if the tenant seeks an order to have the security deposit returned, the tenant shall prove the amount of the security deposit paid and that the security deposit was not returned. If the housing provider seeks an order to withhold all or a portion of the security deposit, the housing provider shall prove the reasons for the withholding.

2933 RENTAL HOUSING CASES – PAPERS FILED WITH THE RAD OR OTHER AGENCIES

2933.1 Any party who wishes the Administrative Law Judge to consider a document that is on file with the RAD or any other District of Columbia agency must introduce a copy of that document into evidence. The Administrative Law Judge shall admit the document into evidence if he or she finds that it is relevant and is an accurate copy of a document on file with the RAD or other agency.

2933.2 A party can establish that a document is an accurate copy of a document on file with RAD or other agency by one of the following methods:

(a) Providing a copy with a legible original file stamp;

(b) Providing a copy with a legible copy of the original file stamp;

(c) Providing a copy certified by the Rent Administrator or an authorized employee of RAD;

(d) Providing testimony or other evidence that the Administrative Law Judge finds satisfactory; or

(e) If all parties consent to the admission of the document into evidence.

2934 RENTAL HOUSING CASES – SUBPOENAS

2934.1 In rental housing cases, the Clerk shall issue no more than three subpoenas to the tenant side and no more than three subpoenas to the housing provider side under Subsection 2824.5 to compel:

(a) The appearance at a hearing of any witnesses, including housing inspectors, with knowledge of conditions, repairs, or maintenance in a party's rental unit or any common areas for the three year period immediately before the filing of the petition with the Rent Administrator;

(b) The production at or before a hearing of all records not created by a government agency, relating to conditions, repairs, or maintenance to a party's rental unit or any common areas for the three year period immediately before the filing of the petition with the Rent Administrator;

(c) The production at or before a hearing of housing violation notices in the possession of the Department of Consumer and Regulatory Affairs relating to a party's rental unit or any common areas for the three year period immediately before the filing of the petition with the Rent Administrator.

(d) The production at or before a hearing of all records in a housing provider's possession relating to any rent increases demanded or implemented for a party's rental unit for the three year period immediately before the filing of the petition with the Rent Administrator.

2934.2 Section 2824 applies to all other subpoenas for witnesses and documents at hearings in rental housing cases. Section 2825 applies to discovery.

2935 RENTAL HOUSING CASES – REPRESENTATION

2935.1 Persons authorized to appear before OAH by Sections 2833 and 2835 may represent parties in rental housing cases.

2935.2 A tenant association may represent one or more tenants in any proceeding as follows:

(a) A statement must be filed with OAH stating that the tenant consents to representation by the tenant association and the tenant association consents to represent the tenant;

(b) A tenant or a tenant association may revoke the consent by filing a statement to that effect;

(c) A tenant association shall designate one or more members or attorneys to represent the association and any of the tenants it represents;

(d) A tenant association may elect to proceed only in a representative capacity without being listed as a party or listed in the caption.

2935.3 The provisions of Sections 2833 and 2835 concerning discipline of persons appearing before OAH apply to all representatives in rental housing cases.

2935.4 If an Administrative Law Judge decides that a proceeding is so complex, or the potential liability so great that a party should be represented by a lawyer, the Administrative Law Judge shall explain to the party the advantages of obtaining a lawyer and offer to continue the case to give the party an opportunity to obtain a lawyer.

2936 RENTAL HOUSING CASES – APPEALS BEFORE A FINAL ORDER

2936.1 An Administrative Law Judge's rulings in a proceeding ordinarily may not be appealed to the Commission until a final order is issued. Before a final order is issued, a party may appeal an order of the Administrative Law Judge only if the Administrative Law Judge certifies the ruling for appeal to the Commission.

2936.2 A party may move the Administrative Law Judge to certify to the Commission an appeal of any ruling other than a final order. Such an appeal is an "interlocutory appeal."

2936.3 The Administrative Law Judge shall certify a ruling for interlocutory appeal only if he or she determines that the issue presented is of such importance to the proceeding that it requires the immediate attention of the Commission, and only if the following are shown:

(a) The ruling involves an important question of law or policy requiring interpretation of the Rental Housing Act, and about which there is substantial basis for difference of opinion; and

(b) Either of the following applies:

(1) An immediate ruling will materially advance the completion of the proceeding; or

(2) Denial of an immediate ruling will cause undue harm to the parties or the public.

2936.4 A party seeking review by interlocutory appeal shall file a motion for certification within five (5) calendar days of service of a ruling by the Administrative Law Judge. The opposing party shall have five (5) calendar days in which to respond. Unless extended by a written order, the Administrative Law Judge shall rule on the motion within ten (10) calendar days following the filing of any response.

2936.5 If the Administrative Law Judge declines to certify a ruling, the Commission may review that ruling on appeal from a final order.

2936.6 The Administrative Law Judge may stay the proceeding while an interlocutory appeal is pending.

2937 RENTAL HOUSING CASES – FINAL ORDERS

2937.1 OAH shall serve all final orders on the parties by first-class mail. OAH also shall serve all final orders on the Rent Administrator and the Commission.

2938 RENTAL HOUSING CASES – REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER

2938.1 Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828, except OAH Rule 2828.15 shall not apply in rental housing cases. In a rental housing case, an Administrative Law Judge should rule on any motion filed under this section within ninety (90) calendar days of its filing. If an Administrative Law Judge has not done so, the motion is denied as a matter of law. After a motion is deemed denied, the Administrative Law Judge, in his or her discretion, may issue a statement of reasons for denying the motion, but any such statement has no effect on the time for seeking judicial review or filing any other appeal.

2938.2 If any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline specified in Subsection 2828.3, an Order will not be final for purposes of appeal to the Rental Housing Commission until the

Administrative Law Judge rules on the motion or the motion is denied as a matter of law under Subsection 2938.1.

2938.3 Any motion for relief from final order has no effect on the deadline for appealing to the Rental Housing Commission. If an appeal has been filed, OAH has no jurisdiction to decide a motion for relief from final order absent a remand from the Commission for that purpose.

2938.4 If the motion has been denied as a matter of law under Subsection 2938.1, OAH shall send written notice to the parties.

2939 RENTAL HOUSING CASES – OFFICIAL RECORD OF A PROCEEDING

2939.1 The official record of a proceeding shall consist of the following:

(a) The final order and any other orders or notices of the Administrative Law Judge;

(b) The recordings or any transcripts of the proceedings before the Administrative Law Judge;

(c) All papers and exhibits offered into evidence at the hearing; and

(d) All papers filed by the parties or the Rent Administrator at OAH.

2939.2 Documents attached to a petition or other filings must be offered and received in evidence at a hearing before the Administrative Law Judge can use them to establish facts.

2940 RENTAL HOUSING CASES – ATTORNEY'S FEES

2940.1 All motions for an award of attorney's fees shall be filed within thirty (30) calendar days of service of the final order. But if a timely motion for reconsideration is filed, a motion for an award of attorney's fees shall be filed within thirty (30) days of the service date of the order deciding the motion or within thirty (30) days of the deemed denial date.

2940.2 Standards for the award of attorney fees are found in Title 14 of the Rental Housing Commission Rules.

2941 RENTAL HOUSING CASES – INTEREST ON SECURITY DEPOSITS

2941.1 In any case in which a tenant claims entitlement to interest on a security deposit under D.C. Official Code § 42-3502.17(b), the tenant must produce evidence of the amount of the security deposit that was given to the housing provider, the date on which it was given, and amount of interest, if any, paid to the tenant.

2941.2 If the tenant does so, then the housing provider must produce evidence of the amount of interest that was earned on the security deposit.

2941.3 If the housing provider fails to produce evidence of the amount of interest that was earned, or the security deposit was not held in an interest bearing account, the Administrative Law Judge shall compute interest by applying the Superior Court of the District of Columbia judgment rate prevailing on January 1st and on July 1st for each six (6)-month period (or part thereof) of the tenancy.

2970 PUBLIC BENEFITS CASES – SCOPE

2970.1 Sections 2970 through 2978 contain the Rules for OAH hearings requested by individuals, other than service providers, concerning the following kinds of benefits:

(a) Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;

(b) Temporary Assistance for Needy Families (TANF);

(c) Supplemental Nutrition Assistance Program (SNAP) (formerly Food Stamps);

(d) Interim Disability Assistance;

(e) Shelter and services for homeless persons;

(f) Rental Assistance programs;

(g) General Assistance for Children;

(h) Child Care Subsidy;

(i) Program on Work, Employment, and Responsibility (POWER);

(j) Burial Assistance;

(k) Any other benefits provided by the Department of Human Services; and

(l) Low Income Home Energy Assistance Program benefits provided by the District of Columbia Energy Office.

2970.2 Sections 2970 through 2978 also apply to hearings requested by the Department of Human Services when it seeks to disqualify someone from receiving SNAP (formerly Food Stamps) benefits due to an intentional program violation.

2970.3 If Sections 2970 through 2978 do not address a procedural issue, the Rules in Chapter 28 apply.

2970.4 If there is a conflict between any federal law or regulation and anything in these Rules, the federal law or regulation shall control.

2970.5 If there is a conflict between any District of Columbia statute and anything in these Rules, the District of Columbia statute shall control.

2970.6 If there is a conflict between any other agency's procedural rules or regulations and these Rules, these Rules shall control.

2971 PUBLIC BENEFITS CASES – BEGINNING A CASE

2971.1 A person can request a hearing in writing, in person, or by telephone.

2971.2 Hearing request forms shall be available at OAH, at all service centers of the Department of Human Services, at the Department of Health Care Finance, at the District Department of the Environment, and at the Division of Early Childhood Education at the Office of the State Superintendent of Education, and at the Department on Disability Services, Rehabilitation Services Administration.

2971.3 A hearing request must describe the type of benefits and the action or inaction to which the person objects. The request also must contain the name, address, and telephone number of the person requesting a hearing; provided, however, a person who requests a hearing under the Homeless Services Reform Act may provide an e-mail address at which they can receive any papers in the case, including notices and orders, if they do not have a street address where they can receive mail.

2971.4 A person may bring, mail, or fax a written hearing request to:

(a) The Department of Human Services;

(b) The Department of Health Care Finance for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;

(c) The District Department of the Environment for a hearing concerning Low Income Home Energy Assistance Program benefits (LIHEAP);

(d) A shelter or other service provider for a hearing under the Homeless Services Reform Act;

(e) The Division of Early Childhood Education at the Office of the State Superintendent of Education for a hearing concerning child care benefits; or

(e) The Department on Disability Services, Rehabilitation Services Administration for a hearing concerning vocational rehabilitation services; or

(g) OAH.

2971.5 To request a hearing in person, a person may come to:

(a) A Department of Human Services service center;

(b) The Department of Health Care Finance, for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;

(c) The District Department of the Environment, for a hearing concerning Low Income Home Energy Assistance Program benefits (LIHEAP);

(d) The Division of Early Childhood Education at the Office of the State Superintendent of Education, for a hearing concerning child care benefits;

(e) The Department on Disability Services, Rehabilitation Services Administration for a hearing concerning vocational rehabilitation services; or

(f) OAH.

2971.6 To request a hearing by telephone, a person may call:

(a) The Department of Human Services;

(b) The Department of Health Care Finance, for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;

(c) The Division of Early Childhood Education at the Office of the State Superintendent of Education; or

(d) The Department on Disability Services, Rehabilitation Services Administration for a hearing concerning vocational rehabilitation services; or

(e) OAH.

2971.7 If the Government receives a written hearing request, it must file the request with OAH within three (3) calendar days of receiving it.

2971.8 If the Government receives an oral or telephone hearing request, it must prepare and file a hearing request form with OAH within three (3) calendar days of receiving the request.

2971.9 If OAH receives a written hearing request from an individual, it will send the request to any agency or service provider whose decision is being challenged.

2971.10 If OAH receives an oral or telephone hearing request from an individual, it will complete a written summary of the request and send it to any agency or service provider whose decision is being challenged.

2971.11 The Department of Human Services can request a hearing concerning a claim that a SNAP (formerly Food Stamps) recipient should be disqualified from receiving benefits due to an intentional program violation by filing a hearing request form approved by the Chief Administrative Law Judge.

2972 PUBLIC BENEFITS CASES – REPRESENTATIVES

2972.1 An applicant for, or recipient of, public benefits may be represented by an attorney, a relative, a friend, or any other representative who is not employed by the District of Columbia government.

2972.2 Any person who is not a lawyer who requests a hearing on behalf of someone else must file a statement, signed by the person, authorizing that non-lawyer to be a representative. A hearing request is subject to dismissal unless that statement is filed. Before dismissing a case under this subsection, an Administrative Law Judge shall notify the representative of this requirement.

2972.3 As required by the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.10, if the person who requested the hearing is not represented by a lawyer, a Government agency or service provider may not be represented by a lawyer at any hearing involving the following public benefit programs:

(a) Medicaid, Healthcare Alliance or other healthcare programs administered by the District of Columbia;

(b) Temporary Assistance for Needy Families (TANF);

(c) SNAP (formerly Food Stamps);

(d) Interim Disability Assistance;

(e) General Assistance for Children; and

(f) Program on Work Employment and Responsibility (POWER).

2972.4 A Government agency or service provider may be represented by a lawyer at a hearing involving any other public benefit program regardless of whether the person who requested a hearing is represented by a lawyer.

2972.5 The practice of lawyers or other party representatives is governed by Sections 2833 and 2835.

2973 PUBLIC BENEFITS CASES – ADMINISTRATIVE REVIEWS

2973.1 An administrative review is an informal meeting between the person who has requested a hearing at OAH and a representative of the agency or service provider whose action or inaction is being challenged by that person. The purpose of an administrative review is to determine whether the agency's or service provider's position is valid and, if possible, to achieve an informal solution.

2973.2 An agency or service provider shall offer each person who requests a hearing at OAH an opportunity for an administrative review, if required by law. At least five calendar days before the hearing date, the agency or service provider shall file and send to all parties and their representatives a status report, which says whether an administrative review was held, and the results of any review.

2973.3 In cases involving shelter or other services for homeless persons, as required by the Homeless Services Reform Act of 2005, D.C. Official Code §§ 4-1601.01, *et seq*., the Department of Human Services shall conduct the administrative review.

2973.4 As required by law, the agency or service provider shall make the case file available to the person who requested the hearing.

2974 PUBLIC BENEFITS CASES – SUBPOENAS

2974.1 Any party may file a request in writing for an Administrative Law Judge to issue a subpoena to require a witness to attend a hearing.

2974.2 The Administrative Law Judge shall issue a subpoena under this section if it is likely that the witness will be able to provide testimony that will be helpful in deciding the case, and if requiring the witness to appear will not be unduly burdensome, or otherwise contrary to law.

2974.3 Any party also may request a subpoena to require a witness to bring documents, photographs, or other things to the hearing. The Administrative Law Judge will issue a subpoena if it is likely that the requested items will be helpful in deciding

the case, and if requiring those items to be produced will not be unduly burdensome, or otherwise contrary to law.

2974.4 A form to be used to request a subpoena is available from OAH.

2974.5 If an Administrative Law Judge issues a subpoena, the party requesting the subpoena must deliver it pursuant to Subsections 2824.6 through 2824.9 and 2824.11. Unless otherwise ordered by an Administrative Law Judge, delivery shall be made at least two days before the hearing.

2975 PUBLIC BENEFITS CASES – HEARING DATES

2975.1 After a hearing request is filed, an Administrative Law Judge ordinarily will schedule a hearing. If any applicable law requires that an administrative review be completed before a hearing takes place, a hearing will not be scheduled until the administrative review has been completed.

2975.2 An Administrative Law Judge may schedule a status conference or other preliminary hearing in order to simplify the issues in the case, identify the parties' legal and factual positions, rule on any preliminary legal issues, or for any other purpose.

2975.3 Any party may ask an Administrative Law Judge for a different hearing date. Copies of a request form will be sent with every hearing notice and are available from OAH.

2975.4 Only an Administrative Law Judge can change a hearing date.

2976 PUBLIC BENEFITS CASES – HEARINGS AND EVIDENCE

2976.1 At each hearing, the Administrative Law Judge shall decide the order in which the parties will present their cases.

2976.2 If a party who requests a hearing fails to attend the hearing without good cause, the Administrative Law Judge may dismiss the case without prejudice. "Good cause" includes, but is not limited to: serious illness, an accident, a childcare problem, severe weather conditions, or other emergency.

2976.3 If the agency or service provider whose action or inaction is being challenged fails to attend the hearing, the Administrative Law Judge may rule in favor of the person who requested the hearing.

2976.4 In a SNAP (formerly Food Stamps) Intentional Program Violation case, the Government must prove its case even if the other party fails to attend the hearing.

2976.5 Parties shall have the following rights at a hearing:

(a) To testify and to have other witnesses testify for them;

(b) To cross-examine witnesses called by another party;

(c) To request that any prospective witness be excluded from the courtroom;

(d) To examine all exhibits offered into evidence by another party;

(e) To object to the admission of any testimony or other evidence;

(f) To subpoena witnesses, as provided in Section 2974; and

(g) To appear with a representative, as provided in Section 2972.

2976.6 At a hearing, all parties may present evidence. "Evidence" includes testimony by the parties and any witnesses that a party may present. Evidence also includes documents, photographs, or any other items that a party believes may help the Administrative Law Judge decide the case. The Administrative Law Judge shall decide what evidence becomes part of the record.

2976.7 At least five calendar days before the hearing date, each party shall file with OAH a list of witnesses and copies of any documents, photographs, or other items that the party wants the Administrative Law Judge to consider at the hearing. Copies must be sent to the other party in the following manner:

(a) Any agency or service provider must send copies to all other parties;

(b) If an individual is represented by a person other than a family member, the representative shall send copies to all other parties;

(c) If a shelter makes free copying services available to a shelter resident, the shelter resident must make and deliver a copy to the shelter director;

(d) For all other individuals, OAH will deliver copies by interagency mail to the appropriate agency.

2976.8 If anything is not filed according to the requirements of Subsection 2976.7, and the other party shows that it has been prejudiced, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party to prepare.

2976.9 If any party demonstrates that it has been prejudiced by the unexpected appearance of a witness, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party to prepare for the witness testimony. If a witness was named on the witness list in the manner provided in

Subsection 2976.7, the Administrative Law Judge shall find that there has been no prejudice.

2977 PUBLIC BENEFITS CASES – DEADLINES

2977.1 As required by Federal law, 7 C.F.R. § 273.15(c), decisions in cases involving SNAP (formerly Food Stamps) benefits shall be issued and served on the parties within 60 calendar days of receipt of the hearing request, except that in Intentional Program Violation cases, as required by 7 C.F.R. § 273.16(e)(2)(iv), the decisions shall be issued and served within ninety (90) calendar days after a hearing notice has been issued.

2977.2 As required by the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.12(a), decisions shall be issued and served on the parties within sixty (60) calendar days of receipt of the hearing request in cases involving the following public benefit programs: Temporary Assistance for Needy Families (TANF); Interim Disability Assistance; General Assistance for Children; Program on Work, Employment and Responsibility (POWER); and Medicaid.

2977.3 As required by the Homeless Services Reform Act of 2005, decisions in cases involving shelter or other services provided for homeless persons shall be issued and served on the parties within fifteen (15) calendar days of the completion of the hearing.

2977.4 As required by Federal law, 34 C.F.R. § 361.57(e)(1), to the extent a hearing concerning vocational rehabilitation services is required in a case involving the District of Columbia Department on Disability Services, Rehabilitation Services Administration, the Administrative Law Judge shall hold the hearing within sixty (60) calendar days of the hearing request, unless the case is informally resolved, a mediation agreement is reached, or the parties agree to a specific extension of time.

2977.5 As required by Federal law, 34 C.F.R. § 361.57(e)(3), decisions shall be issued and served on the parties within thirty (30) calendar days of receipt of the hearing request in cases concerning vocational rehabilitation services involving the District of Columbia Department on Disability Services, Rehabilitation Services Administration, unless the case is informally resolved, a mediation agreement is reached, or the parties agree to a specific extension of time.

2977.6 If a postponement of the hearing date is granted to the party requesting a hearing, the deadline for the issuance and service of the decision shall be extended for as many days as the hearing is postponed. In Intentional Program Violation cases, the deadline shall be extended only if the Respondent requested the postponement.

2978 PUBLIC BENEFITS CASES – REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER

2978.1 Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828.

2980 UNEMPLOYMENT INSURANCE CASES – SCOPE

2980.1 Sections 2980 through 2986 contain the Rules for OAH hearings of appeals of decisions of the District of Columbia Department of Employment Services (DOES) concerning unemployment compensation insurance.

2980.2 If Sections 2980 through 2986 do not address a procedural issue, the Rules in Chapter 28 apply.

2980.3 If there is a conflict between any federal law or regulation and anything in these Rules, the federal law or regulation shall control.

2980.4 If there is a conflict between any District of Columbia statute and anything in these Rules, the District of Columbia statute shall control.

2980.5 If there is a conflict between any other agency's procedural rules or regulations and these Rules, these Rules shall control.

2981 UNEMPLOYMENT INSURANCE CASES – BEGINNING A CASE

2981.1 A party requesting a hearing to appeal a DOES Claims Examiner's Determination in an unemployment compensation case shall file a copy of the determination that the party is appealing with the hearing request. If the party does not file a copy of the determination, OAH will issue an order directing the party to file a copy of the determination in order to establish OAH's jurisdiction. If the copy is not provided, OAH may dismiss the case.

2981.2 In unemployment compensation cases, OAH may extend the deadline for filing a hearing request upon a showing of excusable neglect or good cause.

2981.3 All other procedures for requesting a hearing are governed by Section 2808.

2982 UNEMPLOYMENT INSURANCE CASES – REPRESENTATIVES

2982.1 An authorized agent employed by a firm whose usual business includes providing representation in unemployment compensation cases may represent any party.

2982.2 The practice of lawyers or other party representatives is governed by Sections 2833 and 2835.

2983 UNEMPLOYMENT INSURANCE CASES – FILING OF PAPERS

2983.1 In cases concerning unemployment compensation:

(a) When a request for hearing is mailed to OAH, if the envelope containing the request bears a legible United States Postal Service postmark or if there is other proof of the mailing date, the request shall be considered filed on the mailing date. The filing date cannot be established by a private postage meter postmark alone.

(b) When a request for hearing is delivered to OAH by commercial carrier, the filing date is the date the commercial carrier received the request for delivery to the Clerk's office, so long as the cost of delivery is prepaid and delivery is to occur within three (3) calendar days of the commercial carrier's receipt. The date of commercial carrier's receipt shall be established by a document or other record prepared by the commercial carrier in the normal course of business.

2983.2 All other procedures for filing papers are governed by Section 2809.

2984 UNEMPLOYMENT INSURANCE CASES – SUBPOENAS

2984.1 In unemployment compensation cases, the Clerk shall issue no more than three subpoenas to each party under Subsection 2824.5 to compel:

(a) The appearance at a hearing of persons who have direct knowledge of Claimant's separation from employment; or

(b) The production at a hearing of documents, dated no earlier than six (6) months before the date of separation, in the other party's possession that directly relate to Claimant's separation from employment.

2984.2 Service of a subpoena for a witness to appear at a hearing shall be made by personally delivering the subpoena to the witness. Unless otherwise ordered by an Administrative Law Judge, service shall be made at least two calendar days before the hearing.

2984.3 All other procedures for subpoenas are governed by Section 2824.

2985 UNEMPLOYMENT INSURANCE CASES – HEARINGS AND EVIDENCE

2985.1 At least three (3) business days before a hearing in an unemployment compensation case, a party shall serve on all other parties and file with the Clerk the following:

(a) A list of the witnesses, other than a party, whom the party intends to call to testify; and

(b) A copy of each exhibit that the party intends to offer into evidence, other than exhibits to be used solely for impeachment or rebuttal.

2985.2 All other procedures for hearings are governed by Section 2821.

2986 UNEMPLOYMENT INSURANCE CASES – REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER

2986.1 Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828.

2999 DEFINITIONS

2999.1 Unless otherwise provided, the definitions in Chapter 28 apply to this chapter.

2999.2 For purposes of this chapter, the term:

Commission means the Rental Housing Commission.

Contested residency case means a case in which an adult student or a minor student's parent or guardian has filed, pursuant to 5-E DCMR § 2009.3, a request for review of a decision by DCPS that a student is not entitled to tuition-free education because the student is not a resident of the District of Columbia.

DCPS means District of Columbia Public Schools.

Disciplinary file means any and all tangible evidence, in DCPS's possession, which forms the basis for the school's decision to propose the specific disciplinary action, including, but not limited to, student, staff and other witness statements, incident reports, photographs, police reports, and security camera footage. Nothing in these rules prohibits DCPS from redacting any information it deems confidential or protected.

RAD means the Rental Accommodations Division of the Department of Housing and Community Development.

Rent Administrator means the Rent Administrator of the RAD.

Rental Housing Act means the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code §§ 42-3501.01, *et seq.*).

Rental housing cases means cases initiated pursuant to the Rental Housing Act, but does not include petitions for declaratory orders pursuant to the Rental Housing Conversion and Sale Act of 1980.

School day means a day that school is open, whether or not students are attending, but does not include any day that OAH is closed.

Service Provider means a person or entity that furnishes assistance to members of the public through a contract with or grant from the Government.

Student discipline case means a case in which DCPS seeks to expel a student or to suspend a student for at least eleven (11) days.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* via e-mail to rachel.lukens@dc.gov, or to the Office of Administrative Hearings, 441 Fourth Street NW, Suite 450N, Washington, DC 20001, Attn: Rachel Lukens, Supervisory Attorney-Advisor. Copies of this proposed rulemaking may be obtained from www.oah.dc.gov or from the address listed above.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-233
October 28, 2015

SUBJECT: Delegation of Authority to the Director of the Department of General Services to Execute a Lease Agreement for the Mamie D. Lee School

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22 (2014 Repl.), it is hereby **ORDERED** that:

1. The Director of the Department of General Services is delegated the authority vested in the Mayor pursuant to, the Act, to execute a lease agreement between the District of Columbia and Mamie D. Lee, LLC for a portion of certain real property, as specified in the lease, located at 5101 Fort Totten Drive, NE, Washington, DC, most commonly known as the Mamie D. Lee School and more specifically designated for tax and assessment purposes as Parcel 124, Lot 136 ("Property"), and all other documents necessary to effectuate the lease of the Property, including, but not limited to, a memorandum of ground lease and a real property recordation and tax form.

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

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-234
November 2, 2015

SUBJECT: Appointments — District of Columbia Statewide Independent Living Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and in accordance with Mayor's Order 93-148, dated September 29, 1993, it is hereby **ORDERED** that:

1. **MOLLY WORK** is appointed to the District of Columbia Statewide Independent Living Council, replacing Dennis O'Connor, and shall serve in that capacity at the pleasure of the Mayor for a term to end November 3, 2017.

2. **DAVID BAUER** is appointed to the District of Columbia Statewide Independent Living Council, replacing Robert Coward, and shall serve in that capacity at the pleasure of the Mayor for a term to end November 3, 2017.

3. **HEYAB BERHANE** is appointed to the District of Columbia Statewide Independent Living Council, replacing Effie Smith, and shall serve in that capacity at the pleasure of the Mayor for a term to end November 3, 2017.

4. **REGINA RAYE DUVALL** is appointed to the District of Columbia Statewide Independent Living Council, replacing Samuel Awosika, and shall serve in that capacity at the pleasure of the Mayor for a term to end November 3, 2017.

5. **RONALD THOMAS** is appointed to the District of Columbia Statewide Independent Living Council, replacing Tiffany Sanders, and shall serve in that capacity at the pleasure of the Mayor for a term to end November 3, 2017.

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

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 2015-235
November 2, 2015

SUBJECT: Appointments — Commission for Women

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and in accordance with section 3 of the District of Columbia Commission for Women Act of 1978, effective September 22, 1978, D.C. Law 2-109, D.C. Official Code § 3-702 (2012 Repl.), it is hereby **ORDERED** that:

1. **MARGARET A. HACSKAYLO** is appointed as a member of the Commission for Women (**"Commission"**), replacing Alfreda Davis, to serve in this capacity for a term to end April 20, 2018.

2. **CAMELIA MAZARD** is appointed as a member of the Commission, replacing Tina Fletcher, to serve in this capacity for a term to end April 20, 2018.

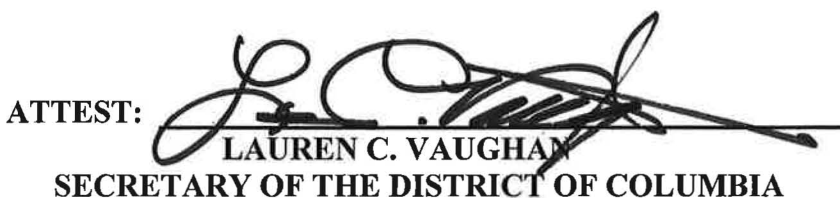
3. **VERONICA NELSON** is appointed as a member of the Commission, replacing Denese Lombardi, to serve in this capacity for a term to end April 20, 2018.

4. **TIFFINI N. GREENE** is appointed as a member of the Commission, replacing Caryn Bailey, to serve in this capacity for a term to end April 20, 2018.

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

MURIEL BOWSER
MAYOR

ATTEST:



LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-236
November 2, 2015

SUBJECT: Appointment — Leadership Council for a Cleaner Anacostia River

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2014 Repl.), and pursuant to section 4(a) of Mayor's Order 2015-171, dated June 24, 2015, establishing the Leadership Council for a Cleaner Anacostia River (**"Leadership Council"**), it is hereby **ORDERED** that:

1. **ANTHONY WILLIAMS**, a representative from a nongovernmental organization, is appointed as a member and Chairperson of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

2. **TOMMY WELLS,** Director, District of Columbia Department of Energy and Environment (**"DOEE"**), who as Director of DOEE is appointed as a member and Co-chairperson of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

3. **JIM FOSTER**, a representative of an environmental organization, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

4. **DENNIS CHESTNUT**, a representative from communities adjacent to the Anacostia River and an environmental organization, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

5. **CHRIS WEISS**, a representative of an environmental organization, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

6. **WALTER SMITH**, a representative of a nongovernmental organization, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

7. **GLEN O'GILVIE**, a representative of a nongovernmental organization, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

8. **WILLIAM MATUSZESKI**, a representative of an environmental organization, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

9. **FRED PINKNEY**, a representative of a federal government agency, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

10. **EDWARD GRANDIS**, a representative of a local government organization, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

11. **MICHAEL STEVENS**, a representative of a local government organization, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

12. **STEPHEN WALZ**, a representative of a local government organization, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

13. **JON M. CAPACASA**, a representative of a federal government agency, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

14. **JEFFREY CORBIN**, a representative of a federal government agency, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

15. **ADAM ORTIZ**, a representative of a county government environmental agency, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

16. **LISA FELDT**, a representative of a county government environmental agency, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

17. **BEN GRUMBLES**, a representative of a state environmental agency, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

18. **MARK BELTON**, a representative of a state government environmental agency, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

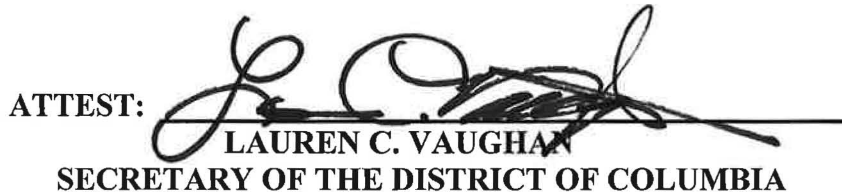
19. **SIMEON HAHN**, a representative of a federal agency, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

20. **GEORGE HAWKINS**, a representative of a local government agency, is appointed as a member of the Leadership Council, and shall serve in that capacity for a term to end September 30, 2018.

21. **EFFECTIVE DATE:** This Order shall be effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:



LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

ACHIEVEMENT PREPARATORY PUBLIC CHARTER SCHOOL (APREP)

REQUEST FOR PROPOSALS

Janitorial Services

Achievement Prep PCS (APrep) is seeking a competitive bid for janitorial services following the expansion of a public charter school facility. Proposals must be received by Friday, November 13, 2015. Please find RFP specifications at www.achievementprep.org under News.

APrep is seeking competitive bids for Janitorial Services at its redeveloped Wahler Place Campus, including but not limited to: day porter cleaning services of facilities on a daily basis during operational hours (7:30am-5:00pm), general housekeeping of facilities on a daily basis after operation hours, "deep cleaning" services to occur on scheduled breaks during which school programming is not occurring (i.e. scheduled school closures), provisioning and procurement of all required materials and equipment.

The Wahler Place Redevelopment Project consists of the renovation and expansion of the Campus to two buildings: the expansion/new construction of a 50,000 sq. ft. facility (opening January 2016) and a 45,000 sq. ft. remodeled facility (opening August 2016). Scope of work includes both facilities on the campus but does not call for a food-service handler.

Bids must include evidence of experience in field, qualifications and estimated fees. Please send proposals to bids@achievmentprep.org and include "RFP Janitorial Services" in the heading. Proposals must be received no later than 12pm on Friday, November 13, 2015.

CESAR CHAVEZ PUBLIC CHARTER SCHOOL DC

REQUEST FOR PROPOSALS

Professional Development for School/District Leadership

Chavez Schools is seeking an organization with a documented track record of providing high quality professional development about literacy and data analysis strategies for the purpose of developing Chavez school leaders and executive team members. Organization must have relationships with universities/colleges to award graduated level credit upon completion. Interested parties must have worked with high performing school organizations and have evidence to support their impact.

The full text of the proposal is available upon request by sending an email to: Tracy.wright@chavezschools.org

Proposals are due no later than 12:00 PM November 4th, 2015.

Bidding requirements can be obtained by contacting: Tracy.wright@chavezschools.org

DC BILINGUAL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Boiler Maintenance

DCBPCS is accepting proposals for a bid to provide boiler maintenance services for school year 2015-2016. For a copy of the RFP please email hbuie@dcbilingual.org. All bids should be submitted electronically to Hannah Buie, School Operations Manager, at hbuie@dcbilingual.org.

The deadline for submission is November 20, 2015.

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: 1A06

Petition Circulation Period: **Monday, November 9, 2015 thru Monday, November 30, 2015**
Petition Challenge Period: **Thursday, December 3, 2015 thru Wednesday, Dec. 9, 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 Commission

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Dexter L. Humphrey
Single-Member District 7B07

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY

GRANTS FOR A
Boat Sewage Pumpout--Clean Vessel Act

The District of Columbia Department of Energy and Environment, Fisheries and Wildlife Division (DOEE) requests applications for potential partners to be included in a grant application to the U.S. Fish and Wildlife Service (USFWS) Clean Vessel Act grant program, CFDA 15.616 for funding to purchase or provide maintenance for boat sewage pumpout systems, portable pumpouts, or pumpout boats. Potential partners will support DOEE in promoting improved water quality and increased compliance with the District of Columbia's ordinance prohibiting discharge of sanitary sewage from vessels, D.C. Official Code § 8-103.06 (m). DOEE may request from U.S. Fish and Wildlife Service up to $1,500,000 for one or more projects. All accepted projects will be included in a competitive proposal to USFWS.

Beginning 11/6/2015, the full text of the Request for Applications ("RFA") will be available online at DOEE's website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

> **Download** from DOEE's website, www.doee.dc.gov. Select "Resources" tab. Cursor over the pull-down list; select "Grants and Funding;" then, on the new page, cursor down to the announcement for this RFA. Click on "Read More," then download and related information from the "attachments" section.
>
> **Email** a request to 2016wildlifeRFA.grants@dc.gov with "Request copy of RFA 2015-1518-FWD" in the subject line;
>
> **Pick up a copy in person** from the DOEE reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call Joanne Goodwin at (202) 535-1798 to make an appointment and mention this RFA by name; or
>
> **Write** DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Joanne Goodwin RE:2015-1518-FWD" on the outside of the letter.

The deadline for application submissions is 11/20/2015 at 10:00 am. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2016wildlifeRFA.grants@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;

☒-Faith-based organizations;

☐-Government agencies

☒-Universities/educational institutions; and

☒-Private Enterprises.

For additional information regarding this RFA, please contact DOEE as instructed in the RFA document, at 2016wildlifeRFA.grants@dc.gov.

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR § 210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, Washington, DC, intends to issue renewal permit numbers 6407-R1 through 64120-R1 to the U.S. General Services Administration (GSA), to install and operate four (4) temporary rental boilers, each rated less than 100 million BTU per hour heat input, as needed, at the sidewalk north of the GSA Central Heating and Refrigeration Plant (CHRP) located at 13th and C Streets SW, Washington, DC 20407.

The application to install and operate the four (4) rental boilers and the draft permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permits and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington DC 20002

No written comments or hearing requests postmarked after December 7, 2015 will be accepted.

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

EXCEL ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Commercial Copiers and Maintenance Agreement

Excel Academy Public Charter School is soliciting proposals for:

- Purchasing or leasing four (4) commercial copiers
- Annual maintenance contract on the copiers

For more information, email John Hansen at jhansen@excelpcs.org. Please do not call.

Proposal Deadline: Friday, November 13th, 2015, 5:00 PM.

Excel Academy is a Washington D.C. based nonprofit all-girls public charter school. Further information about Excel Academy, including our nondiscrimination policy, may be found at www.excelpcs.org. Responses to this notice will be subject to the school's General Conditions Statement found on the website.

HEALTH BENEFIT EXCHANGE AUTHORITY

NOTICE OF PUBLIC MEETING

Executive Board of the Health Benefit Exchange Authority

The Executive Board of the Health Benefit Exchange Authority, pursuant to the requirements of Section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-0094), hereby announces a public meeting of the Executive Board. The meeting will be held at 1225 I Street, NW, 4th Floor, Washington, DC 20005 on **Monday, November 9, 2015 at 5:30 pm**. The call in number is 1-877-668-4493, Access code 736 009 237.

The Executive Board meeting is open to the public.

If you have any questions, please contact Debra Curtis at (202) 741-0899.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Physical Therapy ("Board") hereby gives notice of a change in its regular meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, D.C. Official Code § 3-1204.05 (b)) (2012 Repl.).

Previously, the Board's regular meetings were scheduled on the third Tuesday of each month. As of November 2015, the Board will hold its regular meetings instead on the third Wednesday of the month. Accordingly, the Board's next meeting will be held on Wednesday, November 18, 2015 from 3:30 PM to 5:30 PM. The meeting will be open to the public from 3:30 PM until 4:30 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed from 4:30 PM to 5:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health's Events webpage at www.doh.dc.gov/events to view the agenda.

INGENUITY PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

SPECIAL EDUCATION SERVICES

The Ingenuity 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 special education services: Counseling, Speech/Language, Occupational and Physical Therapy

Please go to http://www.ingenuityprep.org/bids to view a full RFP offering, with more detail on scope of work and bidder requirements.

Proposals shall be received no later than 5:00 P.M., Monday, November 16, 2015.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator
bids@ingenuityprep.org

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. Food Supplies). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

DISTRICT OF COLUMBIA FINANCIAL LITERACY COUNCIL

NOTICE OF PUBLIC MEETING

The Members of the District of Columbia Financial Literacy Council (DCFLC) will hold a meeting on Thursday, November 19, 2015 at 3:00 PM. The meeting will be held at the DC Department of Insurance, Securities and Banking, 810 First St, NE, 7th Floor Conference Room, Washington, D.C. 20002.

Below is the draft agenda for this meeting. A final agenda will be posted to the Department of Insurance, Securities, and Banking's website at http://disb.dc.gov.

Please RSVP to Idriys J. Abdullah, idriys.abdullah@dc.gov for additional information, please call (202) 442-7832 or e-mail idriys.abdullah@dc.gov

DRAFT AGENDA

I. Call to Order
II. Welcoming Remarks
III. Minutes of the Previous Meeting
IV. Unfinished Business
V. New Business
VI. Executive Session
VII. Adjournment

DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

Judicial Tenure Commission Begins Reappointment Evaluations Of Judges Erik P. Christian and Maurice A. Ross

This is to notify members of the bar and the general public that the Commission has begun inquiries into the qualifications of Judges Erik P. Christian and Maurice A. Ross of the Superior Court of the District of Columbia, who are declared candidates for reappointment as Associate Judges upon the expiration of their terms on May 30, 2016.

Under the provisions of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, 87 Stat. 796 (1973), §443(c) as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §12(1) provides in part as follows:

> "…If a declaration (of candidacy) is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written statement of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the nomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court."

The Commission hereby requests members of the bar, litigants, interested organizations, and members of the public to submit any information bearing on the qualifications of Judges Christian and Ross which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials shall be kept confidential unless expressly authorized by the person submitting the information.

All communications should be received by the Commission no later than **January 29, 2016**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
Fax: (202) 727-9718

The members of the Commission are:

Hon. Gladys Kessler, Chairperson
Jeannine C. Sanford, Esq., Vice Chairperson
Michael K. Fauntroy, Ph.D.
Hon. Joan L. Goldfrank
William P. Lightfoot, Esq.
David P. Milzman, M.D.
Anthony T. Pierce, Esq.

BY: /s/ Gladys Kessler
Chairperson

KINGSMAN ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Special Education Services and Program Consultation

Kingsman Academy Public Charter School is seeking competitive proposals for special education services and program consultation. For a copy of the RFP, email procurement@kingsmanacademy.org. Deadline for submissions is 5:00 pm on Monday, November 16, 2015. **No phone calls please**.

OFFICE ON LATINO AFFAIRS

NOTICE OF FUNDING AVAILABILITY (NOFA)

FY 2016 Latino Community Development Grant RFA #22615-16

Background information:
The Mayor's Office on Latino Affairs (MOLA) is soliciting grant applications from qualified Community-Based Organizations (CBOs) serving the District of Columbia's Latino constituents [residents and/or business owners] – for its FY 2016 Community Development Grant. The grant is intended to enhance existing Latino-serving programs focused on Education (all ages), Workforce Development, Economic Development, Housing Services, Civil Engagement, Legal Services, Crisis Intervention, and Arts, Culture and Humanities.

Funding priority areas identified for FY 2016 are aligned with Mayor Muriel Bowser's administration budget priorities:

- Education
- Jobs & Economic Development
- Public Safety
- Housing
- Transportation
- Environment
- Health & Wellness
- Good Government
- Arts & Creative Economy

Eligibility Criteria:
Organizations may apply if they meet all of the following eligibility requirements at the time of application:

- A community-based organization with a Federal 501(c)(3) tax-exempt status,
- the community-based organization's principal place of business is located within in the District of Columbia,
- the community-based organization or program serves the District's Latino residents,
- the community-based organization is currently registered in good standing with the DC Department of Consumer & Regulatory Affairs, Corporation Division, and the Office of Tax and Revenue, and
- Charter Schools are **not** eligible to apply.

Program Scope:
For FY 2016, MOLA's Community Development Grants will fund eligible community based organizations that have **existing** programs targeting the Latino population in the District of Columbia. Programs can be targeted to the general Latino population or specific sub-groups, such as children, youth, persons with disabilities, adults, seniors, etc. [see RFA for details]

Release Date of RFA: Monday, October 26, 2015

Availability of RFA: The RFA will be posted on MOLA's website (www.ola.dc.gov) & on the District's Grant Clearinghouse Website at http://opgs.dc.gov/page/opgs-district-grants-clearinghouse, and the Funding Alert published on OPGS' website. You can pick up a copy at the MOLA office located at the Reeves Center, 2000 14th ST NW, 2nd Floor, Washington, DC 20009

Amount of Awards: Eligible organizations can be awarded up to $50,000.

Length of Awards: Grant awards are for FY 2016,
October 1, 2015 – September 30, 2016.

MOLA Contact: Josué Salmerón
Deputy Director
Phone: (202) 671-2827
Email: Josue.salmeron@dc.gov

Deadline for Electronic Submission: 5:00 p.m. on November 20, 2015 | ola@dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-75

June 18, 2015

VIA ELECTRONIC MAIL

Mr. Jeremy Leval

RE: FOIA Appeal 2015-75

Dear Mr. Leval:

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

Background

On April 30, 2015, you submitted a request under the DC FOIA to DDOT seeking the Geographic Information System ("GIS") purchase data from parking meters located in the District of Columbia. You requested that this data include:

> (1) the purchase data from the parking meters located in Washington DC, including the initial times (the local time when someone purchases a space), locations (locations of the meters where the space is purchased) and durations (the length of time someone purchases the space for), (2) the locations of all physical payments stations for metered parking in Washington DC, (3) The location and number of spaces for all on-street parking zones including, (3)(a) all on-street parking permit zone locations in Washington, DC, (3)(b) all on-street parking metered zone location in Washington, DC, and (3)(c) all on-street parking free zone location in Washington DC.

On May 21, 2015, DDOT responded to you by providing a spreadsheet and a map, which DDOT asserts are responsive to parts (2), (3)(b), and (3)(a) of your request.

You subsequently appealed DDOT's decision, arguing that data related to part (1) of your request exists in unmodified, raw digital form.

In a letter to this office dated June 16, 2015, DDOT responded to your appeal.[1] DDOT asserted that it conducted a thorough search for the requested data. In specific, DDOT "consulted with

[1] A copy of this response is attached hereto.

and queried the DDOT City Wide Parking Programs Division and the DDOT Chief Information Officer on the existence of the requested parking meter data . . . No data pertaining to this information is collected or utilized by this agency."

Discussion

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

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

The crux of this matter is the adequacy of the search with respect to part (1) of the GIS parking meter data. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Id.*

In order to establish the adequacy of a search,

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

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

Accordingly, to conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the location of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.*

In this matter, DDOT searched its City Wide Parking Programs Division for the requested data. Additionally, DDOT questioned its Chief Information Officer on the existence of the requested

parking meter data. DDOT found no data related to part (1) of your request. Based on DDOT's representations, we conclude that its search was reasonable and we accept DDOT's position that it does not retain responsive documents.

Conclusion

Based on the foregoing, we affirm DDOT's decision and hereby dismiss your appeal.

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

Sincerely,

/s Melissa C. Tucker

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

cc: Karen R. Calmeise, FOIA Officer, DDOT (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-76

June 9, 2015

Mr. John Thrift

RE: FOIA Appeal 2015-76

Dear Mr. Thrift:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal you assert that the Office of the State Superintendent of Education ("OSSE") improperly withheld records you requested under the DC FOIA.

On January 23, 2015, you submitted a request under the DC FOIA for certain information related to administration of the Mayor's Opportunity Fund and directions regarding allocation of funds to the University of the District of Columbia ("UDC"). In March 2015, you filed an appeal with the Mayor through the FOIAxpress system, asserting that you had not yet received a response from OSSE. Unfortunately when you filed your appeal in FOIAxpress, you selected UDC as the "Action Office," whereas appeals must be filed with the Mayor's General Counsel. As a result, this office, which responds to FOIA appeals, did not receive your appeal until June 2, 2015.

According to FOIAxpress, OSSE granted your request and provided you with responsive documents on February 24, 2015. Last week I informed you by email that the documents, which consist of 73 pages, are available for review in FOIAxpress. Based on the foregoing, we consider your appeal to be moot. This constitutes the final decision of this office.

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

Sincerely,

/s Melissa C. Tucker

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-77

June 9, 2015

Ms. Joce Sterman

RE: FOIA Appeal 2015-77

Dear Ms. Sterman:

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

On November 17, 2014, you submitted a request under the DC FOIA related to overtime payments for certain MPD officers. In March 2015, you filed an appeal with the Mayor through the FOIAxpress system, asserting that you had not yet received a response from MPD. Unfortunately when you filed your appeal in FOIAxpress, you selected MPD as the "Action Office," whereas appeals must be filed with the Mayor's General Counsel. As a result, this office, which responds to FOIA appeals, did not receive your appeal until June 2, 2015.

According to FOIAxpress, MPD granted your request and provided you with responsive documents on March 25, 2015. Based on the foregoing, we consider your appeal to be moot. This constitutes the final decision of this office.

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

Sincerely,

/s Melissa C. Tucker

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-78

June 12, 2015

VIA ELECTRONIC MAIL

Ms. B. Selah Lee-Bey

RE: FOIA Appeal 2015-78

Dear Ms. Lee-Bey:

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

Background

On April 3, 2015, you submitted a request to DPW seeking:

> Name of the TOWING COMPANY
> Name of Those Doing Business As the TOWING COMPANY
> The Bond (insurance information) and charter (license) for the TOWING COMPANY to business
> Notice of Infraction dated on or prior to the towing of the conveyance
> Propery Record (PD Form 81) recording the towing of the conveyance
> The Towing Crane Number (bond for the Towing Crane itself)
> Delegation of Authority: Who Authorized the towing of the conveyance.

DPW acknowledged receipt of your FOIA request on the same date and informed you that "this agency does not have documents related to the insurance information and charter or license for the towing company. For that information, you must direct your request to the Department of Consumer and Regulatory Affairs."

On May 1, 2015, DPW closed your original request, having provided you with the eight responsive documents found in its search.

You appealed DPW's decision to the Mayor on June 2, 2015, arguing that DPW improperly withheld records and that "[t]hus far, no information regarding the tow company and those towing the conveyance [sic] has been provided." Upon this office's request to clarify your 36

page appeal[1], you stated in a June 3, 2015, email that DPW had provided you with some information but that you had been improperly denied the following information:

> 1) The charter and bond (insurance) of the tow truck/crane present on the day of the theft of my conveyance;
> 2) The charter and bond (insurance) of the Denver boot placed upon my conveyance;
> 3) The NAME of those responsible for the theft of my conveyance, including those that actually took the conveyance and whomever authorized the taking of my conveyance; and
> 4) The charter and bond (insurance) for those responsible for the theft of my conveyance.

The DPW provided this office with a response to your appeal on June 10, 2015. In its response, DPW represented that it had previously provided you with all responsive documents in its possession. DPW further represented that it conducted an additional search that resulted in locating one responsive document relating to insurance.[2] DPW does not assert that exemptions to DC FOIA apply to your request; to the extent that responsive documents exist, DPW states that these documents are maintained by different agencies. DPW directed to you to these relevant agencies in its original acknowledgment to your FOIA request dated April 3, 2015. Lastly, DPW has characterized your remaining requests as interrogatories, to which they are not obligated to respond to under DC FOIA.

Discussion

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

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

[1] We note that this office's jurisdiction is limited to "review[ing] the public record to determine whether [a record] may be withheld from public inspection." D.C. Official Code § 2-537(a). As a result, we do not have the authority to review the non-FOIA legal claims asserted in your appeal.
[2] For the sake of efficiency, we are attaching the newly-located document to this decision instead of asking DPW to provide it to you directly.

Under the law, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States EPA*, 767 F.2d 569, 574 (9th Cir. 1985). The law requires the disclosure only of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-30 (D.D.C. 2009). The request you submitted to DPW consisted largely of questions (e.g., "The NAME of those responsible for the theft of my conveyance, including those that actually took the conveyance and whomever authorized the taking of my conveyance"), and agencies are not required to respond to interrogatories under the DC FOIA.

To the extent that your initial request asked for specific documents, DPW provided you with responsive documents in its possession in its initial response, thereby satisfying its obligations under DC FOIA. Further, on appeal, DPW has proffered an additional document that was overlooked in its initial search. DPW has not denied you access to any documents in its possession. As DPW informed you in the April 3, 2015, email attached to your appeal, with regard to the additional insurance information you are seeking "[f]or that information, you must direct your request to the Department of Consumer and Regulatory Affairs."

Conclusion

Based on the foregoing, we affirm the decision of DPW and dismiss your appeal. If you seek further insurance or charter information beyond what DPW has provided you, you should submit a FOIA request with the Department of Consumer and Regulatory Affairs.

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

Sincerely,

/s Melissa C. Tucker

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

cc: Nakeasha Sanders-Small, Assistant General Counsel, DPW (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-79

June 16, 2015

VIA ELECTRONIC MAIL

Ms. Dana Sleeper

RE: FOIA Appeal 2015-79

Dear Ms. Sleeper:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal you assert that the Office of the Attorney General ("OAG") failed to respond to a request you submitted under the DC FOIA.

On May 11, 2015, you submitted a request to the OAG for "the number of complaints filed in regard to: (i) Interconnection complaints; (ii) Interconnection complaints related to delays; (iii) Installation of net-capable meter; (iv) Installation of net-capable meter delays; (v) Billing Complaints – incorrect billing after installation of net-capable meters." On June 11, 2015, this office received the appeal you filed with the Mayor asserting that the OAG failed to respond to your FOIA request.

The OAG's FOIA officer, Robert White, copied this office on correspondence he sent you earlier today responding to your request. Based on the foregoing, we consider your appeal to be moot.

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

Sincerely,

/s Melissa C. Tucker

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

cc: Robert C. White, Esq., OAG (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-80

July 10, 2015

VIA ELECTRONIC MAIL

Nabiha Syed,

RE: FOIA Appeal 2015-80

Dear Ms. Syed:

This letter responds to the administrative appeal you filed with the Mayor on behalf of your client, BuzzFeed, under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In the appeal, BuzzFeed asserts that the Office of the State Superintendent of Education ("OSSE") improperly formatted and delivered records BuzzFeed requested under the DC FOIA.

Background

On January 12, 2015, BuzzFeed submitted a request under the DC FOIA to OSSE seeking:

> 1) Any records that list the number of withdrawals, suspensions, and expulsions for each school administered by OSSE (including both public and charter schools), for each school year from 2000-01 to the present. These records should, if possible, be comparable to the more recent DC school equity reports.
>
> 2) Records listing the individual student withdrawals from every school administered by OSSE (both public and charter schools) for each school year from 2000-01 through the present (where available) that includes, but isn't necessarily limited to:
> a. The date of the withdrawal;
> b. The type of withdrawal (e.g., transfer, expelled);
> c. Whether the withdrawal was involuntary;
> d. Whether the student was in special education;
> e. The school name and any unique identifiers assigned to the school; and
> f. The type of school (i.e., public or charter).
>
> 3) Record layouts (column names, and descriptions where available) for all OSSE databases containing any information about student withdrawals.

In its request, BuzzFeed specified that the information be provided as "Excel spreadsheets, comma separated values (CSV) files, or SQL schema files, and preferably not as a PDF or Word document." BuzzFeed also requested that the responsive documents be sent by email or FTP upload.

Following correspondence between BuzzFeed and OSSE, OSSE began providing responsive documents. On February 24, 2015, OSSE mailed a CD-ROM with Excel files as its first disclosure. While OSSE attempted to redact the Excel files of its initial response to protect private student information, after the disclosure both OSSE and BuzzFeed became aware that efforts to redact the information could be circumvented to reveal the private student information.[1] As a result, in subsequent disclosures OSSE provided BuzzFeed with redacted PDFs to prevent the inadvertent disclosure of private student information.

On or about May 20, 2015, through May 25, 2015, OSSE disclosed responsive records pertaining to withdrawals, suspensions, and expulsions of students in the form of redacted PDF documents. OSSE sent the PDFs through WatchDox, an online portal, on the grounds that the files were too large to be sent via email or FOIAXpress.

On June 9, 2015, BuzzFeed filed an appeal with the Mayor challenging several issues related to OSSE's responses. Primarily, BuzzFeed claimed: (1) that OSSE's method of disclosure was improper because the documents were produced as PDFs rather than the requested Excel files; and (2) that OSSE's method of delivery was improper because it used WatchDox rather than FOIAXpress. Further, BuzzFeed asserted that there were egregious delays in the timing of OSSE's response and that the delays were either a deliberate ruse or evidence that OSSE is improperly withholding unspecified responsive records.

In support of its claim that the format of OSSE's production was improper. BuzzFeed cites D.C. Official Code § 2–532 (a-1), which states that "a public body shall provide the record in any form or format requested." BuzzFeed also maintains that in several instances the PDFs contain cropped columns or shifted rows and columns, making it difficult to analyze and interpret information. Regarding the delivery method of the documents, BuzzFeed asserts that email, FOIAXpress, or physical devices could have been used as preferable alternatives instead of WatchDox, and notes that WatchDox allows users the ability to control files, track files, audit use of files, and wipe files on demand. Because the total size of the files was under 20MB, the files could have been transmitted via FOIAxpress, according to BuzzFeed. Lastly, BuzzFeed alleges that "[it] can be concluded . . . that there still remain voluminous responsive records that OSSE has failed to provide."

OSSE responded to BuzzFeed's FOIA appeal in a letter to this office dated June 23, 2015.[2] OSSE also provided a Vaughn index/privilege log[3] specifying that the files were redacted to prevent disclosure of personally identifying information in accordance with D.C. Official Code §§ 2-534(a)(2)[4] and 2-534(a)(6)[5] ("Exemption 2" and "Exemption 6," respectively).

[1] *See* Katie Baker and John Templon, *D.C. Schools Released Private Student Data For A Second Time*, BUZZFEED (March 26, 2015) available at http://www.buzzfeed.com/katiejmbaker/dc-public-schools-released-private-student-data-for-a-second?utm_term=.rdnOn83qYg.

[2] The OSSE's letter is attached hereto.

[3] The OSSE's Vaughn index/privilege log is attached hereto.

[4] Section 2-534(a)(2) protects records containing "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

[5] Section 2-534(a)(6) allows for the protection of information specifically exempt from

Additionally, OSSE provided this office, via WatchDox, with the PDF files that were disclosed. In its response, OSSE addressed your claims regarding the format and delivery method of the files. OSSE also explained its search methodology and the delays in its disclosures.

Regarding formatting the files as PDFs, OSSE claims that it attempted to accommodate the requester's preferences; however, it was unable to accommodate the request for an Excel format because doing so would result in violations of thousands of students' privacy rights. OSSE states that the initial disclosures were made as Excel files, but due to the format the attempted redactions were ineffective, inadequate, and resulted in an inadvertent disclosure of information for approximately 100,000 students that should have been protected under the DC FOIA, FERPA, and IDEA. Therefore, OSSE revised its FOIA policy to better align with its obligations to protect sensitive student information. OSSE determined that delivery of documents in an Excel file does not provide the level of privacy and security necessary to protect personal student information.

OSSE contends that providing the documents in an electronic format is legally sufficient to satisfy the "form or format" requirement of D.C. Official Code § 2-532(a-1). OSSE states that the DC FOIA does not specify or differentiate certain types of electronic files; the statute distinguishes electronic formats from traditional means of printed paper production. Further, OSSE contends that the right to request a specific format does not override a valid interest in preventing disclosure of protected personal information, and, as demonstrated by its initial disclosure, OSSE cannot ensure the protection of personal information in Excel files. OSSE references FOIA Appeal 2014-38, in which an agency was ordered to disclose records in a searchable and manipulable format. OSSE contends that the files it produced were searchable, and the distinction here is that the disclosure requires protection of personal student information. Further, OSSE acknowledges that formatting the files into PDFs made the files difficult to read. As a result, on July 8, 2015, OSSE provided BuzzFeed and this office with reformatted PDF files for review. OSSE asserts that these PDF files accurately replicate the content of the original formats.

Regarding the delivery method of the responsive records, OSSE explains that FOIAXpress delivery is email-based and subject to the size limitations of OSSE's email server. OSSE claims that several files were too large to be delivered via OSSE's email server, and that it used WatchDox to expedite transmission of the files in a secure manner because WatchDox allows the administrator to set permissions and apply protection for documents even after they are delivered.

In response to the allegation that it withheld responsive documents, OSSE described its search methodology and attached declarations from the individuals who supervised the search.[6] OSSE asserts that all responsive files discovered by the search have been disclosed. Additionally, OSSE explains its disclosures were delayed due to the process of reviewing and redacting

---

disclosure under other law and was asserted in conjunction with the Family Educational Rights and Privacy Act ("FERPA") 20 U.S.C. § 1232g; 34 C.F.R. Part 99; and the Individuals with Disabilities Act ("IDEA") 20 U.S. Code § 1400 *et seq.*

[6] The declarations are attached hereto.

thousands of pages of documents for compliance with privacy protections under the DC FOIA, and due to its initial inadvertent disclosure of student information, which required OSSE to revise its FOIA process and transition employees working on its FOIA team.

Discussion

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

DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Decisions construing the federal stature are instructive and may be examined to construe local law. *See Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

This determination shall address the format and delivery method of OSSE's disclosures and the allegation that OSSE improperly withheld records. While we acknowledge BuzzFeed's complaints regarding the delay of the disclosures, there is no remedy under the DC FOIA that we can provide.

Format of Files

BuzzFeed argues that D.C. Official Code § 2-532 (a-1) requires OSSE to "provide the record in any form or format requested." The determination in FOIA Appeal 2014-38, in which an agency was ordered to disclose files in a searchable and manipulable format, ostensibly supports this argument. FOIA Appeal 2014-38 is distinguishable from this matter, however, because in that appeal the agency's rationale for providing the files in a static format was to ensure "that data is not subject to manipulation by the requester or by any third parties." FOIA Appeal 2014-38 did not involve the need to protect information from disclosure pursuant to valid exemptions to the DC FOIA. Here, OSSE has invoked Exemptions 2 and 6 to prevent disclosure of private and personally identifiable student information including names, personally identifying numbers, and other indirect identifiers. BuzzFeed does not challenge the use of these exemptions. Therefore, the issue is whether or not OSSE has the capacity to provide the files in the requested format while preventing the disclosure of information protected by Exemptions 2 and 6.

Courts have held that an agency is entitled to withhold records in their entirety if the agency lacks the technical capacity to properly redact protected information.[7] The capacity for redaction

[7] *See e.g.*, *Milton v. DOJ*, 842 F. Supp. 2d 257, 259-61 (D.D.C. 2012) (holding that telephone conversations were exempt from disclosure because an agency did not possess technological capacity to segregate non-exempt portions of requested records); *see also Mingo v. DOJ*, 793 F.

is not a general standard, but rather focuses on "the agency's current technological capacity." *Milton*, 842 F. Supp. 2d at 260. When an agency asserts its lack of capacity with reasonable specificity and detail, the requestor must point either to "contradictory evidence in the record" or provide "evidence of agency bad faith" in order to refute the agency's assertions. *Williams v. FBI*, 69 F.3d 1155, 1159 (D.C. Cir. 1995) (internal quotations omitted). Here, OSSE has described and demonstrated, through its initial disclosure, that it lacks the capacity to properly redact files in an Excel format. OSSE further asserts that it cannot sufficiently remove metadata from Excel files to protect student level information.

An agency is expected to provide requesters with the best copy available of a record. *See McDonnell v. United States*, 4 F.3d 1227, 1261 n. 21 (3d Cir. 1993) ("Of course, we anticipate that [the requester] will receive the best possible reproduction of the documents to which he is entitled."). We agree with BuzzFeed that several portions of the files that OSSE initially disclosed were unintelligible due to cropped columns and shifted rows and columns from the conversion to PDF. After reviewing the reformatted PDF files OSSE provided on July 8, 2015, we find that the legibility of the files is significantly improved and the files no longer appear to contain cropped or shifted columns; however, neither BuzzFeed's appeal nor OSSE's response mentions that the original request also asked for records as "comma separated values (CSV) files, or SQL schema files" in addition to Excel files.

As addressed in FOIA Appeal 2014-38, an important aspect of the format of disclosed information is that it is not only searchable but also manipulable. The formats BuzzFeed specifically requested are searchable and manipulable, whereas the PDF files provided are not manipulable unless the data is copied and pasted into another format. Accordingly, OSSE shall consult with its data team to determine if the files can be disclosed in an alternate requested format that is manipulable but still protects private student information. If OSSE is unable to protect private student level information from disclosure in an alternate requested format, its disclosure of reformatted PDF files shall be considered compliant with the DC FOIA as the best copy available.

Delivery Method

The second issue BuzzFeed raises on appeal is that OSSE used a "questionable" method to deliver the files requested. Unlike the requirement to provide documents in a requested form or format, the DC FOIA does not allow a requestor to mandate a particular method of document delivery. *See* D.C. Official Code § 2-532 (requiring only that an agency make records available for inspection and copying). BuzzFeed requested that the records be sent "via email or FTP upload." Based on the definition of FTP,[8] it appears that OSSE satisfied this request by

---

Supp. 2d. 447, 454-55 (D.D.C. 2011) (concluding that nonexempt portions of recorded telephone calls are inextricably intertwined with exempt portions because agency "lacks the technical capability" to segregate information that is digitally recorded); *Stevens v. United States Dep't of Homeland Sec.*, 2014 U.S. Dist. LEXIS 157086, 33 (N.D. Ill. Nov. 4, 2014) (finding that an agency lacked the capacity to redact video footage; therefore, disclosure was not required).

[8] *See* Bradley Mitchell, *FTP - What Does FTP Stand For?*, AboutTech, (available at http://compnetworking.about.com/od/networkprotocols/g/bldef_ftp.htm).

transmitting the documents through WatchDox. OSSE states that it selected WatchDox because the files were too large to be sent via email or FOIAXpress, whose capability is limited by OSSE's email server. Additionally, OSSE states that WatchDox has superior security because it allows an administrator to set permissions and protect documents even after they are delivered.

It is unclear why OSSE would need a secure file transfer protocol to deliver documents responsive to a request under the DC FOIA because all sensitive and exempt information should be redacted from the disclosures. Moreover, OSSE should not have reason to exercise the additional controls and protections available within WatchDox. Nevertheless, BuzzFeed has not expressed an inability to obtain and inspect the files disclosed via WatchDox. Similarly, our office was able to retrieve and review the documents transmitted via WatchDox. Therefore, the use of WatchDox is not an inappropriate method of delivery in this instance.

Alleged Improper Withholding

On appeal, BuzzFeed also contends that "that there still remain voluminous responsive records that OSSE has failed to provide." The basis for this allegation is unclear, though, as BuzzFeed does not indicate a category of missing records or the failure to perform an adequate search.

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

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

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

In conducting an adequate search, an agency must make reasonable determinations as to the location of records requested and conduct a search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). The determination as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Generalized and conclusory allegations do not establish an adequate search. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Regarding the allegation that OSSE is deliberately withholding responsive records, the Supreme Court has explained that there is a presumption of legitimacy accorded to the official conduct of the government, and clear evidence is usually required to displace it. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174 (2004). Allegations of government misconduct are "easy to

allege and hard to disprove," so a meaningful evidentiary showing is necessary. *Id*. at 175 (citing *Crawford-El v. Britton*, 523 U.S. 574, 585 (1998)).

Here, OSSE responded to your appeal with specificity, describing the search it conducted and including declarations from two data supervisors involved in the search. OSSE, in its response and declarations, indicated: (1) the locations where responsive records in this matter would be stored; and (2) that it conducted searches of these locations. The declarations assert that "all responsive records were provided to the FOIA Officer." The FOIA officer states that all responsive records discovered by the searches have been disclosed in response to the request. Due to the absence of clear evidence to the contrary, we find that OSSE conducted an adequate search and has not improperly withheld responsive records.

Conclusion

Based on the foregoing, we affirm in part and remand in part OSSE's response to BuzzFeed's request. Within 10 business days of the date of this decision, OSSE shall consult with its data team and determine if an alternate format, such as CSV files, can be used to disclose responsive records while protecting personally identifiable student information. The remaining aspects of OSSE's responses are affirmed.

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

Sincerely,

/s Melissa C. Tucker

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

/s John A. Marsh*

John A. Marsh
Legal Fellow
Mayor's Office of Legal Counsel

cc: Mona Patel, FOIA Officer, OSSE (via email)

*Admitted in Maryland; license pending in the District of Columbia; practicing under the supervision of members of the D.C. Bar

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-81

June 23, 2015

VIA ELECTRONIC MAIL

Mr. Steven Sushner, Esq.

RE: FOIA Appeal 2015-81

Dear Mr. Sushner:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), which this office received on June 16, 2015. In your appeal you assert that the Office of Tax and Revenue ("OTR") failed to respond to a request you submitted to OTR on April 27, 2015, under the DC FOIA.

This office notified the OTR of your FOIA appeal on June 16, 2015. On June 19, 2015, you informed me via an email message that OTR has provided you with the information you are seeking, and you are withdrawing your appeal. As a result, we hereby dismiss your appeal on the grounds that it is moot.

Feel free to contact me if you have any questions.

Sincerely,

/s Melissa C. Tucker

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

cc: Bazil Facchina, Assistant General Counsel, OTR (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-82

August 4, 2015

VIA ELECTRONIC MAIL

Mr. CJ Ciaramella

RE: FOIA Appeal 2015-82

Dear Mr. Ciaramella:

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

Background

On April 9, 2015, you requested from MPD "all firearm discharge reports, incident reports regarding an officer-involved shooting, and citizen complaints against" four named officers. On April 20, 2015, MPD responded to your request, stating that it could neither admit nor deny whether any complaints or investigations had been filed regarding the named officers. The MPD further stated that any responsive records would be exempt from disclosure under D.C. Official Code § 2-534(a)(2) because producing them would constitute an unwarranted invasion of the officers' personal privacy.

On appeal, you contend that MPD lacks the authority to assert a response of neither admitting nor denying the existence of a record, a so-called *Glomar* response. Further, you argue that the involvement of MPD's Gun Recovery Unit in a controversial shooting is a matter of public concern that demands disclosure. To the extent privacy concerns are involved, you contend that they may be addressed by MPD producing redacted, reasonably segregated portions of the records.

The MPD responded to your appeal in a letter to this office dated July 16, 2015, reaffirming its position that disclosing firearm discharge reports, incident reports, and citizen complaints concerning identified police officers would constitute an unwarranted invasion of the officers' personal privacy.

Discussion

It is the public policy of the District of Columbia government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that

policy, the DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). The right to inspect public records is subject to various exemptions that may form the basis of a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).[1] District of Columbia Official Code § 2-534(a)(2) exempts from disclosure "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Determining whether disclosure of a disciplinary record would constitute an invasion of personal privacy requires a balancing of one's individual privacy interests against the public interest in the release of the requested information. *Citizens for Responsibility & Ethics in Wash. v. United States Dep't of Justice*, 48 F. Supp. 3d 40, 50 (D.D.C. 2014).

Here, the citizen complaints you seek may consist of mere allegations of wrongdoing, the disclosure of which could have a stigmatizing effect regardless of accuracy. We say "may consist" because MPD has not stated, and has maintained that it will not state, whether or not complaint records exist relating to the officers you have identified. This type of response is referred to as a *Glomar* response, and it is warranted when the confirmation or denial of the existence of responsive records would, in and of itself, reveal information exempt from disclosure. *Wilner v. Nat'l Sec. Agency*, 592 F.3d 60, 68 (2nd Cir. 2009). The MPD's *Glomar* response is justified in this matter because if a written complaint exists, identifying the written record may result in the harm that the FOIA exemption is intended to protect.

Your position that there is an overriding public interest in the disclosure of a public employee's disciplinary files was addressed by the court in *Beck v. United States Dep't of Justice*, 997 F.2d 1489 (D.C. Cir. 1993). In *Beck*, the court held that:

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

---

[1] This office accepts MPD's *Glomar* response, despite your argument that MPD has no authority to assert such a response. As a matter of practice, *Glomar* responses have been accepted in past FOIA Appeals. *See*, *e.g.,* FOIA Appeals 2014-28; 2013-7.

Id. at 1492-93.

In the instant matter, releasing citizen complaints filed against the named police officers would constitute an invasion of their privacy under District of Columbia Official Code § 2-534(a)(2) and would not shed light on the MPD's performance of its statutory duties.

Unlike citizen complaints, however, we find that a public interest may exist in the requested "firearm discharge reports, [and] incident reports regarding an officer-involved shooting." The officers you identified are members of MPD's Gun Recovery Unit, a unit tasked with reducing gun violence in the District. Reports of firearm discharge and officer-involved shootings are directly related to the unit's core mandate, and the release of such information would therefore inform citizens of MPD's performance of one of its statutory duties. MPD has not explained which particular privacy interests related to the reports are protected under D.C. Official Code § 2-534(a)(2). Further, under FOIA, even when an agency establishes that it has properly withheld a document under an exemption, it must disclose all reasonably segregable, nonexempt portions of the requested documents. *See*, *e.g*., *Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). Here, MPD has not explained whether any portions of the report are reasonably segregable.

Conclusion

Based on the foregoing, we uphold the MPD's decision in part and remand it in part. MPD's denial of citizen complaints pertaining to four named officers is affirmed. With respect to the requested firearm discharge reports and incident reports regarding an officer-involved shooting, MPD shall, within 7 business days of this decision, disclose the reports or provide a detailed explanation as to why they are protected under the DC FOIA and not segregable.

We consider this appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to MPD's subsequent response.

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

Sincerely,

/s Melissa C. Tucker

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-83

July 31, 2015

VIA ELECTRONIC MAIL

Linda Flynn

RE: FOIA Appeal Number 2015-83

Dear Ms. Flynn:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a) ("DC FOIA"). You assert in your appeal that the Department of Consumer and Regulatory Affairs ("DCRA") denied your request for business insurance and bond information pertaining to a particular contractor licensed in the District who performed work for you.

In response to your appeal, DCRA reconsidered your request and provided you with responsive information on July 30, 2015.

Based on the foregoing, we consider your appeal to be moot and dismissed. This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

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

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY PRACTICES,

AND

FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to section 34-802 of the District of Columbia Official Code and in accordance with section 2-505 of the District of Columbia Official Code,[1] of its intent to act upon the proposed tariff amendment of the Potomac Electric Power Company ("Pepco" or "Company")[2] in not less than 30 days from the date of publication of this Notice of Proposed Tariff ("NOPT") in the *D.C. Register*.

2. Pepco's proposed tariff amendment changes the Company's Rate Schedules for Electric Service in the District of Columbia to reflect terminology changes being made by PJM Interconnection LLC ("PJM"). On June 1, 2015, PJM implemented residual metered load pricing, a new aggregate pricing point that excludes any load that is priced at a specific nodal price rather than at a zonal price, or if applicable, a fully-metered electric distribution company area. Residential metered load pricing is defined as the use of residual metered Locational Marginal Price ("LMP") instead of the physical zone LMP for pricing real-time load.[3]

3. Pepco proposes to amend the following seven (7) tariff pages:

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Seventy-Seventh Revised Page No. R-1
Seventy-Seventh Revised Page No. R-2
Seventieth Revised Page No. R-2.1
Forty-Sixth Revised Page No. R-2.2
Second Revised Page No. R-15.1
Twenty-First Revised Page No. R-41
Twenty-First Revised Page No. R-41.6

---

[1] D.C. Code §§ 2-505 and 34-802 (2001).

[2] *Formal Case No. 945, In the Matter of the Investigation Into Electric Services Market Competition and Regulatory Practices*, Letter from Peter E. Meier, Vice President, Legal Services, Potomac Electric Power Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, filed May 29, 2015 ("Pepco Letter").

[3] Pepco Letter.

4. The filing may be reviewed at the Office of the Commission Secretary, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. A copy of the proposed tariff amendment is available upon request, at a per-page reproduction cost from the Office of the Commission Secretary or via the Commission's website at www.dcpsc.org.

5. Comments and reply comments on Pepco's proposed tariff amendment must be made in writing to Brinda Westbrook-Sedgwick, Commission Secretary, at the address above. All comments and reply comments must be received not later than 30 and 45 days, respectively, after publication of this NOPT in the *D.C. Register*. Once the comment period has expired, the Commission will take final action on Pepco's tariff filing.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMENDATIONS FOR APPOINTMENT AS NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after December 1, 2015.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on November 6, 2015. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary **Effective: December 1, 2015**
Recommendations for appointment as DC Notaries Public **Page 2**

Last Name	First Name	Employer / Address	ZIP
Afriyie	Phyllis	Wells Fargo 1901 7th Street, NW	20001
Akinyosoye	Bunmi	Self 1731 Gainesville Street, SE, Unit 101	20020
Alarcon	Norma Eunice	Richards Kibbe & Orbe LLP 701 8th Street, NW, Suite 300	20001
Amaguana	Crissy	DC Soccer LLC dba DC United 2400 East Capitol Street, SE	20003
Ankah	Selena	The Law Office of Geoffrey D. Allen 1730 Rhode Island Avenue, NW, Suite 206	20036
Aparicio	Reynaldo V.	Self 115 New York Avenue, NW, #6	20001
Baron	Sabina J.	Greenberg Traurig LLP 2101 L Street, NW	20037
Bartee	Laura C.	Cleary Gottlieb Steen and Hamilton LLP 2000 Pennsylvania Avenue, NW	20002
Biela	Ryan S.	Capital One Bank 1717 Pennsylvania Avenue, NW	20006
Boardwine	Joshua	Wells Fargo Bank 4841 Massachusetts Avenue, NW	20016
Borroto	Lucy Caridad	Premium Title & Escrow, LLC 3407 14th Street, NW	20010
Brevil	Asagai	Wells Fargo 1301 Pennsylvania Avenue, NW	20004
Budd	QuaTanya	Nelson Mullins Riley Scarborough 101 Constitution Avenue, NW, Suite 900	20001
Burgess	Alyson	Great Minds 100 M Street, SE, Suite 500	20003

D.C. Office of the Secretary **Effective: December 1, 2015**
Recommendations for appointment as DC Notaries Public **Page 3**

Cardwell	Cherise	Federal Labor Relations Authority 1400 K Street, NW, 2nd Floor	20424
Christopherson	Ekaterina	Self (Dual) 4036 8th Street, NE, Unit 4	20017
Dang	May	DLA Piper LLP (US) 500 8th Street, NW	20004
Dave	Gaurang V.	LexisNexis Special Services Inc. 1150 18th Street, NW	20036
Dawkins	Wanda Anita	FoxKiser 1701 Pennsylvania Avenue, NW, Suite 900	20006
Dean	Penny M.	U.S. House of Representatives 1718 Longworth Building	20515
Essi Pagano	Christina	Gore Brothers Reporting & Videoconferencing 1025 Connecticut Avenue, NW, Suite 1000	20036
Evans	Merinda E.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Fesseha	Guenet	Arnold & Porter LLP 601 Massachusetts Avenue, NW	20001
Flores	Jose	TD Bank 905 Rhode Island Avenue, NE	20018
Foster	Lisa M.	Childrens National Medical Center 111 Michigan Avenue, NW	20010
Foster	Shannon Wenona	Blackboard Inc. 650 Massachusetts Avenue, NW	20001
Fountain	Angela M.L.	The Carlyle Group 1001 Pennsylvania Avenue, NW, Suite 220 South	20004
Garcia	Maria Rose	Lee and Associates, Inc. 638 Eye Street, NW	20001

D.C. Office of the Secretary **Effective: December 1, 2015**
Recommendations for appointment as DC Notaries Public **Page 4**

Garvanne	Hilary D.	National Park Foundation 1110 Vermont Avenue, NW	20005
Gottlieb	Johnathan	Stinson Leonard Street LLC 1775 Pennsylvania Avenue, NW, Suite 800	20006
Gould	Elizabeth	Regan Zambri & Long, PLLC 1919 M Street, NW, Suite 350	20036
Granberry	Terrell A.	USPS Federal Credit Union 475 L'Enfant Plaza, SW, Suite 1507	20026
Haas	Jean	Autistic Self Advocacy Network 2013 H Street, NW	20006
Harvey	Delese	Disable Veterans National Foundation 1020 19th Street, NW, Suite 475	20036
Harvey	Taniqueka S.	Amtrak 50 Massachusetts Avenue, NE	20002
Hawkins	Patricia L.	S&C Construction Services 331 8th Street, NE	20002
Headen	Allyson W.	Office of the Comptroller of the Currency 400 7th Street, SW	20024
Hooks	Shanika	Wells Fargo Bank 1100 Connecticut Avenue, NW	20036
Hosang	Debra M.	Hogan Lovells US LLP 555 13th Street, NW	20004
Howard	Felecia L.	District Department of the Enviroment 1200 First Street, NE- 5th Floor	20002
Huggins	Shinika	Marquis Marriott Washington, DC 901 Massachusetts Avenue, NW	20001
Ingram	Terika	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036

D.C. Office of the Secretary **Effective: December 1, 2015**
Recommendations for appointment as DC Notaries Public **Page 5**

Jessie	Julia E.	PA Associates, LLC 2300 Good Hope Road, SE	20020
Jones	Barbara Grace	Compass 1506 19th Street, NW	20036
Jones	Martha Vernell	Self 3929 Ames Street, NE	20019
Kahan	Ariel Elissa	Restaurant Association Metropolitan Washington 1625 K Street, NW, Suite 210	20006
Kaltenbaugh	Carol R.	Davis Wright Tremaine LLP 1919 Pennsylvania Avenue, NW, Suite 800	20006
Kennedy	Vera L.	Jackson & Campbell 1120 20th Street, NW	20036
Killian	Renee J.P.	Washington DC Economic Partnership 1495 F Street, NW	20004
Kun	Glenda A.	Federal Trade Commission 600 Pennsylvania Avenue, NW	20580
Langston	Wendi E.	P.O.S.T Construction LLC 1818 New York Avenue, NE, Suite 207	20002
Larson	Linda C.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Lathern	Ivory D.	American National Standards Institute 1899 L Street, NW, Suite 1100	20036
Lee	Alexander	Capital Reporting Company 1821 Jefferson Place, NW	20036
Lee	Jinyoung	Shearman & Sterling LLP 801 Pennsylvania Avenue, NW	20004
McCoy	Tonja	US Green Building Council 2101 L Street, NW, Suite 500	20037

D.C. Office of the Secretary **Effective: December 1, 2015**
Recommendations for appointment as DC Notaries Public **Page 6**

Meigel	Robin	U.S. Department of Agriculture 12th & Independence Avenue, NW	20250
Meli	Christelle N.	Bank of America 722 H Street, NE	20002
Montgomery	Laura L.	Ernst & Young 1101 New York Avenue, NW	20005
Moore	Elena I.	Scheuermann & Menist 700 E Street, SE	20003
Newman	Alicia	SP Plus Corporation 1225 Eye Street, NW	20005
Nicholson	Jennifer J.	O'Melveny & Myers LLP 1625 Eye Street, NW	20006
Nieto	Victor Javier	Marriott 1111 23rd Street, NW	20037
Ntuk	Sonia	State Farm Insurance 4701 Wisconsin Avenue, NW	20016
Ortega	Amanda Elizabeth	DC United 2400 East Capital Streets, NE	20003
Otto	Emily C.	Saul Ewing LLP 1919 Pennsylvania Avenue, NW	20005
Owens	KiJuana	Klein Horning LLP 1325 G Street, NW, Suite 770	20005
Pearson	Chanee' L.	Swankin & Turner 1400 16th Street, NW	20036
Peters	Judith B.	The Washington Post 1150 15th Street, NW	20071
Peterson	Courtney	Sidwell Friends School 3825 Wisconsin Avenue, NW	20016
Pullen	Norma P.	Federal Labor Relations Authority 1400 K Street, NW	20005

Riggs	Suzanne M.	Venable, LLP 575 7th Street, NW	20004
Robertson	Joan M.	Family Matters of Greater Washington 1509 16th Street, NW	20036
Rodriguez, Jr.	Rafael	D&S Accounting and Tax Service, Inc. 3105 Mount Pleasant Street, NW	20010
Russell	Richard	Morvillo LLP 1101 17th Street, NW	20036
Scales	Kamarin	WC Smith 1100 New Jersey, NW, Suite 1000	20003
Sellars-Denny	Donna	American Psychological Association 750 First Street, NE	20002
Sessoms	G. Ron	SunTrust Bank Inc. 1020 19th Street, NW, Suite 150	20036
Sharp	Alison	McGuireWoods LLP 2001 K Street, NW, Suite 400	20006
Shaw	Tabitha	Public Defender Service for the District of Columbia 633 Indiana Avenue, NW	20004
Slavis	Edward Rodolfo	11th Property Group 1321 Rhode Island Avenue, NW	20005
Smalls	Roxane Proctor	Housing Evaluations Plus Inc 1227 Good Hope Road, SE	20020
Smith	DeirdreAnn L.	Council of the District of Columbia - Office of Councilmember Mary Cheh 1350 Pennsylvania Avenue, NW, Suite 108	20004
Teague	Kay A.	Kenyon & Kenyon LLP 1500 K Street, NW	20005
Thomas	Ann Latrell	Vitas Healthcare Corporation 1200 First Street, NW, Suite 320	20002

D.C. Office of the Secretary **Effective: December 1, 2015**
Recommendations for appointment as DC Notaries Public **Page 8**

Thomas	Jacqueline	McGuireWoods LLP 2001 K Street, NW, Suite 400	20006
Turner	Charlie Eliza	Wells Fargo Bank 4841 Massachusetts Avenue, NW	20016
Turner	Elizabeth	AARP 601 E Street, NW	20049
Vias	Ayoko E.	Swankin & Turner 1400 16th Street, NW, Suite 101	20036
Vidutis	Diana B.	Buchanan Ingersoll & Rooney PC 1700 K Street, NW, Suite 300	20006
Ward	Jacalyn Lashley	Anacostia Realty 1920 Martin Luther King, Jr., Avenue, SE	20020
White-Jennings	Mae J.	DC Department of Housing and Community Development 1800 Martin Luther King, Jr., Avenue, SE	20020
Wochomurka	Paige A.	Williams Mullen 1666 K Street, NW, Suite 1200	20006
Woldemichael	Feven	TB Bank 1030 15th Street, NW	20005
Worthy	Kenise	Transit Employees Federal Credit Union 2000 Bladensburg Road, NE	20018

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

Revised NOTICE OF FUNDING AVAILABILITY

DC Main Streets
(Congress Heights Target Areas)

The Department of Small and Local Business Development is soliciting applications from qualified non-profit organizations that are incorporated in the District of Columbia to **operate aDC Main Streets programs for the Congress Heights commercial corridor in Ward 8**. This Notice has been changed to extend the application period.

The designated DC Main Streets program (organization) will receive $125,000 in grant funding and technical assistance to support a commercial revitalization initiative. This organization will develop programs and services to: (1) assist with the retention, expansion and attraction of neighborhood-serving businesses; and (2) unify and strengthen the commercial corridor. The DC Main Streets grant award is a recurring grant, which can be renewed annually as long as the grantee continues to meet the standards for accreditation by the National Main Street Center.

The grant recipient will be selected through a competitive application process and announced December 4, 2015. Interested applicants must complete an application and submit it electronically via email on or before **Wednesday, November 11, 2015 at 2:00 p.m.** Applicants submitting incomplete applications will be notified by Friday, November 13, 2015 and will have until Tuesday, November 17, 2015 at 5 p.m. to submit corrected applications. DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be reviewed.**

The Request for Application (RFA) will be posted at www.dslbd.dc.gov (click on the Our Programs tab and then Solicitations and Opportunities on the left navigation column) on or before October 2, 2015.

Instructions and guidance regarding application preparation can be found in the RFA. DSLBD will host an Information Session on October 14, 2015 at 2:00 p.m. at the RISE Center on St. Elizabeth's East Campus (1100 Alabama Ave SE, Washington, DC 20032). Applicants are encouraged to bring their laptops to the Information Session so they may register on the online application.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA. For more information, contact Cristina Amoruso, DC Main Streets Coordinator, Office of Commercial Revitalization, Department of Small and Local Business Development at (202) 727-3900 or DSLBD.grants@dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
TAXICAB COMMISSION

NOTICE OF FUNDING AVAILABILITY

GRANTS FOR
COORDINATED ALTERNATIVE TO PARATRANSIT SERVICES
("CAPS-DC" CURRENTLY KNOWN AS "TRANSPORT DC")

The Government of the District of Columbia, Taxicab Commission is soliciting applications from approved taxicab companies to provide, through the Coordinated Alternative to Paratransit Services ("TRANSPORT DC") pilot program, a cost-effective, high service quality MetroAccess paratransit service alternative to consenting MetroAccess clients. TRANSPORT DC stands to save District taxpayers as much as $1.8 million a year while increasing the number of wheelchair accessible taxicabs in the D.C. fleet. Under TRANSPORT DC, DCTC approved taxicab companies will provide MetroAccess clients to and from District of Columbia locations. Transportation service will be provided by wheelchair accessible and non-accessible taxicabs, depending on the needs of the requesting client. Upon approval, participating taxicab companies must purchase a new wheelchair accessible vehicle after the completion of every 3000 trips. Those vehicles, subject to availability and service priority, can provide both TRANSPORT DC service including wheelchair accessible taxicab service, District-wide.

DCTC intends to make available $1 million in funding, available no later November 30, 2015, for DCTC approved taxicab companies to provide transportation service for eligible MetroAccess clients.

The Request for Applications ("RFA") #TRANSPORT DC2015-11-002 release date will be Monday, November 2, 2015. The full text of the RFA will be available online at DCTC's website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

Download by visiting the DCTC website, www.dctaxi.dc.gov.

Email a request to karl.muhammad2@dc.gov with "Request copy of RFA TRANSPORT DC2015-11-002" in the subject line.

In person by making an appointment to pick up a copy from the DCTC ADA office at 2235 Shannon Place, SE, Suite 2001, Washington, DC 20020 (call Karl Muhammad at (202) 645-4435 or 645-6018 and mention this RFA by name); or

Write DC Taxicab Commission, Office of Taxicabs at 2235 Shannon Place, SE Washington, DC 20020, "Attn: Request copy of RFA# TRANSPORT DC2015-11-002" on the outside of the letter.

The deadline for application submissions is November 23, at 3:00 p.m. Four hard copies must be submitted to the above address and a complete electronic copy must be submitted.

Eligibility: Only taxicab companies that are licensed by DCTC may participate in TRANSPORT DC and may apply for this opportunity.

Period of Awards: The TRANSPORT DC grant program performance period will begin on December 1, 2015 and end on 9/30/2016.

Available Funding: Approximately $1,000,000 will be available for one or more awards**.** Award amounts will range from a minimum of $100,000 up to a maximum of $1,000,000. There may be more than one grant recipient. The amount is contingent on availability of funding and approval by the appropriate agencies.

For additional information regarding this RFA, please contact Karl Muhammad at karl.muhammad2@dc.gov or (202) 645-4435 or 645-6018.

WASHINGTON CONVENTION AND SPORTS AUTHORITY (T/A EVENTS DC)

NOTICE OF RESCHEDULED PUBLIC MEETING

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that a previously announced meeting scheduled for November 12, 2015, beginning at 10 a.m., will instead take place at the same time on November 19, 2015.

The meeting will take place in the Dr. Charlene Drew Jarvis Board Room of the Walter E. Washington Convention Center, 801 Mt. Vernon Place, N.W., Washington, D.C. 20001. The Board's agenda includes reports from its Standing Committees.

For additional information, please contact:

Sean Sands
Chief of Staff
Washington Convention and Sports Authority
t/a Events DC

(202) 249-3012
sean.sands@eventsdc.com

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Sewerage Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Sewerage Services Committee will be holding a meeting on Thursday, November 19, 2015 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	**Call to Order**	Committee Chairperson
2.	**AWTP Status Updates** 1. BPAWTP Performance	Assistant General Manager, Plant Operations
3.	**Status Updates**	Chief Engineer
4.	**Project Status Updates**	Director, Engineering & Technical Services
5.	**Action Items** - Joint Use - Non-Joint Use	Chief Engineer
6.	**Emerging Items/Other Business**	
7.	**Executive Session**	
8.	**Adjournment**	Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, November 20, 2015 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information please contact: Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Chairman
2.	October 2015 Financial Report	Director of Finance & Budget
3.	Agenda for December Committee Meeting	Chairman
4.	Adjournment	Chairman

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Governance Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will be holding a meeting on Tuesday, November 10, 2015 at 9:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1. Call to Order	Chairperson
2. Government Affairs: Update	Government Relations Manager
3. Update on the Compliance Monitoring Program	TBD
4. Update on the Workforce Development Program	Contract Compliance Officer
5. Emerging Issues	Chairperson
6. Agenda for Upcoming Committee Meeting (TBD)	Chairperson
7. Executive Session	
8. Adjournment	Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Tuesday, November 10, 2015 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	Other Business	
3.	Executive Session	Committee Chairperson
4.	Adjournment	Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, November 17, 2015 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to the DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1. Call to Order	Committee Chairman
2. Monthly Updates	Chief Financial Officer
3. Committee Work plan	Chief Financial Officer
4. Other Business	Chief Financial Officer
5. Adjournment	Chief Financial Officer

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Water Quality and Water Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Water Quality and Water Services Committee will be holding a meeting on Thursday, November 19, 2015 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	Water Quality Monitoring	Assistant General Manager, Consumer Ser.
3.	Action Items	Assistant General Manager, Consumer Ser.
4.	Emerging Issues/Other Business	Assistant General Manager, Consumer Ser
5.	Executive Session	
6.	Adjournment	Committee Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 18801-A of Fort Lincoln Multifamily Housing and Fort Lincoln Joshua Barry Townhouse, LLC, Motion for Modification, pursuant to § 3129 of the Zoning Regulations.

> The original application (No. 18801) was pursuant to §§ 3103.2 and 3104.1, for a variance from the loading requirements under § 2201, and a special exception under § 2516, to erect more than one building on a record lot, in order to construct 103 townhouses and three multi-family buildings with a total of 260 units in the R-5-D and C-2-B Districts on the north side of Commodore Joshua Barney Drive, N.E (Square 4325, Parcel 173/149 and a portion of Parcel 1784/4).

HEARING DATES (Original application): July 22, 2014 and July 29, 2014
DECISION DATE (Original application): July 29, 2014
FINAL ORDER ISSUANCE DATE (Original application): August 8, 2014
HEARING DATE (Modification): September 29, 2015[1] and October 20, 2015
DECISION DATE (Modification): October 20, 2015

SUMMARY ORDER ON REQUEST FOR MODIFICATION

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4 in the record of Application No. 18801.)

On July 29, 2014, the Board approved Application No. 18801 of Fort Lincoln Multifamily Housing LLC and Fort Lincoln Joshua Barney Townhouse LLC ("the Applicant"), pursuant to §§ 3103.2 and 3104.1, for a variance from the loading requirements under § 2201, and a special exception under § 2516, to erect more than one building on a record lot, in order to construct 103 townhouses and three multi-family buildings with a total of 260 units in the R-5-D and C-2-B Districts.

On July 17, 2015, the Applicant submitted a request for minor modification of the plan approved by the Board in order to provide 123 townhomes, instead of the 103 townhomes as depicted in the approved plans, and 240 apartment units, instead of the 260 apartment units as depicted in the approved plans. The proposed revision would also provide the apartment units in one apartment building, rather than in three buildings as depicted in the approved plans. The Applicant

[1] The motion was originally for a minor modification and was considered at the Board's public meeting on September 29, 2015. At that time, the Board determined that the modification required a public hearing, and set the request down for a public hearing on October 20, 2015.

BZA APPLICATION NO. 18801-A
PAGE NO. 2

accompanied its request for minor modification with proposed plans. (Exhibit 3A.) During the public meeting on September 29, 2015, the Board considered this request and determined that the proposed changes to the approved plans exceed the scope of a minor modification and that the significant architectural changes proposed would require a limited hearing. Accordingly, the Board set the request for modification down for a public hearing on October 20, 2015.

During the public hearing on October 20, 2015, the Applicant submitted a final version of its revised plans. (Exhibit 11.) During the hearing, the Applicant noted this request for modification resulted from engagement with neighbors of the project and revised the proposed plans in response to their comments and suggestions.

Pursuant to § 3129.8 of the Zoning Regulations (Title 11), the scope of the hearing for a request for modification shall be limited to reviewing the impact of that modification on the subject of the original application. The Board held a public hearing on October 20, 2015 on this motion, pursuant to § 3129.7, and heard the request for a modification to the approval for variance and special exception relief.

Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. The site of this application is located within the jurisdiction of Advisory Neighborhood Commission ("ANC") 5C, which is automatically a party to this application. The ANC submitted a report on September 28, 2015, which stated that at a regularly scheduled and properly noticed meeting on September 16, 2015, at which a quorum was present, the ANC voted 7-0 in support of the modification request. (Exhibit 7.)

The Office of Planning ("OP") submitted a timely report recommending approval of the request, but noting that further revision of the plans was required to address two issues regarding design and landscaping details. (Exhibit 8.) OP testified in support of the application at the hearing and noted that the revised plans submitted by the Applicant address its prior concerns. The District Department of Transportation ("DDOT") submitted a report of no objection, subject to one condition. (Exhibit 6.) The Applicant testified that it accepted the condition proposed by DDOT.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for modification of approval. Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a modification to the original approval in Case No. 18801, the Applicant has met its burden of proof under 11 DCMR § 3129, that the modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

BZA APPLICATION NO. 18801-A
PAGE NO. 3

It is therefore **ORDERED** that this application for modification of the Board's approval in Application No. 18801 is hereby **GRANTED, SUBJECT TO THE APPROVED MODIFIED PLANS IN EXHIBIT 11, AND SUBJECT TO THE FOLLOWING CONDITION:**

1. The Applicant shall update its loading management plan to reflect the revised plans approved by this Order.

In all other respects, Order No. 18801 remains unchanged.

VOTE: **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Robert E. Miller, to Approve; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: ________________________________
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 26, 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 § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 19052-A of Josh Green, **Motion for Modification of Approval in Order No. 19052**, pursuant to § 3129 of the Zoning Regulations, and amended application.

The original application (No. 19052) was pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, to construct a deck with staircase to an existing one-family dwelling in the R-3 District at premises 2905 28th Street N.W. (Square 2106, Lot 89).

NOTE: In this Order, the application is amended to include the relief already approved in the original application as well as a request for special exception relief under § 223, not meeting the rear yard requirements under § 404. The revised caption with the amended relief reads as follows:

Application No. 19052-A of Josh Green, as amended, pursuant to 11 DCMR § 3104.1 for a special exception under § 223, not meeting the lot occupancy requirements under § 403, and not meeting the rear yard requirements under § 404, to construct a deck with staircase to an existing one-family dwelling in the R-3 District at premises 2905 28th Street N.W. (Square 2106, Lot 89).

HEARING DATE (Application No. 19052) July 21, 2015
DECISION DATE (Application No. 19052)**:** July 21, 2015
FINAL ORDER ISSUANCE DATE (No. 19052)**:** July 22, 2015
HEARING DATE FOR MODIFICATION: October 20, 2015
MODIFICATION DECISION DATE: October 20, 2015

SUMMARY ORDER ON REQUEST FOR MODIFICATION AND AMENDED APPLICATION

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5 in the record of Application No. 19052.)

BACKGROUND

On July 21, 2015, the Board of Zoning Adjustment ("Board" or "BZA"), by a vote of 4-0-1, approved the Applicant's original request for special exception approval to construct a deck with staircase to an existing one-family dwelling in the R-3 District. The original application (BZA No. 19052) was pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, to construct a deck with staircase to an existing one-family dwelling in the R-3 District at premises 2905 28th Street N.W. (Square 2106, Lot 89). BZA Order No. 19052 (the "Order"), approving the original request, was issued on July 22, 2015. (Exhibit 31 in the record of Application No. 19052.) Subsequently, the

Department of Consumer and Regulatory Affairs ("DCRA") informed the Applicant that relief is also needed for rear yard (20 ft. minimum required; 15.7 ft. proposed).

MOTION FOR MODIFICATION OF APPROVAL AND AMENDED APPLICATION

On August 26, 2015, the Applicant submitted a request for a modification to the approval granted in Application No. 19052 and to amend the relief requested in Application No. 19052 to add special exception relief from the rear yard requirements under § 404. (Exhibit 1 in Case No. 19052-A.) The plans have not changed from those approved in Application No. 19052. The caption in this case has been amended in this Order to reflect all the relief being granted, both in Application No. 19052 and in this application. This application is considered a continuation of No. 19052, and amends that case to include the relief approved in the original application together with the additional relief requested.

Pursuant to § 3129.7 of the Zoning Regulations (Title 11), requests to modify other aspects of a Board order than the approved plans may be made at any time, but require a hearing. Subsection 3129.8 limits the scope of the hearing conducted to review a request for modification to the impact of the modification on the subject of the original application. Also, § 3129.6 authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. No material facts have changed from the original application. The Board held a public hearing on October 20, 2015 on this motion, pursuant to § 3129.7, and heard the request for a modification to the approval for special exception.

Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. The Board provided proper and timely notice of the public hearing on this application for modification and amended relief by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. The ANC submitted a report of no objection, which stated that at a regularly scheduled and properly noticed meeting on September 21, 2015, at which a quorum was present, the ANC voted not to object to the modification application. (Exhibit 18.)

The Office of Planning ("OP") submitted a timely report recommending approval of the request for special exception relief pursuant to § 223 from the rear yard requirement at § 404 (Exhibit 21) and testified in support of the application at the hearing. OP stated that the Applicant applied for building permits after receiving the Board's Order No. 19052 and on August 18, 2015, was informed by DCRA that the rear yard was calculated incorrectly and that rear yard relief was also required. The Applicant filed the motion for modification and amended application on August 26, 2015.

The District Department of Transportation ("DDOT") submitted a report of no objection. (Exhibit 19.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for modification of approval. Based upon the record before the Board and having given great weight to the ANC and OP reports filed

in this case, the Board concludes that in seeking a modification to the original approval in Case No. 19052, the Applicant has met its burden of proof under 11 DCMR § 3129, that the modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

Also as directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception for a special exception under § 223, not meeting the rear yard requirements under § 404, to construct a deck with staircase to an existing one-family dwelling in the R-3 District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, and 404 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification and amendment of the Board's approval in Application No. 19052 is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS IN EXHIBIT 3.**

In all other respects, Order No. 19052 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON JULY 21, 2015: 4-0-1
(Lloyd J. Jordan, Jeffrey L. Hinkle, Marnique Y. Heath, and Robert E. Miller to Approve; Frederick L. Hill, not present or participating.)

VOTE ON MODIFICATION OF APPROVAL AND AMENDED APPLICATION: 4-0-1
(Marnique Y. Heath, Robert E. Miller, Frederick L. Hill, and Jeffrey L. Hinkle to Approve; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

FINAL DATE OF ORDER: October 23, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19063 of Woinshet Mekonnen, pursuant to 11 DCMR § 3104.1, for a special exception from the new residential development requirements under § 353, to allow the construction of three new one-family dwellings in the R-5-A District at premises 2306-2308 16th Street S.E. (Square 5753, Lots 73, 74, and 75).

HEARING DATES: September 15[1] and October 27, 2015
DECISION DATE: October 27, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 8A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8A, which is automatically a party to this application. ANC 8A did not submit a report to the record. The Applicant's agent testified at the public hearing that he attempted to make contact with the ANC and received no response.

The Office of Planning ("OP") submitted a timely report, indicating that it could not recommend approval of the application because the Applicant had not submitted final grading and landscaping plans, as required by §§ 353.4 and 353.5. (Exhibit 32.) The Applicant subsequently submitted the required plans to the record. (Exhibit 36.) OP testified at the public hearing that, based on its review of the plans filed by the Applicant, it recommends approval of the relief requested. The District Department of Transportation ("DDOT") submitted a timely report, indicating that it had no objection to the requested special exception. (Exhibit 31.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to 11 DCMR § 3104.1, for a special exception from 11 DCMR § 353 to allow the construction of three new one-family dwellings in the R-5-A District. No parties appeared at the public hearing in opposition to this

[1] This case was originally scheduled for public hearing on September 15, 2015, but was postponed and rescheduled to October 27, 2015 at the Applicant's request.

application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR §§ 3104.1 and 353, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 10 AND 36.**

VOTE: 4-0-1 (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Anthony J. Hood to APPROVE; and one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 28, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

BZA APPLICATION NO. 19083
PAGE NO. 3

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19082 of Chichest LLC, pursuant to 11 DCMR § 3104.1, for a special exception under § 353 for the construction of a new 16-unit apartment house on vacant lots in the R-5-A District at premises 37-39 Missouri Avenue N.W. (Square 3393, Lots 39 and 40).

HEARING DATE: October 20, 2015
DECISION DATE: October 20, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 4B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. The ANC submitted a report and resolution dated October 7, 2015, recommending approval of the application. The ANC report indicated that at a regularly scheduled, duly noticed meeting on October 6, 2015, at which a quorum was present, the ANC voted, 7 yes, 0 no, to support the application. The ANC also recommended that the Applicant utilize trash compactors instead of trash dumpsters for collection and disposal of trash. (Exhibit 32.) The Applicant testified that he discussed the issue with the ANC and would not be able to provide a trash compactor, but plans to enclose the building's trash dumpsters and schedule for regular trash collection to address any potential issues.

The Office of Planning ("OP") submitted a timely report recommending approval of the application subject to submission of acceptable landscaping and grading plans, as required by § 353, (Exhibit 34), and testified in support of the application at the hearing. OP testified that it was satisfied with the landscape plan submitted by the Applicant (see Exhibit 35) and that it would support proposed Option B with regard to the exterior finishing. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application, subject to the Applicant agreeing to provide six long-term bicycle parking spacing, as required by the DCMR. (Exhibit 33.) The Applicant noted that these six spaces are not shown in the revised site plan, but indicated that they would be provided.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under § 353 for the construction of a new 16-unit apartment house on vacant

lots in the R-5-A District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 35 AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall have flexibility to choose between the initially proposed design and Option B for finishing (as shown on pg. 2 of the approved plans).[1]

VOTE: **4-0-1** (Marnique Y. Heath, Robert E. Miller, Frederick L. Hill, and Jeffrey L. Hinkle, to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 26, 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

[1] The Board expressed its preference for the brick exterior in Option B, but still granted flexibility to the Applicant.

BZA APPLICATION NO. 19082
PAGE NO. 3

PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19083 of Simone Management, LLC, as amended,[1] pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the off-street parking requirements under § 2101.1 and a special exception from the new residential developments requirements under § 353.1, to construct a new four-unit apartment house in the R-5-A District at premises 2205 16th Street S.E. (Square 5795, Lot 27).

HEARING DATE: October 20, 2015
DECISION DATE: October 20, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 8A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8A, which is automatically a party to this application. ANC 8A did not submit a report to the record. The Applicant's agent testified at the public hearing that he attempted to make contact with the ANC several times and received no response.

The Office of Planning ("OP") submitted a timely report on October 9, 2015, recommending approval of the application with two conditions. (Exhibit 30.) At the public hearing, the Applicant testified that he accepted both conditions. OP also testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report on October 13, 2015, indicating that it had no objection to the requested variances and special exception based on the revised site plan. (Exhibit 31.)

Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to 11 DCMR § 3104.1,

[1] The original application included a request for variance relief from the parking access requirements under § 2117.5. As confirmed by the Applicant's testimony at the public hearing, the revised plans submitted to the record under Exhibit 28 eliminate the need for this area of relief. The caption has been amended accordingly.

BZA APPLICATION NO. 19083
PAGE NO. 2

for a special exception from 11 DCMR § 353. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR §§ 3104.1 and 353.1, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from 11 DCMR § 2101.1, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without causing substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law.

It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 10 AS REVISED BY EXHIBIT 28 AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The parking pad shall be constructed of pervious materials.

2. The Applicant shall provide an overhang for the exterior entrance to the basement apartment.

VOTE: 4-0-1 (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE; one Board seat vacant.)

BZA APPLICATION NO. 19083
PAGE NO. 3

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 26, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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,

BZA APPLICATION NO. 19083
PAGE NO. 4

RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19084 of Tito Construction Company LLC, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101, to allow the construction of a new one-family dwelling in the R-4 District at premises 1028 D Street, N.E. (Square 962, Lot 801).

HEARING DATE: October 20, 2015
DECISION DATE: October 20, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a report in support of the application, dated September 11, 2015. The ANC's report indicated that at a regularly scheduled and properly noticed meeting on September 10, 2015, at which a quorum was in attendance, the ANC voted 7-0 to support the application. (Exhibit 28.)

The Office of Planning ("OP") submitted a report recommending approval of variances from § 2101.1, as advertised, as well as variances from § 401 – lot area, and § 401 – lot width. (Exhibit 31.) At the hearing the Applicant testified that relief under § 401 was not needed per communication with the Zoning Administrator. (See email between the Applicant's counsel and the Zoning Administrator at Exhibit 32.) Given the assessment from the Zoning Administrator, the application was not amended and the case proceeded as advertised.

The District Department of Transportation filed a report expressing no objection to the application. (Exhibit 33.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from § 2101.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

BZA APPLICATION NO. 19084
PAGE NO. 2

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from §§ 2101.1, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED**, **SUBJECT TO APPROVED PLANS AT EXHIBIT NO. 7 – ARCHITECTURAL PLANS & ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Robert E. Miller, Marnique Y. Heath, and Jeffrey L. Hinkle to Approve; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 23, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR

BZA APPLICATION NO. 19084
PAGE NO. 3

THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19086 of Gail and Lindsay Slater, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.1, and the nonconforming structure requirements under § 2001.3, to construct a three-story addition to an existing one-family dwelling in the CAP/R-4 District at premises 215 A Street N.E. (Square 759, Lot 27).

HEARING DATE: October 20, 2015
DECISION DATE: October 20, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC submitted a report in support, indicating that at a duly noticed, regularly scheduled meeting on September 10, 2015, with a quorum present, the ANC voted unanimously (4:0:0) to support the application. The ANC's letter stated that the Applicant provided sight line and shadow studies that showed no visibility from the street and no material impact on the neighbors, who supplied letters of support. The ANC noted that the project had received approval from the Historic Preservation Review Board. (Exhibit 28.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 31) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 29.)

The Architect of the Capitol ("AOC") submitted a timely report pursuant to 11 DCMR § 1202, which indicated that the AOC has no objections to the application. The AOC letter also stated that granting the relief requested for a special exception would not be inconsistent with the intent of the CAP/R-4 District; would not adversely affect the health, safety, and general welfare of the U.S. Capitol Precinct and area adjacent to that jurisdiction; and is not inconsistent with the goals and mandates of the U.S. Congress. (Exhibit 27.)

Three letters of support from the neighbors residing at 211, 213, and 217 A Street, N.E. were submitted to the record. (Exhibit 11.) A letter of support for the application was submitted from the Capitol Hill Restoration Society. (Exhibit 34.)

A letter of opposition to the application was submitted to the record by the owner and resident of 7 Terrace Court, N.E. (Exhibit 33.) Three other neighbors, Joy Ash, James R. Langkamp, and Thomas Plack, appeared at the hearing and testified in opposition. Joy Ash read the testimony of Nancy McNabb into the record which was submitted as Exhibit 36. The neighbors in opposition generally expressed issues over the design of the addition, as well as concerns about the Applicant's failure to engage them during the design and review process. The Applicant's architect testified that she reached out to the adjacent neighbors and the neighbor across the alley to the rear, but did not directly contact the other residents of Terrace Court, as the sun study (Exhibit 30) did not show that these neighbors would be impacted.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under § 223, not meeting the lot occupancy requirements under § 403.1, and the nonconforming structure requirements under § 2001.3, to construct a three-story addition to an existing one-family dwelling in the CAP/R-4 District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, 403.1, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6.**

VOTE: **4-0-1** (Frederick L. Hill, Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE; and one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 22, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19087 of Andrew Weinschenk and Rachel Cononi, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, and the nonconforming structure requirements under § 2001.3, to construct a second-story rear addition to an existing two-story, one-family dwelling in the R-4 District at premises 602 A Street, N.E. (Square 867, Lot 124).

HEARING DATE: October 20, 2015
DECISION DATE: October 20, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 6C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C stated that at a duly noticed meeting on September 10, 2015, at which a quorum was present, the ANC voted 4-0-0 to support the application. (Exhibit 28.)

The Office of Planning ("OP") also submitted a report in support of the application. (Exhibit 30.) OP noted that the Applicant might need relief from § 406 – Courts because, according to the Applicant, the proposed second story awning would vertically extend the existing non-conforming open court created by the first floor awning. However, the Board found that relief under § 406 was not necessary because the definition of "court" in the Zoning Regulations requires two or more open sides, which the Applicant is not providing.[1] The D.C. Department of Transportation filed a report expressing no objection to the special exception relief. (Exhibit 29.) The Capitol Hill Restoration Society submitted a letter in support of the application. (Exhibit 32.) Eight support letters were submitted into the record from neighbors to the subject property. (Exhibits 10 and 23.)

[1] Title 11 DCMR § 199.1 provides the following definition:
Court - an unoccupied space, not a court niche, open to the sky, on the same lot with a building, which is bounded on two (2) or more sides by the exterior walls of the building or by two (2) or more exterior walls, lot lines, or yards. A court may also be bounded by a single curved wall of a building. (28 DCR 4192)

BZA APPLICATION NO. 19087
PAGE NO. 2

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223, 403, and 2001.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 403.2, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 - ARCHITECTURAL PLANS & ELEVATIONS.**

VOTE: **4-0-1** (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, and Robert E. Miller to Approve; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 22, 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 PURPOSES OF SECURING A BUILDING PERMIT.

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, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT

BZA APPLICATION NO. 19087
PAGE NO. 3

THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19096 of Mark Lawrence, as amended[1], pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the nonconforming structure requirements under § 2001.3, to construct a two-story rear addition with mezzanine to an existing two-story one-family dwelling in the R-4 District at premises 1319 Naylor Court, N.W. (Square 367, Lot 38).

HEARING DATE: Applicant waived right to a public hearing
DECISION DATE: October 20, 2015 (Expedited Review Calendar).

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)[2] The Applicant also amended the application and requested additional relief to that originally requested. (Exhibit 37.)

Pursuant to 11 DCMR § 3118, this application was tentatively placed on the Board of Zoning Adjustment ("Board") expedited review calendar for decision without hearing as a result of the applicant's waiver of its right to a hearing. (Exhibit 6.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2F, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2F, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on September 2, 2015, at which a quorum was in attendance, ANC 2F voted 7-0-0 in support of the application. (Exhibit 33.) Nine letters of support for the application were filed by adjacent neighbors. (Exhibits 24-32.)

---

[1]The Applicant initially filed for a special exception relief under § 223, not meeting the lot occupancy requirements under § 403.2 and the rear yard requirements under § 404.1. (Exhibit 1.) However, based on a recommendation by the Office of Planning, the Applicant amended the application by adding relief from the nonconforming structure requirements under § 2001.3. (Exhibit 37.) The caption has been changed accordingly.

[2] The Applicant filed a Self-Certification form (Exhibit 5) as well as submitted a memorandum from the Zoning Administrator as to the relief required. (Exhibit 7.)

BZA APPLICATION NO. 19096
PAGE NO. 2

The Office of Planning ("OP") submitted a timely report and testified at the hearing in support of the application, as amended. (Exhibit 36.) The District Department of Transportation ("DDOT") submitted a report expressing no objection to the approval of the application. (Exhibit 34.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by §§ 2118.6 and 2118.7. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223, 403.2, 404.1, and 2001.3. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 403.2, 404.1, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 4.**

VOTE: **4-0-1** (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill and Robert E. Miller to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 26, 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.

BZA APPLICATION NO. 19096
PAGE NO. 3

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19097 of 1626 29th Street NW Trust, pursuant to 11 DCMR § 3104.1 for a special exception under § 223, not meeting the lot occupancy requirements under § 403, to construct a one-story rear addition to an existing three-story, one-family dwelling in the R-3 District at premises 1626 29th Street N.W. (Square 1283, Lot 806).

HEARING DATE: October 27, 2015[1]
DECISION DATE: October 27, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 11.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. The Single Member District ANC 2E07 ("SMD") filed a letter explaining why the ANC did not take a formal vote on the application. The SMD letter expressed that the ANC has no objection to the application and indicated that the ANC had classified this project as one requiring "no review," because of its *de minimis* nature. (Exhibit 31.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 34) and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 29.)
A letter of support from the next door neighbors residing at 1624 29th Street, N.W. was submitted to the record. (Exhibit 24.)

The next door neighbor to the north, Ms. Dolly Langdon Chapin, who resides at 1628 29th Street, N.W., submitted two letters of opposition (Exhibits 27 and 33) and testified in opposition to the application at the public hearing on October 27, 2015. In her testimony, Ms. Chapin raised concerns about the size of the addition, but noted that light and air on her property would not be negatively impacted. The Applicant responded to the neighbor's opposition in its pre-hearing statement (Exhibit 28) and in its testimony at the

[1] This case was initially scheduled on the Expedited Review calendar on October 20, 2015, but was removed from the Expedited Review agenda at the request of a neighbor, Dolly Langdon Chapin, (Exhibit 27), and placed on the Board's hearing agenda for October 27, 2015.

public hearing on October 27, 2015. This case was initially scheduled for Expedited Review without a hearing on October 20, 2015, but the Board removed it from the Expedited Review agenda at Ms. Chapin's request. (Exhibit 27.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exception under § 223, not meeting the lot occupancy requirements under § 403, to construct a one-story rear addition to an existing three-story, one-family dwelling in the R-3. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, and 403, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 8.**

VOTE: **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Anthony J. Hood to APPROVE; and one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 28, 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

BZA APPLICATION NO. 19097
PAGE NO. 3

PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19102 of Gregg Solomon and Sarah Helmstadter, as amended[1], pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot area requirements under § 401.3, the side yard requirements under § 405.9, and the nonconforming structure requirements under § 2001.3, to construct a rear porch in the R-1-B District at premises 4334 P Street, N.W. (Square 1324, Lot 44).

HEARING DATE: Applicant waived right to a public hearing
DECISION DATE: October 20, 2015 (Expedited Review Calendar).

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6).

Pursuant to 11 DCMR § 3118, this application was tentatively placed on the Board of Zoning Adjustment ("Board") expedited review calendar for decision without hearing as a result of the applicant's waiver of its right to a hearing. (Exhibit 2.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3D, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on October 7, 2015, at which a quorum was in attendance, ANC 3D voted 6-0-0 in support of the application. (Exhibit 30.) Two letters as well as a petition signed by eight adjacent neighbors were filed in support of the application. (Exhibits 13, 25, and 27.) A letter in support of the application was filed by the National Park Service of the U.S. Department of the Interior. (Exhibit 26.)

---

[1]The Applicant initially filed for a special exception relief under § 223, not meeting the lot area requirements under § 401.3 and the side yard requirements under § 405.9. (Exhibit 1.) At the decision meeting, based on the Office of Planning's recommendation, the Board amended the application to add relief from the nonconforming structure requirements under § 2001.3. The caption has been changed accordingly.

BZA APPLICATION NO. 19102
PAGE NO. 2

The Office of Planning ("OP") submitted a timely report in support of the application, as amended. (Exhibit 31.) The District Department of Transportation ("DDOT") submitted a report expressing no objection to the approval of the application. (Exhibit 29.)
No objections to expedited calendar consideration were made by any person or entity entitled to do by §§ 2118.6 and 2118.7. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223, 401.3, 405.9, and 2001.3. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 401.3, 405.9, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 8.**

VOTE: **4-0-1** (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, and Robert E. Miller to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: October 26, 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

BZA APPLICATION NO. 19102
PAGE NO. 3

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 DISTICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT
441 4TH STREET, N.W.
SUITE 200-SOUTH
WASHINGTON, D.C. 20001

PUBLIC NOTICE OF CLOSED MEETINGS FOR NOVEMBER 2015

In accordance with § 405(c) of the Open Meetings Act, D.C. Official Code § 2-575 (c), on October 27, 2015, the Board of Zoning Adjustment voted 4-0-1 to hold *closed meetings telephonically* ***on Monday, November 2nd, 9th, 16th,and 23rd***, beginning at 4:00 p.m. for the purpose of obtaining legal advice from counsel and/or to deliberate upon, but not voting on the cases scheduled to be publicly heard or decided by the Board on the day after each such closed meeting, as those cases are identified on the Board's meeting and hearing agendas for November 3rd, November 10th, November 17th, and November 24th, 2015.

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

Marnique Y. Heath, Chairperson, Frederick L. Hill, Vice-Chairperson,
Jeffrey L. Hinkle, Board Seat Vacant, and a Member of the Zoning Commission.
Clifford W. Moy, Secretary of the Board of Zoning Adjustment,
Sara A. Bardin, Director, Office of Zoning.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FILING

Z.C. Case No. 08-07B
(Four Points, LLC – Second-Stage PUD and Modification to Previously Approved First-Stage PUD @ Squares 5772 and 5784)
October 28, 2015

THIS CASE IS OF INTEREST TO ANC 8A

On October 26, 2015, the Office of Zoning received an application from Four Points, LLC (the "Applicant") for approval of a second-stage planned unit development ("PUD") and modification to a previously approved first-stage PUD for the above-referenced property.

The property that is the subject of this application consists of Lots 827, 829, 881, 882, 984, 1017, and 1020 in Square 5772 and Lots 899, 900, and 1101 in Square 5784 in southeast Washington, D.C. (Ward 8). The PUD site is approximately bounded by U Street (north), Martin Luther King Jr. Ave (east), Chicago Street (south), and Interstate 295 (west).

The property was rezoned, for the purposes of this project, from the C-2-A and C-M-1 Zone Districts to the C-3-A Zone District.

The Applicant proposes to develop Lots 899, 900, and 1101 in Square 5784 with a mixed-use office and retail building (Building 4); and to develop Lots 827, 829, 881, 882, 984, 1017,and 1020 in Square 5772 with a mixed-use residential and office building (Building 8) and a mixed-use retail, office, and theater building (Building 9).

The Applicant seeks several changes from the previously approved PUD, including changes in land area, height, gross floor area, lot occupancy, parking, and loading, and the Applicant is also requesting to add Lots 881 and 882 in Square 5772 into the PUD Site in order to develop the Anacostia Playhouse as part of the project.

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 FILING

Z.C. Case No. 15-25
(Initio LP – Petition for Text Amendment to § 2401.1(c) –
Lot Size Requirements for PUDs)
October 29, 2015

THIS CASE IS OF INTEREST TO ALL ANCs

On October 27, 2015, the Office of Zoning received a petition from Initio LP (the "Petitioner") for approval of a reduction in lot size requirements for planned unit developments ("PUD") in all zone districts except the following: R-1, R-2, R-3, R-4, R-5-A, R-5-B, and W-0.

The proposed text amendment is as follows:

Current Language

2401.1 The minimum area included within the proposed development, including the area of public streets or alleys proposed to be closed, shall be as follows:

(c) A total of fifteen thousand square feet (15,000 ft.^{2}) for development to be located in any other zone district.

Proposed Language

2401.1 The minimum area included within the proposed development, including the area of public streets or alleys proposed to be closed, shall be as follows:

(c) A total of fifteen ten thousand square feet (~~15,000~~ 10,000 ft.^{2}) for development to be located in any other zone district.

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 FILING
Z.C. Case No. 15-26
(251 Massachusetts Avenue, LLC – Consolidated PUD & Related Map Amendment @ Square 560 – 251 H Street, N.W.)
October 29, 2015

THIS CASE IS OF INTEREST TO ANC 6E

On October 27, 2015, the Office of Zoning received an application 251 Massachusetts Avenue, LLC (the "Applicant") for approval of a consolidated planned unit development ("PUD") and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 27 and 838 in Square 560 in northwest Washington, D.C. (Ward 6), also known as 251 H Street, N.W. The property is zoned C-2-C. The Applicant is requesting a PUD-related map amendment rezoned the property, for the purposes of this project, to C-3-C.

The Applicant proposes to construct a two-story addition to the current office building that is situated on the Lot 838 portion of the property and to construct a new eight-story commercial office building on the Lot 27 portion of the property. The maximum height of the addition will be 130 feet and the new building will be 110 feet; together, the property will have a total of 21,418 square feet and a density of 7.67 floor area ratio ("FAR"). The property will have 34 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
ZONING COMMISSION ORDER NO. 14-18
Z.C. Case No. 14-18
Mid-City Financial Corporation
(First-Stage Approval for a Planned Unit Development and Zoning Map Amendment Application @ Square 3953, Lots 1-3; Square 3954, Lots 1-5 and Parcel 143/45; Square 4024, Lots 1-4; and Square 4025, Lots 1-7)
September 10, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on March 16, 2015, May 7, 2015, and May 11, 2015 to consider an application from Mid-City Financial Corporation ("Applicant") for first-stage approval of a planned unit development ("PUD") and related Zoning Map amendment. The Commission considered the application pursuant to Chapters 2, 24, and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, Public Hearing, and Post-Hearing Submissions and Actions

1. The Subject Property consists of approximately 20 acres, and is formally designated as: Square 3953, Lots 1-3; Square 3954, Lots 1-5 and Parcel 143/45; Square 4024, Lots 1-4; and Square 4025, Lots 1-7 ("Subject Property"). The Subject Property is currently the site of the Brookland Manor apartment complex and the Brentwood Village Shopping Center located at the intersection of Rhode Island Avenue, N.E. and Montana Avenue, N.E. The Subject Property is generally bound by Rhode Island Avenue, N.E. to the north, Montana Avenue, N.E. to the east, Downing Street, N.E./14th Street, N.E./Saratoga Avenue, NE to the south, and Brentwood Road, N.E. to the west. The Subject Property is currently zoned C-2-A and R-5-A and is located within the boundaries of Advisory Neighborhood Commission ("ANC") 5C. (Exhibit ["Ex."] 2, pp. 5-7.)

2. The Applicant filed this application on October 1, 2014. The first-stage PUD application sought approval to create the new Brentwood Village community, a new and revitalized mixed-income and mixed-use community on the Subject Property. The first-stage PUD application sought to establish a new street grid[1] which will create eight new blocks for development and a new centrally located community green and pedestrian walk. Over time, the existing buildings on the Subject Property will be replaced and the PUD project will include a variety of housing types (multi-family, senior housing, two-over-two buildings, and townhouses) and a significant retail component. Initially, the PUD project was proposed to include approximately 2,200 residential units and approximately 200,000 square feet of retail uses. Parking for these uses will be provided in below-grade

[1] The Applicant filed a street closing/dedication application with the DC Surveyor's Office in order to effectuate the proposed new street grid.

parking structures, integral at-grade garage parking for the two-over-two units and the townhouses, and on-street parking. (Ex. 2, pp. 2, 6.)

3. Initially, the proposed heights of the multi-family buildings were to range from 90 feet along Rhode Island Avenue down to 60 feet as one proceeds further into the Subject Property along Saratoga Avenue, N.E., 14th Street, N.E., and 15th Street, N.E. The proposed two-over-two buildings were to be approximately four stories tall, and the townhouses were to be three-to-four stories tall. The density of the individual blocks ranged from approximately 1.3 floor area ratio ("FAR") for the townhouses, to a maximum of 4.7 FAR. The Zoning Map Amendment sought to rezone the Subject Property to the C-2-B, C-2-A, and R-5-B Zone Districts. (Ex. 2, pp. 6-7.)

4. The Commission set the application down for a public hearing at its November 24, 2014 public meeting. The Applicant filed a pre-hearing statement on January 8, 2015, and a public hearing was timely scheduled for March 16, 2015. In response to the comments made at the November 24, 2014 public meeting, the Applicant filed a pre-hearing statement on January 8, 2015 which included the following information:

- Details on the proposed tenant relocation plan, construction phasing plan, and affordable housing program; (Ex. 15, pp. 1-2; Ex. 15A.)

- Additional information regarding the visual appearance of the proposed buildings (whether they were to include a podium design for parking), and the proposed visual impacts on the surrounding buildings; (Ex. 15, p. 2; Ex. 15B)

- Details on the vehicular circulation through the Subject Property; (Ex. 15, p. 2; Ex. 15B.)

- Discussion regarding why the proposed Community Green does not include a playground or why a recreation center is not included in the project; information regarding the location of schools and recreation centers in close proximity to the Subject Property; (Ex. 15, p. 3; Ex. 15B.)

- Information on the proposed infrastructure improvements and green building initiatives that will occur as a result of this project; (Ex. 15, p. 3-4; Ex. 15B.)

- Discussion of the appropriateness of the proposed C-2-B and C-2-A Zone Districts proposed in the Zoning Map amendment application and the appropriateness of the density proposed for the Subject Property; and (Ex. 15, p. 4; Ex. 15B.)

- Information regarding the proposed lot occupancy for the mixed-use buildings and the areas of potential flexibility needed for the second-stage PUD applications; (Ex. 15, pp. 4-5; Ex. 15B.)

5. Prior to the public hearing, the Applicant supplemented its application with additional information on February 24, 2015. The additional information included: information regarding the Applicant's dialogue with the Brookland Manor residents, ANC 5C, ANC 5B, and the surrounding community; resumes of the Applicant's proposed expert witnesses; a transportation impact study; additional information on the tenant relocation and construction phasing plan; an additional request for flexibility regarding the timing of the filing of second-stage PUD applications; and a commitment to include a grocery store in the future development of the project. (Ex. 23, 23A-23F.)

6. On March 1, 2015, the Brookland Manor/Brentwood Village Residents Association ("Residents Association") filed a timely request for party status in opposition to the application. (Ex. 28.)

7. On March 13, 2015, the Office of Planning ("OP") submitted a report which noted that despite OP's general support for the concept, OP could not make a recommendation on the first-stage PUD at that time. OP noted that "In particular, additional attention to consistency with the Comprehensive Plan and [a] more defined and definitive affordable housing/tenant relocation plan is necessary." The OP report noted that a path forward for the project could include: (i) "redesigning the PUD so it is 'not inconsistent' with the existing Comprehensive Plan which would allow for the Phase 1 Construction as shown on page three of the 20-day Submission dated February 2015; (ii) while the revised PUD is in progress, the applicant should simultaneously be working with the City-wide planning division of OP and the neighborhood on amendments to the Comprehensive Plan; and (iii) once the Comprehensive Plan is amended, the PUD could be modified to reflect the new designations and densities and the PUD could continue." (Ex. 53, pp. 1, 4.)

8. The Commission opened the public hearing on March 16, 2015 and the Commission granted the Residents Association's request for party status. The Commission admitted Matthew Bell as an expert in architecture and urban planning and Dan Van Pelt as an expert in transportation engineering. (Transcript of March 16, 2015 Public Hearing ["3/16/15 Tr."] pp. 7-11.)

9. The Commission noted the issues in the March 13, 2015 OP report regarding the consistency of the initial application with the Comprehensive Plan. The Commissioners agreed with the OP report and determined that they could not go forward with the public hearing due to the project's lack of consistency with elements of the Comprehensive Plan. The Commission rescheduled the public hearing in this case for May 7, 2015. (3/16/15 Tr., pp. 11-18.)

10. On April 10, 2015, in response to the comments made at the March 16, 2015 public meeting, the Applicant filed a supplemental pre-hearing statement which included the following information:

- In response to the concerns raised by OP and the Commission regarding the proposed C-2-B Zone District (along Rhode Island Avenue and extending to Saratoga Avenue) and the C-2-A Zone District's (on the south side of Saratoga Avenue) consistency with the Future Land Use Map and the Generalized Policy Map, the Applicant amended the Zoning Map Amendment application so that the project proposed the C-2-A Zone District for Blocks 1-3 and the R-5-B Zone District for Blocks 4-8. These changes resulted in lower building heights and gross floor area on Blocks 1-3 and 5-6. As a result of these changes, the total number of residential units in the project will be approximately 1,760 and approximately 181,000 square feet of retail and commercial uses will be included in the project; (Ex. 75 p. 2; Ex. 76A-76M.)

- Blocks 1, 2, and 3, proposed to be in the C-2-A Zone District, will be improved with mixed-use buildings with retail and apartment uses. The maximum height of these buildings will be 65 feet (rather than 90 feet), and each block is proposed to have a maximum density of 3.0 FAR. No changes were proposed for the Community Green, the Pedestrian Walk or the new street grid. Blocks 5 and 6, now proposed to be located in the R-5-B Zone District, do not include ground-floor retail uses. Blocks 5 and 6 will include 60 foot tall multi-family residential buildings, with a maximum density of 3.0 FAR. No changes were proposed for Blocks 4, 7, and 8. These blocks will include a mix of apartments, row houses, and flats. The total density of the project was reduced to 2.8 FAR; (Ex. 75 p. 2; Ex. 76A-76M.)

- Updated information on the proposed tenant relocation plan, construction phasing plan, and affordable housing program; (Ex. 75, pp. 4-5, Ex. 75A.)

- Discussion of the project’s consistency with all elements of the Comprehensive Plan, including the Future Land Use Map (“FLUM”) and the Generalized Policy Map (“GPM”); (Ex. 75, p. 2.)

- Discussion of the Applicant’s decision regarding the proposed unit mix in the project; (Ex. 75, pp. 5-6.)

- Response to questions raised in the March 13, 2015 OP report; (Ex. 75, pp. 6-8.)

- An update on the status of discussions with the Residents Association; and (Ex. 75, p. 8.)

- The Applicant’s response to the conditions of support noted in ANC 5C’s resolution in support of the project. (Ex. 75, pp. 8-9.)

11. At the May 7, 2015 public hearing, testimony was presented by the Applicant's project team, including representatives of the Applicant, the project architect and the project's transportation engineer. The Commission heard reports from OP and the Department of Transportation ("DDOT"). The Commission also heard testimony from residents in support and opposition to the application. The Commission continued the case to May 11, 2015.

12. At the May 11, 2015 public hearing, the Commission heard testimony from the ANC 5C05 Commissioner regarding the ANC's support for the project. The Commission also heard the testimony of the Residents Association, and the rebuttal testimony of the Applicant.

13. At the conclusion of the public hearing, the Applicant was requested to provide additional information regarding the following issues:

    - Enhanced architectural materials/information, including: updated renderings of the project; an illustrative plan for the pedestrian walkway connecting the Community Green and Rhode Island Avenue; an illustrative plan for the Community Green; perspectives which show the new buildings in relation to the surrounding buildings; and updated shadow studies;

    - The Applicant addressed the possibility of making upgrades to the Rhode Island Avenue, N.E. streetscape;

    - The Applicant provided additional information on the expected number of second-stage PUD applications and the timeline for the filing of those applications;

    - The Applicant submitted the final Construction Phasing and Tenant Relocation Plan;

    - The Applicant provided more detailed information on the existing Brookland Manor Residents and the Applicant's decision to not construct four and five bedroom units in the project;

    - The Applicant provided additional detail on the affordable housing component of the project; and

    - The Applicant provided comments on the reports OP received from DC Water and the Metropolitan Police Department.

    The Applicant was required to file this information with the Commission by June 8, 2015, and the Applicant and the Residents Association were required to file proposed Findings of Fact and Conclusions of Law with the Commission on June 15, 2015. Any

response to the Applicant's submission was required to be filed with the Commission by June 15, 2015, and the Commission announced that it would take Proposed Action on the applications at the June 29, 2015 public meeting.

14. On June 8, 2015, the Applicant submitted the requested information into the record in response to issues that were raised at the public hearing.

15. On June 15, 2015, the Commission received proposed Findings of Fact and Conclusions of Law from the Applicant and the Residents Association.

16. On June 29, 2015, the Commission took proposed action to approve the applications. The Commission requested that the Applicant consider more expedited dates for the project's phasing and completion the dates proposed by the Applicant, and left the record open for a response from the Applicant and comment by the Residents Association.

17. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC's Executive Director, by delegated action dated July 2, 2015, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

18. On July 6, 2015, the Applicant submitted its list of proffers and draft conditions pursuant to 11 DCMR § 2403.16. (Ex. 111.)

19. On July 13, 2015, the Applicant filed its response to the question posed by the Commission when it took proposed action. The Applicant stated that its proposed phasing and completion dates for the project were unchanged. (Ex. 114.) On July 20, 2015, the Residents Association submitted a response. (Ex. 116.) In that response, the Residents Association stated that the Applicant's draft order did not explain why the Commission believes the affordable housing and relocation plan portions of the proposed public benefits package are sufficient to justify approval, and recommended enhancements to those aspects of the project. The Commission has reviewed this Order and is satisfied that it adequately explains why the public benefits of the project, when considered in their totality, are sufficient to warrant the zoning flexibility requested. That being the case, the Commission has no authority to compel an Applicant to augment an already satisfactory public benefits proffer.

20. On July 20, 2015, the Applicant filed is final list of proffers and draft conditions pursuant to 11 DCMR § 2403.20. (Ex. 115.)

21. The Commission took final action to approve the application in Z.C. Case No. 14-18 on September 10, 2015.

The Subject Property and the Surrounding Area

22. The Subject Property includes approximately 20 acres, 19 garden apartment buildings, and a commercial strip shopping center at the intersection of Rhode Island Avenue, N.E. and Montana Avenue, N.E. The topography of the Subject Property includes a significant grade change as one heads west on Rhode Island Avenue, N.E. from the intersection of Rhode Island Avenue and Montana Avenue, N.E. This change in grade is approximately 16 feet. (Ex. 2, pp. 8-9.)

23. The Brookland Manor apartment complex, along with the adjacent Brentwood Village Shopping Center (located at the intersection of Rhode Island and Montana Avenues, N.E.), was built as a planned community in keeping with the Garden City movement of the 1930-1940s. The sprawling Brookland Manor apartment complex[2] includes 19 garden apartment buildings, ranging in height from two-to-four stories, and is spread over approximately 18 acres of land in Northeast, D.C. Over a period of many years from the 1940s to 1971, Brookland Manor fell into a state of disrepair through neglect and lack of capital with which to maintain and operate the sprawling complex. In 1971, the owners of Brookland Manor, Brentwood Associates, LP, received a loan commitment to substantially renovate the property under the Department of Housing and Urban Development's § 236 mortgage insurance program. In 1974, the general contractor defaulted and construction stopped immediately. In 1975, with work still to be done, HUD and the limited partners approved the replacement of the general partner with Eugene F. Ford, Sr. (founder of Mid-City Financial Corporation). HUD provided an interim construction loan for a period of approximately two years and the property was substantially rehabilitated in public partnership with HUD. In 1977, HUD then provided a 40-year fixed rate mortgage with a maturity date in 2017. (Ex. 2, p. 1.)

24. Since 1977, Brentwood Associates has managed the apartment buildings on the property pursuant to two project-based Section 8 contracts, through the acceptance of District of Columbia Housing Authority vouchers, and by renting to a small number of market rate residents. There are approximately 535 apartment units in the Brookland Manor complex, with units ranging from one-to-five bedrooms. The Applicant noted that Brentwood Associates has been a responsive and attentive owner/manager of these properties. The existing buildings are meticulously maintained and the grounds are kept free of trash and litter. The Applicant stated that the existing buildings are now 75 years old and have significant engineering and design features that cannot be easily addressed or fixed. In addition, the current Brookland Manor apartment complex and the adjacent public streets and public space are impacted with ongoing crime problems. In many instances, the causes of these crime problems can be traced to the urban design of the original Brentwood Village apartments as well as the concentration of very low-income residents. (Ex. 2, pp. 1-2.)

---

[2] The Brookland Manor apartment complex was originally known as Brentwood Village Apartments.

25. While there is ample green space around the 19 apartment buildings, this green space is highly undefined and creates numerous blind corners and darkened recesses in the buildings. There is no clear understanding as to the ownership or utility of these open spaces. These open spaces do not provide the existing residents, or their guests, with a sense of safety and there is no idea of "defensible space". Furthermore, the existing street configuration does not allow for safe and efficient pedestrian and vehicular access through the Subject Property. Internal streets lead to dead ends and do not connect with the surrounding neighborhood. From a contemporary urban design perspective, these buildings do not provide strong edges along the adjacent streets. (Ex. 2, p. 2.)

26. While the Brentwood Village Shopping Center was initially built as an amenity for the residents of Brookland Manor/Brentwood Village, it was also focused on the automobile. Parking spaces are located in the front of the shopping center. The existing Brentwood Village Shopping Center no longer provides quality retail that serves the needs of the nearby residents of Brookland Manor and the Brentwood neighborhood. The current mix of retail uses in this center (which include a needle exchange, a liquor store, and a pawn shop) lead to significant amounts of loitering and crime in and around the shopping center as well as Brookland Manor. (Ex. 2, pp. 2-3.)

27. The Rhode Island Avenue Metro Station is located approximately one-half mile to the west of the Subject Property along Rhode Island Avenue, N.E. Row houses are the predominant residential land use to the immediate south and east of the Subject Property boundaries. Single-family homes are found across Montana Avenue, N.E. and east of Saratoga Avenue, N.E. The Historic Berean Baptist Church is located to the east of the Subject Property at the southeast corner of the intersection of Rhode Island Avenue, N.E. and Montana Avenue, N.E. (1400 Montana Avenue, N.E.). Commercial uses are located northeast of the Subject Property along Rhode Island Avenue, N.E, and a fire station is located on the north side of Rhode Island Avenue, N.E. A large vacant property is adjacent to the fire station on the north side of Rhode Island Avenue, N.E. (Ex. 2, p. 9.)

Existing Zoning and Future Land Use Map Designation

28. The existing Brentwood Village Shopping Center is located in the C-2-A Zone District and the remainder of the Subject Property is located in the R-5-A Zone District. The Subject Property is located in the Moderate-Density Residential land use and Mixed-Use, Moderate-Density Commercial/Moderate-Density Residential land use categories on the District of Columbia's Comprehensive Plan Future Land Use Map. The areas of the Subject Property with frontage along Rhode Island Avenue, N.E. and Montana Avenue, N.E. are designated as Main Street Mixed-Use Corridors on the Generalized Policy Map of the Comprehensive Plan. The Subject Property is located within the boundaries of ANC 5C. ANC 5B is located to the north of the Subject Property, across Rhode Island Avenue. (Ex. 2, pp. 6-7.)

Description of the PUD Project

Applicant's Development Vision for the Project

29. The Applicant stated that the new mixed-use Brentwood Village, envisioned in this first-stage PUD and Zoning Map amendment application, provides a unique and exciting opportunity to create a new and revitalized community that corrects some of the mistakes of earlier urban planning concepts, and creates a great place for existing residents and new residents. The primary goals for the development of this project are:

   - Preservation of Affordable Housing and Creation of a Truly Mixed-Income Community - The PUD project will create a truly mixed-income and mixed-age residential community. This project proposes the development of approximately 1,760 residential units on the Subject Property. The Applicant is proposing that 22% of the residential units included in the PUD project will be reserved as affordable housing and the Applicant worked with the existing residents of the Brookland Manor community to create a workable and effective Tenant Relocation Plan so that those residents can participate in the new Brentwood Village community;

   - Creation of a Variety of Housing Types - The approximately 1,760 residential units will include multi-family buildings, senior housing, two-over-two buildings, and row houses. The project will include a mix of for-sale and rental residential units;

   - Urban Design - Urban design is the process of designing and shaping cities, towns, and villages. Where architecture focuses on individual buildings, urban design addresses the larger scale of groups of buildings, of streets and public spaces, whole neighborhoods and districts, and entire cities, in order to make urban areas functional, attractive, and sustainable. The goal of this project is to make a safe and inviting place for existing and new residents through the creation of a beautiful public realm using up-to-date urban design methods. The creation of a mix of residential types and retail uses will invigorate this community and help raise the general level of architectural quality and character along Rhode Island and Montana Avenues, N.E. The proposed project will create a new center for positive neighborhood activity;

   - Connectivity and Open/Green Space - The project will create walkable streets, many lined with retail uses, and a reconfigured street grid that will better connect the Brookland Manor community to the surrounding Brentwood neighborhood. The project includes a central community green and a pedestrian walk, of approximately one acre, that provide open and green spaces for residents of this community and their guests;

- Enhanced Retail Opportunities - The proposed project will create approximately 181,000 square feet of updated and enhanced retail opportunities. In addition to a full-sized grocery store of approximately 56,000 square feet, the project will have ground-floor retail uses ringing Rhode Island, Montana and Saratoga Avenues, N.E., as well as the community green; and

- Community Dialogue - Prior to the filing of this application and throughout the Commission process, the Applicant and members of the Applicant's development team made formal presentations regarding the vision and plans for this project to the Brookland Manor residents and to the Brentwood Citizens Association. In addition, the Applicant engaged in dozens of smaller group meetings and discussions with residents and leaders of Brookland Manor, the Brentwood community, ANCs 5C and 5E Commissioners, and other civic groups/leaders along the Rhode Island Avenue, N.E. corridor. (Ex. 2, pp. 3-5; Ex. 75.)

30. The Applicant noted that the new Brentwood Village will be a safe and inviting mixed-income and mixed-age community with ground floor commercial uses along Rhode Island, Saratoga, and Montana Avenues, NE. The proposed new street grid system creates eight new blocks that have been carefully studied and laid out in order to allow the development of buildings that will create vibrant streetscapes and active pedestrian experiences, a significant amount of housing, and attractive open spaces. Throughout the project, the adjacent public sidewalks and public rights-of-way will be enhanced to provide appropriate widths for landscaping and plantings, pedestrian travel ways, and sidewalk cafés (as appropriate). The PUD project will also include significant low impact development (LID) and sustainability components. (Ex. 2, p. 9.)

Block 1

31. Block 1 is located at the northwest edge of the Subject Property and has frontage along Rhode Island Avenue, N.E. and is bound by Brentwood Road, N.E. to the west, a pedestrian walk to the east and a newly created vehicular street to the south. The entirety of Block 1 is proposed to be included in the C-2-A Zone District. Due to the significant grade change that occurs on this portion of the Subject Property, no ground-floor retail is proposed on Block 1. Two residential buildings, consisting of a total of approximately 312,909 square feet and approximately 347 residential units, are proposed on this block. The buildings will have a maximum height of 65 feet and the building which has frontage on Brentwood Road, N.E. will be required to be terraced at the top in order to provide an appropriate transition to the smaller scale residential properties on the other side of Brentwood Road, N.E. Below-grade parking will be provided, with access to the parking and loading facilities provided from a service court. This block will have a density of approximately 3.0 FAR. (Ex. 2, p. 10; Ex. 76A-76M.)

Pedestrian Walk Between Blocks 1 and 2

32. In order to help foster and encourage pedestrian connections between the various parts of the project, Rhode Island Avenue, N.E., and the Rhode Island Avenue Metro Station, a broad pedestrian walk has been created between Blocks 1 and 2. This broad, tree-lined, pedestrian walk, with a width of approximately 75-80 feet, connects the community green with Rhode Island Avenue. A series of gradual stairs and water features will be included in the pedestrian walk to account for the change in grade and to provide some relief and animation to the hardscape elements. In order to help ensure that this space is activated and lively, the Applicant is proposing 12 loft units on Block 1 and 15 loft units on Block 2 that will have direct entrances from the residential units onto the pedestrian walk. (Ex. 2, p. 10; Ex. 76A-76M.)

Block 2

33. Block 2 has frontage along Rhode Island Avenue, N.E. to the north, a newly created extended 15th Street, N.E. to the east, Saratoga Avenue, N.E. to the south, an extended 14th Street, N.E. and the pedestrian walk to the west. The entirety of Block 2 is proposed to be included in the C-2-A Zone District. Two mixed-use buildings, consisting of a total of approximately 319,674 square feet of residential use, 355 residential units, and approximately 97,518 square feet of commercial use are proposed on this block. The total amount of density proposed on this Block is 3.0 FAR and the maximum building height will be 65 feet.

    - The building in Block 2 with frontage along Rhode Island Avenue, N.E., Building No. 1, will have a maximum height of 65 feet and includes a ground-level retail floor plate of approximately 56,000 square feet. This building has been designed to accommodate a full-service grocery store on the ground level, with loading facilities accessed from a newly created interior alley system. Below-grade parking for this building will also be accessed from this interior alley system. Building No. 1 on Block 2 will include approximately 209,810 square feet and approximately 233 units.

    - Building No. 2 in Block 2 will have frontage along Saratoga Avenue, N.E. and across 14th Street, N.E. from the proposed community green. Ground-floor retail, approximately 23,400 square feet, is proposed for this building along Saratoga Avenue, N.E. and fronting on the community green. The building will have a maximum height of 65 feet, will include approximately 109,684 square feet of gross floor area, and approximately 122 units. This building will have below-grade parking, accessed from the same interior alley system as Building No. 1. (Ex. 2, p. 11; Ex. 76A-76M.)

Block 3

34. Block 3 has frontage along Rhode Island Avenue, N.E. to the north, Montana Avenue, N.E. to the east, Saratoga Avenue, N.E. to the south, and a newly extended 15th Street, N.E. to the west. The entirety of Block 3 is proposed to be included in the C-2-A Zone District. Two mixed-use buildings, consisting of a total of approximately 192,710 square feet of residential use, 214 residential units, and approximately 84,236 square feet of commercial use are proposed on this block. The total amount of density proposed on this Block is 3.0 FAR.

- The building in Block 3 with frontage along Rhode Island Avenue, N.E., Building No. 1, will have a maximum height of 65 feet and includes a ground-level retail floor plate of approximately 31,800 square feet. This building will include approximately 82,846 square feet of gross floor area and approximately 92 residential units. Access to the loading and below-grade parking facilities provided in this building will be from an east-west alley that will run between the new public street and Montana Avenue, N.E.

- Building No. 2 in Block 3 will have frontage along Saratoga Avenue, N.E., a newly extended 15th Street, N.E., and Montana Avenue, N.E. Ground-floor retail is also proposed for this building. The building will have a maximum height of 65 feet. This building will include approximately 109,684 square feet of gross floor area and approximately 122 residential units. Access to the loading and below-grade parking facilities provided in this building will be from an east-west alley that will run between the new public street and Montana Avenue, N.E. (Ex. 2, p. 12; Ex. 76A-76M.)

Block 4

35. Block 4 is located to the south of Block 1 and is bound by Brentwood Road, N.E. to the west, Saratoga Avenue, N.E. to the south and two newly created streets to the east and north. Block 4 is proposed to be rezoned to the R-5-B Zone District. Fourteen two-over-two residential units, consisting of approximately 33,600 square feet of gross floor area, are proposed along Brentwood Road, N.E., across the street from single-family residential uses. At-grade parking spaces, in the rear of these two-over-two units are provided and will be accessed from the Saratoga Avenue, N.E. and the new public street. A 60 foot tall multi-family building with approximately 170,574 square feet of residential use and 182 residential units is also proposed on Block 4. The below-grade parking spaces and the loading facilities for this building will be accessed from a curb cut off of Saratoga Avenue, N.E. The total amount of density proposed on this Block is 3.0 FAR. (Ex. 2, pp. 12-13; Ex. 76A-76M.)

Community Green

36. The proposed community green is envisioned as the heart and soul of the new Brentwood Village. It will be encircled by new vehicular streets with a one-way, counter-clock wise, circulation pattern. The buildings which surround the community green will have active ground-floor uses and windows on the upper floors of the residential units to help provide positive surveillance of the community green and a safe public environment. The community green is expected to be used for active and passive recreation activities. A fountain and/or sculpture feature is proposed for the north end of the community green, at the point where the pedestrian walk and the community green come together. The southern portion of the community green will have an orchard, open green space, and a playground. (Ex. 2, p. 13; Ex. 104.)

Block 5

37. Block 5 is located across Saratoga Avenue, N.E. from Block 2. Block 5 is proposed to be rezoned to the R-5-B Zone District. It is bound by Saratoga Avenue, N.E. to the north, the newly extended 15th Street, N.E. to the east, a private alley to the south and 14th Street, N.E. to the west. Along Saratoga Avenue, N.E., a multi-family building with a maximum height of 60 feet is proposed. This building will include approximately 115,044 square feet of gross floor area and approximately 128 residential units. Access to the loading and below-grade parking facilities provided in this building will be from an east-west alley that will run between the new public street and 14th Street. The total amount of density proposed for the multi-family portion of this block is 3.0 FAR. The southern edge of Block 5 will include twelve 16-foot-wide townhouses, which will include approximately 24,654 square feet of gross floor area. The fronts of nine of these townhouses will face a private street/alley that will include townhouses in Block 8. Three of the townhouses will have frontage along 14th Street. All of the townhouses will have internal garages that are accessed from the proposed alley system in Block 5. (Ex. 2, pp. 13-14; Ex. 76A-76M)

Block 6

38. Block 6 is located across Saratoga Avenue, N.E. from Block 3. It is bound by Saratoga Avenue, N.E. to the north, Montana Avenue, N.E. to the east, a private alley to the south, and the newly extended 15th Street, N.E. to the west. Block 6 is proposed to be rezoned to the R-5-B Zone District. Along Saratoga Avenue, N.E., a multi-family building with a maximum height of 60 feet is proposed. This building will include approximately 120,525 square feet of residential gross floor area and approximately 134 residential units. Access to the loading and below-grade parking facilities provided in this building will be from an east-west alley that will run between the new public street and Montana Avenue, N.E. The total amount of density proposed for the multi-family portion of this block is 3.0 FAR. The southern edge of Block 6 will include twelve, 16-foot-wide

townhouses, which will include approximately 24,654 square feet of gross floor area. The fronts of nine of these townhouses will face a private street/alley that will include townhouses in Block 8. Three of the townhouses will have frontage along Montana Avenue, N.E. All of the townhouses will have internal garages that are accessed from the proposed alley system in Block 6. (Ex 2, pp. 14-15; Ex. 76A-76M.)

Block 7

39. Block 7 is located to the south of Block 4 and is bound by Brentwood Road, N.E. to the west and Saratoga Avenue, N.E. to the north, and 14th Street, N.E. to the east. Block 7 is proposed to be rezoned to the R-5-B Zone District. Twenty-eight two-over-two residential units are proposed along Brentwood Road, N.E. and Saratoga Avenue, N.E. A five-story building, with a height of approximately 60 feet, and approximately 217,332 square feet of space is also proposed along Saratoga Avenue, N.E. and will have frontage on the community green. This building is expected to include up to 286 units of housing, with a senior housing component that will consist of approximately 150-200 units. The total amount of density proposed on this Block is 3.0 FAR. (Ex. 2, p. 12; Ex. 76A-76M.)

Block 8

40. Block 8 is located to the south of Blocks 5 and 6 and is bounded by Downing Street, N.E. to the south. Block 8 is proposed to be rezoned to the R-5-B Zone District. Block 8 is proposed to include 48 townhouses with internal garages. All of these townhouses will be 16-feet-wide and will have internal parking spaces. Six townhouses will have frontage on 14th Street, N.E., six townhouses will have frontage on Montana Avenue, N.E., 18 townhouses will have frontage on Downing Street, N.E., and 18 townhouses will have frontage on the private street facing Blocks 5 and 6. The total square footage for these townhouses is 131,383 square feet. (Ex. 2, pp. 15-16; Ex. 76A-76M.)

Applicant's Testimony

41. Mr. Eugene Ford, Jr., representative of the Applicant, testified to the Applicant's experience in developing and managing affordable and market-rate housing communities in the DC metropolitan area and the Applicant's history with Brentwood Village/Brookland Manor. (Transcript of May 7, 2015 public hearing ["5/7/15 Tr."] pp. 10-15.)

42. Mr. Matthew Bell, of Perkins Eastman, admitted as an expert witness in the field of architecture and urban planning, described the transformative nature of the project. Mr. Bell noted that the project will be transformative by: linking the Brookland Manor community to the surrounding community in a way that does not currently occur; bringing unique open space to the area that does not currently exist; and by bringing a diversity of retail and housing uses to the community. Mr. Bell noted the following guiding principles for the new Brentwood Village: designing a beautiful public realm;

creation of a variety of housing types with affordable and market rate units; connecting and integrating this project with the broader community; creation of a walkable and safe community; and provision of a mix of retail and residential uses. (5/7/15 Tr., pp. 16-17.)

43. Mr. Bell also noted that the creation of the very significant community green at the center of the new community was in direct response to the meandering nature of the existing open space. The idea behind the community green was that it will become a gathering place for members of the community of all ages. Mr. Bell also noted that there are a number of recreation centers and recreation fields within a 10 minute walk of the Brookland Manor community, so the design of the community green was to create something that is different from the sports fields and recreation centers that are already available in the neighborhood. Mr. Bell concluded that the community green will be complimentary to the inventory of public spaces in the surrounding community and not the same as those existing public spaces. (5/7/15 Tr., pp. 23-24.)

44. Mr. Bell described the proposed zone districts, building heights, and new street network for the project. Mr. Bell also noted the significant sustainability measures that are incorporated into the project. Mr. Bell testified that sustainability begins with settlement patterns and that the creation of projects like this (where there is existing transit, community center and residential neighborhood infrastructure) foster. Mr. Bell also noted that the first-stage PUD application will satisfy the LEED-ND Silver requirements. (5/7/15 Tr., pp. 21, 23-25, 38-41.)

45. At the May 7, 2015 public hearing, Mr. Dan Van Pelt, of Gorove/Slade Associates and admitted as an expert witness in transportation engineering, testified to the internal street system proposed for the project, parking and loading access, traffic impacts, and multi-modal considerations. Mr. Van Pelt also addressed the Applicant's proposed mitigation measures and coordination with DDOT. Mr. Van Pelt's conclusion was that the project has substantial transportation benefits, including a vastly improved street layout compared to the existing conditions, providing all loading and parking access from alleys, installation of a new traffic signal that will have multi-modal benefits, and a framework for additional multi-modal improvements. (5/7/15 Tr., pp. 27-31.)

46. At the May 7, 2015 public hearing, Mr. Michael Meers testified on behalf of the Applicant. Mr. Meers testified to the Applicant's community engagement, the construction phasing and tenant relocation plans, and the affordable housing program proposed by the Applicant. Mr. Meers noted that the Applicant's outreach to the community was extensive, transparent, inclusive, and respectful. Mr. Meers stated that the immediate neighbors to the north, south, east, and west have all weighed in with their support of the project. (5/7/15 Tr., pp. 32-33.)

47. Mr. Meers' provided testimony regarding the construction phasing and tenant relocation plan that was offered to the residents of the existing buildings on the property. Mr. Meers noted that there were only two matters that were unresolved with the Brookland Manor

residents regarding the tenant relocation plan. The two issues are: (i) the creation of four and five bedroom apartments in the new Brentwood Village; and (ii) the total number of affordable units that will be built in the new community. Mr. Meers testified that the Applicant researched the issue of the construction of four- and five-bedroom apartments and noted that nowhere in the country are these types of units being constructed. Mr. Meers stated that the Applicant's research of the families that are currently living in the four- and five-bedroom units resulted in the finding that all but 13 of the existing four- and five-bedroom households can be housed in smaller units based on prevailing HUD occupancy standards. Mr. Meers stated that the Applicant would meet with those 13 families in order to ensure that they will be reasonably accommodated into the new Brentwood Village project. (5/7/15 Tr., pp. 35-36.)

48. In regard to the number of affordable units that will be created in the new community, Mr. Meers testified that the Applicant's affordable housing commitment is to provide 373 deeply subsidized affordable units in the project covered by the Section 8 contract. The 373 affordable units constitute 22% of the total number of units in the project. Mr. Meers noted that the Applicant's affordable housing commitment establishes the affordability on site in perpetuity in a manner that does not exist today. Mr. Meers concluded that at more than 20% of the total number of units, the Applicant believed that its affordable housing commitment is as substantial as any new development in the city today in terms of the number of units and the depth of affordability. (5/7/15 Tr., pp. 37-38.)

49. In rebuttal testimony at the May 11, 2015 public hearing, Mr. Meers testified that the Applicant is going to retain the Section 8 contract on the property in perpetuity, that anyone with a DCHA Housing Choice Voucher will have the opportunity to remain, all residents in good standing will have the opportunity to return, and when relocations occur the Applicant will pay for all moving and packing expenses. Mr. Meers also entered into the record a report from Quadel Consulting and Training, which addressed the issue of replacement units in New Communities projects. Mr. Meers quoted from that report which stated, "It should be understood that this principle, one for one replacement, does not intend that replacement units will mirror the demolished units by bedroom size. One for one replacement has not been fully understood and may require clarification. It was not intended to entail the construction of housing developments that exactly mirror the unit mix of the existing public housing. Nor can the mix of new housing be built to fit the households in the current population." (Transcript of May 11, 2015 public hearing ["5/11/15 Tr."] pp. 84-88.)

<u>Density Proposed and Flexibility Requested</u>

50. The total amount of gross floor area approved in the PUD project is approximately 1,928,303 square feet (approximately 1,746,459 square feet of residential gross floor area and approximately 181,844 square feet of retail gross floor area) and the project will have an overall density of 2.8 FAR. The maximum building height on Blocks 1, 2, and 3 shall

not exceed 65 feet. The maximum building height on Block 4 shall not exceed 60 feet. The maximum building height for the multi-family buildings on Blocks 5 and 6 shall not exceed 60 feet and the maximum building height for the townhouses on Blocks 5 and 6 shall not exceed 45 feet. The maximum building height for the buildings on Block 7 shall not exceed 60 feet. The maximum building height for the townhouses on Block 8 shall not exceed 45 feet. (Ex. 76L.)

51. The R-5-B Zone District permits a maximum density of 1.8 FAR as a matter of right and a maximum density of 3.0 FAR in a PUD project. The maximum height allowed as a matter-of-right in the R-5-B Zone District is 50 feet. A PUD project in the R-5-B Zone District is permitted a maximum building height of 60 feet. The C-2-A Zone District permits a maximum density of 2.5 FAR (1.5 commercial) as a matter of right and a maximum density of 3.0 FAR (2.0 commercial) in a PUD project. The maximum height allowed as a matter-of-right in the C-2-A Zone District is 50 feet. A PUD project in the C-2-A Zone District is permitted a maximum building height of 65 feet.

52. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403:

    (a) Housing and Affordable Housing: Pursuant to § 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing and affordable housing is a public benefit that the PUD process is designed to encourage. This project provides for the creation of approximately 1,760 residential units on the Subject Property. The Applicant is committed to retaining the Section 8 contract on the Subject Property, so the existing 373 units (with deep affordability) at Brookland Manor will remain in the new Brentwood Village. The Applicant will provide for 22% (373 of the total 1,646 multi-family and senior citizen units including of the new rental accommodations) to be reserved as affordable units with area median income ("AMI") levels that are significantly below 50% of AMI. An additional 11 for-sale townhouses or two-over-two units, representing 10% of the units, will be subject to Inclusionary Zoning ("IZ") regulations, including the set-aside requirements of §§ 2603.1 and 2603.3. Thus, at the end of the build-out of the new Brentwood Village community, the affordable units will be approximately 22% of the total number of units. In support of the Applicant's affordable housing commitment across the site, the senior citizen building will be 100% assisted, each multi-family building will have at least 10% of the units reserved as affordable housing,[3] and, as noted,

[3] During the buildout, the Applicant will be relocating the existing 373 households on the site in accordance with the tenant relocation and construction phasing plan. (Ex.104B). Since not all of the multi-family buildings will be constructed concurrently, the percentages of affordable units in the earlier completed buildings will be higher than what will ultimately be in place. The 373-unit Section 8 contract will be renewed during build out, and 373 units will be maintained, initially in a smaller number of buildings than will ultimately be the case. The final redistribution of the existing Section 8 contracts will

10% of the for-sale residential units (townhouses or two-over-two units) will subject to IZ. (Ex. 104, p. 6.) In each second-stage PUD application, the Applicant will provide the actual square footage of the affordable units being provided in each multi-family building. In the unlikely even that the Section 8 program is abolished by the Federal Government, or the contract is not renewed for the project, the Applicant has proffered two alternative affordable housing proffers.

The following charts summarize the affordable housing provided by the project if the Section 8 program remains in effect (Chart 1) and the two alternatives if the program is abolished by the Federal Government, or the contract is not renewed for the project (Charts 2 and 3):

Chart 1: Affordable housing provided if the Section 8 program remains in effect:

Residential Unit Type	GFA / Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	1,746,459	1,760				
Multi-Family including Senior Building	To be determined	1,646				
Townhouses and Two-Over-Two Units	To be determined	114				
Affordable/Non-IZ (Multi-Family including Senior Building)	To be determined	373	Less than 50% AMI	perpetuity	rental	Retention of Sec. 8 contract
IZ – Townhouses or Two-Over-Two Units	GFA To be determined/ /5% of GFA	6	50% AMI	perpetuity	ownership	
IZ – Townhouses or Two-Over-Two Units	GFA To be determined/5% of GFA	5	80% AMI	perpetuity	ownership	

Chart 2: Affordable housing provided if the Section 8 program is abolished by the Federal Government, or the contract is not renewed for the project and if a change in underwriting standards is approved, some form of property tax relief is granted for those units, and DC Housing Trust Funds are provided:

take place at the start of occupancy of the last building constructed, and at that time the actual distribution of affordable units will be finalized. However, at no point will the percentage of Section 8 units within any of the new multi-family buildings be less than 10% of the total units.

Residential Unit Type	GFA / Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	1,746,459	1,760				
Multi-Family including Senior Building	To be determined	1,646				
Townhouses and Two-Over-Two Units	To be determined	114				
-------------------------	------------------	----	---------	--------------	--------------	--------
Affordable/Non-IZ (Multi-Family including Senior Building)	To be determined	329	60% AMI	perpetuity	rental	
IZ – Townhouses or Two-Over-Two Units	To be determined /5% of GFA	6	50% AMI	perpetuity	ownership	
IZ – Townhouses or Two-Over-Two Units	To be determined /5% of GFA	5	80% AMI	perpetuity	ownership	

Chart 3: Affordable housing provided if the Section 8 program is abolished by the Federal Government, or the contract is not renewed for the project and if no change in underwriting standards is approved, no form of property tax relief is granted for those units, and no DC Housing Trust Funds are provided:

Residential Unit Type	GFA / Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	1,746,459	1,760				
Multi-Family including Senior Building	To be determined	1,646				
Townhouses and Two-Over-Two Units	To be determined	114				
-------------------------	------------------	----	---------	--------------	--------------	--------
Affordable/Non-IZ (Multi-Family including Senior Building)	To be determined	165	50% AMI	perpetuity	rental	
Affordable/Non-IZ (Multi-Family including Senior Building)	To be determined	164	80% AMI	perpetuity	rental	
IZ – Townhouses or Two-Over-Two Units	To be determined/ 5% of GFA	6	50% AMI	perpetuity	ownership	
IZ – Townhouses or Two-Over-Two Units	To be determined/ 5% of GFA	5	80% AMI	perpetuity	ownership	

(b) Urban Design, Architecture, Landscaping, or Creation of Open Spaces: Subsection 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The proposed project exhibits all of the characteristics of exemplary urban design and the creation of exemplary open

spaces. The massing and height of the proposed buildings have been carefully studied in order to create a project that is appropriate for this location and the surrounding Brentwood community. All of the buildings address the failings of the existing Brookland Manor complex by providing effective, well-defined edges to the streets and the creation of defensible open spaces. The new community will be much safer as there will be more "eyes on the street" and the existing dimly lit recesses and blind corners of buildings have been removed. The ground floor retail uses and enhancements to the surrounding public realm will provide dynamism to the daily rhythm of life along Rhode Island, Montana and Saratoga Avenues, N.E. The proposed community green and pedestrian walk create opportunities for passive and active recreation uses, as well as a place for public activities such as a farmers market or a community fair. The streets surrounding the community green on the east and west sides can be easily closed off for larger activities without any adverse impact on the overall traffic circulation; (Ex. 2, pp. 19-20; 5/7/15 Tr., pp. 17-23.)

(c) Site Planning, and Efficient and Economical Land Uses: Pursuant to § 2403.9(b) of the Zoning Regulations, "site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Commission. The proposed street grid creates eight new development blocks that allow the creation of buildings and open spaces that are of an appropriate human scale and create a variety of housing options and mix of uses. This project seamlessly integrates approximately 1,760 residential units and approximately 181,000 square feet of commercial use into a community that has the look and feel of a neighborhood that grew organically. The new street grid responds to the crime problems that were created by the existing site plan and allows for greater connectivity and integration with the surrounding community; (Ex. 2, p. 20.)

(d) Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to § 2403.9(c), state that "effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities. The Applicant submitted a transportation impact study (TIS) prepared by Gorove Slade Associates. The TIS analyzed the impacts on the surrounding transportation network during three distinct phases of development of the project.

The TIS noted that this project includes several significant transportation improvements and found:

> The PUD Master Plan takes advantage of the significant size of the project to greatly enhance the street network. Not only will the project add more roads to the site, it lays out the roads in a fashion that provides more connectivity for drivers, pedestrians and cyclists. First, a new '15th Street Extended' will connect all of the way through the site from Downing

Street to Rhode Island Avenue. Second, 14th Street will be extended through the site to Rhode Island Avenue as a pedestrian connection, providing a second access point on Rhode Island Avenue. Finally, the PUD Master Plan includes a new alley network that provides quality access to parking facilities and loading docks.

Given the nature of this first-stage PUD application, the TIS notes that Transportation Demand Management ("TDM") plans and the exact number of parking spaces provided in each building will be addressed at subsequent second-stage PUD applications. The TIS includes proposed mitigation measures for some of the phases of development (such as the installation of a traffic signal at the intersection of Saratoga Avenue and Montana Avenue in the second phase of development of the entire project, which is expected to be completed by 2022), but ultimately concludes that "the PUD project will not have a detrimental impact to the surrounding transportation network assuming that all planned site design elements are implemented, and all mitigation measures are incorporated into the PUD application;" (Ex. 23, pp. 2-3; Ex. 23C.)

(e) Uses of Special Value: According to § 2403.9(i), "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The Applicant spent significant amounts of time and resources on creating a construction phasing plan and tenant relocation plan that minimized adverse impacts on the Brookland Manor community and residents of the surrounding area. The Applicant noted that these plans were guided by the following priorities:

- Minimize construction impacts to the residents to ensure that a safe environment exists;

- Building out the project's infrastructure in the most efficient manner possible; and

- Phasing the improvements in a way that maximizes the project's ultimate success, including the creation of 373 new affordable apartments in a revitalized community.

The Applicant noted that as construction progresses, most existing households will be relocated on site once prior to moving into a new building. A few families may have to be relocated twice as dictated by available accommodations and construction scheduling. The Applicant will pay for all costs associated with relocating tenants on-site and off-site; (Ex. 104, 104B.)

The Applicant has also agreed to pay for: sidewalk reconstruction along Rhode Island Avenue, N.E. at five locations between the Subject Property and the Rhode

Island Avenue Metro Station; the re-striping of the pedestrian crosswalks at eight intersections along Rhode Island Avenue, N.E.; and the reconstruction of an ADA accessible ramp at the intersection on Rhode Island Avenue, N.E. and Bladensburg Road, N.E. The cost of these improvements is approximately $35,000; (Ex. 104, p. 2.)

The Applicant submitted a construction management agreement in order to mitigate any potential adverse impacts on the existing Brookland Manor residents and the surrounding community due to construction activity; (Ex. 23, p. 3; Ex. 23E.)

The management of Brookland Manor currently provides its residents with a number of programs that are designed for the children and seniors that live in the community. The existing programs for children include a variety of enrichment activities, such as after school care, tutoring, arts and crafts, community gardening, summer camp, and meal programs to ensure that no child goes home hungry. The seniors programs include periodic brown-bag lunches and other events designed to bring Brookland Manor's senior community together. The Applicant has stated that these programs will be retained and enhanced in the new Brentwood Village community; (5/7/15. Tr., p. 8; Ex. 75.)

(f) Job Training Programs: Subsection 2403.9(e) lists employment and training opportunities as a public benefit and project amenity. The Applicant has agreed that all second-stage PUD applications related to the project will include as a condition of approval the requirement that the Applicant in that case will enter into a First Source Employment Agreement with the Department of Employment Services (DOES); (Ex. 75, p. 8.)

(g) Environmental Benefits: According to § 2403.9(h), "environmental benefits" are representative public benefits and project amenities. This first-stage PUD project will be able to achieve a LEED-ND Silver certification, without knowing the level of sustainability performance for any of the individual buildings. In the public open spaces, the PUD project will include sustainable design techniques such as LID/Stormwater areas and rain gardens where possible; (Ex. 2, p. 21.)

(h) Comprehensive Plan: According to § 2403.9(j), public benefits and project amenities include "other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan." The Applicant noted that the proposed PUD is consistent with and furthers many elements and goals of the Comprehensive Plan. The project's consistency with the Comprehensive Plan is described in greater detail below; and (Ex. 2, p. 14.)

(i) Public Benefits of the Project: Subsections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. This PUD project will include many, if not all, of the attributes of PUD projects that have been recently approved by the Commission, including:

- Exemplary/superior architecture;
- Creation of large open and green spaces;
- Housing and affordable housing;
- Significant public infrastructure improvements; and
- Neighborhood retail.

Comprehensive Plan

53. In regard to the FLUM designation for the Subject Property, the Applicant provided its analysis that the proposed C-2-A Zone District and its location on a portion of the Subject Property that is only included in the moderate-density residential land use classification on the FLUM is consistent with the Comprehensive Plan. The Applicant noted that the FLUM is not a zoning map and it is not parcel specific. The mixed-use FLUM designation follows the existing land uses on the site, the mixed-use moderate-density commercial/moderate-density residential land use designation is located on the portion of the site that currently includes the strip shopping center, with the boundary of the mixed-use designation being the one block of 14th Street to the rear of that shopping center. The proposed urban design and site planning of the project removes the one block of 14th Street right-of-way to create a completely new and safer site plan which allows for 15th Street to extend all the way to Rhode Island Avenue, thereby enhancing the pedestrian and vehicular traffic flow through the Subject Property. The ability to extend commercial uses along the frontage of the proposed community green and along the northern side of Saratoga Avenue are significant benefits of the project, and will encourage a walkable neighborhood community. (Ex. 75, p. 3.)

54. In regard to the Generalized Policy Map's designation of the majority of the Subject Property in the Neighborhood Conservation Area. The definition of the Neighborhood Conservation Area states, in part:

> Neighborhood Conservation Areas have very little vacant or underutilized land. They are primarily residential in character. Maintenance of existing land uses and community character is anticipated over the next 20 years. Where change occurs, it will be modest in scale and will consist primarily of scattered site infill housing, public facilities, and institutional land uses. Major changes in density over current (2005) conditions are not expected but some new development and reuse opportunities are anticipated.

The existing Brookland Manor is in fact underutilized and more importantly of an era of urban design that has been shown to create unsafe environments for its residents. Numerous Brookland Manor residents and members of the community have submitted letters into the record which note that the existing land uses and community character should not be maintained, and that the planning process for the new Brentwood Village needs to occur with a sense of urgency. (Ex. 75, p. 3.)

55. The Applicant noted that the PUD is consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities.

Managing Growth and Change

The guiding principles of this element are focused on ensuring that the benefits and opportunities of living in the District are equally available to everyone in the city. The PUD is fully consistent with a number of the goals set forth in this element. Specifically, the PUD will help to attract a diverse population with the inclusion of a mix of housing types for households of different incomes. The proposed PUD project will create not only a significantly new amount of residential development, but also will improve and expand the current retail uses on the Subject Property. Such growth is consistent with the Comprehensive Plan's acknowledgement that both residential and non-residential growth are critical for the District, particularly since non-residential growth benefits residents with job opportunities where less affluent households may increase their income. This project will better connect the new Brentwood Village residents with the rest of the Brentwood neighborhood through a reconfigured street system, the enhanced pedestrian connections and the creation of the community green. The urban design of this project encourages greater connection between the new Brentwood Village residents and the Rhode Island Avenue commercial corridor, the Rhode Island Avenue Metro Station, and schools and services and in the surrounding neighborhood. (Ex. 2, pp. 27-28.)

Creating Successful Neighborhoods

The guiding principles for creating successful neighborhoods include both improving the residential character of neighborhoods and encouraging commercial uses that contribute to the neighborhood's character and make communities more livable. In addition, the production of new affordable housing is essential to the success of neighborhoods. Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. The PUD furthers each of these guiding principles with the construction of market-rate and affordable housing and retail uses that will create additional housing, retail and employment opportunities. As discussed above, the Applicant has already begun a dialogue process with the residents and leadership of

Brookland Manor, the Brentwood Citizens Association, and will be working with Advisory Neighborhood Commission 5C. (Ex. 2, pp. 28-29.)

Increasing Access to Education and Employment

Increasing Access to Education and Employment element includes a number of policy goals focused on increasing economic activity in the District, including increasing access to jobs by District residents; encouraging a broad spectrum of private and public growth (§ 219.2); supporting land development policies that create job opportunities for District residents with varied job skills; and increasing the amount of shopping and services for many District neighborhoods. The PUD is fully consistent with these goals since the significant amount of retail uses included in the project will likely attract new jobs to the District and the Brentwood neighborhood. Also, the increase in the number of rental buildings will bring additional employment in the management, leasing, and maintenance functions. (Ex. 2, p. 29.)

Connecting the City

The PUD will help to implement a number of the guiding principles of this element. As shown on the Plans, the PUD will include streetscape improvements to provide improved mobility and circulation through the Subject Property, as well as the overall neighborhood. In addition, the access points for the required parking and loading facilities will be designed to appropriately balance the needs of pedestrians, bicyclists, transit users, autos and delivery trucks as well as the needs of residents and others to move around and through the city. Moreover, the PUD and streetscape improvements will also help to reinforce and improve this portion of the city. (Ex. 2, pp. 29-30.)

Building Green and Healthy Communities

The proposed development is fully consistent with the guiding principles of the building green and healthy communities element since the project's proposed landscaping plan will help to increase the District's tree cover, and the proposed development will minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. The community green will include some form of urban farming and/or an orchard in addition to open, green space. The proposed improved street grid will also help to facilitate pedestrian and bicycle travel. (Ex. 2, p. 30.)

56. The Applicant noted that the Comprehensive Plan's Housing Element includes the following policies that are supported by this project:

> Policy H-1.1 - Expanding Housing Supply: Expanding the housing supply is a key part of the District's vision to create successful neighborhoods. Along with

> improved transportation and shopping, better neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city's fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs.

> Policy H-1.1.3 - Balanced Growth: Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low-and moderate-density single family homes as well as the need for higher-density housing.

The Applicant noted that the new Brentwood Village has been thoughtfully designed to meet the needs of the existing Brookland Manor residents, existing residents of the Brentwood community, and the future residents of this community. The new Brentwood Village will contain approximately 2,200 new residential units devoted to a variety of housing types. The provision of new housing at this particular location, located in close proximity to the Rhode Island Avenue Metro Station and the Rhode Island Avenue Main Street Corridor is fully consistent with the District's policies for expanding the housing supply and balancing growth. (Ex. 2, p. 35.)

> Policy H-1.1.4 - Mixed Use Development: Promote mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations.

The PUD is consistent with the goals of promoting mixed-use development, including housing on property that will be zoned C-2-A. The Project enhances the character of Rhode Island Avenue, N.E. as recommended by the Generalized Policy Map's inclusion of the Subject Property in a Main Street Mixed-Use Corridor.

> Policy H-1.2.3 - Mixed Income Housing: Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing.

The PUD will transform the existing Brookland Manor apartment complex into an attractive and vibrant mixed-income community. The Applicant is creating a community that provides housing opportunities for existing Brookland Manor residents and new residents in a setting with walkable and safe streets and significantly enhanced retail

opportunities. The PUD project includes a range of housing options for people of differing incomes.

> Policy H-1.3.2 - Tenure Diversity: Encourage the production of both renter-occupied and owner-occupied housing.

> Policy H-2.1.3 - Avoiding Displacement: Maintain programs to minimize displacement resulting from the conversion or renovation of affordable rental housing to more costly forms of housing. Rental housing comprises almost 60 percent of the housing stock and is the main housing option for those just entering the workforce and those without the initial resources to purchase a home. These programs should include financial, technical, and counseling assistance to lower income households and the strengthening of the rights of existing tenants to purchase rental units if they are being converted to ownership units.

Consistent with these policies, the PUD project will provide for a range of housing types, including senior housing on Block 7. Furthermore, the PUD will include the production of both renter-occupied and owner-occupied housing. The Applicant created effective and comprehensive tenant relocation and construction phasing plans to minimize adverse impacts on the existing residents and which provided all residents in good standing the opportunity to return to the new Brentwood Village. (Ex. 2, 35-37.)

57. The Applicant noted that the Comprehensive Plan's Urban Design Element includes the following policies which are furthered by the PUD project:

> Policy UD-1.4.1 - Avenues/Boulevards and Urban Form: Use Washington's major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city;

> Policy UD-1.4.4 - Multi-Modal Avenue/Boulevard Design (bikes/walkways): Discourage the use of the city's major avenues and boulevards as "auto-only" roadways. Instead, encourage their use as multi-modal corridors, supporting transit bus lanes, bicycle lanes, and wide sidewalks, as well as conventional vehicle lanes;

> Policy UD-3.1.1 - Improving Streetscape Design: Improve the appearance and identity of the District's streets through the design of street lights, paved surfaces, landscaped areas, bus shelters, street "furniture", and adjacent building facades;

> Policy UD-3.1.8 - Neighborhood Public Space: Provide urban squares, public plazas, and similar areas that stimulate vibrant pedestrian street life and provide a

focus for community activities. Encourage the "activation" of such spaces through the design of adjacent structures; for example, through the location of shop entrances, window displays, awnings, and outdoor dining areas; and

Policy UD-3.2.4 Security Through Streetscape Design: Develop and apply attractive, context-sensitive security measures in the design of streets, plazas, and public spaces. These measures should use an appropriate mix of bollards, planters, landscaped walls, vegetation, and street furniture rather than barriers and other approaches that detract from aesthetic quality.

The PUD project has been very carefully planned to address the failed elements of the current urban design of the Brentwood Village Shopping Center and Brookland Manor. The PUD project significantly improves the streetscape environment along Rhode Island Avenue with the removal of the street level parking lot of the Brentwood Village Shopping Center and the introduction of mixed-use buildings along Rhode Island Avenue, N.E. with significant ground floor retail uses. All of the development blocks have been created with the goal of creating ample sidewalks that will allow for appropriately sized planting strips, pedestrian travel paths, and sidewalk cafes (in the commercially zoned portions of the Subject Property). The establishment of the community green and the pedestrian walk will foster enhanced pedestrian activity in a safe and inviting environment. (Ex. 2, pp. 32-33.)

58. The Applicant noted that the Comprehensive Plan's Land Use Element includes the following policies which are furthered by the PUD project:

Policy LU-1.2.2 - Mix of Uses on Large Sites: Ensure that the mix of new uses on large redeveloped sites is compatible with adjacent uses and provides benefits to surrounding neighborhoods and to the city as a whole. The particular mix of uses on any given site should be generally indicated on the Comprehensive Plan Future Land Use Map and more fully described in the Comprehensive Plan Area Elements. Zoning on such sites should be compatible with adjacent uses; and

Policy LU-1.2.6 - New Neighborhoods and the Urban Fabric: On those large sites that are redeveloped as new neighborhoods (such as Reservation 13), integrate new development into the fabric of the city to the greatest extent feasible. Incorporate extensions of the city street grid, public access and circulation improvements, new public open spaces, and building intensities and massing that complement adjacent developed areas. Such sites should not be developed as self-contained communities, isolated or gated from their surroundings.

The PUD, which includes a significant amount of residential and retail use on a large site, 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. The new neighborhood created

by this PUD project has been designed to seamlessly connect with the surrounding Brentwood neighborhood through the proposed street closure and new street alignment. The new street grid, the creation of the community green, and the introduction of the pedestrian walk are attributes of the PUD project that help fully integrate this project into the fabric of the surrounding Brentwood neighborhood in a manner that does not currently exist. (Ex. 2, pp. 30-31.)

> Policy LU-1.4.1 - Infill Development: Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create "gaps" in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the development pattern.

The PUD project will replace the existing Brentwood Village Shopping Center with a pedestrian-oriented, family friendly village ambiance directly abutting Rhode Island Avenue, N.E. This project will encourage sidewalk use and inter-neighborhood activity, and outdoor seating and cafes are envisioned to enhance well-defined spaces that cater to pedestrian use. The stepping down of the massing and heights of the buildings from Rhode Island Avenue, N.E. to Downing and Bryant Streets, N.E. complements the character of the surrounding residential uses. (Ex. 2, p. 31.)

> Policy LU-2.1.3 - Conserving, Enhancing, and Revitalizing Neighborhoods: Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to "create successful neighborhoods" in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others.

The PUD project is consistent with this policy, and the Applicant has sought to balance the housing supply in the area and expand neighborhood commerce with the parallel goals of protecting the neighborhood character, and restoring the environment. (Ex 2, p. 32.)

> Policy LU-2.2.4 - Neighborhood Beautification: Encourage projects which improve the visual quality of the District's neighborhoods, including landscaping and tree planting, façade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements.

The PUD has been thoughtfully planned with various beautification elements, including a carefully planned pedestrian realm with ground floor retail, open spaces (including a community green and pedestrian walk), and well-defined building edges providing

appropriate surveillance of public spaces and "eyes on the street". Throughout the project, new street trees and extensive plantings will be installed, as well as significant upgrades to the surrounding sidewalks and new streets. (Ex. 2, p. 32.)

59. The Applicant noted that the Comprehensive Plan's Transportation Element includes the following policies which are furthered by the PUD project:

> Policy T-1.2.3 - Discouraging Auto-Oriented Uses: Discourage certain uses, like "drive-through" businesses or stores with large surface parking lots, along key boulevards and pedestrian streets, and minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break-up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas.

The PUD project has been thoughtfully planned to discourage automobile use. The Brentwood Village Shopping Center's surface parking lot will be removed and will be replaced with new retail uses that will convey an outdoor village feel. Pedestrian pathways and well-defined community spaces with aesthetics like outdoor sculptures, lighting, and landscaping will encourage walking and bicycle use. (Ex. 2, p. 34.)

> Policy T-2.4.1 - Pedestrian Network: Develop, maintain, and improve pedestrian facilities. Improve the city's sidewalk system to form a network that links residents across the city.

The PUD will further this policy through constructing new sidewalks throughout the project and upgrading existing sidewalks, and the creation of the pedestrian walk to ensure a safe pedestrian network within and around the Subject Property. (Ex. 2, p. 34.)

60. The Applicant noted that the Comprehensive Plan's Environment Element includes the following policies which are furthered by the PUD project:

> Policy E-1.1.1 - Street Tree Planting and Maintenance: Plant and maintain street trees in all parts of the city, particularly in areas where existing tree cover has been reduced over the last 30 years. Recognize the importance of trees in providing shade, reducing energy costs, improving air and water quality, providing urban habitat, absorbing noise, and creating economic and aesthetic value in the District's neighborhoods.

The PUD will result in the planting and enhanced maintenance of street trees throughout the Subject Property. (Ex. 2, p. 37.)

> Policy E-1.1.3 - Landscaping: Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity.

The PUD encourages the use of landscaping to beautify the community and surrounding neighborhoods, especially with the community green and pedestrian pathways. Additionally, this landscaping will create a multiplier effect by enhancing existing public streets and businesses that have not yet been aesthetically improved. (Ex 2, pp. 37-38.)

> Policy E-2.2.1- Energy Efficiency: Promote the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses. The overarching objective should be to achieve reductions in per capita energy consumption by DC residents and employees.

The PUD promotes the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses through mixed-use development, the creation of safe and attractive spaces for pedestrians, and shared parking strategies to reduce unnecessary construction of parking facilities. (Ex. 2, p. 38.)

> Policy E.3.1.2 - Using Landscaping and Green Roofs to Reduce Runoff: Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new constructive and adaptive reuse, and the application of tree and landscaping standards for parking lots and other larger paved surfaces.

The PUD promotes and plans multiple areas of tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction. The PUD project will be able to achieve a LEED-ND Silver certification, without knowing the level of sustainability performance for any of the individual buildings. In the public open spaces the PUD project will include sustainable design techniques such as LID/Stormwater areas and rain gardens where possible. (Ex. 2, p. 38.)

> Policy E-3.1.3 - Green Engineering: Promote green engineering practices for water and wastewater systems. These practices include design techniques, operational methods, and technology to reduce environmental change and the toxicity of waste generated.

The PUD will promote green engineering practices for water and wastewater systems. The PUD will include street tree planting and maintenance, landscaping, energy efficiency, methods to reduce stormwater runoff, and green engineering practices, and is therefore fully consistent with the Environmental Protection Element. (Ex 2, p. 39.)

61. The Applicant noted that the Comprehensive Plan's Economic Development Element includes the following policies which are furthered by the PUD project:

> Policy 2.2.1- Expanding the Retail Sector: Pursue a retail strategy that will allow the District to fully capitalize on the spending power of residents, workers, and visitors, and that will meet the retail needs of the underserved area.

The PUD project is consistent with this policy in expanding opportunities for more storefronts and retail in replacing the existing commercial strip center with high quality retail uses. In total, the PUD project will include approximately 181,000 square feet of retail use. Additionally, a full service grocery store is planned for Block 2. (Ex. 2, p. 39.)

> Policy ED-2.2.3 - Neighborhood Shopping: Create additional shopping opportunities in Washington's neighborhood commercial districts to better meet the demand for basic goods and services. Reuse of vacant buildings in these districts should be encouraged, along with appropriately-scaled retail infill development on vacant and underutilized sites. Promote the creation of locally-owned, non-chain establishments because of their role in creating unique shopping experiences.

The new Brentwood Village will create additional shopping opportunities in the various mixed-use buildings, providing ground floor retail uses for building residents and the surrounding community. Furthermore, the PUD is consistent with this policy because it will replace the underutilized retail in the existing Brentwood Village Shopping Center with more community-oriented, and possibly locally-owned commercial establishments. (Ex. 2, pp. 39-40.)

> Policy ED-2.2.5 - Business Mix: Reinforce existing and encourage new retail districts by attracting a mix of nationally-recognized chains as well as locally-based chains and smaller specialty stores to the city's shopping districts.

The Applicant intends to market the proposed retail areas to a mix of nationally recognized retailers as well as locally based retailers and smaller specialty stores, which will help to reinforce existing and encourage new retail districts in the immediate neighborhood and help to improve the mix of goods and services available to residents. (Ex. 2, p. 40.)

> Policy ED-2.2.6 - Grocery Stores and Supermarkets: Promote the development of new grocery stores and supermarkets, particularly in neighborhoods where residents currently travel long distances for food and other shopping services. Because such uses inherently require greater depth and lot area than is present in

> many commercial districts, adjustments to current zoning standards to accommodate these uses should be considered.

The PUD project furthers this policy by including a grocery store on Block 2 to promote grocery stores and supermarkets in the community and greater neighborhood. Rezoning the entirety of Blocks 2 and 3 to the C-2-A Zone District is necessary to help make the added costs of a grocery store, such as a large enclosed loading area, economically feasible. (Ex. 2, p. 40.)

62. The Applicant noted that the Comprehensive Plan's Upper Northeast Area Element includes the following policies which are furthered by the PUD project:

> Policy UNE-1.1.2 - Compatible Infill: Encourage compatible residential infill development throughout Upper Northeast neighborhoods, especially in Brentwood, Ivy City, and Trinidad, where numerous scattered vacant residentially-zoned properties exist. Such development should be consistent with the designations on the Future Land Use Map. New and rehabilitated housing in these areas should meet the needs of a diverse community that includes renters and owners; seniors, young adults, and families; and persons of low and very low income as well as those of moderate and higher incomes.

The PUD project is entirely consistent with this specific policy. Given the large size of the Subject Property, development on the proposed eight blocks has been carefully planned to be compatible with the immediate surroundings. Higher density and greater building heights are proposed along Rhode Island Avenue, N.E. and Montana Avenue, N.E., while the building heights and massing are reduced as the development moves closer to the lower-density residential uses located along Brentwood Road, N.E., Bryant Street, N.E., and Downing Street, N.E. The PUD project will provide for a range of housing types, including senior housing on Block 7, for a mix of incomes in renter-occupied and owner-occupied housing. In this PUD project, 22% of the total number of residential units will be reserved as affordable units. Affordable units will be provided in each and every Block of the proposed PUD project. (Ex. 2, p. 41.)

> Policy UNE-1.1.4 - Reinvestment in Assisted Housing: Continue to reinvest in Upper Northeast's publicly-assisted housing stock. As public housing complexes are modernized or reconstructed, actions should be taken to minimize displacement and to create homeownership opportunities for current residents.

The existing buildings which make up Brookland Manor are approximately 75 years old and are in need of significant reinvestment. The Applicant is fully committed to minimizing the displacement of any Brookland Manor residents and will continue to work with representatives of the Brookland Manor Leadership Council in creating an effective Tenant Relocation Plan. (Ex. 2, p. 41.)

> Policy UNE-1.1.6 - Neighborhood Shopping: Improve neighborhood shopping areas throughout Upper Northeast. Continue to enhance 12th Street N.E. in Brookland as a walkable neighborhood shopping street and encourage similar pedestrian-oriented retail development along Rhode Island Avenue, Bladensburg Road, South Dakota Avenue, West Virginia Avenue, Florida Avenue, and Benning Road. New pedestrian-oriented retail activity also should be encouraged around the area's Metro stations.

The proposed introduction of mixed-use buildings on Rhode Island Avenue, N.E. and Montana Avenue, N.E. will not only provide new and enhanced retail opportunities at the ground level, but will also create additional demand for these retail uses from the residents of these buildings. The PUD project will remove a more car-oriented strip commercial shopping center with retail uses that are not very neighborhood friendly, with uses that will cater to both the immediate neighborhood and the surrounding community. (Ex. 2, p. 42.)

> Policy UNE-1.2.1 - Streetscape Improvements: Improve the visual quality of streets in Upper Northeast, especially along North Capitol Street, Rhode Island Avenue, Bladensburg Road, Eastern Avenue, Michigan Avenue, Maryland Avenue, Florida Avenue, and Benning Road. Landscaping, street tree planting, street lighting, and other improvements should make these streets more attractive community gateways.

The general character of the Avenue is not expected to change significantly over the next 20 years, but there are opportunities for moderate density infill development in several locations. Filling in "gaps" in the street wall would be desirable in the commercial areas, creating a more pedestrian-friendly environment. While most of the street is zoned for commercial uses, development that includes ground floor retail uses and upper story housing would be desirable. The surrounding area is under-served by retail uses and would benefit from new restaurants, local-serving stores, and other services. (Ex. 2, p. 41.)

> Policy UNE-2.5.4 - Rhode Island Avenue Corridor: Strengthen the Rhode Island Avenue corridor from 13th to 24th Street N.E. as a pedestrian-oriented mixed use district that better meets the needs of residents in the Brentwood, Brookland, Woodridge, and Langdon neighborhoods. Infill development that combines ground floor retail and upper-story office and/or housing should be encouraged.

The PUD project satisfies all of these goals for streetscape improvements along the Rhode Island Avenue, N.E. and Montana Avenue, N.E. corridor. The proposed mixed-use buildings along Rhode Island and Montana Avenues, N.E. and the adjacent public realm improvements, will help make this stretch of Rhode Island Avenue, N.E. and

Montana Avenue, N.E. an attractive gateway to the Brentwood neighborhood. The proposed mix of uses (ground floor retail and varying housing types) and the introduction of open spaces (the community green and the pedestrian walk) will create a vibrant addition to the Brentwood neighborhood. (Ex. 2, pp. 42-43.)

Government Agency Reports

63. OP submitted three reports in this case, a Setdown Report dated November 14, 2014, a Hearing Report dated March 13, 2015, and a Supplemental Report dated April 27, 2015. In the April 27, 2015 Supplemental Report, OP stated that it "was supportive of the redevelopment of the Brookland Manor Apartments and Brentwood Village Shopping Center to provide a revitalized community with a mix of housing and unit types and better retail uses to serve the residents and the surrounding community, while replacing existing affordable housing on the site. The development would also incorporate more useable open spaces and provide better security for the residents and surrounding community." The OP Supplemental Report noted that the Applicant revised the submission and proposes a first-stage PUD and a PUD-related map amendment from the R-5-A and C-2-A Zone Districts to the R-5-B and C-2-A Zone Districts; and consequentially OP concluded that the proposed zones are consistent with the mixed-use moderate-density residential and moderate-density commercial on the north and northeast portion of the site and moderate-density residential on the remainder of the site. OP therefore recommended approval of the requested first-stage PUD and PUD related map amendment from the R-5-A and C-2-A Zone Districts to the R-5-B and C-2-A Zone Districts. (Ex. 79, p. 1.)

64. The OP Supplemental Report also addressed the project's consistency with the Comprehensive Plan. The OP Supplemental Report noted that the FLUM identifies the majority of the site for moderate density residential, and identifies the area of the Brentwood Shopping Center (corner of Montana and Rhode Island Avenue) for mixed-use moderate-density commercial and moderate-density residential. The Generalized Policy Map ("GPM") designates the area as a Neighborhood Conservation Area and along a Main Street Mixed-Use Corridor. In regard to the project's consistency with the FLUM and the GPM, OP concluded:

> The proposed C-2-A/PUD zoning has a density and height that is considered to be moderate density. The proposed C-2-A mixed-use buildings within the PUD extend commercial uses into the residential designated areas, but the Comprehensive Plan maps are generalized and show general patterns of development appropriate for an area, not for individual property boundaries. In this case, the FLUM and GPM designations are reflective of the existing development, and the applicant has demonstrated that the buildings and the infrastructure are old and not optimally functional.

The proposed R-5-B/PUD on the remainder of the site which would be developed with a mixture of apartments, rowhouses and two-over-two units would not be inconsistent with the moderate-density residential recommendation.

There is no specific land use supplemental guidance for this site, but the PUD would further many of the Comprehensive Plan goals for revitalizing neighborhoods, improving housing quality and transit-oriented development. The scale of development allows for the retention of the Section 8 Housing as part of the development. In addition, the circulation through the site is cumbersome and unsafe because of its many blind spots, dead ends, and unused open spaces. To overcome these issues, the Applicant proposes buildings with floor plates that accommodate a new circulation pattern that connects to the adjacent neighborhood, provides through streets and alleys, allows for eyes on the street, and centralizes open spaces.

OP is also supportive of the redevelopment of the site at a higher density. This would require amendments to the Comprehensive Plan, a process that would include a policy level public discussion regarding the appropriate vision and density for this site. As noted in the OP Report of March 13, 2015, OP is willing to work with the Applicant through the City-wide planning division of OP and the neighborhood on amendments to the Comprehensive Plan to accommodate their original proposal. If the Comprehensive Plan is amended to anticipate higher densities on this site, a modification to the PUD could be requested to reflect the new designations and densities. (Ex. 79, pp. 1–3.)

65. OP's Setdown Report addressed the application's consistency with the Land Use, Transportation, Housing, Environment, Economic Development, Urban Design, and Upper Northeast Area Elements and satisfaction of the PUD standards. (Ex. 10, pp. 12-18.)

66. OP's Supplemental Report provided the following analysis of the outstanding issues from the Setdown and Hearing reports:

Detail of the phasing plan, including approximate scheduling and development priorities and justification for a three year-time period for the Stage 1 approval.

The Applicant submitted a phasing plan that incorporates the retention of the current residents on the site during construction and being moved into new units after construction. (Ex. 75A.) The development would be constructed over three phases (Phase 1, 2A, 2B, and 3) with 200 housing units for seniors in Phase 1 to minimize the number of moves for those residents. The Applicant states that off-site relocation is not anticipated, but has indicated that if it is unavoidable they are

committed to being responsible for the cost associated with the relocation and the cost to return after construction.

As part of each second-stage submission, the Applicant should provide additional information on phasing, which should include the approximate scheduling and development priorities at that time.

One-to-one replacement of deep subsidies.

The proposal would have a total of 1,760 units and would retain the existing 373 Section 8 units. The Applicant projects that at the beginning of construction there will be 424 occupied units which would be considered the replacement units. The replacement units would consist of 373 Section 8 apartment units and 51 “market rate units” with rents paid using the DC Housing Voucher Program. OP recommends that additional units be provided to accommodate residents with DC Housing Vouchers as well as additional IZ units which would equate to, or be more in line with the 535 units that are within the current buildings. In addition, the Applicant should provide information regarding affordability deeper than 50% AMI should the development not retain the Section 8 subsidy.

Options for funding if federal funds are not renewed.

The Applicant states that if the commitment of HUD to retain the Section 8 contracts does not materialize, the option would be to reserve at least 20% of the proposed 1,760 units for affordable households at Inclusionary standards as follows:

- 165 units (10%) at up to 80% of AMI;
- 164 units (10%) at up to 50% of AMI; and
- 11 for sale townhomes (10% of 114) for families at up to 80% of AMI.

This option does not include the replacement of any of the affordable housing that is currently on the site. OP is not supportive of any proposal that would lessen the level of affordability that currently exists.

Provide a Table showing Existing and Proposed Unit Size by bedroom.

The Applicant provided a table showing the existing bedroom sizes and square footages for each unit type. However, a similar table was not provided for the proposed development within each phase. The Applicant states that the unit sizes are not available at this time but would be provided at each Stage 2 review as the buildings are designed in detail. (Ex. 75A.)

Size of units, number of bedrooms, and AMI.

The current development contains four and five bedroom units but the proposal has not committed to providing any four or five bedroom units. The Applicant states that a study was recently conducted, and using the HUD guidelines of two persons per bedroom, there are 13 existing households which would require four bedrooms and no household would require five bedrooms. The building with the larger units would remain on the site until the later phases at which time they can be "right sized" to accommodate the larger families. The Applicant provided a table to demonstrate existing household size. The proposed unit sizes, number of bedrooms of each and the corresponding AMI level would be provided at each Stage 2 development.

Clarify the number of Inclusionary Zoning units required and proposed.

The Applicant proposes 424 apartment units, of which 373 units would be replacement units under the Section 8 Program and 11 rowhouses would be IZ units, six at up to 50%, of AMI and five at up to 80% of AMI. The Applicant should provide a breakdown of the gross floor area of the IZ units and their bedroom sizes.

Provide reason behind not having active play fields or playgrounds within the development.

At Exhibit 15B, is a map showing the locations of recreation centers and park/fields in the neighborhood, most within a 10 minute walk from the property and are sufficient to serve the residents. However, in a recent study, conducted by OP and Department of Parks and Recreation these facilities were found to have inadequate services. The Applicant has stated that the influx of residents to Brookland Manor would have a positive impact and lead to improvements at these facilities, but has not committed to making these improvements or indicated who would. OP maintains that the Applicant should provide an analysis of existing facilities in the neighborhood and demonstrate that these would adequately serve the new residents.

67. The Commission has included conditions in this Order requiring the Applicant to provide the additional information requested by OP regarding phasing, proposed unit sizes, number of bedrooms, and corresponding AMI level in the appropriate second-stage applications. The Commission has addressed OP's concerns regarding the one-to-one replacement of deep subsidies in paragraphs 97 and 98 below. The Applicant amended its commitment if the Section 8 contracts did not materialize and/or continue from the commitment stated in OP's report to the commitment listed in the chart above in paragraph 52(a). The Commission believes that this amended proffer is sufficient for the reasons stated in paragraphs 97 and 98 below.

68. DDOT submitted its report to the Commission on March 6, 2015. The purpose of DDOT's first-stage review is to provide an overview of the potential safety and capacity impacts of the proposed action on the District's transportation network and, as necessary, propose additional mitigations that are commensurate with the action. The transportation analysis for the first-stage PUD process generally identifies potential impacts to the transportation network related to the land uses and density of the Site. Due to the size of this project, the details of vehicle parking access have not yet been fully defined, but will be more fully defined through second-stage submissions. One of the most critical elements of DDOT's review of project traffic on a project like this is of vehicular parking levels and access points. As such, DDOT will expect a full evaluation of transportation facilities as part of the second-stage process, and as necessary an updated suite of proposed mitigations. (Ex. 34, pp. 1-2.)

69. The DDOT report noted that after an extensive, multi-administration review of the case materials submitted by the Applicant, DDOT finds:

Site Design

- A robust network of public and private streets is proposed, with an added link connecting 15th Street N.E. to Rhode Island Avenue;

  The new street network has the potential to disperse site traffic in a way that minimizes the action's impact on the external road network and improves connectivity to the adjacent neighborhoods;

- Sufficient bicycle and pedestrian connections are proposed through the site;

- Loading for the retail and multi-family residential is generally proposed to occur from existing or proposed public and/or private alleys, which is consistent with DDOT standards and approach;

- The proposed ROW layout for the Site as shown in the March 3, 2015 submittal is consistent with DDOT standards; and

- As design level details for vehicle access are defined in Stage 2, additional traffic analysis will be required.

Travel Assumptions

- The action is expected to generate a significant number of new vehicle, transit, bicycle, and pedestrian trips; and

- The number of vehicle trips generated by the site is reasonable; but

- The amount of vehicle parking for the residential units is somewhat high relative to other recent projects.

Analysis

- The Applicant utilized sound methodology to perform the analysis;
- The action is expected to minimally increase travel delay in most locations and significantly impact operations for at least five intersections, as outlined in the body of this report;
- The Applicant expects site generated transit trips can be served with existing transit service. However, adjacent bus service has not been shown to have the necessary capacity, and Metrorail's service requires a relatively long walk from portions of the development or transferring modes; and
- The additional bicycle demand will necessitate on-street bicycle facilities along with bikeshare service and facilities. (Ex. 34, p. 2.)

70. DDOT noted that the Applicant has proposed the following mitigations which DDOT finds appropriate:

- Committed to build all public streets to DDOT ROW and design standards;
- Appropriately mitigated traffic impacts at Montana Avenue and Saratoga Avenue by committing to signalization of the intersection;
- Committed to creation of a modified intersection at 15th Street and Rhode Island Avenue and Brentwood Road. A new signal is also anticipated for this location;
- Committed to adjusting the geometries of various intersections and turn movements to mitigate potential impacts. These adjustments should be further developed during the second-stage processes. As needed, additional changes may be requested;
- Potential impacts to bicycle travel are mitigated by the addition of:
  - Two Capital Bikeshare stations; and
  - Multimodal street design of Saratoga Avenue to include bicycle facilities; and
- Offer a good general TDM plan that should be refined and augmented during subsequent second-stage submissions.

As the project proceeds into second-stage applications, the following or similar potential mitigations may also be necessary:

- Additional traffic and safety impact mitigations for impacted intersections not addressed previously. Including at:
    - Montana Avenue & 18th Street/W Street; and
    - Rhode Island Avenue & Montana Avenue/14th Street;

- Additional analysis to verify existing transit service has capacity to accommodate future demand, and identify new demands that may warrant transit adjustments;

- Details on long-term and short-term bicycle parking facilities and for pedestrian and bicycle facilities are expected in second-stage process;

- Improve pedestrian connections to major nearby offsite destinations;

- Commit to inclusion of non-auto incentives for Capital Bikeshare membership and carshare membership to all residential tenants and commercial employees;

- Adjustments to improve connectivity and safety, such as updated geometry and operations for Brentwood Road north of the site and coordination with the Fire Department to potentially add an alley at the rear of their property and/or relocate their driveway; and

- Fund a transit study examining the proposed extension of a Rhode Island bus to downtown (as found in Appendix 4 of the Final Recommendations of *The Metrobus Rhode Island Avenue-Baltimore Avenue Line Study* by WMATA, 2014) [Estimated cost: up to $100,000].

71. The phasing of these improvements or additional analysis will be finalized during the second-stage process. Added detail for the above mitigations or additional mitigations may be necessary upon an updated scoping and analysis as part of the second-stage PUD process.

Continued Coordination

Given the complexity and size of the action, the Applicant is expected to continue to work with DDOT on the following matters:

Project Process

- For each subsequent second-stage PUD submission, DDOT expects the Applicant to update its CTR for the specific second-stage action while also presenting updated analysis for the entire PUD. It is expected that each submission will present findings in terms of the entire PUD, which may include elements already completed;

- Street closure and rededication will require coordination with DDOT and Council action;

- Coordination is expected to determine curbside management, to include at least metered parking, building entrance zones, potential Residential Permit Parking blocks, loading zone restrictions, etc.; and

- Coordination is expected to locate a relocated bus stop site on Rhode Island Avenue and any other transit adjustments.

Design Elements

- All roadway infrastructure should be designed according to DDOT standards;

- Site design refinements should be coordinated with DDOT such that:
  - Vehicle access minimizes potential impacts to the roadway network;
  - Utility vaults are located in private space; and
  - Loading vehicle movements are accommodated on private space;

- In particular, DDOT will want to analyze the design and operations of new proposed intersections on Brentwood Road, N.E. and Montana Avenue, N.E.;

- Further design development is expected for the proposed operational and geometric changes intended to mitigate impacts;

- Public space, including curb and gutter, street trees and landscaping, street lights, sidewalks, and other features within the public rights-of-way, are expected to be designed and built to DDOT standards;

- Careful attention should be paid to pedestrian and bicycle connections through and along the Site's perimeter and adjacent infrastructure;

- Locations for Capital Bikeshare stations;

- Signal implementation and modification will be coordinated as part of the second-stage PUDs to optimize performance of the road network while providing ample pedestrian crossing time; and

- TDM plans for each building. (Ex. 34, pp. 3-4.)

72. The District's Department of Energy and Environment ("DOEE") filed a report dated March 2, 2015. The report noted that DOEE representatives met with the Applicant's development team to review the development plan and offer suggestions. The DDOE report noted that "Given the project will be built out over the next 10-15 years, and that many of the regulatory standards will be updated in that time, we recommend that the

project set high standards and goals for the project that design for the future." The DOEE report recommended that all parcels in the master plan be designed to meet or exceed the quality and environmental standards set out in the Anacostia Waterfront Development Zone (AWDZ). The DOEE report also recommended that all buildings in the second-stage PUD applications meet the LEED-Gold requirements and that the full development project satisfy the stormwater management requirements of the AWDZ. (Ex. 30.)

73. The Metropolitan Police Department ("MPD") provided a report to OP regarding the project. The MPD report requested that DDOT should "be consulted regarding the impact and plan for the anticipated increased traffic in the area". DDOT has submitted its report in this case and the Applicant has agreed with all of the mitigation measures noted in the DDOT report. The MPD report also requested that the Applicant "consider enhanced lighting and security features a priority to ensure increased public safety along the walkways and interior courtyards of the development." The Applicant responded that in the design of all of the second-stage PUD applications, these issues will be addressed. (Ex. 105; Ex. 104, p. 8.)

74. DC Water provided OP with an e-mail regarding the project. DC Water noted that it has reasonable capacity in the water and sewer systems in the vicinity of the development to support the project. DC Water also noted that it is likely that the Applicant can arrange the water and sewer systems on site to provide adequate service on site and connections to the public system. In regard to the proposed closure of a portion of 14th Street, N.E., DC Water stated that while it has facilities in the portion of 14th Street, N.E. to be closed, it expects the Applicant will either relocate these existing facilities to existing rights of way, or will provide appropriate easements. In response to these comments, the Applicant noted that its civil engineering firm met with DC Water representatives to discuss these issues, and that it agreed with DC Water's conclusion that "there are practical options that would be acceptable to DC Water". The Applicant noted that these issues are typically resolved during the Street Closing and Dedication process, which is occurring concurrently with this PUD process. (Ex. 105; Ex. 104, p. 7.)

ANC 5C Report

75. ANC 5C submitted a letter into the record of this case, dated March 12, 2015, which noted ANC 5C's unanimous support for this application, with 18 conditions. ANC Commissioner for 5C05, Commissioner Regina James, presented the report of the ANC and testified in support of the application. Ms. James noted the support that this project has in the community and the Applicant's willingness to listen to the concerns and issues of the community regarding providing housing for seniors. (Ex. 58; 5/11/15 Tr., pp. 64-70.)

76. At the request of the Commission, the Applicant provided its response to each of these conditions. The Applicant noted that these conditions can be generally grouped into six categories: (i) development of the senior citizens building; (ii) tenants' right to return;

(iii) construction management issues; (iv) employment, contracting, and retail issues; (v) sale of the townhouses; and (vi) the renaming of Saratoga Avenue. The Applicant noted that it believes that the specific issues raised in many of these conditions will be appropriately addressed in the second-stage PUD applications. The Applicant responded to the ANC's conditions as follows:

- Development of the Senior Citizens Building (Condition Nos. 1-2) – The Applicant is committed to developing a senior citizens building on the Subject Property as the first project. The Applicant believes that the preponderance of the units will be occupied by existing Brookland Manor residents, who will be able to stay on the Brookland Manor property until the senior citizens building is ready for occupancy. However, to the extent that additional capacity is available, the Applicant is willing to provide existing residents of the Brentwood neighborhood first preference to those remaining units. The design, interior layout, and facilities included in the senior citizens building will be determined in the second-stage PUD review;

- Tenants' Right to Return (Condition No. 3) – The Applicant will allow all qualified Brookland Manor residents, at the time that the redevelopment commences, the ability to return to the new Brentwood Village;

- Construction Management (Condition Nos. 4-9, 17) – The Applicant has submitted into the record of this case a general construction management plan that will guide construction activity. The Applicant fully expects that more refined construction management agreements will be implemented for each specific second-stage PUD application. These specific construction management agreements will address the issues noted by the ANC;

- Employment, Contracting, and Retail Opportunities (Condition Nos. 10-13, 15) – The Applicant has agreed to enter into a First Source Employment Agreement with the Department of Employment Services. The Applicant will also work with small business owners to contract for their services in the development of this project and their ability to open retail stores in the project. In regard to the prohibition of an "ABC Establishment" in any portion of the project, the Applicant will work with the ANC to confirm which types of "ABC" establishments they do not want to see in the project. The Applicant believes that the inclusion of restaurants is an important component of this project, and restaurants will want to obtain an ABRA license. The Applicant also has no ability to determine whether 5th District MPD officers will be able to work part-time in the retail portion of the project. The Applicant requests that the issue of MPD officers working part-time in the retail portions of the project not be included as a condition of the Commission's approval;

- Sale of the Townhouses (Condition Nos. 14-16) – The Applicant agrees to provide all realtor listings for the townhouses to ANC 5C and the Ward 5 Councilmember's Office. The Applicant is proposing that 10% of the townhouses will be reserved as Inclusionary Zoning units, which will be attractive to first-time homeowners and DC employees (including teachers, police officers, and fire fighters); and

- Renaming of Saratoga Avenue, N.E. (Condition No. 18) – The Applicant is fully supportive of any actions that ANC 5C or the Brentwood community decides to take with regard to the renaming of Saratoga Avenue, N.E. and will work with ANC 5C to facilitate the approval of that through appropriate city agencies and processes. (Ex. 75, pp. 8-9.)

77. The Commission finds that these commitments are adequate to address the issues and concerns expressed in ANC 5C's report.

ANC 5B Report

78. ANC 5B submitted a letter in support of the project, with conditions, dated April 24, 2015. The letter attached the ANC's resolution listing its issues and concerns. The first issue was the ANC's belief that the project does not provide sufficient public benefits and amenities, and it suggested that the Applicant should provide additional benefits in the form of a playground, recreation facilities, and/or youth centers to provide youth focused recreational opportunities. The second issue was an opposition to the encroachment of commercial uses into areas away from Rhode Island Avenue that are marked residential on the Future Land Use Map. The third issue was that a development timeline should be required as a part of the Commission's first-stage PUD approval. The fourth issue was that the Applicant should provide a written, well-defined and definitive tenant relocation plan as a condition of a first-stage PUD order. The fifth issue was that the Applicant should be required to guarantee to qualified tenants a right of return to the premises upon completion of the development based on the full number of 525 affordable units in existence today, and that the Applicant should provide an alternative affordable housing proposal in the event that the HUD does not renew its Section 8 contract with Brookland Manor in 2017. The final issue was that the Commission should preserve the maximum amount of affordable housing possible within the development.

79. In response to the first issue, the Commission finds that the project's public benefits are a sufficient trade-off for the requested zoning relief under the circumstances. As described more fully elsewhere in this Order, the Commission believes that the ability to extend commercial uses along the frontage of the proposed community green and along the northern side of Saratoga Avenue are significant benefits of the project, and will encourage a walkable neighborhood community. As to the third issue, this Order includes a condition setting forth what the Commission believes is an appropriate

development timeline. This Order also requires the Applicant to abide by the tenant relocation plan it submitted into the record, and to provide additional information regarding its tenant relocation commitments with its future second-stage PUD applications, and the Commission believes this adequately addresses the ANC's concern. Regarding the fifth issue, the Commission disagrees with the ANC that the Applicant should be required to provide 525 affordable units on the Subject Property because it believes the proffered public benefit of affordable housing, in conjunction with the other public benefits of the project are sufficient to justify approval of this PUD application and the Applicant provided a sufficient alternative in the event the Section 8 program is not renewed. Finally, the Commission believes the affordable housing provided is sufficient to justify approval of the project.

Parties and Persons in Support

80. There were no parties in support of the application.

81. The Ward 5 Councilmember, Kenyan McDuffie, submitted a letter in support of the application. Councilmember McDuffie's letter noted that the Applicant has worked with a diverse coalition of community interests and has struck a responsible balance in ensuring that existing residents are able to participate in the renewed community. Councilmember McDuffie also noted that the redevelopment of this property into a mixed-income, mixed-use community will also create economic opportunity in Ward 5. He concluded that this truly transformative endeavor will bring much needed retail to the Rhode Island Avenue corridor. (Ex. 80.)

82. Dianne Camp, a Brookland Manor resident since 1965, provided written and oral testimony in support of the project. In Ms. Camp's written testimony she stated that she believed that the new Brentwood Village community is exactly the type of mix of incomes, mix of residential types, creation of open spaces, and mix of residential and retail uses that are needed in her community. She noted that the proposed new streets and buildings, with restaurant and retail uses on the ground floors, and central community green will create a safe environment that will allow her and her neighbors to walk freely through our neighborhood. Ms. Camp also thought that the different types of housing (townhouses, a senior citizens building, two-over-two condominium buildings, and apartment buildings) offered to people of varying incomes will allow the new Brentwood Village to be a really inclusive neighborhood that will allow the existing residents of Brookland Manor to stay, and will allow them to have new neighbors who are interested in being a positive force for the future of her neighborhood. (Ex. 44; 5/7/15 Tr., pp. 145-148.)

83. Jose Barrios, ANC 5B04 Commissioner (which is on the north side of Rhode Island Avenue, northwest of Brookland Manor), and Michael Morrison ANC 5B03 Commissioner (which is directly across the street from the development between 13th and 14th Street) testified in support of the project. They noted that the overall project would

benefit the nearby community. Mr. Barrios and Mr. Morrison noted that ANC 5B passed a resolution in support, while indicating some concerns, which are discussed above. (5/7/15 Tr., pp. 131-133, 148-150.)

84. Kyle Todd, on behalf of the Friends of Rhode Island Avenue, Northeast – managing the Rhode Island Main Street program, testified in support of the project. Mr. Todd noted that approval of the first-stage PUD program will create tremendous new opportunities for retail dining and other neighborhood amenities, and will provide opportunities for new jobs, and a much needed boost to the residential density for the entire corridor. Mr. Todd also noted the Applicant's commitment to the community over the last several decades and the efforts that Mr. Meers has undertaken to reach out and work with area residents, surrounding civic associations, and ANCs. (5/7/15 Tr., pp. 133-135.)

85. Maya Chaplin-Glover, a Brookland Manor resident, testified in strong support of the project. She noted that this project would create a mixed-income and mixed-use development project like those seen in the rest of the city. Ms. Chaplin-Glover noted that Brookland Manor has had a concentration of low incomes for too long and if the property was integrated economically with a mix of incomes, there would be more opportunity for its residents. (5/7/15 Tr., pp. 135-137.)

86. John Iskander, a resident of 20th Street, N.E., testified in support of the project. Mr. Iskander noted that he was originally opposed to the project but changed his mind based on the Applicant's reduction in height and massing of the buildings along Rhode Island Avenue, N.E. Mr. Iskander commended the Applicant for listening to, and addressing, his concerns. Mr. Iskander concluded that the transformation of Brookland Manor is very worthwhile and will benefit all of the community. (5/7/15 Tr., pp. 161-164.)

87. Approximately 34 letters in support of the project were filed in the record of the case. These letters were from individual residents, organizations, and churches (Isle of Patmos Baptist Church, Israel Baptist Church). In general, these letters noted the benefits that the project will bring to the community and the need for change from the current activity which occurs in and around Brookland Manor.

Party in Opposition

88. The Residents Association presented written and oral testimony into the record of this case. At the May 11, 2015 public hearing, the Residents' Association presented testimony from Will Merrifield, a staff attorney with the Washington Legal Clinic for the Homeless and the authorized representative of the Residents Association, and residents of Brookland Manor including Minnie Elliott (President of the Brookland Manor/Brentwood Resident Association) and Dr. Edward Ameen (a trained psychologist who works with homeless youth).

89. Mr. Merrifield noted the Residents Association's testimony was meant to highlight their concerns in order to achieve a truly equitable redevelopment that does not result in the loss of one unit of current affordable housing and maintains current bedroom sizes and subsidy levels at the property. The Residents Association noted these issues are relevant to the Commission because the proposed public benefits offered are not offset by the loss of affordable housing the PUD would create. The Residents Association also argued that the proposal is inconsistent with the Comprehensive Plan and that it seeks to demolish and will not replace apartments that are currently occupied by families who live in three-, four-, and five-bedroom units. The Residents Association's argument was that the Applicant should be required to provide 535 units of affordable housing, at the current levels of subsidy, and the current mix of three-, four-, and five-bedroom units in the PUD project. (Ex. 96; 5/11/15 Tr., pp. 6-14.)

90. Minnie Elliott, President of the Brookland Manor/Brentwood Resident Association, presented testimony regarding the lack of a family friendly development plan, the lack of transparency in the development of a playground/pool/community center, the misuse of the word affordable, and problems with the tenant relocation plan. (5/11/15 Tr., pp. 15-20.)

91. Reverend Dr. Loretta Washington, Vice President of the Brookland Manor/Brentwood Resident Association and a long-time Brookland Manor resident, testified that she would like to see 535 units of affordable housing continue to be provided in the new PUD project, all families remain on site, and at least 10% of the families on site be hired and trained prior to ground-breaking. (5/11/15 Tr., pp. 21-25.)

92. The Residents Association also presented testimony from Yvonne C. Johnson, a Brookland Manor resident, and read into the record submissions from Kelvin Brooks (current Brookland Manor resident) and Marjorie Thomas-Barnes (past Brookland Manor resident). Ms. Johnson raised concerns regarding the children at Brookland Manor and their ability to stay at the property. Mr. Brooks and Ms. Thomas-Barnes raised concerns regarding the ability of families to remain on the property. (5/11/15 Tr., pp. 25-26, 34-40.)

Persons in Opposition

93. Farisha Walsh, Dorothy Davis, Katrina Johnson, and Keisha Howard (all Brookland Manor residents), noted concerns about their ability to remain at Brookland Manor following the redevelopment of the property and the anxiety that is shared by some of their fellow Brookland Manor residents. (5/7/15 Tr. pp. 140-144, 164-169)

Contested Issues

Tenant Relocation and Construction Phasing Plan

94. The Applicant's tenant relocation and construction phasing plan, consists of the following priorities:

- Minimize construction impacts to the residents to ensure that a safe environment exists;
- Manage the onsite relocation of residents to minimize the impact on educational, social, emotional, and employment needs of individuals and families;
- Building out the project's infrastructure in the most efficient manner possible; and
- Phasing the improvements in a way that maximizes the project's ultimate success, including the creation of 373 new affordable apartments in a revitalized community.

The Applicant noted that as construction progresses, most existing households will be relocated on site once prior to moving into a new building. A few families may have to be relocated twice as dictated by available accommodations and construction scheduling. The commitment is to ensure that each of the new buildings has at least 10% affordable units, noting that there may need to be some right-sizing (getting back down to 10% where it starts above that level) based upon construction phasing. The Applicant's current plans do not contemplate off-site relocations during construction. The Applicant acknowledged that it is responsible for the payment of costs or expenses associated with the relocation of tenants on-site or off-site. (Ex. 104B.)

95. The Applicant additionally committed to allow all households that reside at Brookland Manor at the commencement of the redevelopment in early 2018 with the right to return to the new Brentwood Village community. The Applicant expects that there will be 424 occupied units at the time that the redevelopment commences in 2018. The expected turnover of 60 units, from 484 occupied units (as of 6/2/15) to 424 (as of 1/1/18), will come from normal turnover, and is based on historic results (78 units turned over in 2012, 79 in 2013, and 47 in 2014). (Ex. 104, p. 6.)

96. The Applicant's proposed Construction Phasing Plan will consist of three phases, described as follows:

- **Phase 1 – Development of Block 7:** Phase 1 will include the development of up to a 200-unit senior citizen (limited to residents aged 62+) building and 28 for-sale units in Block 7. There will also be a smaller 86-unit market-rate building that will assist with tenant relocations. The senior citizen building in Phase 1 will consist of approximately 185 one-bedroom apartments and 15 two-bedroom apartments. The 28 for-sale units in Phase 1 will be either "two over two" or townhouse units.

  In order to construct a new senior citizen building and to manage the relocation of existing tenants on-site, the existing buildings must have vacancy and that vacancy in turn needs to be concentrated. Block 7 is the chosen location for the senior citizen building because it is in a central location, is proximate to the community green, and the parcel that will house the senior citizen building currently only has three buildings with 64 units.

  The Applicant anticipates that Block 7's three existing buildings will be vacant when construction starts in early 2018 with all of those residents relocated at ownership expense to an appropriate home on the property.

  The Block 7 multifamily buildings are scheduled for completion in 2019, and at that point approximately 286 apartments will be available as a relocation source (compared with the 64 units that currently occupy Block 7's three buildings). The ultimate size of the senior building will be determined based upon a survey of the 62+ age resident population to assess their needs and preferences. The expectation is that the building will be sized somewhere in the 150-200 unit range and will be occupied principally by existing residents with most having Section 8 assistance.

- **Phase 2A – Development of Blocks 2 and 3:** Completion of the Block 7 buildings will vacate 209+ units in the existing buildings. The existing buildings which are located on what will become Blocks 2 and 3 in a total of 142 units of which a smaller number will be occupied at the start of construction in 2019 (as many of the residents aged 62+ currently reside in buildings which are located on Blocks 2 and 3 and will have since been relocated to the new senior citizen building). For those not relocating to the senior building, the Applicant will relocate those residents at the Applicant's expense to a comparable unit on the Subject Property. On site relocations will clear all existing units in these blocks to permit construction. This phase will contain 569 apartments, including 71 affordable units. At completion of this Phase 2A, 280 of the 373 affordable units will have been replaced with new units.

- **Phase 2B – Development of Blocks 5, 6, and 8:** The existing Brookland Manor buildings located on future Blocks 5, 6, and 8 contain 184 apartments. All

existing residents in this phase will be relocated elsewhere on the site to permit construction – this could include the senior citizen building in Phase 1, the multi-family buildings in Phase 2A, or any of the existing buildings in Phase 3. Again, relocations will be done at the Applicant's expense with relocations to a comparable unit. Phase 2B will contain 262 apartments and 72 townhouses. As many as 66 of the 262 units will be reserved as affordable units when these buildings are constructed as this will need to be an affordable relocation source of housing until the Phase 3 buildings are delivered. At the completion of this phase, 346 of the 373 affordable units will have been replaced with new units.

- **Phase 3 – Development of Blocks 1 and 4:** This final phase will contain a total of 543 units, 529 apartments, and 14 townhouses. Of the final 543 units, 27 affordable units will be completed, bringing the total number of affordable units to 373. It is important to note that in order to achieve the minimum 10% affordability levels in these buildings, affordable units will need to be relocated from the Phase 2A and 2B buildings to the Phase 3 buildings. (Ex. 104B.)

Affordable Housing

97. OP and the Residents Association and its representatives have asked the Applicant to provide 535 new units of affordable housing in this project. The OP report also noted that an alternate replacement schedule with affordability deeper than 50% AMI should be considered if the development does not retain the Section 8 subsidy. OP also noted that it was not supportive of any proposal that would completely eliminate the level of affordability that currently exists on the property. The Applicant presented information into the record that it expects that a total of 424 households will reside at Brookland Manor upon the commencement of redevelopment in early 2018: 373 Section 8 affordable units and 51 market-rate units (most occupied by tenants assisted by DC Housing Choice Vouchers). Brookland Manor does not currently include 535 "affordable" units, rather Brookland Manor includes 373 Section 8 units and 117 "market"-rate units with individual tenants paying their rents with supplemental financial assistance in the form of DC Housing Choice Vouchers. The Applicant argued that its commitment to maintaining the Section 8 contracts in the new Brentwood Village is a significant amenity of the PUD project and protects the level of affordability which currently exists at Brookland Manor. The Applicant also noted that it was not aware of any developer that is able to provide levels of affordability below 50% of AMI without some form of financial subsidy, whether that subsidy comes from the Federal Government or the District Government. The Applicant noted that this affordable housing commitment is more robust in percentage and depth of affordability than any privately owned and funded development in the city. (Ex. 104, p. 6.)

98. The Applicant noted that it remains committed to retaining the Section 8 contract on the Subject Property, so the existing 373 units (with deep affordability) at Brookland Manor

will remain in the new Brentwood Village. The Applicant stated that it will provide for 22% (373 of the total 1,646 multi-family units) of the new rental accommodations to be reserved as affordable units with AMI levels that are significantly below 50% of AMI. An additional 11 for-sale townhouses or two-over-two units will be reserved as affordable units that will satisfy the Inclusionary Zoning standards. At the end of the build-out of the new Brentwood Village community, the affordable units will be approximately 22% of the total number of units. In support of the Applicant's affordable housing commitment across the site, the senior citizen building will be 100% assisted, each multi-family building will have at least 10% of the units reserved as affordable housing, and 10% of the for-sale residential units (townhouses or two-over-two units) will be reserved as affordable dwellings. (Ex. 104, p. 6.) Finally, the Applicant amended its proffer so that in the event the Section 8 contract does not materialize or is not renewed, the Applicant will provide the alternative affordable housing benefits stated in Findings of Fact No. 52(a).

Proposed Unit Size

99. The Applicant presented written testimony that its decision not to construct four and five bedroom units in the new Brentwood Village is entirely consistent with local and national practices in the development and operation of affordable housing communities. It is also based on the Applicant's own experience as the largest operator of affordable housing units in Washington, D.C. (Ex. 104.)

100. In its rebuttal testimony, the Applicant noted the 2014 Quadel Consulting and Training, LLC report, which was commissioned by the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") to review the existing New Communities Initiative and provide recommendations for moving that program forward. The Quadel report considered the issue of one-for-one replacement of unit types and noted that "it was not intended to entail the construction of housing developments that mirror the unit mix of the public housing" and went on to conclude that "it is generally not economical to build replacement four, five, and six bedroom apartments". The Applicant concurs with these conclusions. (Ex. 104.)

101. The Applicant also notes the national research that it found on this issue. The Applicant determined that multifamily housing providers across the country are not building four- and five-bedroom apartments. This is best articulated by the President of the National Multi-Housing Council, Douglas M. Bibby, who submitted a letter to the Commission in February 2015 where he stated that:

> I am President of the National Multi-Housing Council ("NMHC") which is the largest trade association for the apartment industry. NMHC's members own and operate literally millions of rental apartment units across the country. NMHC is the primary resource for industry research, insight, analysis and expertise on

apartment industry issues. After due inquiry, I am not aware of any of our members building new 4BR and 5BR family apartments anywhere in the country. There are practical, social, market, and economic reasons why rental units of this type are not feasible and are not being produced by NMHC's members. (Ex. 104.)

102. The Applicant also identified its years of practical experience at Brookland Manor and other properties which has led it to the conclusion that the larger unit types (in the apartment flat configuration) are significantly impactful on the families who live there and the residents of the surrounding community. In many instances where there are more than six people occupying a one apartment flat, the housing configuration is not ideal in that there are relatively small common areas within the homes and those areas are inadequate in serving the educational, social, and emotional needs of family members. (Ex. 104.)

Creation of a Community Center on the Subject Property

103. The OP Supplemental Report requested that the Applicant provide an analysis of existing recreation centers and park/fields in the neighborhood and demonstrate that these would adequately serve the new residents. The Applicant's expert in architecture and urban planning noted that there are a number of recreation centers and recreation fields within a 10 minute walk of the Brookland Manor community, so the design of the community green was to create something that is different from the sports fields and recreation centers that are already available in the neighborhood. The Applicant's expert in architecture and urban planning concluded that the community green will be complimentary to the inventory of public spaces in the surrounding community and not the same as those existing public spaces.

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

104. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." (11 DCMR § 2403.8.) The Commission agrees with the Applicant's testimony and written materials that the development of the new Brentwood Village will be a transformative project that will benefit the existing Brookland Manor residents and members of the surrounding community. The Commission finds that the mix of retail and residential uses provided in this application, along with the mix of market-rate and affordable housing units provided in different residential unit types, the large public open spaces provided in the community green and the pedestrian walk, the significant infrastructure improvements proposed, and the high levels of urban design found in this project are properly deemed to be significant project amenities and public benefits. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map

amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project.

105. The Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to urban design, site planning, infrastructure improvements, and the provision of housing and affordable housing. The Commission finds that the creation of a mixed-income and mixed-use project on the Subject Property will provide significant economic benefits to the District of Columbia as well as new housing and job opportunities to existing and future residents of the District.

106. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to the C-2-A and R-5-B Zone Districts are appropriate and that the proffered amenities and benefits are acceptable. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Subject Property are not inconsistent with the Comprehensive Plan. This Commission has spent considerable time considering how its decisions are to be guided by the various maps, guidelines, policies, and elements that make up the Comprehensive Plan. This Commission has appropriately determined that the Comprehensive Plan provides it with a series of tools that help guide decisions regarding consistency with the Comprehensive Plan. The FLUM, the GPM, or specific elements and policies are not in and of themselves determinative of whether a project or proposed zone district is consistent with the Comprehensive Plan. Rather, the Commission looks at the Comprehensive Plan in its entirety. In this case, the Commission finds that the proposed PUD and related map amendment of the Subject Property to the C-2-A and R-5-B Zone Districts is appropriate given the FLUM designation of the Subject Property and the project's satisfaction of numerous policies enumerated in the Comprehensive Plan. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.

107. The Commission finds that the Applicant has adequately addressed all of the outstanding issues raised in OP's Supplemental Report. In particular, the Commission believes that the Applicant has appropriately addressed OP's issue regarding the need to include a recreation center or playing field on the Subject Property. The Commission agrees with the Applicant's desire to have the community green be reserved for a playground and more open, passive recreation spaces while encouraging the residents of the new Brentwood Village to go outside of their community to visit and use the existing recreation centers in the immediate community.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, 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. (11 DCMR § 2405.)

3. The development of the project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The application meets the contiguity requirements of § 2401.3.

6. The Commission notes the materials submitted by the Applicant which depict the project in the context of the surrounding neighborhood. Based on these materials, the testimony of the project urban planner and architect, and OP's conclusions on this subject, the Commission finds that the proposed height and density of the buildings in the project will not cause a significant adverse effect on any nearby properties. The Commission notes that the second-stage PUD applications, which will provide greater architectural detail, will further allow the Commission to address any issues regarding impacts of the project.

7. The Commission finds the public benefits and project amenities provided by the project are significant and appropriate given the additional height and density that is granted by this first-stage PUD application. The Commission agrees with the Applicant's conclusion that this will be a transformative project for the neighborhood. The creation of new retail uses along Rhode Island Avenue, N.E., including a grocery store, will bring positive economic activity and job opportunities to the area. The significant infrastructure improvements (including the public space improvements along Rhode Island Avenue,

N.E. that are not immediately adjacent to the Subject Property) proposed by the Applicant, the creation of large public open spaces, and the dedication of large amounts of private property for public purposes are appropriately deemed to be public benefits and project amenities of the project.

8. The Commission agrees with the Applicant's analysis that Brookland Manor does not currently include 535 "affordable" units, rather Brookland Manor includes 373 Section 8 units and 117 "market"[4] rate units with individual tenants paying their rents with supplemental financial assistance in the form of DC Housing Choice Vouchers. The Commission agrees that the Applicant's commitment to maintaining the Section 8 contracts in the new Brentwood Village is a significant amenity of the PUD project and protects the level of affordability which currently exists at Brookland Manor. At the end of the build-out of the new Brentwood Village community, the affordable units will be approximately 22% of the total number of units. The Commission finds that the Applicant's decision to retain the Section 8 contract on the Subject Property and provide 373 units of housing for residents who make significantly less than 50% of AMI is a significant project amenity of this first-stage PUD application.

9. In regard to the Residents Association's arguments that the Applicant should be required to provide four and five bedroom units in the project, the Commission notes the information that the Applicant submitted into the record regarding the existing demographics of the Brookland Manor residents that occupy the four- and five-bedroom units, the research that they undertook to determine that they are not aware of any development elsewhere in D.C. or in the entire country that includes four- and five-bedroom units in multi-family developments, the Quadel report which addressed the meaning of one-for-one replacement of units in New Communities projects, and the Applicant's own experience that larger unit types are significantly impactful on the families who live in those units and on the surrounding community. The Commission concludes that it is not necessary for the Applicant to include four- and five-bedroom units in the project.

10. The Commission regards the Applicant's tenant relocation and construction phasing plan as a commendable public benefit. The plan includes the following priorities: minimizing construction impacts to the residents and ensuring that a safe environment exists; managing the on-site relocation of residents to minimize the impact on educational, social, emotional and employment needs of individuals and families; building out the project's infrastructure in the most efficient manner possible; and phasing the improvements in a way that maximizes the project's ultimate success. The Commission also recognizes that the Applicant has committed to allow all households that reside at Brookland Manor at the commencement of the redevelopment in early 2018 with the

[4] At the time of the public hearings in this case, there were 490 residential units that were occupied at Brookland Manor.

right to return to the new Brentwood Village community. The Commission notes that the Applicant's plan will require that most existing households will be relocated on site once prior to moving to a new building and that a few families may have to be relocated twice as dictated by available accommodations and construction scheduling. The Commission also notes that the Applicant's current plans do not contemplate off-site relocations during construction and the Applicant acknowledges that it is responsible for the payment of any costs or expenses associated with the relocation of tenants on-site or off-site. The Commission finds that the proposed tenant relocation plan and construction phasing plan appropriately addresses the concerns raised by the Residents Association and protects the rights of the existing residents of the Subject Property.

11. The Commission concludes that the Applicant's commitment to a LEED-ND Silver certification is appropriate at this point in the process of development of the project. The Commission does not find it necessary to require that each development parcel be designed to meet or exceed the quality and environmental standards set out in the AWDZ. In addition, the Commission does not find it necessary to require that the full development project satisfy the AWDZ stormwater management requirements. When each second-stage application is brought before the Commission, the Commission will review the sustainability measures proposed in that specific building or parcel.

12. The application seeks a PUD-related zoning map amendment to the C-2-A and R-5-B Zone Districts. The application also seeks limited flexibility from the Zoning Regulations regarding the timing of filing subsequent second-stage PUD applications. The Commission finds the requested relief to be minimal and allows for the creation of a project that has numerous benefits and amenities.

13. The Commission finds that rezoning the site is consistent with the Comprehensive Plan. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The project is consistent with the major themes and city-wide elements of the Comprehensive Plan, including the Housing, Urban Design, Land Use, Environmental, Economic Development, and Transportation Elements. The PUD is also consistent with the more specific goals and policies of the Upper Northeast Area Element.

14. The Commission agrees with the Applicant's analysis that the mixed-use FLUM designation follows the existing land uses on the site, the mixed-use moderate-density commercial/moderate-density residential land use designation is located on the portion of the site that currently includes the strip shopping center, with the boundary of the mixed-use designation being the one block of 14th Street to the rear of that shopping center. The Commission agrees with the statements of the Applicant and OP that the FLUM is not a zoning map and is not parcel specific. The Commission finds that the proposed urban design and site planning of the project removes the one block of 14th Street right-of-way to create a completely new and safer site plan which allows for 15th Street to extend all

the way to Rhode Island Avenue. The Commission also agrees that the ability to extend commercial uses along the frontage of the proposed community green and along the northern side of Saratoga Avenue are significant benefits of the project, and will encourage a walkable neighborhood community. For these reasons, the Commission concludes that approval of this first-stage PUD and Zoning Map amendment application is not inconsistent with the FLUM designation for the Subject Property.

15. In regard to the Generalized Policy Map designation for the Subject Property, the Commission agrees with the Applicant's analysis that the existing Brookland Manor is in fact underutilized and more importantly of an era of urban design that has been shown to create unsafe environments for its residents. The Commission notes the submissions of numerous Brookland Manor residents and members of the community which stated that the existing land uses and community character should not be maintained, and that the planning process for the new Brentwood Village needs to occur with a sense of urgency. For these reasons, the Commission concludes that approval of this first-stage PUD and Zoning Map amendment application is not inconsistent with the Generalized Policy Map designation for the Subject Property.

16. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)) to give great weight to the affected ANC's recommendation. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC's concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. D.C. Official Code § 1-309.10(d)(3)(A) and (B). As is reflected in the Findings of Fact, ANCs 5B and 5C voted to support the application with conditions. The Commission considered this advice and for each issue and concern discussed why the advice was or was not persuasive in Findings of Fact Nos. 75 through 79.

17. The Commission is also required to give great weight to the recommendations of OP 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). The Commission gives OP's recommendation to approve the application great weight, and concurs with OP's conclusions.

18. The PUD project and the rezoning of the Subject Property will promote orderly development of the Subject Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

19. The applications for a PU and related Zoning Map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for first-stage review of a planned unit development and related Zoning Map amendment to the C-2-A and R-5-B Zone Districts for the Subject Property (Square 3953, Lots 1-3; Square 3954, Lots 1-5 and Parcel 143/45; Square 4024, Lots 1-4; and Square 4025, Lots 1-7). The approval of this PUD is subject to the following guidelines, conditions, and standards.

A. PROJECT DEVELOPMENT

1. The PUD project shall be developed in accordance with the plans prepared by Perkins Eastman marked as Exhibits 76A-76M and supplemented by drawings submitted on June 8, 2015 as Exhibit 104A of the record ("Approved Plans"), as modified by guidelines, conditions, and standards herein.

2. The PUD shall be a mixed-use development devoted to residential retail, recreational, and other uses as shown on the Approved Plans. The total amount of gross floor area approved in the PUD project is approximately 1,928,303 square feet (approximately 1,746,459 square feet of residential gross floor area and approximately 181,844 square feet of retail gross floor area) and the project will have an overall density of 2.8 FAR.

3. The maximum building height on Blocks 1, 2, and 3 shall not exceed 65 feet. The maximum building height on Block 4 shall not exceed 60 feet. The maximum building height for the multi-family buildings on Blocks 5 and 6 shall not exceed 60 feet and the maximum building height for the townhouses on Blocks 5 and 6 shall not exceed 45 feet. The maximum building height for the buildings on Block 7 shall not exceed 60 feet. The maximum building height for the townhouses on Block 8 shall not exceed 45 feet.

B. PUBLIC BENEFITS

1. **For so long as the project exists**, the Applicant shall provide the following affordable housing:[5]

   a. If the Section 8 contract remains, the Applicant's affordable housing obligations shall be as follows:

---

[5] Although this condition assumes that the Zoning Administrator will approve a request of the Applicant made pursuant to 11 DCMR § 2603.3(f) to exempt the multi-family buildings from the Inclusionary Zoning Regulations set forth in Chapter 26, nothing herein shall be construed as a decision on the Commission's part that such an exemption should or should not be granted.

(1) There shall be at least 384 affordable units, of which 373 shall be Section 8 units and 11 shall be "inclusionary units" within the meaning of 11 DCMR § 2602;

(2) Of the 373 Section 8 units, 150 to 200 of such units shall be in the Senior Building, which shall contain no other type of unit;

(3) The remaining Section 8 units shall be in the multi-family buildings; provided that at least 10% of each multi-family building's units shall be the Section 8 units; and

(4) The 11 inclusionary units shall be either townhouses or two-over-two units collectively constituting at least 10% of the residential GFA of the townhouses and two-over-two units. Six of the inclusionary units shall be reserved for households earning no more than the 50% of the AMI and five of the inclusionary units shall be reserved for households earning no more that 80% of the AMI;

b. If the Section 8 program is abolished by the Federal Government or the contract is not renewed for the project and if a change in underwriting standards is approved, some form of property tax relief is granted for the units, and DC Housing Trust Funds are provided, the Applicant's affordable housing obligations shall be:

(1) The Applicant shall provide at least 340 affordable units of which 329 shall be non-IZ units reserved for households earning no more than 60% of AMI and 11 shall be "inclusionary units" within the meaning of 11 DCMR § 2602;

(2) Of the 329 non-IZ units, 150 to 200 of such units shall be in the Senior Building, which shall contain no other type of unit;

(3) The remaining non-IZ units shall be in the multi-family buildings; provided that at least 10% of each multi-family building's units shall be non-IZ units; and

(4) The 11 inclusionary units shall be either townhouses or two-over-two units collectively constituting at least 10% of the residential GFA of the townhouses and two-over-two units. Six of the inclusionary units shall be reserved for households earning no more than the 50% of the AMI and five of the inclusionary units shall be reserved for households earning no more that 80% of the AMI;

c. If the Section 8 program is abolished by the Federal Government, or the contract is not renewed for the project and if no change in underwriting standards is approved, no form of property tax relief is granted for the units, and DC Housing Trust Funds are not provided, the Applicant's affordable housing obligations shall be:

(1) The Applicant shall provide at least 340 affordable units of which 329 shall be non-IZ units and 11 shall be "inclusionary units" within the meaning of 11 DCMR § 2602;

(2) Of the 329 non-IZ units:

(A) 165 shall be reserved for households earning no more than 50% of AMI and 164 shall be reserved for households earning no more than 80% of AMI;

(B) 150 to 200 of the non-IZ units shall be in the Senior Building, 50% of which shall be reserved for households earning no more than 50% of AMI and 50% shall be reserved for households earning no more than 80% of AMI; and

(C) The remaining non-IZ units shall be in the multi-family buildings; provided that at least 10% of each multi-family building's units shall be non-IZ units. Within each multi-family building 50% of the non-IZ units shall be reserved for households earning no more than 50% of AMI and 50% shall be reserved for households earning no more than 80% of AMI; and

(3) The 11 inclusionary units shall be either townhouses or two-over-two units collectively constituting at least 10% of the residential GFA of the townhouses and two-over-two units. Six of the inclusionary units shall be reserved for households earning no more than the 50% of the AMI and five of the inclusionary units shall be reserved for households earning no more that 80% of the AMI.

2. The Applicant shall abide by the terms of the tenant relocation and construction phasing plan as detailed at Exhibit 104B of the record in this case.

3. The Applicant shall abide by the terms of the construction management agreement as detailed at Exhibit 23E of the record in this case.

4. The development of either Block 2 or Block 3 shall include a grocery store. **Prior to the issuance of a certificate of occupancy for any building on either Block 2 or Block 3**, the Applicant shall provide sufficient evidence to the Zoning Administrator that space has been reserved in either Block 2 or Block 3 for a grocery store.

5. The Applicant shall provide the Pedestrian Walk between Blocks 1 and 2 with the features stated at Exhibit 2, at page 10 and Exhibit 76A-76M, and the Community Green with the features stated at Exhibit 2, at page 13 and Exhibit 104.

6. The Applicant shall pay for sidewalk repaving at the following locations along the eastbound sidewalk of Rhode Island Avenue, N.E.:

   a. Two locations between Washington Place, N.E. and 10th Street, N.E.;

   b. One location between Bryant Street, N.E. and 12th Street, N.E.; and

   c. Two locations between Brentwood Road, N.E. and Montana Avenue, N.E.

7. The Applicant shall pay for the restriping of the crosswalks located at the intersections of Rhode Island Avenue, N.E. and the following streets: 10th Street, N.E.; Bryant Street, N.E.; 12th Street, N.E.; Saratoga Avenue, N.E.; Douglas Street, N.E.; Brentwood Road, N.E.; 14th Street, N.E.; and Montana Avenue, N.E.

8. The Applicant shall pay for the ADA ramp reconstruction at the intersection of Rhode Island Avenue, N.E. and Bladensburg Road, N.E.

9. **Prior to the issuance of a certificate of occupancy for the buildings approved in the second-stage PUD application that includes buildings with frontage on Rhode Island Avenue, N.E**, the Applicant shall provide evidence that these improvements in public space have been made, as described in Condition Nos. B.6 through B.8.

10. The applicants in all second-stage PUD applications shall enter into a First Source Employment Agreement with the Department of Employment Services ("DOES").

C. Second-Stage Applications

1. In addition to the information requested by 11 DCMR § 2406.12, the Applicant shall submit the following with each second-stage application:

a. Updated information regarding the phasing of the project, which shall include the approximate scheduling and development priorities at that time;

b. For each second-stage application that includes a multi-family building, the following:

(1) A table showing the bedroom sizes and square footages for each unit type similar in format to the table in Exhibit 75A containing this information for existing units;

(2) For the affordable units the applicant shall:

(A) Indicate the number and location of the units; and

(B) Provide a table indicating the proposed unit sizes, number of bedrooms of each and the corresponding AMI level;

c. For each second-stage application that includes townhouses or two-over-two units, the Applicant shall:

(1) Indicate the number and location of the inclusionary units; and

(2) Provide a table demonstrating the proposed inclusionary unit sizes, number of bedrooms of each, and the corresponding AMI level;

d. For the second-stage application for the Senior Building the Applicant shall:

(1) Indicate the number of units; and

(2) Provide a table indicating the proposed unit sizes, number of bedrooms of each, and the corresponding AMI level;

e. A progress report regarding the status of the tenant relocation process and construction phasing plan detailed at Exhibit 104B;

f. A detailed description of the programs for children and seniors that will be provided in that project;[6]

[6] The management of Brookland Manor currently provides its residents with a number of programs that are designed for the children and seniors that live in the community. The existing programs for children include a variety of enrichment activities, such as after school care, tutoring, arts and crafts, community gardening, summer

g. A copy of the fully executed First Source Employment Agreement with DOES; and

h. A progress report regarding the construction of the Pedestrian Walk and Community Green.

D. Transportation Mitigation Measures

1. The Applicant will abide by the following Transportation Mitigation measures:

a. **Prior to the issuance of a certificate of occupancy for the buildings constructed in Phase 2B**, install a traffic signal at the intersection of Saratoga Avenue and Montana Avenue;

b. **Prior to the issuance of a certificate of occupancy for the buildings constructed in Phase 2A**, incorporate 15th Street extended as the fourth leg of the intersection of Rhode Island Avenue with Brentwood Road;

c. During the second-stage PUD application for Phases 2A and 2B, work with DDOT and WMATA to relocate the bus stop, determine the need for separate right and left turn lanes on 15th Street extended, and determine if a left turn lane from Rhode Island Avenue onto 15th Street extended is necessary;

d. **Prior to the issuance of a certificate of occupancy for the buildings constructed in Phase 2B**, install lane marking and striping changes at two intersections: Rhode Island Avenue and Montana Avenue, and 18th Street and Montana Avenue;

e. **Prior to the issuance of a certificate of occupancy for the buildings constructed in Phase 2B**, install lane markings, striping, and signing improvements as needed to establish an official bike route between 12th Street and 18th Street through the site; and

f. Coordinate with DDOT during all second-stage PUD applications on the following issues:

(1) Amount and size of loading facilities;

---

camp, and meal programs to ensure that no child goes home hungry. The seniors programs include periodic brown-bag lunches and other events designed to bring Brookland Manor's senior community together. The Applicant has agreed that these programs will be retained and enhanced in the new Brentwood Village community.

(2) Maneuvering analyses of trucks to and from loading facilities;

(3) Amount of off-street parking (this may require an inventory and occupancy count of on-street facilities to help determine the appropriate amount of parking and potential spillover impacts);

(4) Layout of internal streets, including curbside management;

(5) Transportation Demand Management plans for each building;

(6) Amount of secure off-street bicycle parking in each building;

(7) Locations and amount of on-street bicycle racks; and

(8) Locations for Capital Bikeshare stations.

E. MISCELLANEOUS

1. The Zoning Regulations Division of the Department of Consumer and Regulatory Affairs ("DCRA") shall not issue any building permits 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, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The change of zoning from the R-5-A and C-2-A Zone Districts to the C-2-A and R-5-B Zone Districts shall be effective upon the recordation of the covenant discussed in Condition No. E.1, pursuant to 11 DCMR §3028.9.

3. The first-stage PUD shall remain valid until August 1, 2023 provided that a second-stage PUD application for the construction of the Senior Building is filed no later than one year from the effective date of this Order. The filing of each second-stage PUD Application and the Commission's approval thereof will vest the Commission's approval of Z.C. Case No. 14-18, with respect to the property that is the subject of the second-stage application, even if other second- stage applications are not filed by the expiration date.

4. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender

identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

5. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

On June 29, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at its Public Meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On September 10, 2015, upon the motion of Commissioner Miller, as seconded by Chairman Hood, the Zoning Commission **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 adopt; Marcie I. Cohen to adopt by absentee ballot.)

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 6, 2015.

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	
Metropolitan Police Department	Certification No. 161
and	
Department of Forensic Sciences	
Respondents	

CERTIFICATION OF REPRESENTATIVE

A representation proceeding having been conducted in the above-captioned matter by the Public Employee Relations Board ("Board") in accordance with the District of Columbia Merit Personnel Act of 1978 and the Rules of the Board, and it appearing that an exclusive representative has been designated;

Pursuant to the authority vested in the Board by D.C. Official Code §§ 1-605.02(1) 1-605.02(2) and Board Rule 504.1(a);

IT IS HEREBY CERTIFIED THAT:

The National Association of Government Employees, Local R3-05 has been designated by a majority of the employees of the above-named public employer, Department of Forensic Sciences, in the modified unit described below, as their preference for their exclusive

representative for the purpose of collective bargaining concerning both compensation and terms-and-conditions of employment matters with the employer.

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.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

April 30, 2015

Clarene Phyllis Martin
Executive Director

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
	)	
Metropolitan Police Department	)	
	)	PERB Case No. 10-U-14(R)
Petitioner	)	
	)	Opinion No. 1533
v.	)	
	)	Corrected Copy
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	)	
	)	
Respondent	)	

DECISION AND ORDER ON REMAND

This case is before the Board on remand from the D.C. Superior Court.[1] Complainant, Fraternal Order of Police/Metropolitan Police Department ("FOP"), filed a Petition for Review with the Superior Court of the Board's Decision and Order in the above-captioned case, Opinion No. 1397, appealing the Board's Decision and Order in regards to PERB Case No. 10-U-14.[2] The Superior Court affirmed, in part, reversed in part, and remanded for further proceedings.

[1] *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Public Employee Relations Board*, Case No. 2013 CA 005151 P(MPA)(November 17, 2014).

[2] *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Public Employee Relations Board*, Slip Op. No. 1397, PERB Case Nos. 09-U-41, 09-U-42, 09-U-43, 09-U-44, 10-U-01, and 10-U-14 (2013). In Opinion No. 1397, the Board granted Respondent Metropolitan Police Department's ("MPD") Motion for Reconsideration, in part, finding that the allegations in PERB Case No. 10-U-14 were untimely filed. The Board had previously, in Opinion No. 1391, adopted a Hearing Examiner's findings that the MPD had committed an unfair labor practice.

The Superior Court overturned the Board's Decision in Opinion No. 1397, finding that one of three allegations in an unfair labor practice complaint, PERB Case No. 10-U-14, was untimely. The Superior Court remanded to the Board an allegation that MPD improperly proposed the suspension of FOP Vice Chairman Wendell Cunningham. In Opinion No. 1397, the Board had determined that the allegation was untimely, because the Board calculated the Board Rule 520.4's filing period to have begun when Cunningham was first questioned and not when the suspension was proposed. The Superior Court reversed this determination and found that the Board's 120-day timeline for filing an unfair labor practice complaint begins "once the employer has made an unequivocal statement to that employee regarding the underlying adverse employment decision."[3] The Superior Court affirmed that the two other allegations in the complaint were untimely filed.

Pursuant to the Order issued by the Superior Court on November 17, 2014, the Board finds that the allegation regarding Cunningham's proposed discipline was timely filed. The Board vacates its Decision and Order in Opinion No. 1397 and reinstates its Decision and Order in Opinion No. 1361, regarding the allegation of proposed discipline of Cunningham. [4]

ORDER

1. The Board's Decision and Order in Opinion No. 1397, regarding the allegation of proposed discipline of FOP Vice Chairman Wendell Cunningham, and the Board's Decision and Order in Opinion No. 1361 for this allegation is reinstated.

2. MPD will cease and desist from interfering, restraining, or coercing FOP in the exercise of its rights guaranteed by D.C. Code § 1-617, et seq., by disciplining FOP officials for engaging in protected union representational activities and speech;

3. MPD will immediately withdraw *in toto*, and with prejudice the second specification in the disciplinary action against FOP Vice Chairman Wendell Cunningham, expunge all personnel records concerning the disciplinary action, and reimburse him for any lost salary and benefits;

[3] Superior Court Order at 6.
[4] *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, 60 D.C. Reg. 2283, Slip Op. No. 1361, PERB Case Nos. 09-U-41, 09-U-42, 09-U-43, 09-U-44, 10-U-01, and 10-U-14 (2013). In Opinion No. 1361, the Board reviewed and adopted the Hearing Examiner's findings and conclusions for Cunningham's proposed discipline in Case No. 10-U-14. The Board finds that the Board's remedies in Opinion No. 1361 are appropriate for the finding that MPD interfered with, coerced, or restrained Cunningham in the exercise of his CMPA rights by proposing discipline against him and that the proposed discipline was in retaliation for Cunningham's exercise of protected union activity and speech. The Board and reinstates the remedies that the Board awarded.

4. MPD shall conspicuously post within ten (10) days from the issuance of this Decision and Order the attached Notice where notices to bargaining unit members are normally posted. The Notice shall remain posted for thirty (30) consecutive days;

5. MPD shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order that the Notice has been posted accordingly;

6. MPD will pay FOP's costs in the litigation of PERB Case No. 10-U-14; and

7. 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 and Member Keith Washington. Member Ann Hoffman was not present.

Washington, D.C.

July 24, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Corrected Copy of the Decision and Order in PERB Case No. 10-U-14(R) was served to the following parties via File & ServeXpress on this the 19th day of August 2015:

Mark Viehmeyer, Esq.
Nicole Lynch, Esq.
Metropolitan Police Department
300 Indiana Ave., NW
Room 4126
Washington, D.C. 20005

Anthony M. Conti, Esq.
Daniel J. McCartin, Esq.
Conti Fenn & Lawrence, LLC
36 South Charles Street, Suite 2501
Baltimore, MD 21201

/s/Sheryl Harrington
Sheryl Harrington
Public Employee Relations Board
1100 4th Street, SW
Suite E630
Washington, D.C. 20024
Telephone: (202) 727-1822
Facsimile: (202) 727-9116

1100 4th Street S.W.
Suite E630
Washington, D.C. 20024
Business: (202) 727-1822
Fax: (202) 727-9116
Email: perb@dc.gov

NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT ("MPD"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1533, PERB CASE NO. 10-U-14(R).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered MPD to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04, et seq., by the actions and conduct set forth in Slip Opinion No. 1533.

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.

WE WILL NOT, in any like or related manner, discipline Fraternal Order of Police/Metropolitan Police Department Labor Committee officials for engaging in protected union representational activities and speech when they are acting in a representational capacity.

District of Columbia Metropolitan Police Department

Date:__________________________ By:_______________________________

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

July 20, 2015

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Metropolitan Police Department	)	PERB Case No. 09-U-48(R)
Complainant	)	Opinion No. 1535
v.	)	**Decision and Order on Remand**
Fraternal Order of Police/ Metropolitan Police Department Labor Committee	)	
Respondent	)	

DECISION AND ORDER ON REMAND

I. Statement of the Case

On September 12, 2014, the D.C. Superior Court granted the Fraternal Order of Police/Metropolitan Police Department Labor Committee's ("FOP") Petition for Agency Review of the Board's Decision and Order, Opinion No. 1224, and ordered that Opinion No. 1224 be vacated.[1] Consistent with the Superior Court's Order, Opinion No. 1224 is vacated, and MPD's complaint is dismissed with prejudice.

II. Discussion

In Opinion No. 1224, the Board found that a complaint filed by the Metropolitan Police Department against FOP was timely and that FOP committed an unfair labor practice.[2] The allegation in the complaint was that FOP improperly invoked arbitration in a matter that was not covered by the parties' collective bargaining agreement and refused to withdraw its request for arbitration.[3] The complaint was filed 146 days after the alleged unfair labor practice occurred,

---

[1] *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Public Employee Relations Board*, Case No. 2011 CA 009830 P(MPA)(September 12, 2014).
[2] *Metropolitan Police Department* v. *Fraternal Order of Police/Metropolitan Police Department Labor Committee*, Slip Op. No. 1224, PERB Case No. 09-U-48 (2014).
[3] *MPD v. FOP*, Slip Op. No. 1224 at 8.

but the Board found that the complaint was timely filed, in accordance with Board Rule 520.4, because FOP's failure to withdraw its arbitration request constituted a continuing violation that occurred repeatedly, thus extending the timeline for filing the complaint.[4]

The Superior Court found that the Board improperly applied the continuing violation doctrine. The Superior Court stated, "Although the Court of Appeals has not addressed the 'continuing violation' doctrine in the context of unfair labor practices, numerous federal courts have limited the doctrine in this context as well, noting that such violations are limited to those 'whose character as a violation did not become clear until [they] w[ere] repeated during the limitations period, typically because it is only [the] cumulative impact…that reveals [their] illegality."[5] Specifically, the Superior Court observed, "[T]he Court in *AKM* noted that the 'mere failure to right a wrong…cannot be a continuing wrong which tolls the statute of limitations,' for if it were, 'the exception would obliterate the rule.'"[6]

The Superior Court found for the following reasons that the Board erred in its application of the continuing violation doctrine:

> First, the FOP's alleged unfair labor practice in this case – the filing of an arbitration request – was a single discrete act, not "prolonged or repeated conduct," or "continuous and repetitious wrongs." Second, FOP's refusal to withdraw that single arbitration request did not convert a single violation into a continuing one. Rather, FOP's "mere failure to right a wrong" (here, by not withdrawing its arbitration request) "cannot be a continuing wrong which tolls the statute of limitations" because if it were, the exception would obliterate the rule."[7]

Therefore, the Superior Court reversed the Board's determination that the time period for MPD's filing of the unfair labor practice complaint was tolled by a continuing violation.

The Superior Court further discussed that "PERB Rule 520.4 functions as a statute of limitations on unfair labor practice complaints and provides that such complaints must be filed 'not later than 120 days after the date on which the alleged violations occurred.'"[8] The Superior Court observed that the Court of Appeals has found that this time limit is "mandatory and jurisdictional."[9] The Superior Court, however, noted that the Court of Appeals has questioned whether the time period for filing is jurisdictional, or if the time period for filing "can be waived if not timely asserted" as a "claim-processing rule."[10]

---

[4] *Id.*
[5] Order at 5, citing *AKM LLC, d/b/a Volks Constructors v. Sec'ty of Labor*, 675 F.3d 752, 757 (D.C. Cir. 1977).
[6] *Id.*
[7] Order at 5.
[8] Order at 3, quoting Board Rule 520.4.
[9] Order at 3.
[10] *Id.* (citing *Neill v. D.C. Pub. Employee Relations Bd.*, 9 A.3d 229, 233 n.5 (D.C. 2014)).

The Superior Court concluded that MPD's complaint was not tolled by the continuing violation doctrine, and that FOP had timely objected to the timeliness of MPD's complaint.[11] Therefore, the Superior Court remanded the matter to the Board for dismissal of MPD's complaint.

III. Conclusion

Consistent with the D.C. Superior Court's Order, the Board vacates its Decision and Order in Opinion No. 1224. MPD's Complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Decision and Order in Opinion No. 1224 is vacated.

2. MPD's Unfair Labor Practice Complaint is dismissed with prejudice.

3. 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 Ann Hoffman, Member Keith Washington, and Member Yvonne Dixon.

Washington, D.C.

August 20, 2015

[11] Order at 6.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-48(R), Opinion No. 1535, was served on the following parties on this the 24th day of August, 2015.

via U.S. Mail
Dean Aqui, Esq.
Andrea Comentale, Esq.
Office of the Attorney General
441 4th St., NW
Ste. 1180 North
Washington, D.C. 20001

via U.S. Mail
Mark Viehmeyer, Esq.
Nicole Lynch, Esq.
Metropolitan Police Department
300 Indiana Avenue, NW
Room 4126
Washington, D.C. 20001

via File & ServeXpress
Dan McCartin, Esq.
Anthony Conti, Esq.
Conti Fenn & Lawrence LLC
36 S Charles St.
Ste. 2501
Baltimore, MD 21201

/s/Sheryl V. Harrington

Sheryl V. Harrington
Administrative Assistant
D.C. Public Employee Relations Board
1100 4th Street, SW, Suite E630
Washington, D.C. 20024

Government of the District of Columbia
Public Employee Relations Board

In the Matter of: Fraternal Order of Police/Metropolitan Police Department Labor Committee, Complainant, v. District of Columbia Metropolitan Police Department, Respondent.	PERB Case Nos. 08-U-69, 09-U-01, 10-U-04, 10-U-05, 10-U-10, 10-U-28, and 10-U-29 Opinion No. 1536

DECISION AND ORDER

Between August 7, 2008, and April 9, 2010, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") filed with the Board seven unfair labor practice complaints with overlapping allegations arising out of the efforts of the Metropolitan Police Department ("MPD" or "Respondent") to require FOP Chairman Kristopher Bauman ("the Chairman") and FOP Steward Delroy Burton ("the Steward") to attend in-service training.[1] The Executive Director consolidated the cases and assigned them to a hearing examiner.

Following a hearing held on December 4, 2014, and February 18, 2015, and briefing by the parties, the hearing examiner submitted a Report of Findings and Recommendations ("Report") on June 29, 2015. FOP filed exceptions to which MPD filed an opposition. The Report, the exceptions, and the opposition are before the Board for disposition. Except with regard to remedies, the Board finds the exceptions to be without merit and the Report to be reasonable, supported by the record, and consistent with Board precedent.

[1] The complaints were assigned case numbers 08-U-69, 09-U-01, 10-U-04, 10-U-05, 10-U-10, 10-U-28, and 10-U-29.

I. Hearing Examiner's Findings

The hearing examiner made findings on each of the cases and then recommended four orders for the Board to issue pertaining to all of them.

A. Case Number 08-U-69

In 2008, Lieutenant Linda S. Nischan of MPD's Office of Professional Responsibility investigated the Chairman's failure to complete professional development training in 2007. The final investigative report, issued July 7, 2008, found that MPD had not required previous FOP chairmen to attend in-service training. The final investigative report did not recommend that any discipline be taken against the Chairman but recommended that MPD establish a written directive about training for the Chairman going forward. Four days later, the acting director of labor relations issued to the Chairman a Performance Management System Documentation Form, PD Form 62E, ("PD 62E"), which stated, "By service of this PD 62E, you are directed to ensure that you satisfy all annual training requirements prior to the end of calendar year 2008."[2]

The hearing examiner found that the investigation was not conducted in reprisal for the Chairman's public criticism of the mayor and the chief of police ("the Chief") and did not interfere with, restrain, or coerce the Chairman with respect to his ability to exercise his protected rights. In view of the investigation's finding that previous chairmen were not required to attend in-service training, the hearing examiner found that the directive that the Chairman complete training in 2008 was a unilateral change in conditions of employment. He found MPD's failure to bargain in good faith over this change to be a violation. However, MPD did not refuse to bargain over the change because FOP had not demanded bargaining on the subject at the time the complaint was filed.[3] The Respondent's failure to bargain in good faith did not rise to the level of a repudiation of the contract.[4]

The hearing examiner also found that MPD committed an unfair labor practice by ignoring information requests the Chairman made during the investigation.

B. Case Number 09-U-01

Criticism of the mayor and the Chief by the Chairman was published in the media on May 4, 2008. FOP alleged that in reprisal for that criticism MPD issued to him a PD 62E, a non-appealable type of discipline.[5] As quoted above, the PD 62E instructed the Chairman to satisfy all training requirements by the end of 2008. FOP alleges that by issuing that order, MPD unilaterally changed conditions of employment without bargaining and repudiated the contract. FOP also alleges that new training and performance evaluation requirements imposed on FOP officials constituted improper surveillance of their conduct of union business.[6]

---

[2] Report 5.
[3] Report 21-22.
[4] Report 22.
[5] Report 22.
[6] Report 22-24.

The hearing examiner rejected FOP's claim that the PD 62E was issued as reprisal for the Chairman's May 4, 2008 statements. Training was a concern of MPD's long before May 4, 2008. The PD 62E was issued more than two months after the Chairman's statements but just four days after the final investigative report. The hearing examiner stated that it was clearly a response to the final investigative report. The hearing examiner added that the "circumstances here do not support a finding that the issuance of the PD 62E was a disciplinary action." The hearing examiner also rejected the claim of surveillance as not within the scope of the complaint.

The Hearing Examiner found that the PD 62E's imposition of training requirements was a unilateral change in employment conditions and a failure to bargain in good faith but was not a repudiation of the contract.[7]

C. Case Numbers 10-U-04

In 2009, MPD investigated the failure of the Chairman and the Steward to complete professional development training in 2008. The Chairman submitted requests for information related to the investigation. He did not receive a response. The hearing examiner found that while FOP may not be entitled to answers to most of the questions the Chairman posed, MPD had an obligation to respond to the legitimate questions and to indicate the basis for its non-response to the others. He found that MPD's failure to provide a response was a violation of its duty to bargain in good faith.

D. Case Number 10-U-05

The Union alleges that MPD's 2009 investigation of the Chairman and the Steward violated their statutory rights by investigating their compliance with inapplicable requirements and by retaliating against them for their protected activity of sending a letter on behalf of FOP questioning the Chief's attendance at professional training in 2008. The hearing examiner found that the investigation was retaliatory.

E. Case Number 10-U-10

In case number 10-U-10, FOP alleges that MPD revoked the police powers of the Chairman and the Steward for non-compliance with training in 2009. The hearing examiner found that this action was (1) inconsistent with the past practice of not requiring full-time FOP officials to attend training and thus violated MPD's duty to bargain in good faith and (2) taken in reprisal against the Chairman and the Steward for their exercise of their rights under that past practice not to attend training.

[7] Report 25.

F. Case Numbers 10-U-10 and 10-U-28

In case numbers 10-U-10 and 10-U-28, FOP alleges that MPD committed an unfair labor practice when the Chief terminated ongoing impact-and-effects bargaining on various issues including training. The Chief stated that FOP did not seek to enter negotiations in good faith because it filed an unfair labor practice complaint on the eve of a bargaining session. The complaints in those cases also allege that on December 21, 2009, the Chairman and the Steward were given a memorandum instructing them to report for training on December 23, 2009.

The hearing examiner found that both actions were unfair labor practices. As to the termination of negotiations, he stated that filing an unfair labor practice was not an act of bad faith on the part of FOP. If MPD believed that further negotiations were useless, its options were to file an unfair labor practice complaint or to seek a declaration of an impasse.[8] MPD employed neither of those options. The hearing examiner found that the order to report for training made a change to a past practice without bargaining and that the short notice given the Chairman and the Steward was a serious interference with their activities.

G. Case Number 10-U-29

As in 2009 and 2008, in 2010 MPD investigated the failure of the Chairman and the Steward to attend training the previous year. On April 2, 2010, the Chairman requested information about the investigation.

The hearing examiner found that the investigation interfered with the protected rights of the Chairman and the Steward, was undertaken despite an extension during negotiations, and was taken in reprisal against the Chairman and the Steward for their exercise of their rights under that past practice not to attend training.

F. Remedies

The hearing examiner recommended that the Board issue an order directing MPD to:

> Cease and desist from interfering with, restraining, or coercing any FOP officials in the exercise of their protected rights;
>
> Cease and desist from taking retaliatory actions against any FOP officials;
>
> Expunge the negative items from Chairman Baumann's and Executive Steward Burton's personnel files related to their absence from 2007, 2008, or 2009 training, anything related to their having been placed on non-contact status, and anything related to the revocation of their police powers; and

[8] Report 30-31, 31 n.16 (citing Exhibit 43, interest arbitration award).

Pay the FOP's reasonable costs in these matters.[9]

II. Exceptions

FOP filed exceptions arguing that (1) the hearing examiner should not have admitted exhibits 43 and 44 into the record, (2) the Board should not adopt the hearing examiner's finding that the PD 62E was not a disciplinary action, and (3) the Board should clarify the remedies to include certain remedies omitted from the hearing examiner's recommendations.

MPD filed an opposition to FOP's exceptions. MPD did not file exceptions of its own.

III. Discussion

A. Admissibility of MPD Exhibits 43 and 44

FOP objects on procedural and substantive grounds to the hearing examiner's consideration of two exhibits offered by MPD, exhibits 43 and 44. The exhibits are, respectively, a February 3, 2014 impasse arbitration award and a November 24, 2014 order of the D.C. Superior Court upholding the impasse arbitration award.

Procedurally, FOP objects that the hearing examiner admitted the exhibits after the record closed[10] but supports that objection with an executive director's statement that a *party* cannot submit additional evidence after a hearing is closed.[11] In the present case, MPD did not submit additional evidence after the hearing closed. According to FOP, "During the hearing in this matter, the MPD attempted to introduce two exhibits into the record. . . ."[12] FOP objected to the exhibits. The hearing examiner did not rule on the objection during either of the two days of the hearing,[13] but in his Report he accepted them into the record.[14] FOP claims that MPD abandoned its effort to seek admission of the exhibits by not doing so when the matter reconvened for the second and final day of the hearing.[15] But there is no requirement that a party move for admission of its exhibits on each day of a hearing or trial and no rule prohibiting a hearing examiner from ruling on evidentiary objections in his report. FOP has not identified anything procedurally improper or even unusual in the admission of the exhibits.

Substantively, FOP has failed to show how it is prejudiced by the admission of the exhibits. The impasse arbitration award, evidenced by exhibits 43 and 44, added to the parties' labor

---

[9] Report 36.
[10] Exceptions 10.
[11] *Durant v. Gov't of the District of Columbia Dep't of Corrs.*, Slip Op. No. 1315 at p. 1, PERB Case No. 09-U-15 (Apr. 24, 2012) (citing *Elliott v. D.C. Dep't of Corrs.*, Slip Op. 455 at 2, PERB Case No. 95-U-06 (1995) (holding that a request to reopen a hearing will be denied absent compelling reasons)).
[12] Exceptions 4.
[13] Report 12; Exceptions 4-5.
[14] Report 13.
[15] Exceptions 10.

agreement the requirement that "[a]ll members of the bargaining unit, with no exceptions, must satisfy all required training."[16]

The hearing examiner refers to the award in connection with two subjects. The first is MPD's termination of bargaining, which FOP challenged in case numbers 10-U-10 and 10-U-28. The hearing examiner uses exhibit 43 adversely to MPD in support of his finding that MPD had no legal authority to terminate bargaining. The hearing examiner contrasts that unlawful act with MPD's forgone legal options, one of which was to seek declaration of an impasse.[17] In a footnote the hearing examiner cites exhibit 43 in support of his finding that MPD did not seek declaration of an impasse: "The question of training requirements for full-time FOP officials was eventually resolved through interest arbitration in 2014 (RX43). The interest arbitration award indicates that there was no resort to impasse[] proceedings until 2013. . ."[18] In its exceptions, FOP makes clear that it does not consider the question of training requirements resolved, but the point the hearing examiner is making is that MPD did not resort to impasse proceedings during negotiations, a finding that does not prejudice FOP.

The hearing examiner also refers to the impasse arbitration award in connection with remedies. He begins his discussion of the arguments on remedies by stating that the outcome of the interest arbitration "does not diminish the fact or the seriousness of the unfair labor practices already committed; for such offenses remedial action is appropriate."[19] This statement is consistent with FOP's position that exhibits 43 and 44 are of no relevance "regarding whether MPD committed unfair labor practices in these consolidated matters."[20]

FOP claims that the hearing examiner "used Exhibits 43 and 44 to improperly limit the remedy."[21] The hearing examiner noted that in two prior cases the Board had ordered MPD to cease requiring the Chairman and the Steward to attend in-service training for the balance of the collective bargaining agreement without first negotiating with FOP. "In light of the fact that a new collective bargaining agreement is now in effect that requires the attendance of these officials at training, such a remedial action is not necessary," he stated.[22] Despite its claim that this is an improper limitation on remedies, FOP did not request in its post-hearing brief, and does not request in its exceptions, an order that MPD cease requiring the Chairman and the Steward to attend in-service training for the balance of the collective bargaining agreement without first negotiating with FOP. Because the hearing examiner used the exhibits to exclude a remedy that FOP does not request, FOP has not shown how it has been prejudiced nor has it shown how the remedy was improperly limited.

FOP asserts that the impasse arbitration award "is irrelevant and does nothing to expunge the effects of the unfair labor practices."[23] It is unclear whether FOP contends that the award is

[16] Report 13.
[17] *Supra* p. 4.
[18] Report 31 n.16.
[19] Record 6.
[20] Exceptions 4, 9.
[21] Exceptions 6.
[22] Report 35.
[23] Exceptions 9.

irrelevant not only to unfair labor practice liability but also to the remedies that should be awarded. As noted, the hearing examiner agrees with FOP that the exhibits are irrelevant to the issue of whether MPD committed unfair labor practices in requiring training. Indeed, he found such unfair labor practices in all the cases in which the required training was alleged to be a statutory violation.[24] However, the hearing examiner manifestly found that the exhibits were of probative value to his consideration of remedies. Board Rule 550.16 requires the hearing examiner to "admit proffered evidence that is of probative value." The only exception the rule provides is for "[e]vidence that is cumulative or repetitious." Issues concerning the probative value of evidence are reserved for the hearing examiner.[25]

As MPD states in its opposition, "the Complainant's Exception only involves a disagreement with the Hearing Examiner's decision to admit these exhibits."[26] The disagreement relates to FOP's dissatisfaction with the outcome of the impasse arbitration rather than the outcome these consolidated cases.

B. Disciplinary Nature of the PD 62E

As discussed, *supra* page 3, the hearing examiner rejected FOP's claim that the PD 62E was retaliatory. He explained his reasons for doing so as follows:

> The argument that the issuance of the PD 62E to Bauman was in reprisal for his having publicly criticized the Mayor and the Chief of Police is not persuasive. As discussed above, the issue of attendance at training by full-time FOP officials had been a matter of concern for the MPD for some time, long preceding Bauman's May 4, 2008 public statements. The PD 62E was issued on July 11, more than two months after the public statements, and was clearly a response to the findings of Nischan's Final Investigative Report (CX17/RX4).[27]

The hearing examiner then went on to say

> The circumstances here do not support a finding that the issuance of the PD 62E was a disciplinary action. The Complainant misreads the court's findings in *Hawkins v. D.C.*[28] and, in general, places form over substance. In *Hawkins*, the court did not determine that a PD 62E was a form of discipline, but rather that the specific contents of the PD 62E issued to the plaintiff were disciplinary in nature.[29]

---

[24] Namely, case numbers 08-U-69, 09-U-01, 10-U-05, 10-U-10, 10-U-28, and 10-U-10.
[25] *Hoggard v. D.C. Pub. Schs.*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20 (1996).
[26] Opposition p. 7.
[27] Report 24.
[28] 923 F. Supp. 2d 128 (D.D.C. 2013), *appeal dismissed*, No. 13-7125 (D.C. Cir. Jan. 21, 2014).
[29] Report 24.

FOP excepts to the finding that the PD 62E was not disciplinary, but FOP does not argue that the disciplinary nature of the PD 62E is an element of any unfair labor practice that it has alleged. An element of a *prima facie* case for retaliation against protected activities is that the employer took adverse employment actions against the employee. An adverse action does not have to be a disciplinary action.[30] For example, the hearing examiner found that the 2009 and 2010 investigations raised in case numbers 10-U-05 and 10-U-29, respectively, were retaliatory acts. The court in *Hawkins v. District of Columbia*, relied upon by FOP, noted that failing to hold a birthday party for a public employee or requiring additional hours of work to be considered for a promotion have been held to be adverse actions for purposes of the cause of action that was before the court, a First Amendment retaliation claim.[31] The court began its analysis of whether the plaintiff, Detective William Hawkins, prevailed on a First Amendment retaliation claim with the question of "whether the Government took a constitutionally significant 'adverse action' against Hawkins."[32] After considering the testimony on the PD 62E (or Documentation of Counseling) that MPD issued to Hawkins in that case, the court held that "[a]s a matter of law . . . the Documentation of Counseling constitutes an 'adverse action' for First Amendment purposes."[33]

In the present case, the hearing examiner did not make a finding on whether the PD 62E was an adverse action for purposes of the Comprehensive Merit Personnel Act. He did not need to do so because he found that another element of a *prima facie* case for retaliation against protected activities was absent, i.e., a nexus between the protected activity and the asserted retaliation.[34] Because that essential element is missing, characterizing the PD 62E as an adverse action, or a disciplinary action, would not lead to the conclusion that FOP proved a claim for reprisal for protected activities. FOP does not contend that a disciplinary action is an element of some other unfair labor practice that it made. Again, FOP has failed to show how it is prejudiced by the finding to which it excepts.

Even if FOP were prejudiced by that finding, its exception would be without merit. Contrary to FOP's assertions, neither *Hawkins* nor the Board's decision in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department* ("Slip Op. No. 1391"),[35] compelled the hearing examiner to characterize the PD 62E as an adverse action or a disciplinary action. The court in *Hawkins* made a finding based upon testimony for purposes of a different, albeit analogous, cause of action. The court used the expression "as a matter of law" because of case law holding that for that cause of action the threshold question of whether the government took an adverse action against the plaintiff is question of law for the

[30] *F.O.P./Metro. Police Dep't Labor Comm. (on behalf of Daniels) v. Metro. Police Dep't*, 60 D.C. Reg. 12080, Slip Op. No. 1403 at pp. 3-4, PERB Case No. 08-U-26 (2013).
[31] *Id.* (citing *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 76 n.8 (1990); *Tao v. Freeh*, 27 F.3d 635, 639 (D.C.Cir.1994)).
[32] 923 F. Supp. 2d at 137.
[33] *Id.* at 138.
[34] Report 24. *See Dupree v. F.O.P./Dep't of Corrs. Labor Comm.*, 46 D.C. Reg. 4034, Slip Op. 568 at p. 3, PERB Case Nos. 98-S-08 and 98-U-23 (1998).
[35] 60 D.C. Reg. 9212, Slip Op. No. 1391, PERB Case Nos. 09-U-52 and 09-U-53 (2013).

court.[36] FOP argues that the Board in Slip Op. No. 1391 determined that the PD 62E is a form of discipline and that this determination is precedent and the law of the case. The Board's finding in Slip Op. No. 1391 that "the Hearing Examiner did not err in equating PD 62E's with 'discipline'" is by its terms clearly not binding precedent that a PD 62E is always a form of discipline. It is not the law of the case either because Slip Op. No. 1391 is a different case. As FOP acknowledges, the doctrine of the law of the case posits that a decision should govern the same issues in later stages of the *same* case.[37]

C. Omitted Remedies

In its exception concerning remedies, FOP points out that although the hearing examiner found in many of the consolidated cases that MPD breached its duty to bargain in good faith and made unilateral changes in employment conditions without bargaining, he does not recommend that the Board order MPD to cease and desist from failing to bargain in good faith with FOP and to cease and desist from making unilateral changes to FOP members' conditions of employment without first bargaining with FOP. In addition, FOP notes that the hearing examiner did not require MPD to post a notice of its violations as is standard.

This exception has merit. Contrary to MPD's assertion in its opposition, a general order that MPD desist from failing to bargain in good faith and from making unilateral changes to conditions of employment without bargaining does not compel MPD to cease requiring whatever training is now called for in the parties' labor agreement. The omissions noted by FOP appear to be oversights. The hearing examiner's list of the remedies requested by FOP leaves out FOP's request for an order compelling MPD to conspicuously post no less than two notices of its violations and PERB's Order in each MPD building.[38]

IV. Conclusion

Based on the foregoing, the Board finds that the hearing examiner's findings are reasonable, supported by the record, and consistent with Board precedent. As a result, we adopt the hearing examiner's factual findings and ultimate determination that MPD committed the unfair labor practices discussed above in violation of D.C. Official Code § 1-617.04 (a)(1) and (5). With the preceding additions, we adopt the recommended remedies of the hearing examiner as set forth below in the order.

---

[36] 923 F. Supp. 2d at 137 (citing *Tao v. Freeh*, 27 F.3d 635, 637 (D.C.Cir.1994) ("the requirement that Tao submit new lengthy promotion-application materials is sufficient, as a matter of law, to constitute an 'adverse action' for constitutional purposes")).
[37] Exceptions 11 (citing *Flanagan v. Wyndham Int'l, Inc.*, 231 F.R.D. 98, 103 n.2 (D.D.C. 1995)). For an application of the law of the case under the appropriate circumstances, *see D.C. Pub. Schs. v. Council of Sch. Officers, Local 4*, Slip Op. No. 1525 at 5, PERB Case No. 13-A-09 (June 25, 2015).
[38] Post-Hearing Br. for Complainant 103; Report 34.

ORDER

IT IS HEREBY ORDERED THAT:

1. MPD shall cease and desist from further interference with, coercion of, and retaliation against FOP officials for engaging in protected activities.

2. MPD shall expunge the negative items from Chairman Baumann's and Executive Steward Burton's personnel files related to their absence from 2007, 2008, or 2009 training, anything related to their having been placed on non-contact status, and anything related to the revocation of their police powers.

3. MPD shall cease and desist from failing to bargain in good faith with FOP and cease and desist from making unilateral changes to FOP members' conditions of employment without first bargaining with FOP.

4. MPD shall conspicuously post where notices to employees are normally posted within ten (10) days from the issuance of this Decision and Order a notice that the Board will furnish to MPD. The notice shall remain posted for thirty (30) consecutive days.

5. MPD shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from receipt of the notice that it has been posted accordingly.

6. MPD shall pay the FOP's reasonable costs in these matters

7. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

August 20, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Numbers 08-U-69, 09-U-01, 10-U-04, 10-U-05, 10-U-10, 10-U-28, and 10-U-29 is being transmitted to the following parties on this the 25th day of August, 2015.

Anthony M. Conti
Daniel J. McCartin **via File&ServeXpress**
36 South Charles St., suite 2501
Baltimore, MD 21201

Mark Viehmeyer
Metropolitan Police Department **via File&ServeXpress**
300 Indiana Ave. NW, room 4126
Washington, DC 20001

/s/ Sheryl V. Harrington
Sheryl V. Harrington
Secretary

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Dancy Simpson, Pamela Chase, Ernest Durant, Shante Briscoe, et al.	PERB Case Nos. 10-S-05 10-S-07 10-S-08 10-S-09
Complainants	
v.	Opinion No. 1537
Fraternal Order of Police/ Department of Corrections Labor Committee	
Respondent	

DECISION AND ORDER

I. Statement of the Case

Standards of Conduct Complaints were filed by several Fraternal Order of Police/Department of Corrections Labor Committee ("FOP/DOC") members against FOP/DOC, alleging that FOP/DOC failed to conduct a fair election of local union officials, improperly denied a member the right to run for the election, and failed to disclose requested financial documents.[1] The Complaints were consolidated in this proceeding. A hearing was held, and a Hearing Examiner's Report and Recommendation was issued, which is before the Board for disposition. The Board finds that the Hearing Examiner's Report and Recommendation is inconsistent with the Board's precedents and remands the case to the Hearing Examiner for further factual findings.

[1] Complainants included FOP Lodge #1 as a Respondent in Case No. 10-S-05. The Hearing Examiner found that no allegations or evidence was presented by the Complainants against FOP Lodge #1, and recommended dismissing FOP Lodge #1 as a Respondent. The Board finds that the Hearing Examiner's determination is reasonable, based on the record, and consistent with Board precedent. FOP Lodge #1 is dismissed as a party, and removed from the caption of the case.

II. Facts and Background

A. Case No. 10-S-05

On April 6, 2010, Dancy Simpson filed a Standards of Conduct Complaint, Case No. 10-S-05, alleging that FOP violated §§ 1-617.03(1), (3), (4), and (5); and 1-617.10 of the Comprehensive Merit Personnel Act ("CMPA"), by "failing to make its financial reports and contract terms available to members at the December 30, 2009 meeting for their approval 'for the 2010 budget as required by the By-laws and the CMPA….'"[2] Simpson additionally alleged that FOP's contract requires members to pay a portion of legal fees, contravening FOP's bylaws and constitution.[3] Simpson also challenged the appointment of Betty Wofford as the 2010 Election Committee Chairperson by FOP Chairperson Nila Ritenour, and the appointment of Theresa Capers to the Election Committee, and alleged that the election rules posted by Capers on March 1, 2010 violated state and federal laws. FOP filed an answer, denying the allegations and also filed a motion to dismiss, contending that the complaint contained allegations arising from a 2008 election that had already been resolved by PERB.[4]

B. Case No. 10-S-07

On April 10, 2010, Ernest Durant filed a Standards of Conduct Complaint, asserting that FOP improperly conducted the 2010 elections, including election rules dictating that members could not vote with less than two years of service. He also objected to the location of the polling site, which was the office of the incumbent Executive Board, rather than the D.C. Jail where 90% of the members worked. FOP filed an Answer, denying the allegations.[5]

C. Case No. 10-S-08

On May 14, 2010, Case No. 10-S-08 was filed by Pamela Chase, Edwin Hull, Curtis Thomas, Dancy Simpson, Jacqueline White, Keith Allison, Linwood Benton, and Ernest Durant. The Complaint alleges that FOP violated D.C. Official Code § 1-617.03, because the May 10 election was a sham election and that the poll watcher was a close friend of Capers, and did not fully observe the election. In addition, the Complaint alleged that 160 dues paying members were not permitted to vote, even though they were members in good standing, because their status was probationary.[6] FOP filed an answer denying the allegations.

D. Case No. 10-S-09

On June 10, 2010, Shante Briscoe filed a Standards of Conduct Complaint against FOP. Briscoe alleged that on March 31, 2010, she was nominated and accepted a position as Executive

---

[2] HERR at 3.
[3] *Id.*
[4] Complainants filed a motion for preliminary relief. The Board denied the motion in an Order, Slip Op. No. 1019, and consolidated Case Nos. 10-S-05 and 10-S-07 for a hearing.
[5] HERR at 3.
[6] *Id.*

Secretary, and that Capers sent Briscoe a letter stating that Briscoe could not run, because she was not a member in good standing. Briscoe contested the decision of Capers, and Capers did not respond.

III. Discussion

A hearing was held before Hearing Examiner Lois Hochhauser on four separate dates in 2010. The record was closed with the filing of briefs in 2011. The Report and Recommendations was issued on November 8, 2011 and mailed to the parties on November 11, 2011. In a letter received from the Union's counsel dated December 4, 2004, the Union asserted that it had not received a copy of the Hearing Examiner's Report and Recommendations.[7] An additional copy of the Report and Recommendations was served on the parties on December 19, 2014, and the Union was provided an opportunity to submit Exceptions, which it did not do.

No Exceptions were timely received by the Board. "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,'" based on the record, and consistent with Board precedent.[8]

A. The CMPA governs Standard of Conduct cases.

D.C. Official Code § 1-617.03 establishes the standards of conduct for labor organizations under the CMPA. Section 1-617.03 (a) (1) requires labor organizations to maintain governing rules that define and secure the right of individual members to participate in the affairs of the organization and to a fair process in disciplinary proceedings. Subsection (a)(4) requires fair elections. Subsection (a)(5) requires "[t]he maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and finance controls and regular financial reports or summaries to be made available to members."

B. The Hearing Examiner applied the wrong legal standard to the allegations regarding the election.

The Hearing Examiner considered the Complainants' allegations[9] in light of "[t]he union . . . duty of 'fair representation' toward its members…to act 'without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.'"[10] The Hearing Examiner stated, "A union violates the standards of conduct

[7] Complainants did not object to the Union's assertion.
[8] *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)).
[9] The Hearing Examiner considered that the Complainants appeared *pro se* and that the Board construes the claims of *pro se* complainants liberally.[9] The Hearing Examiner correctly applied the Board's standard for construing *pro se* complaints.
[10] HERR at 17, citing *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

if its actions can reasonably be considered so far outside a 'wide range of reasonableness' that they can be characterized as 'arbitrary, [or] discriminatory….'"[11]

The Board has held that "a breach by an exclusive representative of the duty to fairly represent its employees ... does not concomitantly constitute a breach of the standards of conduct, and vice versa."[12] The CMPA's standards of conduct for labor organizations address standards that apply to the internal operation of the union and union members' participation in such affairs.[13]

The right to be fairly represented, however, arises from a union's role as the employee's exclusive bargaining representative.[14] The alleged acts and conduct of FOP/DOC do not implicate obligations with respect to FOP/DOC's duty to fairly represent employees in a collective bargaining context. Rather they go to the rights of FOP/DOC members' to participate in the affairs of FOP/DOC consistent with the CMPA's prescribed standards of conduct for labor organizations, including FOP/DOC's duty to conduct fair elections and disclose certain financial information to members.

The Hearing Examiner also stated that the union violates the standards of conduct if its actions can reasonably be considered as "bad-faith". This standard of analysis when determining whether a fair election was conducted is also improper. The Hearing Examiner should examine the totality of the circumstances to determine whether a fair election was held. In addition, the Hearing Examiner should determine whether the rights of any of the Complainants were violated by the allegedly improper candidacy and voter rules. Bad faith is not required to find a violation.

C. The Hearing Examiner failed to analyze the claims of financial misconduct.

The Hearing Examiner made no findings of fact and applied no analysis to the allegations that financial reports and a summary of the contract for the Union's legal representation were not made available to the members and approved for the 2010 budget, as required by the by-laws and D.C. Official Code § 1-617.03(a)(5).[15] D.C. Official Code § 1-617.03(a)(5) requires, "The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members." The Hearing Examiner should determine whether or not these financial documents should have been provided to the membership.

---

[11] HERR at 18.
[12] *Charles Bagenstose v. Washington Teachers Union, Local 6*, 43 D.C. Reg. 1397, Slip Op. No. 355, PERB Case Nos. 90-S-01 and 90-U-02 (1993).
[13] *William H. Dupree v. FOP/DOC Labor Committee*, PERB Case Nos. 98-S-08 & 98-U-23, Opinion No. 568 (1998).
[14] *Dupree*, Opinion No. 568 at p. 2. *See* D.C. Official Code § 1-618.06.
[15] HERR at 26, and Complaint 10-S-05 at 3-4.

IV. Conclusion

In reaching her conclusions and recommendations, the Hearing Examiner relied on case law concerning a union's duty of fair representation, which is fundamentally different than whether a fair election was conducted and whether the union met its financial reporting and disclosure obligations under the Standards of Conduct established by the CMPA. The case law concerning the duty of fair representation that the Hearing Examiner considered is inapplicable to the standards of conduct allegations in the present case. The Board finds that the Hearing Examiner's Report and Recommendation is inconsistent with law and the Board's precedents. Therefore, the Board rejects the Hearing Examiner's Report and Recommendation.

As the Hearing Examiner's conclusions regarding the allegations raised by the Complainants do not contain any discussion of applicable law, the Board declines to accept the findings of the Hearing Examiner. The complaints are remanded to the Hearing Examiner. The Hearing Examiner is instructed to determine under the totality of the circumstances whether FOP/DOC committed the alleged violations and whether those alleged violations violated its governing rules and applicable law in breach of the right of individual members to participate in the affairs of the organization, D.C. Official Code § 1-617.03(a)(1), and deprived the Complainants' of a fair election under D.C. Official Code § 1-617.03(a)(4). The Hearing Examiner may examine such factors as whether there were non-discriminatory procedures for determining voters, whether voters had access to an effective polling station, whether balloting procedures were fair and effective, whether the integrity of the ballot was safeguarded through appropriate measures, whether voters were able to cast their ballots without fear or intimidation, and whether ballot counting was secure and subject to monitoring and/or impartial verification. As the Board has not promulgated specific regulations for conducting elections, the Hearing Examiner may consider the Department of Labor's regulations and cases arising under them in making her analysis regarding whether a fair election was conducted.[16] The complaint concerning a breach of FOP/DOC's duties to disclose certain financial data, pursuant to D.C. Official Code § 1-617.03(a)(5), is remanded to the Hearing Examiner for proper findings of fact and conclusions of law.

[16] Comparatively, in the private and federal sectors, the Labor-Management Reporting and Disclosure Act ("LMRDA") and Civil Service Reform Act of 1978 ("CSRA"), respectively, "promote union democracy through standards for union officer elections and union trusteeships." These acts "establish democratic standards for conducting union officer elections, including frequency and method of election, right of members in good standing to be candidates, rights of candidates, and voting rights of members." The Department of Labor's Office of Labor-Management Services administers and enforces most of the LMRDA and the standard of conduct regulations of the CSRA through administrative actions. Department of Labor, http://www.dol.gov/olms/union_info.htm (last accessed: August 25, 2015). The Department of Labor issues regulations for union democracy (CFR Title 29 Chapter IV Part 452 *et seq.*) and financial integrity (29 CFR 458.31-36).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaints will be remanded to the Hearing Examiner for further fact finding and legal analysis as discussed in the Decision. The Hearing Examiner may conduct further proceedings as necessary.
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 and Member Keith Washington. Member Ann Hoffman was not present.

Washington, D.C.

July 24, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Nos. 10-S-05, 10-S-07, 10-S-08, and 10-S-09 was transmitted to the following parties on 25th of August, 2015.

Michael J. Hannon, Esq. **via File&ServeXpress**
Hannon Law Group
1901 18th Street, N.W.
Washington, D.C. 20009

Dancy Simpson **via U.S. Mail**
2236 Alice Avenue
#202
Oxon Hill, MD 20741

Pamela Chase **via U.S. Mail**
6225 Oaklawn Lane
Woodridge, VA 22193

Earnest Durant, Jr. **via U.S. Mail**
813 Galway Lane
Fredericksburg, VA 22407

Marcello Muzzatti **via U.S. Mail**
Fraternal Order of Police District of Columbia Lodge #1
711 4th Street, NW
Washington, D.C. 20001

_/s/Sheryl V. Harrington_____
Sheryl V. Harrington
Administrative Assistant
Public Employee Relations Board
1100 4th Street, SW
Suite E630
Washington, D.C. 20024

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police / Metropolitan Police Department Labor Committee, Petitioner,	PERB Case No. 13-U-35
	Opinion No. 1538
v.	Motion for Reconsideration
District of Columbia Board of Ethics and Government Accountability, Respondent.	

DECISION AND ORDER

I. Statement of the Case

The above-captioned matter is before the Board on a Motion for Reconsideration ("Motion") by the Fraternal Order of Police/Metropolitan Police Department ("FOP"). The Respondent requests that the Board reconsider and clarify the decision issued by the Executive Director on June 10, 2015, dismissing with prejudice its unfair labor practice charge against the District of Columbia Board of Ethics and Government Accountability ("BEGA"). In the dismissal letter, the Executive Director found that FOP lacked standing to bring an unfair labor practice complaint against BEGA because there is no privity of contract between the parties. For the reasons stated below, the Board denies the Motion for Reconsideration.

II. Background

On February 13, 2013, the District of Columbia's Ethics Act was modified by the Government Accountability Emergency Amendment Act of 2013 (the "Act").[1] The Act instituted measures that can be used by BEGA to carry out its statutory purposes. These measures included the authority to investigate ethics violations, hold hearings, and assess civil penalties for violations of the Code of Conduct.[2] On March 5, 2013, FOP contacted BEGA requesting a meeting to discuss how the new policies would be administered to ensure

[1] MFR at 1.
[2] *See* D.C. Official Code §§ 1-1162.12-14 and 21.

compliance with the provisions of the Labor Agreement between FOP and the Metropolitan Police Department ("MPD").[3] On April 26, 2013, FOP sent BEGA a proposed Memorandum of Understanding ("MOU") requesting impact and effects bargaining over the Act and how it would be administered to FOP members.[4] After a third letter from FOP to BEGA on June 3, 2013, BEGA responded on June 17, 2013, that BEGA was under no obligation to bargain with FOP.[5]

On June 28, 2013, FOP filed the instant Unfair Labor Practice Complaint claiming that BEGA interfered with the collectively bargained for rights of the members of FOP and violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing to bargain in good faith with FOP over the impact and implementation[6] of the Act, despite repeated requests by FOP.[7] The Board scheduled the case for mediation to occur on April 13, 2015. However, on April 10, 2015, the Board canceled the mediation and issued an Order to Show Cause for FOP to demonstrate why the case should not be dismissed pursuant to *FOP/MPD Labor Committee v. OUC and OLRCB*, 62 D.C. Reg. 2902, Slip Op. No. 1505, PERB Case No. 13-U-10 (2014) (hereinafter "Slip Op. No. 1505").[8] After a review of FOP's response, on June 10, 2015, the Executive Director dismissed FOP's Complaint for lack of standing.[9] On July 7, 2013, FOP filed this motion for reconsideration.

III. Analysis

A. The Standard for a Motion for Reconsideration

The Board has consistently held that it will deny motions for reconsideration that are based upon mere disagreement with the initial decision or which do not provide a statutory basis for reversal.[10] Moreover, PERB will uphold an Executive Director's decision where it is reasonable and supported by PERB precedent.[11]

B. The Holding in Slip Op. No. 1505

In Slip Op. No. 1505, FOP filed a complaint against OUC and OLRCB alleging that the Respondents committed an unfair labor practice when they refused to produce information

[3] Complaint at 3.
[4] *Id*.
[5] *Id*. at 4.
[6] While the Complaint refers to impact and implementation bargaining, PERB case law consistently refers to the right as impact and effects bargaining. *See, for example*, *AFGE, Local 383 v. D.C. Youth Rehabilitation Services*, 61 D.C. Reg. 1544, Slip Op. No. 1449, PERB Case No. 13-U-06 (2014).
[7] Complaint at 5.
[8] *See also FOP/MPD Labor Committee v. D.C. PERB and OUC*, Civ. Case No. 2013 CA 002120 P(MPA) (D.C. Super. Ct. Aug. 21, 2014).
[9] PERB finds that the dismissal letter is clear that the Complaint was dismissed for lack of standing. There is one sentence where the letter states that FOP "was seeking information." This is in error. However, the rest of the dismissal makes it clear that FOP's original Complaint sought impact and effects bargaining.
[10] *See AFGE, Local 1000 v. Dep't of Emp. Services*, 61 D.C. Reg. 9776, Slip Op. No. 1486, PERB Case No. 13-U-15 (2014).
[11] *DCPS and CFSA v. AFSCME, Dist. Council 20, Local 2921 and WTU Local 6*, 60 D.C. Reg. 16222, Slip Op. No. 1429, PERB Case No. 12-N-03 (2013).

requested by FOP under D.C. Official Code §§ 1-617.04(a)(1) and (5) and Article 10 of FOP's collective bargaining agreement with MPD. PERB ruled in that case that OUC was not under any obligation to produce information under MPD's and FOP's collective bargaining agreement because it was not a signatory to that agreement. PERB went on to find that OUC was not obligated under D.C. Official Code §§ 1-617.04(a)(1) and (5) to provide the information because the statutory duty to provide information, was imposed by the collective bargaining agreement.

FOP uses dictum from Slip Op. No. 1505 to stand for the proposition that statutory rights *"apply to District agencies regardless of their respective agreements."*[12] FOP's reliance on this small section of text is misplaced as that was not the holding of that case. The entire portion of the applicable text in Slip Op. No. 1505 states:

> While certain statutory rights (i.e. Weingarten rights) apply to all District agencies regardless of their respective agreements, the obligation to produce information is imposed by the collective bargaining agreement, not by a statute.[13]

In analyzing just the statutory claim in that case, PERB held that FOP was not the "exclusive representative" of any employees of OUC as required by the express language of D.C. Official Code § l-617.04(a)(5). Further, none of OUC's employees had chosen FOP to be their representative as required by the stated language of PERB's holding in *AFGE, Local 2725 v. D.C. Dep't of Health,* 59 D.C. Reg. 6003, Slip Op. No. 1003 at p. 4-5, PERB Case No. 09-U-65 (2009).

In its Motion for Reconsideration, FOP claims that it is not seeking to enforce contractual rights, as was the case in Slip Op. No. 1505, but is seeking to enforce the statutory rights as cited in the dictum of Slip Op. No. 1505. FOP argues that, because the Board stated that certain statutory rights apply to all District agencies, the instant complaint should not be dismissed because the rights at issue here are those based in statute. In its complaint, the statutory rights that FOP believes have been violated are those found in D.C. Official Code § 1-617.04(a)(5).[14]

D.C. Official Code § 1-617.04(a)(5) prohibits the District, its agents and representatives from refusing to bargain collectively in good faith with the exclusive representative of its employees. As stated in the Executive Director's dismissal of this action, FOP is not the exclusive representative of any employees at BEGA as required by the express language in § 1-617.04(a)(5). Therefore, BEGA is not under any statutory obligation to bargain collectively with FOP.

Further, FOP seeks to bargain over the impact and effects of the Act[15] without the main tool; a collective bargaining relationship. FOP's Complaint bears this out by stating that "BEGA also interfered with the collectively bargained for rights of the members of the D.C. Police Union,

[12] Motion at 6 (emphasis in original).
[13] Slip Op. No. 1505 at p. 6.
[14] Complaint at 5.
[15] *Id*.

and violated D.C. Code §1-617.04(a), by refusing to implement the provisions of the Labor Agreement, entered into by the District of Columbia, that govern investigations and penalties or discipline."[16] In that statement, FOP is correct to some extent. The rights that FOP seeks to enforce – the right to engage in impact and effects bargaining - are those that were "collective[ly] bargained for" in the collective bargaining agreement by the exclusive representative. However, this argument fails because the collective bargaining agreement and the rights that have been bargained for are with MPD, not BEGA.

Moreover, the Act is administered under statute by BEGA. BEGA is not in an employee/employer relationship with any FOP members and is therefore incapable of disciplining or terminating any FOP members. The Act does not give BEGA that type of authority. The Act empowers BEGA to enforce its statutory purpose by investigating, holding hearings, and if necessary, assessing administrative penalties.[17]

IV. Conclusion

The Board has consistently held that it will deny motions for reconsideration that are based upon mere disagreement with the initial decision or which do not provide a statutory basis for reversal. Absent authority which compels reversal, PERB will not overturn its initial decision. In the case at hand, FOP has presented no authority that would compel reversal. Because the arguments made in the Motion for Reconsideration are the same arguments made in FOP's previous pleadings, the Motion is nothing more than a disagreement with the Executive Director's decision to dismiss the case.

For these reasons and pursuant to the authorities cited herein, FOP's Motion for Reconsideration is hereby DENIED.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Reconsideration is DENIED.
2. The Complaint is DISMISSED with prejudice.
3. Pursuant to PERB Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Ann Hoffman, and Yvonne Dixon.

Washington, D.C.

---

[16] *Id.* at 6.
[17] Indeed, it is conceivable that any District employee who violates the Act could be subject to both administrative penalties from BEGA as well as discipline from the employing agency.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-35, Op. No. 1538 was transmitted by File & ServeXpress to the following parties on this the 26th day of August, 2015.

Sara L. Faulman, Esq.
Gregory K. McGillivary, Esq.
Molly A Elkin, Esq.
Woodley & McGillivary, LLP
1101 Vermont Avenue, N.W.
Suite 1000
Washington, D.C. 20005
slf@wmlaborlaw.com
gkm@wmlaborlaw.com
mae@wmlaborlaw.com

Kevin M. Stokes, Esq.
Michael D. Levy, Esq.
D.C. Office of Labor Relations
and Collective Bargaining
441 4th Street, N.W.
Suite 820 North
Washington, D.C. 20001
Kevin.Stokes@dc.gov
Michael.Levy@dc.gov

Rahsaan J. Dickerson, Esq.
Office of the Attorney General
for the District of Columbia
441 4th Street, N.W.
Suite 1180
Washington, D.C. 20001
Rahsaan.Dickerson@dc.gov

/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Service Employees International Union, Local 500	)	PERB Case No. 15-N-01
	)	Opinion No. 1539
Petitioner	)	
and	)	
University of the District of Columbia	)	
Respondent	)	

DECISION AND ORDER

I. Statement of the Case

On February 9, 2015, the Service Employees International Union, Local 500 ("SEIU" or "Union") filed a Negotiability Appeal ("Appeal"), pursuant to Board Rule 532. SEIU and the University of the District of Columbia ("UDC" or "Agency") are currently negotiating their first Collective Bargaining Agreement ("CBA") on working conditions. SEIU filed this Appeal, in response to UDC's written rejection of a number its contract proposals as nonnegotiable. UDC filed an Answer, contesting SEIU's position that the provisions in question were negotiable. The parties submitted briefs in support of their positions. [1]

II. Discussion

The Board has the authority to consider the negotiability of the proposals pursuant to Board Rules 532.1 and 532.4.

In *UDCFA/NEA v. UPC*, the Board adopted the Supreme Court standard for subjects for bargaining that was established and defined in *National Labor Relations Board v. Borg-Warner Corp.*, 356 U.S. 342 (1975).[2] Under this standard, the three categories of bargaining subjects are as follows: (1) mandatory subjects-over which the parties must bargain; (2) permissive subjects,

[1] SEIU requested that the parties be given the opportunity to brief their positions.
[2] 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 2, PERB Case No. 82-N-01 (1982).

over which the parties may bargain; and (3) illegal subjects, over which the parties may not legally bargain.[3]

UDC opposes the Union's proposals found *infra*, because UDC asserts that the proposals affect management's rights under the CMPA. D.C. Official Code § 1-617.08(a) designates management rights:

> (a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:
> (1) To direct employees of the agencies;
> (2) To hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees for cause;
> (3) To relieve employees of duties because of lack of work or other legitimate reasons;
> (4) To maintain the efficiency of the District government operations entrusted to them;
> (5) To determine:
> (A) The mission of the agency, its budget, its organization, the number of employees, and to establish the tour of duty;
>
> (B) The number, types, and grades of positions of employees assigned to an agency's organizational unit, work project, or tour of duty;
>
> (C) The technology of performing the agency's work; and
>
> (D) The agency's internal security practices; and
>
> (6) To take whatever actions may be necessary to carry out the mission of the District government in emergency situations.

The D.C. Court of Appeals has recognized that "verbs such as 'must' or 'shall' denote mandatory requirements, unless such construction is inconsistent with the manifest intent of the legislature or repugnant to the context of the statute."[4]

Additionally, D.C. Official Code § 1-617.08(b) provides that "all matters shall be deemed negotiable, except those that are proscribed by this subchapter." The Board has held that this language creates a presumption of negotiability. [5] The Board has stated that "in view of specific rights reserved solely to management under this same provision, i.e. D.C. Official Code § 1-617.08(a), the Board must be careful in assessing proffered broad interpretations of either

[3] *Id. See also D.C. Nurses Association v. D.C. Department of Mental Health*, 59 D.C. Reg. 10776, Slip Op. No. 1285, PERB Case No. 12-N-01 (2012).
[4] *Leonard v. District of Columbia*, 801 A.2d 82, 84-85 (2002).
[5] *International Association of Firefighters, Local 36 v. D.C. Department of Fire and Emergency Medical Services*, 51 D.C. Reg. 4185, Slip Op. No. 742, PERB Case No. 04-N-02 (2004).

subsection (a) or (b)."[6]

III. Positions of the Parties

The Union's proposals are set forth below. The proposals are followed by: (1) UDC's arguments in support of nonnegotiability; (2) SEIU's arguments in support of negotiability; and (3) the findings of the Board. The Board considers each proposal as a whole, unless the Union has requested that only a particular portion of a proposal be considered.

Union Proposed Article 5 – Assignments, Appointments and Re-appointment

The Union proposed an article concerning the assignment, appointment and reappointment of employees. The Agency has declared most of the Union's proposals non-negotiable, arguing that the proposals infringe on UDC's management rights.[7]

1. *Union's Proposals:*

> A. Assignments shall be for [a] duration of 3 years, 1 year or by semester.
>
> B. UDC shall notify the part-time faculty member of their course assignment/s, in writing, no later than March 1 for the following fall semester and October 1 for the following spring semester in which the assignment is offered. The appointment letter shall include details of the courses to be taught and pay rates for each course.

Agency: UDC argues that these provisions "infringe on UDC's right to direct and assign employees; to maintain the efficiency of the University; and to determine the mission, budget and organization of the University."[8] UDC asserts that the length of time of an employee's assignment is a management right to set educational policy and to "suspend, demote, discharge, or take other disciplinary action against employees for cause" and to "relieve" employees of their duties due to lack of work or other legitimate reason."[9] Further, UDC asserts that prescribing a time period to notify employees of their work assignment interferes with UDC's right to establish educational policy.

Union: As noted above, the Union asserts that its proposals are procedural in nature, and therefore, negotiable.[10]

Board: D.C. Official Code § 1-617.08(a)(1) grants management the sole right "[t]o direct

[6] *Washington Teachers' Union v. District of Columbia Public Schools*, 46 D.C. Reg. 8090, Slip Op. No. 450 at p.4, PERB Case No. 95-N-01 (1999).
[7] UDC's Brief at 3.
[8] UDC's Brief at 3 (citing D.C. Official Code § 1-617.08(a)(1), (2), (4) & (5)(A)).
[9] UDC's Brief at 3.
[10] SEIU's Brief at 2.

employees of the agencies," while subsection (a)(2) grants management the sole right "[t]o hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees for cause."[11] The CMPA reserves the right to direct and assign employees solely to management.[12] Proposal A requires management to only offer assignments of three (3) years, one (1) year, or by semester. The right to determine the length of an assignment infringes on UDC's right to assign work. Additionally, the language in Proposal B, which requires UDC to notify employees by particular dates of their assignments, affects UDC's management's right to assign work by requiring UDC to make assignments by particular dates.[13] The Board finds that the proposals are nonnegotiable, as they interfere with management's right to assign.

2. *Union proposal:*

> C. Part-time faculty members who are on 3-year or annual appointments may be offered additional course assignments. They shall be shall be (sic) solicited by UDC as to their interest in receiving an additional assignment(s) no later than March 1 for the following annual or 3-year appointment.

Agency: UDC argues that Section C requires UDC to offer certain employees additional assignments.

Union: As noted above, the Union argues that this is procedural.

Board: The language of the proposal does not require that the Agency assign particular work to certain employees. The language of the proposal provides for the employees to provide input on their assignment preferences. It does not impose a duty on the Agency to assign an employee his or her preference. Therefore, the Board finds that the proposal is negotiable.

3. *Union proposal:*

> D. A part-time faculty member who is provided notice of course assignments(s) for a semester shall notify UDC of the acceptance of the assignment(s) within two (2) weeks of receiving notice of assignment, except in circumstances beyond the part-time faculty member's reasonable control.

Agency: UDC argues that the proposal sets a time limit for acceptance, which "interferes with the University's right to hire, assign and maintain the efficiency of the University."[14]

---

[12] D.C. Official Code § 1-617.08(a)(1) and (2).
[13] Although bargaining over notice for re-assignments is governed differently in the federal sector, the FLRA has found proposals requiring notice that limit's management's ability to change work schedules nonnegotiable. *See Illinois Nurses Ass'n and VAMC, Hines,* 28 FLRA 212, 227-28 (1987).
[14] UDC Brief at 3 (citing D.C. Official Code § 1-617.08(a)(1)).

Union: As stated above, the Union argues that this proposal is procedural.

Board: Proposal D would require UDC to hold positions open for a minimum of two weeks, while a part-time faculty member decides to accept the position. This proposal affects UDC's right to assign, because it prevents UDC from assigning courses as needed by UDC.[15] The Board finds that this proposal is nonnegotiable.

4. *Union proposal:*

> G: If a part-time faculty member's assigned course is cancelled due to lack of enrollment, the department shall promptly notify the part-time faculty of the cancellation. In the case of course cancellation, the part-time faculty member shall be offered an available alternative course, that has not been assigned to another part-time faculty member and which the part-time faculty member is qualified to teach.

The parties only dispute the negotiability of the second sentence of Section G.

Agency: UDC asserts that the sentence is nonnegotiable, because the sentence interferes with "UDC's management right to direct and assign work, to maintain the efficiency of the University, and to determine the University's mission, budget, organization, and number, types and grades of positions."[16]

Union: As stated above, the Union argues that this proposal is procedural.

Board: The Board finds that this proposal is nonnegotiable, because it requires UDC to assign particular work to a particular employee without regard for UDC's right to maintain the efficiency of the agency and determine UDC's mission.

5. *Union proposal:*

> H: Part-time faculty members shall be given the opportunity to give input to the department on what courses s/he would like to teach. Part-time faculty members shall have the ability to propose new courses, programs or seminars to departments. Part-time faculty members shall receive the same support accorded to full-time faculty in the pursuit of their contributions to the departments' course offerings. Department Chairs or designees shall meet, on request, with a part-time faculty member to discuss the part-time faculty member's qualification to teach other courses.

[15] In general, the FLRA will find a proposal negotiable concerning vacancy filling as long as the proposal does not establish particular time for a vacancy to be filled. *AFGE Local 1738 and VAMC, Salisbury,* 27 FLRA 52, 61-63 (1987).
[16] UDC Brief at 4.

Agency: UDC argues that the Union's proposal "interferes with UDC's mission and its organization by requiring that part-time faculty members have input into new courses, programs and seminars," the development of which UDC argues is a management right to direct educational policy.[17] In addition, UDC asserts that the Union's proposal requires UDC to assign work to the Department Chairs or designees.[18]

Union: As stated above, the Union argues that this proposal is procedural.

Board: The proposal is nonnegotiable. The language "shall receive the same support" requires that management provide certain type of support to the part-time faculty members. The language infringes on management's right to determine the mission and organization of the agency. The Board notes that if the proposal was presented to the Board without the nonnegotiable language discussed above, the proposal would have been negotiable. Allowing input from employees would not require management to take any action. Further, a Department Chair or another designated employee is only proposed to discuss a member's qualifications. It does not require the Chair in particular to meet with a faculty member, nor does it require the Chair or designee to assign a faculty member to another course.[19]

6. *Union proposal:*

> I: If a part-time faculty member(s) designs a new course, and the department intends to offer the course, the part-time member shall be given the first right of refusal to teach the course/s suggested and developed until such time in the future the part-time faculty member declines to teach the course.

Agency: UDC argues, "By mandating that a part-time faculty member be given 'the right of first refusal' to teach a course, this Section infringes on UDC's right to direct and assign employees, to hire employees, to determine the mission of the University and its organization, and to determine the number, types and grades of positions assigned to an organizational unit."[20]

Union: As stated above, the Union argues that this proposal is procedural.

Board: The Board finds that the Union's proposal is nonnegotiable. It requires UDC to assign a particular class to a particular employee, regardless of any discretion or standards for assigning the employee.

---

[17] UDC Brief at 5.
[18] UDC Brief at 5-6.
[19] The FLRA has stated, "[T]he right to assign work 'encompasses the right to determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned.' However the mere fact that a proposal or provision entails some kind of agency action does not necessarily implicate an agency's right to assign work." *NTEU and DHS, Customs & Border Protection*, 64 FLRA 443, 447 (2010).
[20] UDC Brief at 6.

7. *Union proposal:*

> J: Part-time faculty members shall not be limited in the number of courses they can teach per semester or per academic year, as a result of this agreement.

Agency: UDC argues that "whether there should be a limit on the number of courses a part-time faculty member is permitted to teach should be determined by the University."[21] UDC asserts that the Union's proposal interferes with the management rights to direct its mission and organization, by interfering with UDC's right to determine the criteria and number of courses that defines part-time and full-time faculty members.[22] In addition, UDC asserts that the proposal affects its right to determine tours of duty.

Union: As stated above, the Union argues that this proposal is procedural.

Board: The Board finds that the proposal is negotiable. The language of the Union's proposal "as a result of this agreement" saves the proposal. The Union does not assert that the number of courses cannot be limited. The proposal states that the parties' agreement does not establish a limit on the number of courses a part-time faculty member can teach.

8. *Union proposal:*

> L: When courses become newly available that are not assigned to any part-time faculty member or additional sections of existing courses are opened, part-time faculty will be notified of the available courses and the courses will be posted on the UDC website. Qualified part-time faculty members who apply to teach such courses and who already teach at UDC shall be given preferential treatment in assignment over applicants who do not teach at UDC. Where more than one part-time faculty is a qualified applicant under this article and merit and ability are approximately equal in the Employer's reasonable judgment, the course will be offered to the longest serving part-time faculty member. If two or more part-time faculty members have equal length of service, the course will be offered to the part-time faculty member who has taught the greatest number of courses during their length of service at UDC.

Agency: UDC argues that the provision "is a direct infringement on UDC's right to direct employees; hire and assigned employees; maintain the efficiency of the University; and determine the mission of the University, its budget, organization and number of employees; and determine the number, types and grades of positions within each organizational unit."[23]

---

[21] UDC Brief at 8.
[22] UDC Brief at 8.
[23] UDC brief at 8-9.

Union: As stated above, the Union argues that this proposal is procedural.

Board: The Board has held that seniority is negotiable.[24] Notwithstanding, the provision establishes a "reasonable judgment" standard that may interfere with management's right to determine who is qualified. Therefore, the proposal is nonnegotiable.

9. Union proposal:

> M: When multiple sections of a course are assigned to multiple part-time faculty members and the department determines that one or more of those sections will be canceled, the section/s assigned to the shortest-serving part-time faculty member shall be cancelled first.

Agency: UDC argues that the provision infringes on UDC's right to direct, hire and assign employees, maintain the efficiency of the agency, and determine its mission and organization.[25] UDC argues that the cancellation of a course "goes to the heart of its mission and educational policy."[26]

Union: As stated above, the Union argues that this proposal is procedural.

Board: The Board finds that the proposal is nonnegotiable. Section M infringes on UDC's educational mission, as it requires UDC to determine the availability of courses based on seniority. Specifically, UDC would be required to make determinations of which sections to offer to students, based solely on seniority, instead of other factors like student enrollment in other sections. The proposal infringes on UDC's right to determine which sections to provide, which interferes with UDC's right to determine its educational mission.

10. Union proposals:

> O: Part-time faculty members who have previously taught a course for a minimum of two (2) semesters within a period of two (2) academic years at UDC shall be offered re-appointment at a course load at least equal to the number of courses assigned ("courses assigned" shall mean either courses having been assigned to the part-time faculty member or actually taught) during the previous corresponding semester (fall to fall and spring to spring), excluding overload courses.

> P: Part-time faculty members who have taught a course for a minimum of three (3) semesters within a period of three (3) academic years shall be offered an annual appointment at a course load at least equal to the number of courses assigned during the previous academic year. Part-time

[24] . Teamsters Local Union No. 639 and D.C. Public Schools, Slip Op. No. 263, PERB Case Nos. 90-N-02, 90-N-03, and 90-N-04 (1990).
[25] UDC brief at 8-9.
[26] UDC Brief at 9.

faculty members who do not want to be assigned to an annual appointment shall continue to be re-appointed on a semester basis as per Article 5, section N. above, until such time as the part-time faculty member desires an annual appointment.

Q: Part-time faculty members who have taught a course for a minimum of four (4) semesters within a period of four (4) academic years shall be offered a 3-year appointment at a course load at least equal to the number of courses assigned during the previous academic year. Part-time faculty members who do not want to be assigned to a 3-year appointment shall continue to be re-appointed on a semester or Annual basis as per Article 5, section N and/or 0 above, until such time as the part-time faculty member desires a 3-year appointment.

Agency: UDC argues that the proposals mandate that UDC reappoint certain faculty members, violating management's rights "to direct, hire, assign and retain employees; to maintain the efficiency of the University; to determine its mission, budget, organization and number of employees; and to determine the number, types and grades of positions within each unit."[27]

Union: As stated above, the Union argues that this proposal is procedural.

Board: The provisions are nonnegotiable, as the provisions violate management's right to assign, hire, and direct work by requiring management to reappoint faculty members.

11. Union proposals:

R: Re-appointment may be denied, reduced, or subsequently cancelled only in the following circumstances:

a. Elimination or downsizing of a department or program, or a reduction in the number of courses or sections (hereinafter, "courses") offered in the applicable semester, but the impact shall be limited to the relevant course(s) taught by the Part-time faculty member;
b. Cancellation of a course(s) due to under enrollment, based on a predetermined standard for minimum enrollment, but the impact shall be limited to the relevant course(s) taught by the part-time faculty member;
c. Elimination or decrease in courses due to changes in General Curriculum requirements or major or minor or program offerings, but the impact shall be limited to the relevant course(s) taught by the part-time faculty member;
d. Poor performance by the part-time faculty member, as evidenced by the part-time faculty member's evaluation file as set forth in Article_, or the

[27] UDC Brief at 10.

> part-time faculty member's failure to correct a performance problem identified in an evaluation conducted pursuant to Article or by a Department Chair/Program Director or designee through prior discussion, provided that the part-time faculty member has been given a reasonable opportunity to remedy such deficiencies;
> e. Discharge or serious misconduct or neglect of duties resulting in a suspension or written reprimand in accordance with Article __

Agency: UDC argues that "Section R limits the circumstances under which re-appointment of a part-time faculty member can be denied, reduced or cancelled."[28]

Union: As stated above, the Union argues that this proposal is procedural.

Board: Section R is nonnegotiable. The provision places restrictions on UDC's ability to re-appoint employees. Consequently, the provision affects UDC's management right to assign work.

11. Union proposal:

> S: Student evaluations alone shall not be used as the exclusive basis to deny, reduce, or subsequently cancel an appointment.

Agency: UDC argues that this provision "interferes with the right to assign and undermines the University's ability to determine its mission and the right to relieve an employee from duty for lack of work or other legitimate reason."[29] In addition, UDC argues that SEIU cannot determine UDC's criteria for making a decision for re-appointment of a faculty member.[30]

Union: As stated above, the Union argues that this proposal is procedural.

Board: The Board finds the proposal nonnegotiable. The provision creates criteria for UDC to consider or not consider when re-appointing or assigning an employee. This provision restricts UDC's right to assign work.

12. Union proposal:

> T. Courses shall not be scheduled in a manner that impacts the part-time faculty member's availability to continue teaching the course, unless there is a demonstrable operational or programmatic need, in the Employer's reasonable discretion. In the circumstances set forth in subparagraphs a, b, and c, the Department Chair/Program Director or designee shall offer the

[28] UDC Brief at 11.
[29] UDC Brief at 12.
[30] *Id*.

> impacted part-time faculty member an available scheduled course that the part-time faculty member is qualified to teach.[31]

Agency: UDC argues that the provision "interferes with UDC's right to maintain the efficiency of the University; to determine the University's mission and organization; and to establish the tour of duty."[32] UDC also argues that the proposal interferes with its right to assign.

Union: As stated above, the Union argues that this proposal is procedural.

Board: The Board finds that the provision is nonnegotiable, because it limits the basis on which UDC can schedule a class and requires that an employee be offered a class to teach. This requirement infringes on UDC's right to assign work.

13. Union proposal:

> U. Should a part-time faculty member be denied a reappointment for alleged poor performance, pursuant to paragraph R (d) of this Article, UDC shall inform the part-time faculty member of the specific deficiencies resulting in such denial and the University's reasonable expectations and timeline for remedying such deficiencies. Upon satisfying those expectations in the University's reasonable judgment, the part-time faculty member shall have their rights under this article fully restored to them. Should UDC fail to provide the part-time faculty member with such expectations, the part-time faculty member may consider his/herself as terminated and shall have the right to challenge the UDC's actions pursuant to Article_ (Grievance and Arbitration) of this agreement.

Agency: UDC argues that the provisions "infringes on UDC's right to suspend or discharge an employee for cause to relieve an employee of his duty for legitimate reasons if UDC is required to undo such action by setting conditions for the re-appointment of the faculty member."[33]

Union: As stated above, the Union argues that this proposal is procedural.

Board: The Board finds that the provision is nonnegotiable, because it interferes with UDC's right to discharge. The provision requires UDC to create a timeline for the employee to remedy the deficiencies and then requires UDC to restore the employee to his or her full employment rights. The provision does not provide UDC with any discretion to discharge for poor performance, and requires UDC to allow the part-time faculty member to continue teaching.

14. Union proposal:

---

[31] Subparagraphs a, b, and c were not included in the negotiability appeal.
[32] UDC Brief at 12.
[33] UDC Brief at 14.

V. In the case of course cancellation due to under-enrollment the effected part-time faculty member shall be offered the opportunity to teach the students who had signed up for the course on a per-student basis. The rate for such per-student teaching will be as outlined in this agreement.

Agency: UDC argues that this provision "infringes on UDC's right to direct and assign employees; to relieve employees of duty for lack of work or other legitimate reason; to maintain the efficiency of the University's operations; to determine the mission of the University, its budget, its organization and number of employees; and to determine the number types and grades of positions of employees assigned to each organizational unit."[34]

Union: As stated above, the Union argues that this proposal is procedural.

Board: The Board finds that this provision is nonnegotiable. The provision requires that UDC continue to teach students in a particular subject. This infringes on UDC's right to maintain efficiency of UDC's operations.

Union Proposed Article 6 – Evaluations

15. Union proposal:

A. The purpose of evaluations is to support excellence in teaching and adherence to academic and professional standards, while creating opportunities for professional advancement.

Agency: UDC asserts that the provision is not negotiable because it seeks to establish the purpose of UDC's evaluation system.

Union: SEIU asserts that the provision "concern[s] procedures to be followed and the impact of Employer decisions on bargaining unit employees."[35] SEIU argues that it intends to "supplement rather supplant" UDC"s evaluation system.[36]

Board: The Board finds that the provision is nonnegotiable. The Board has previously held that a proposal that sets forth the purpose of a performance evaluation system is nonnegotiable, because it interferes with management's rights to direct and assign employees.[37]

16. Union proposals:

[34] UDC Brief at 14.
[35] SEIU Brief at 2.
[36] SEIU Brief at 2.
[37] *AFGE, Local 1403 and D.C. Office of the Corp. Counsel*, Slip Op. No. 709, PERB Case No. 03-N-02.

B. All part-time faculty members shall be evaluated at least once every academic year of appointment.

D. Evaluation of part-time faculty members will be based on student feedback, peer evaluations, classroom observation, a review of the syllabus and course materials, evidence of part-time faculty member's scholarship or professional/artistic or other achievements in their field, additional statements of support from students and/or peers, and an optional part-time faculty member self-evaluation. The Evaluator shall give consideration to all relevant material provided by the part-time faculty member in advance of the evaluation being prepared.

E. Evaluations shall be carried out by a panel of Evaluators. The panel may include full-time faculty and part-time faculty peers.

G. The part-time faculty member may, if he/she chooses, submit a written response to the student evaluations. The written response will be taken into consideration by the Evaluators when evaluating the faculty member and be included in the part-time faculty member's evaluations file.

I. Student feedback will not be used as the sole basis to evaluate a faculty member's performance.

J. Any expectations of course content and materials, teaching methodologies, use of technologies, and academic and professional standards shall be provided by the Department to the part-time faculty member in person and in writing before the beginning of the course. A part-time faculty member will not be held to expectations that were not made clear in advance to her/him.

K. Classroom observation(s) shall be undertaken for purposes of this evaluation.
1. The time and date of the observation shall be designated in advance by mutual agreement between the Evaluator/sand the part-time faculty member.
2. Classroom observation(s) shall be conducted during a period in which instruction is taking place, and for a duration of time reasonably necessary to observe a part-time faculty member's teaching skills and methodologies.
3. The Evaluator/s will be trained in the discipline in which the part-time faculty member is teaching as well as the methodologies used for the course. If the part-time faculty member feels that any of the Evaluators is not qualified to evaluate them, the part-time faculty member may request and shall be provided with an alternative Evaluator.

L. The Evaluators will prepare a written evaluation report within a four (4) week period of time after the classroom observation, review of evaluation materials, and when the student evaluations are made available to the Evaluators. A copy of the evaluation will be made available to the part-time faculty member. Upon request of the part-time faculty member or the Evaluator, the Evaluators will meet with the part-time faculty member in a timely manner to discuss it. A part-time faculty member may appeal the written report in writing within three (3) weeks of the part-time faculty member's receipt of the evaluation. The Evaluators shall review the appeal with the part-time faculty member and respond in writing to the concerns raised by the appeal within three (3) weeks. The part-time faculty member's written appeal and the Evaluators' response shall be maintained as part of the evaluation materials.

M. Part-time faculty members may request additional classroom observations, no more than once a semester, at any time between annual evaluations. Written feedback from additional observations will be made available to the part-time faculty member within a reasonable period of time after the classroom observation. The process followed in paragraph K will apply.

O. External sources of information on part-time faculty, such as "Rate My Professor," or social media sites, shall not be used to evaluate part-time faculty.

Agency: UDC asserts that the Union’s provisions are nonnegotiable, because the provisions “seek to establish the purpose of the University’s evaluation system and criteria in which a part-time faculty member will be evaluated.”[38]

Union: As stated above, SEIU argues that provisions are intended as procedural in nature.

Board: The Board finds that above provisions are nonnegotiable, because they contain criteria for the UDC to consider for performance evaluations. The Board has held that determining the criteria for a performance evaluation is within management’s rights to implement a performance and evaluation system.[39]

17. Union proposal:

C. Each department will maintain an evaluations file for each part-time faculty member which will contain all evaluations materials, including those provided by the part-time faculty member. The part-time faculty member may examine and make copies of the file at any time.

---

[38] UDC Brief at 15.
[39] *AFGE, Local 1403 and D.C. Office of the Corp. Counsel*, Slip Op. No. 709, PERB Case No. 03-N-02.

Agency: UDC asserts that the Union's provisions are nonnegotiable, because the provisions "seek to establish the purpose of the University's evaluation system and criteria in which a part-time faculty member will be evaluated."[40]

Union: As stated above, SEIU argues that provisions are intended as procedural in nature.

Board: The Board finds the provision negotiable. Section C does not contain any language affecting UDC's right to establish criteria or the purpose of the performance evaluations.

18. Union proposals:

> F. Student evaluations shall be completed for each course. Students shall submit completed evaluations to the department before the last day of class. Student evaluations shall be released to the part-time faculty member following the submission of final grades. Part-time faculty members shall be included in the design of student evaluation forms and shall have the right to submit additional questions, to suggest the removal of questions or to suggest other changes to the student evaluation forms for the Department or Program to consider, in order to ensure that issues that are specific to the Department, Program, or course are addressed in the evaluations. Departments will make a good faith effort to ensure that the majority of students complete the student evaluations form.
>
> H. Part-time faculty members may solicit feedback from students at any time on their course content and teaching effectiveness in order to allow the part-time faculty member to address any concerns surrounding the student feedback that may arise.

Agency: UDC argues that these provisions "interferes with the University's mission, educational policy, and the efficiency of the University, its budget and its organization, and the right to direct employees."[41]

Union: As stated above, SEIU argues that provisions are intended as procedural in nature.

Board: The Board finds that the provisions place requirements on UDC for establishing student evaluations and solicitation of the evaluations. These requirements infringe on UDC's right to determine its mission and educational policy. Therefore, the provision is nonnegotiable.

18. Union proposal:

---

[40] UDC Brief at 15.
[41] UDC Brief at 16.

Section N. If a concern arises during the semester regarding the part-time faculty member's teaching performance, the Employer shall promptly notify the part-time faculty member of the alleged performance issue and give the part-time faculty member clear guidelines on how to rectify the issue. The purpose of this paragraph is to provide the part-time faculty member with notice of an alleged performance issue that is capable of being corrected during the remainder of the course while protecting student confidentiality.

Agency: UDC argues that the provision prohibits UDC from taking disciplinary action.[42]

Union: As stated above, SEIU argues that provision is intended as procedural in nature.

Board: D.C. Official Code 1-617.08(a)(2) designates management's right to discharge. The Board finds that the provision prevents UDC from discharging an employee, by requiring UDC to notify an employee and provide guidelines to correct performance issues. It does not include language that allows UDC to discharge an employee, and restricts UDC from taking action outside of notifying an employee and providing guidelines to correct performance issues. Therefore, the Board finds that the proposal is nonnegotiable.

Union Proposed Article 7- Access to Services- Departmental Support

19. Union proposals:

A. All part-time faculty members will be provided the supplies, materials, technologies, and other resources necessary for teaching the course, before the beginning of the course.

B. Part-time faculty members shall have access to computers with internet access, printers, photocopying, tech support and clerical/administrative support in order to prepare for classes and serve students, on the campus on which she or he teaches. Part-time faculty members who teach after 5 pm and on weekends will have access to office facilities and administrative services in order to prepare for classes, on the campus on which he or she teaches.

O. All equipment shall be maintained in good working order. Technology support shall be made available to part-time faculty who teach in the evenings or on weekends, on the campus on which they teach.

P. Equipment such as projectors and laptops shall be made easily accessible to part-time faculty who teach in the evenings or on weekends.

[42] UDC Brief at 17.

Agency: UDC asserts that the provisions interfere with its management's rights to determine technology.[43]

Union: SEIU argues that the proposals are intended to ensure access to UDC's services and resources, as UDC is responsible to provide.[44]

Board: D.C. Official Code § 1-617.08(a)(5)(C) creates management's right to determine "[t]he technology of performing the agency's work." The Union's provisions impose upon UDC's right to determine the technology that is available to an employee. Therefore, the Board finds that the provisions are nonnegotiable.

20. Union proposal:

> G. All proposed course-related field trips must be approved in advance by the relevant department or program chair, and if approved, part-time faculty members must abide by applicable guidelines and policies relating to such field trips. Upon prior written approval by the department or program, UDC shall generally make direct payment to the institution or facility to cover the cost of field trips and similar expenses directly related to the course curriculum. Examples of such field trips may include, but are not limited to, visits to galleries and museums, performances, concerts, movies, plays, and readings. If a part-time faculty member receives written authorization to cover the costs of the approved field trip or similar expenses, he/she will be promptly reimbursed, upon submission of a receipt or other documentation of the expense.

Agency: UDC argues that this provision "infringes on UDC's management right to maintain the efficiency of the University."[45]

Union: SEIU argues that the proposals are intended to ensure access to UDC's services and resources, as UDC is responsible to provide.[46]

Board: The Board finds the provision nonnegotiable. SEIU's proposal places requirements on UDC and its interaction and payment of third-party vendors. This proposal interferes with management's rights to maintain the agency's efficiency.

21. Union proposals:

> L. UDC shall make available training and/or guidance in teaching methods and grading criteria, curriculum development and shall offer professional

[43] UDC Brief at 18, 20.
[44] SEIU Brief at 3.
[45] UDC Brief at 19.
[46] SEIU Brief at 3.

development courses and support. Part-time faculty members shall have the opportunity to apply for grants and professional development programs made available to full-time faculty. Trainings/courses will also be made available in the evenings for those who teach after 5pm and on weekends.

M. Part-time faculty shall be made aware of students' level of preparedness for College-level course before a course begins. The University shall provide orientation, training and assistance to part-time faculty members in approaching the diverse learning styles and levels of preparedness of the students the part-time faculty members are teaching and mentoring.

N. Part-time faculty shall receive regular training in the technologies and equipment used by UDC, including but not limited to, Black Board, Banner and in-classroom Smart Boards.

Agency: UDC argues that the provision infringes on UDC's right to direct and assign employees.

Union: SEIU argues that the proposals are intended to ensure access to UDC's services and resources, as UDC is responsible to provide.[47]

Board: The FLRA has found that the proposals that require training interfere with management's rights to assign work.[48] The Board adopts the FLRA's holding, and finds the proposals nonnegotiable.

Union's proposed Article 11- Rank and Advancement

22. Union proposal:

A. UDC shall provide in writing to part-time faculty members, and post on the UDC website, the policies and procedures for assignment of title and advancement in rank of part-time faculty.

Agency: UDC argues that the provision interferes with its right to determine technology and interferes with its right to maintain the efficiency of the University and its right to determine its budget.

Union: SEIU argues that the provisions specify procedural requirements for advancement, and does not require the Employer promote any particular candidate.[49]

---

[47] SEIU Brief at 3.
[48] PASS and Dept. of Transp., FAA, 61 FLRA 97, 99 (2005).
[49] SEIU Brief at 3-4.

Board: The Union's proposal only requires UDC to advertise on its website procedures for assignment of title and advancement in rank. Although not exactly on point, the FLRA has found a proposal was negotiable that required management to instruct employees how to apply for open positions. [50] The proposal at issue in the present case is similar to the FLRA case, because both proposals only discuss advertising procedural information, and do not require management to make any promotions or hiring decisions. Further, UDC does not argue that the posting of the notice on its website creates any substantial cost or affects the right to determine its budget.[51] Therefore, the Board finds the proposal negotiable.

23. Union proposal:

> B. When a full-time position becomes available, UDC shall post the position to the existing part-time faculty for two (2) calendar weeks prior to advertising for external candidates.

Agency: UDC argues that the provision "interferes with UDC's exclusive right to hire, promote, assign, and retain employees."[52]

Union: As stated above, SEIU argues that the provisions specify procedural requirements for advancement, and do not require the Employer to promote any particular candidate.[53]

Board: The provision imposes restrictions on the timeframe for UDC to hire. The Board does not have precedent on this issue, and looks to the FLRA. The D.C. Circuit, on review of an FLRA decision, found a proposal negotiable where the proposal provided bargaining unit members with a ten-day advance start on the applications process, during which the employer was allowed to solicit outside applicants.[54] The Union's proposal in the present case prevents UDC from soliciting outside applicants for two calendar weeks, and thus, interferes with UDC's hiring process. Therefore, the Board finds that the provision is nonnegotiable.

24. Union proposal:

> C. If a part-time faculty member who has completed two (2) semesters applies for a full-time position at UDC, s/he shall be given the opportunity to interview for the position, provided s/he meets the minimum qualification for said position. If a part-time faculty applicant has qualifications, merit and ability that are equivalent to an external candidate for a full-time position, the part-time faculty members shall be given first consideration for the position.

---

[50] *AFGE Local 1760 and DHHHS, SSA,* 28 FLRA 160, 162-64 (1987). Comparatively, the proposal as issue in the present case is similar to the FLRA case, because both proposals only discuss advertising procedural information, and do not

[51] See *AFGE, Local 1441*, 61 FLRA 201, 205 (2005).

[52] UDC Brief at 21.

[53] SEIU Brief at 3-4.

[54] *NTEU v. FLRA*, 837 F.2d 1163 (D.C. Cir. 1988).

Agency: UDC argues that the provision infringes upon its right to "direct employees, and hire, promote, transfer, assign, and retain employees."[55]

Union: As stated above, SEIU argues that the provisions specify procedural requirements for advancement, and does not require the Employer promote any particular candidate.[56]

Board: The Board finds that the provision is negotiable. The provision does not prevent UDC from considering outside applicants nor does it require UDC to hire an internal candidate.[57]

Union's Proposed Article 13 - Health and Safety

25. Union proposal:

> A: UDC and the Union are committed to providing a healthy and safe working environment for all faculty members. To that end, the Labor Management Committee (as provided for in Article 8) shall be responsible for considering and making recommendations on health and safety issues as they arise, in addition to its other duties.

Agency: UDC argues that the phrase "shall be responsible for considering and making recommendations on health and safety issues as they arise…" is nonnegotiable. UDC argues that the provision requires that safety recommendations be jointly proposed, which "undermines the authority of management to direct the workforce and maintain operational efficiency."[58]

Union: SEIU asserts that the language of the provision "recognizes the advisory role that a Labor Management Committee will have with regard to health and safety issues." SEIU argues that the proposal does not require the adoption of any recommendations made by the committee.

Board: The provision does not require any action by UDC.[59] Further, the provision does not prevent the UDC from taking action under its management rights. Therefore, the provision is negotiable.

26. Union proposal:

> B: Departments will inform part-time faculty members if they are aware that any student/s may pose a potential threat or become potentially disruptive in class. Departments shall inform part-time faculty members of

---

[55] UDC Brief at 22.
[56] SEIU Brief at 3-4.
[57] The FLRA has found that proposals that do not restrict an agency from considering outside applicants may be found negotiable. *See Dept. of Defense, Dept. of Navy, Navy Ordinance Station, Louisville and IAM Local Lodge 830,* 4 FLRA 760, 777 (1980).
[58] UDC Brief at 24.
[59] The Board notes that UDC does not argue that the Labor Management Committee is improper.

> the procedures and protocols for dealing with students that the part-time faculty member may consider threatening or hostile. Part-time faculty shall be given opportunities to comment on and be engaged in the up-dating of such procedures and protocols.

Agency: UDC argues that the provision interferes with management's right to determine security practices.

Union: SEIU asserts that the provision only obligates UDC to inform faculty of potentially disruptive or threatening students, and to allow faculty the ability to provide input on the procedures and protocols.

Board: The Board finds that the provision infringes on management's right to determine internal security practices. The provision requires UDC to act on particular information. Therefore, the provision is nonnegotiable.

27. Union proposal:

> C: Room temperature in classrooms shall be maintained at a reasonable level of comfort.

Neither party has presented an argument of the negotiability of this provision in their briefs. The Board dismisses the negotiability appeal on this provision.

Union's Proposed Article 16- Class Size and Teaching Assistance

28. Union proposal:

> A. When a part-time faculty member is teaching a course that exceeds 25 students, he/she shall be offered a teaching assistant for that course. For every additional 25 students, another teaching assistant shall be available.

Agency: UDC argues that the provision interferes with its management rights to direct and assign employees.[60] UDC asserts that it "retains the right to determine the number of employees throughout the University and the number of employees of a particular type and within a particular grade or position."[61] UDC also asserts that the provision requires UDC to provide a teaching assistant, which infringes on its rights to determine its mission and organization, to maintain efficiency, and to control its budget.[62] UDC argues that the agency has the right to determine the total number of employees, as well as the "specific units" where employees are assigned."[63]

---

[60] UDC Brief at 26.
[61] UDC Brief at 26.
[62] UDC Brief at 26.
[63] UDC Brief at 27 (citing *Int'l Ass'n of Firefighters, Local 36 v. District of Columbia Fire Dep't*, PERB Case No. 87-N-01, Slip Op No. 167 at 3-4, *aff'd*, *Local 36, Int'l Ass'n of Firefighters v. District of Columbia Public Employee*

Union: SEIU argues that the provision relates to workload, which is negotiable. SEIU relies upon *University of the District of Columbia Faculty Ass'n and University of the District of Columbia* ("*UDCFA*").[64] SEIU argues that *UDCFA* as applied to Article 16 makes the Union proposed provisions negotiable, because the provisions concern "quantitative element[s]."

Board: The Board finds that the present case can be distinguished from *UDCFA*. Most importantly, *UDCFA* preceded D.C. Official Code § 1-617.08(a-1), which amended the prior codification of management's rights to state, "An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section." Although the Board found in *UDCFA* that provisions related to "workload" were negotiable, the Board relied upon the parties' previous collective bargaining agreement. In particular, in *UDCFA*, the Board did not find that UDC had expressly waived its management rights, but the Board stated, "Given these various statutory provisions and recognizing the possible implications of any broad 'workload' ruling, the Board confines its determination on this issue to the area indicated by the parties' 1980 course of action." The Board weighed the parties' prior negotiations in its determination of negotiability, finding that prior collective bargaining agreements could provide insight into the intent of the parties and their interpretation of their statutory obligations.[65] Based on the amendment to § 1-617.08(a-1), the Board finds that *UDCFA* is inapplicable.

Relations Bd., MPA No. 15-87 (D.C. Superior Court Dec. 15, 1988).

[64] 29 D.C. Reg. 2975, Slip Op. No. 43, PERB Case No. 82-N-01.

[65] *UDCFA v. UDC*, at 6-7. The Board notes, in April 2005, the Council of the District of Columbia amended D.C. Official Code § 1-617.08 to include subsection (a-1), which states: "An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section." In *District of Columbia Dep't of Fire and Emergency Medical Services v. American Federation of Government Employees, Local 3721*, 54 D.C. Reg. 3167, Slip Op. No. 874, PERB Case No. 06-N-01 (2007), the Board considered a negotiability appeal filed after the April 2005 amendment to D.C. Official Code § 1-617.08. In that case, the Board stated:

> [A]t first glance, the above amendment could be interpreted to mean that the management rights found in D.C. Code § 1-617.08(a) may no longer be a subject of permissive bargaining. However, it could also be interpreted to mean that the rights found in D.C. Code § 1-617.08(a) may be subject to permissive bargaining, if such bargaining is not considered as a permanent waiver of that management right or any other management right. As a result, [the Board indicated] that the language contained in the statute is ambiguous and unclear.

Id. at 8. The Board reviewed the legislative history of the 2005 amendment to determine the intent of the Council of the District of Columbia. *Id.* The Board noted that analysis prepared by the Subcommittee on Public Interest stated:

> Section 2(b) also protects management rights generally by providing that no "act, exercise, or agreement" by management will constitute a more general waiver of a management right. This new paragraph should not be construed as enabling management to repudiate any agreement it has, or chooses, to make. Rather, this paragraph recognizes that a right could be negotiated. However, if management chooses not to reserve a right when bargaining, that should not be construed as a waiver of all rights, or of any particular right at some other point when bargaining.

Id.

The language of the Union's proposal requires UDC to hire teaching assistants, which interferes with its management rights to assign work and to determine the numbers, types and grades of positions of employees assigned to an agency's organizational unit or work project. Therefore, the Board finds the proposal nonnegotiable.

29. Union proposals:

B. UDC shall maintain class sizes appropriate to the course discipline and to historic class sizes.

C. UDC shall maintain appropriate caps on the number of students permitted to take a course. Departments shall not permit students to register for a course if the course cap is full.

Agency: UDC argues that the provisions are non-negotiable, because the Board has previously ruled that class size is non-negotiable, because it affects management's right to decide its mission.[66]

Union: SEIU argues that these provisions are similar to the quantitative standards that were found negotiable in *UDCFA*.

Board: In *WTU*, the Board found that provisions dictating the class size for teachers were nonnegotiable.[67] The Board reached its determination on the basis that provisions related to class size were within management's rights to determine the mission of the agency and to maintain efficiency of the government operations. The Board finds that class size is nonnegotiable in the present case, because it interferes with management's rights to determine the mission of the agency and maintain efficiency of UDC's operations.

30. Union proposals:

D. Part-time faculty members who have a large number of under-prepared students in their course may request a teaching assistant for that course. Such requests shall not be unreasonably denied.

E. Part-time faculty members who teach writing-intensive courses may request a teaching assistant for that course. Such requests shall not be unreasonably denied.

Agency: UDC argues that these provisions are non-negotiable, because the language "shall not be unreasonably denied" creates a standard for the UDC to provide teaching assistants that is not required by the CMPA and interferes with UDC's management rights to hire, direct, and assign employees; to maintain efficiency of its operations; to determine the number of employees

---

[66] UDC Brief at 27 (citing *Washington Teachers' Union, Local 6,* PERB Case No. 95-N-01, Opinion No. 450, at 12).
[67] *WTU*, at 13, 17 & 18.

and each type and grade; and to determine its mission and budget.[68]

Union: The Union argues that these provisions concern workload issues, which are negotiable.

Board: The Board finds that the provisions are nonnegotiable. The language "shall not be unreasonably denied" requires that the Agency hire or assign teaching assistants. Hiring and assignment of work is within UDC's management rights under the CMPA.

ORDER

IT IS HEREBY ORDERED THAT:

1. SEIU's Proposed Article 5, Sections A, B, C, D, G, H, I, L, M, O, P, Q, R, S, T, U, and V are nonnegotiable.
2. SEIU's Proposed Article 5 Section J is negotiable.
3. SEIU's Proposed Article 6, Sections A, B, D, E, F, G, H, I, J, K, L, M, N, and O are nonnegotiable.
4. SEIU's Proposed Article 6, Section C is negotiable.
5. SEIU's Proposed Article 7, Sections A, B, G, L, M, N, O, and P are nonnegotiable.
6. SEIU's Proposed Article 11, Section A and C are negotiable.
7. SEIU's Proposed Article 11, Section B is nonnegotiable.
8. SEIU's Proposed Article 13, Section A is negotiable.
9. SEIU's Proposed Article 13, Section B is nonnegotiable.
10. SEIU's Proposed Article 16, Sections A, B, C, D, and E are nonnegotiable.
11. 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.

August 20, 2015

[68] UDC Brief at 28.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-N-01, Opinion No. 1539, was served on the following parties on this the 28th day of August, 2015.

Steve Schwartz **via File&ServeXpress**
SEIU, Local 500
901 Russell Avenue, Suite 300
Gaithersburg, MD 20879

Gary L. Lieber **via File&ServeXpress**
FordHarrison LLP
1300 19th St., NW, Suite 300
Washington, D.C. 20036

/s/ Erica J. Balkum
Erica J. Balkum
Attorney-Advisor
Public Employee Relations Board
1100 4th Street, SW
Suite E630
Washington, D.C. 20024

Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	
District of Columbia Public Schools,	PERB Case No. 15-A-05
Petitioner,	
v.	Opinion No. 1540
Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO (on behalf of Sharon Wells),	
Respondent.	

DECISION AND ORDER

Petitioner District of Columbia Public Schools ("DCPS") appeals from a "Decision & Award as to Arbitrability" ("Award") finding arbitrable a grievance filed by Respondent Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO, ("Union"). DCPS asserts herein that the arbitrator exceeded his jurisdiction and that his award is contrary to law and public policy.[1] As the Board finds that there may be grounds to modify or set aside the arbitrator's award, the parties will have fifteen days to file briefs concerning the matter.

I. Statement of the Case

In 2011, grievant Sharon Wells ("Wells") was appointed to a one-year term as the principal of a DCPS elementary school. On May 23, 2012, Kaya Henderson, chancellor of DCPS, ("the Chancellor") reappointed Wells to another one-year term.[2] Less than three months later, on August 6, 2012, DCPS gave Wells a "Notice of Termination," which stated, "In accordance [with] 5-E DCMR 520.2, I am hereby providing you with notice of termination of

[1] The Board is empowered to modify, set aside, or remand an arbitration award "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." D.C. Official Code § 1-605.02(6).
[2] Award pp. 7-8.

your appointment as Principal with the District of Columbia Public Schools (DCPS). Your separation from service will be effective at the close of business August 21, 2012."[3]

The Union challenged the termination in a letter to DCPS, which it styled a grievance. DCPS responded that it did not believe the termination could be grieved and refused to process the grievance.[4] The Union advanced the case to arbitration, asserting that the termination violated the parties' collective bargaining agreement ("CBA").[5] At an arbitration hearing, DCPS took the position that the case was not subject to arbitration. The arbitrator, Homer LaRue, bifurcated the proceedings so that arbitrability could be addressed before any hearing on the merits.[6] Following the submission of briefs by the parties, the arbitrator made the following award:

> 1. The termination of the appointment of Sharon Wells, effective August 21, 2012, as Principal with the District of Columbia Public Schools (DCPS), is subject to arbitration under the parties' CBA.
>
> 2. Sharon Wells and the [Union] may proceed to arbitration on the merits of the grievance.
>
> 3. The Arbitrator retains jurisdiction to determine the merits of the grievance.[7]

DCPS timely filed an arbitration review request ("Request") with the Board. Pursuant to Board Rule 538.2, DCPS requests the Board to determine that there may be grounds to modify or set aside the Award and, if it so finds, to afford DCPS an opportunity to brief the matter. The Union filed an Opposition. Subsequently, DCPS filed a motion for leave to file supplemental authority, namely, *D.C. Public Schools v. D.C. Public Employee Relations Board*, No. 13 CA 7322 (D.C. Super. Ct. Jan. 8, 2015).

DCPS's motion for leave to file supplemental authority is granted. The Request and Opposition are before the Board for disposition.

II. Grounds for Review Asserted by DCPS

In its Request, DCPS contends that the arbitrator exceeded his jurisdiction and that the Award is contrary to law and public policy.

Quoting from the CBA's definition of "grievance," DCPS asserts that "[t]he parties' collective bargaining agreement specifically excludes disputes 'not involving the meaning, application, or interpretation of the terms and provisions of this Agreement' from the grievance and arbitration process under the contract."[8] DCPS contends that by requiring it "to arbitrate a

---

[3] Award p. 9. The notice of termination was Joint Exhibit 3 but was not furnished to the Board.
[4] Award p. 10.
[5] Award App. A, Joint Stipulation of Facts ¶ 14.
[6] *Id.* ¶¶ 16, 17.
[7] Award p. 23.
[8] Request ¶ 8 (quoting CBA art. VIII(A)).

dispute specifically excluded from the parties' grievance proceedings and arbitration agreement, the Arbitrator has added terms to the CBA and therefore exceeded his jurisdiction under the contract."[9]

DCPS argues that the Award is contrary to law and then argues separately that the Award is contrary to public policy. For its argument that the Award is contrary to law, DCPS notes that the D.C. Court of Appeals has asserted that "law" is not limited to statutes but includes administrative rules and regulations[10] and relies upon the D.C. Municipal Regulations ("DCMR"), specifically title 5-E, chapter 5-E5, rule 5-E520 of the DCMR. DCPS alleges, "According to Title 5 of the [DCMR] Chapter 5, the retention and reappointment of principals is at the sole discretion of the Chancellor of DCPS. See, Title 5 DCMR § 520.2." Pursuant to this provision, the Chancellor removed Wells from her position as a principal.[11] DCPS states that the CBA does not contain an agreement to arbitrate disputes under 5 DCMR § 520 nor does it refer to 5 DCMR § 520.[12]

With regard to its argument that the Award is contrary to public policy, DCPS states that an award that is contrary to law *ipso facto* may be said to be contrary to the public policy that the law embodies.[13] Additionally, DCPS claims a right under D.C. Official Code § 1-617.08 and article IV of the CBA to direct its employees and to determine its organization. "This policy," DCPS argues, "is found in the Chancellor's authority to retain and reappoint principals, as established by Title 5 of the DCMR. Insofar as separate provisions of Title 5 DCMR 520 individually and separately address retention and reappointment, they must mean separate things."[14]

The Union filed an Opposition that did not address the import of section 520.2. The Union merely recites that DCPS disagreed with the arbitrator's interpretation of the CBA and asserts that the arbitrator's exercise of his authority to determine arbitrability does not raise a statutory ground for review.

III. Discussion

A. Jurisdiction

While an award finding a grievance to be arbitrable might not be a final award, appealing such an award to the Board, as was done here, is proper procedure under the Comprehensive Merit Personnel Act.[15] As in other arbitration appeals, the Board determines whether an

---

[9] Request ¶ 10.
[10] Request ¶ 11 n.4 (citing *J.C. & Assocs. v. D.C. Bd. of Appeals & Review*, 778 A.2d 296, 303 (D.C. 2001) (construing the District of Columbia Administrative Procedure Act)).
[11] Request ¶¶ 11- 12.
[12] Request ¶ 13.
[13] Request ¶ 15 (citing *F.O.P./Dep't of Corr. Labor Comm. v. D.C. Pub. Emp. Relations Bd.*, 973 A.2d 174, 179 (D.C. 2009)).
[14] Request ¶ 15.
[15] *AFGE, Local 2725 v. D.C. Dep't of Consumer & Regulatory Affairs*, 59 D.C. Reg. 5347, Slip Op. No. 930 at p. 6, PERB Case No. 06-U-43 (2008). The Board has taken appeals from awards that decided only the issue of arbitrability. *D.C. Dep't of Human Servs. v. F.O.P./Dep't of Human Servs. Labor Comm.*, 50 D.C. Reg. 5028, Slip

arbitrator exceeded his or her jurisdiction in rendering an award on arbitrability by evaluating whether the award draws its essence from the collective bargaining agreement.[16] The pertinent test regarding the arbitrator's jurisdiction is whether in resolving any legal or factual disputes the arbitrator was arguably construing or applying the contract.[17]

The Award satisfies that test. The CBA defines a grievance "as an unsettled complaint of any alleged violation, misinterpretation, or misapplication of any of the provisions of this Agreement." The definition goes on to state that a "difference or dispute not involving the meaning, application or interpretation of the terms and provisions of this Agreement shall not constitute a grievance for the purpose of this Article."[18] The CBA also provides that "[n]o disciplinary action shall be taken against an officer except for just cause."[19] The unsettled complaint in this case concerns an alleged violation of the "just cause" provision and involves the meaning, application, and interpretation of the terms of that provision. The Arbitrator arguably (1) construed that provision and determined it applied to the instant case in which the Chancellor did not retain a principal during a term of appointment[20] and (2) construed "disciplinary action" to include "the action of DCPS, in not retaining Grievant during the term of her one-year appointment."[21]

DCPS states that the CBA contains neither an agreement to arbitrate disputes concerning an exercise of the Chancellor's discretion under section 520 nor any reference to section 520.[22] It appears DCPS presumes that if a collective bargaining agreement does not specify that a type of grievance is arbitrable, then it is excluded from the grievance arbitration process. To the contrary, the presumption is the reverse. If an agreement contains an arbitration clause, there is a presumption that any given grievance is arbitrable. Only an express provision excluding a particular type of grievance from arbitration can overcome that presumption.[23] Citing no specific exclusion, DCPS takes the position that the arbitrator required it "to arbitrate a dispute specifically excluded from the parties' grievance proceedings and arbitration agreement."[24] The arbitrator determined that the CBA contains no language exempting from its coverage principals who hold a one-year appointment and are not retained during their term, and he determined that it contains no limitation on the application of the just-cause provision.[25] In making those

---

Op. No. 691 at p. 1 n.1, PERB Case No. 02-A-04 (2002); *D.C. Pub. Schs. and AFSCME Dist. Council 20, Local 2093(on behalf of Hemsley)*, 31 D.C. Reg. 3020, Slip Op. No. 79, PERB Case No. 84-A-02 (1984).

[16] *D.C. Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm.*, 61 D.C. Reg. 11609, Slip Op. No. 1487 at p. 9, PERB Case No. 09-A-05 (2014).

[17] *See id.* (citing *Mich. Family Resources, Inc. v. SEIU, Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007)); *D.C. Dep't of Fire & Emergency Med. Servs. v. AFGE. Local 3721*, 59 D.C. Reg. 9757, Slip Op. No. 1258 at pp. 3-4, PERB Case No. 10-A-09 (2012).

[18] CBA art. VIII(A), pp. 6-7.

[19] CBA art. X(A).

[20] Award p. 20.

[21] Award p. 22.

[22] Request ¶ 13.

[23] *D.C. Dep't of Fire & Emergency Med. Servs. v. AFGE. Local 3721*, 59 D.C. Reg. 9757, Slip Op. No. 1258 at p. 3, PERB Case No. 10-A-09 (2012).

[24] Request ¶ 10.

[25] Award p. 20.

determinations and the others discussed above, the arbitrator construed and applied the CBA. Therefore, the Award draws its essence from the contract and the arbitrator did not exceed his jurisdiction.

B. Law and Public Policy

DCPS contends that the arbitrator's finding of arbitrability is contrary to a provision in the DCMR. Rule 5-E520 of the DCMR is entitled "One Year Appointments of Principals and Assistant Principals." Within that rule, section 520.2 provides, "Retention and reappointment shall be at the discretion of the Superintendent."[26] DCPS's argument turns upon the meaning of "retention" and "discretion" in that provision.

1. Retention

Whether the word retention as used in section 520.2 applies to the removal of a principal in the midst of a term is an issue of first impression.[27] That issue was presented in neither of the cases of non-reappointment of principals that DCPS has raised, *Gray v. D.C. Public Schools*[28] and *D.C. Public Schools v. D.C. Public Employee Relations Board*.[29] What the arbitrator said about *Gray* applies equally to *D.C. Public Schools v. D.C. Public Employee Relations Board*. The case concerned "the situation in which the Chancellor, pursuant to Section 520 of the DCMR, elects not to retain or to reappoint a principal at the end of that employee's one-year term of appointment . . . [and] does not address the fact situation presented by this dispute—that is, that Grievant was still in the status of a reappointed principal with a one-year term of appointment."[30]

DCPS contends that because section 520.2 addresses retention separately from reappointment, the words must mean separate things.[31] To be specific, their meanings are "separate and distinct avenues for the Chancellor's exercise of her discretion."[32]

The arbitrator stated that DCPS's argument "tends to be negated" by its practice of citing section 520.3 in all letters since 2009 notifying principals that they have not been reappointed.[33] The arbitrator cited no evidence to the contrary. Section 520.3 establishes the reversion rights of a "person who is not retained in the position of Principal or Assistant Principal." In the arbitrator's view, describing those principals who have not been reappointed as not retained

---

[26] The Public Education Reform Amendment Act of 2007, D.C. Law 17-9, converted the position of superintendent to that of 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).
[27] *See* Award App. A, Joint Stipulation of Facts ¶ 17.
[28] OEA Matter No. 1601-0122-08 (Oct. 23, 2009).
[29] No. 13 CA 7322 (D.C. Super. Ct. Jan. 8, 2015).
[30] Award p. 16.
[31] Request ¶ 15.
[32] Award p. 11 (quoting DCPS Brief p. 10).
[33] Award p. 18.

"tends to lend credence to the interpretation that the terms 'retention' and 'reappointment' have been used interchangeably by DCPS rather than as separate bases for removal of a principal."[34]

Generally, an interpretation that renders two words in a law interchangeable is not favored because it makes one of the two superfluous, thereby contravening a basic rule of statutory construction.[35] That rule is "to avoid conclusions that effectively read language out of a statute whenever a reasonable interpretation is available that can give meaning to each word in the statute."[36] As noted, DCPS's interpretation is that "the use of both words in the Regulation is intended to '. . . describe separate and distinct avenues for the Chancellor's exercise of her discretion.'"[37] Neither party explains why section 520.2 uses both words but section 520.3 uses only the word "retained."

2. Discretion

If "retention" is used in section 520.2 to mean something other than reappointment and a principal's retention during a term of appointment and his retention once his appointment expires are both at the discretion of the Chancellor, then the next questions are whether the Chancellor's discretion is reviewable by an arbitrator and to what degree. In *D.C. Public Schools v. D.C. Public Employee Relations Board*, the D.C. Superior Court referred to the section 520.2 discretion of the Chancellor as "the sole discretion of the Chancellor."[38] Where a contract provides that discharge or discipline is within the sole discretion of the employer, the discharge or discipline has usually been found to be not subject to arbitration.[39]

Here, the Chancellor's discretion is conferred by a regulation rather than a contract. The Federal Labor Relations Authority has held that, because civil service laws and regulations give federal agencies discretion to summarily terminate probationary employees, the termination of a probationary employee is not arbitrable, but the threshold question of whether a terminated employee was probationary is arbitrable.[40] In the present case there is no analogous threshold

---

[34] Award p. 18. The arbitrator disclaimed making a definitive interpretation of "retention" and "reappointment" but concluded that "DCPS has not used 'retention' as an independent and separate basis for the removal of a principal during the term of the principal's one-year appointment." Award pp. 18-19.

[35] *See State ex rel. Winkleman v. Ariz. Navigable Stream Comm'n*, 229 P.3d 242, 254 (Ariz. App. 2010).

[36] *Sch. St. Assocs. Ltd. P'ship v. District of Columbia*, 764 A.2d 798, 807 (D.C. 2001).

[37] Award p. 11 (quoting DCPS Brief p. 10).

[38] No. 13 CA 7322, slip op. at 8 (D.C. Super. Ct. Jan. 8, 2015), *on remand*, *D.C. Pub. Sch. v. Council of Sch. Officers, Local 4 (on behalf of Williams)*, Slip Op. No. 1525 at p. 6, PERB Case No. 13-A-09 (June 25, 2015).

[39] *United Paperworkers Int'l Union, AFL-CIO v. Misco*, 484 U.S. 29, 41 (1987) (dictum); *Int'l Bhd. of Teamsters, Local Union No. 371 v. Logistics Support Group*, 999 F.2d 227, 229-30 (7th Cir. 1993); *Boston Mut. Life Ins. Co. and Ins. Workers Int'l Union*, 170 N.L.R.B. 1672, 1672 (1968). Conversely, an arbitrator interpreted a contractual grant of discretion with regard to retention as permitting limited review in *Major League Umpires Association v. American League of Professional Baseball Clubs*, 357 F.3d 272 (3d Cir. 2004). In that case, the arbitrator interpreted a collective bargaining agreement providing that "[a]ll umpires shall be selected or retained in the discretion of League Presidents on the basis of the merit and skill of the umpire" as leaving subject to arbitration the issue of whether terminations of umpires were an abuse of discretion or were performed in a discriminatory or arbitrary manner. *Id.* at 277, 282. With one judge dissenting, the court held that the arbitrator's finding of arbitrability drew its essence from the contract. *Id.* at 283-84.

[40] *U.S. Dep't of Labor and AFGE, Local 12*, 61 F.L.R.A. 825, 832(2006). *Cf. Sheriff of Middlesex County v. Int'l Bhd. of Corr. Officers, Local R1-193*, 821 N.E.2d 512, 514 (Mass. App. 2005) ("In labor disputes between public

question on the status of Wells for the arbitrator to decide because the parties stipulated that Wells was hired as a principal.[41]

IV. Conclusion

If the Chancellor exercised her discretion regarding retention of principals in this case, an application to this case of the precedents discussed arguably suggests that the Chancellor's action is not arbitrable or that the arbitrator's authority is limited or eliminated. On the other hand, the inconsistent terminology of sections 520.2 and 520.3 may suggest that the Chancellor's discretion can be exercised only at the end of a principal's term, leaving a termination at any other time subject to the contract's just cause provision. DCPS has not expressly asserted that section 520.2 supersedes the just cause provision of the CBA, and conversely the Union has not expressly asserted that a chancellor's decision not to retain a principal during a term is subject to the just cause provision of the CBA notwithstanding section 520.2.

In view of the foregoing, the Board finds pursuant to Rule 538.2 that there may be grounds to modify or set aside the Award. In accordance with that rule, the parties will have fifteen days from service of this decision and order to file briefs regarding the petitioner's arbitration review request.

ORDER

It is hereby ordered that:

1. The Board notifies the parties that it finds that there may be grounds to modify or set aside the Award.

2. The Board requests that the parties fully brief their position regarding Rule 5-E520 of the D.C. Municipal Regulations, particularly sections 520.2 and 520.3, whether either of those sections supersedes the just cause provision of the CBA, and the effect of those sections on the arbitrability of this matter.

3. Please address in your briefs the issues discussed in this decision and order and any other argument, issue, and federal or District laws or policies which you deem relevant.

3. The parties' briefs are due on September 25, 2015.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

August 20, 2015

---

employers and employees, however, where a statute confers upon the public employer a particular managerial power, an arbitrator is not permitted to direct the employer to exercise that power in a way that interferes with the discretion granted to the employer by statute.")

[41] Award App. A, Joint Stipulation of Facts ¶ 3.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-05 was transmitted via File & ServeXpress to the following parties on this the 10th day of September 2015.

Kaitlyn A. Girard
D.C. Office of Labor Relations and
Collective Bargaining
441 Fourth Street, N.W. Suite 820 North
Washington, D.C. 20001

VIA FILE & SERVEXPRESS

Mark J. Murphy
Mooney, Green, Saidon, Murphy & Welch, P.C.
1920 L Street NW, suite 400
Washington, D.C. 20036

VIA FILE & SERVEXPRESS

/s/ Sheryl Harrington
D.C. Public Employee Relations Board
1100 4th Street, SW, Suite E630
Washington, D.C. 20024

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, Respondents.	PERB Case No. 09-U-31 Opinion No. 1541 **Motion for Reconsideration**

DECISION AND ORDER

Before the Board is a motion for reconsideration filed by the Respondents, the District of Columbia Government and twenty one of its agencies[1] ("Agencies" or "Respondents"). In

[1] 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

Opinion No. 1528,[2] the Board found that the Agencies had committed an unfair labor practice against ten locals of the American Federation of Government Employees[3] ("Unions" or "Complainants") and ordered the Agencies to bargain with the Unions and to post a notice of the violation.

The Respondents timely moved for reconsideration of the decision and order, requesting that the Board either reconsider its decision and order or provide clarification regarding the order and the notice issued by the Board. The motion for reconsideration is denied for the reasons set forth below, which provide further discussion of the issues raised in the motion as requested by Respondents.

I. Statement of the Case

The Unions' complaint alleged that the Agencies refused to bargain over the development of a new annual electronic performance management system known as the ePerformance system and a drug and alcohol testing program. The Unions further alleged that the Agencies failed to provide requested information regarding those two programs ("the Programs").

The matter was referred to a Hearing Examiner. Following a hearing and the filing of post-hearing briefs by the parties, the Hearing Examiner issued a Report and Recommendation. The Hearing Examiner determined that the Programs fall within management rights as defined in the CMPA[4] and thus the Respondents were not required to bargain over the decisions to implement the Programs.[5] 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.[6] 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 implementation."[7]

The Agencies filed exceptions in which they objected 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) of the D.C. Official Code prohibits impact-and-effects bargaining related to the ePerformance system. Section 1-613.53(b) provides, "Notwithstanding any other provision of law or of any collective bargaining agreement, the implementation of the performance

[2] *AFGE Local 631 v. D.C. Gov't*, 62 D.C. Reg. 11793, Slip Op. No. 1528, PERB Case No. 09-U-31 (2015) ("Opinion No. 1528").
[3] Locals 631, 383, 1000, 1403, 1975, 2725, 2741, 2978, 3444, and 3721.
[4] D.C. Official Code § 1-617.08(a).
[5] Report & Recommendation 11.
[6] *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)).
[7] Report & Recommendation 12.

management system established in this subchapter is a non-negotiable subject for collective bargaining."

The Unions filed an opposition to the exceptions. The Unions noted that section 1-613.53(b) is entitled "Transition provisions" and renders nonnegotiable "the implementation of 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 argued that the ePerformance system is not the performance management system established in that subchapter.

The Board determined that it was unnecessary to address the Unions' argument that section 1-613.53(b) is inapplicable to the implementation of the ePerformance system. The reason the Board found it unnecessary to address that argument is that the present case is only about impact-and-effects bargaining. The Board stated that impacts and effects are not the same as implementation,[8] contrary to the Agencies' argument, and further the Board noted that it had previously held that section 1-613.53(b) is not a bar to impact-and-effects bargaining.[9]

The Board accepted the Hearing Examiner's recommended finding that the Agencies had committed an unfair labor practice by refusing to engage in impact-and-effects bargaining regarding the Programs.

The Board issued the following orders:

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.

The notice the Board furnished to the Agencies for posting states:

---

[8] Opinion No. 1528 at 12 (citing *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)).

[9] Opinion No. 1528 at 12 (citing *AFGE Local 631 v. D.C. Gov't*, 59 D.C. Reg. 15175, Slip Op. 1334 at pp. 2-3, PERB Case No. 09-U-18 (2012), and *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)) .

> **WE HEREBY NOTIFY** our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.
>
> **WE SHALL** cease and desist from refusing to bargain in good faith with the exclusive representative of our employees over the procedures for and the impact and effects of the ePerformance system and the drug and alcohol testing program.
>
> **WE SHALL** 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. 1528.

The Agencies filed a motion for reconsideration and an amended motion for reconsideration. As amended, the motion argues that the Board's decision distinguishes implementation from impact and effects but its order and notice impose a duty to bargain over procedures as well as impact and effects. "Given its analysis in the Decision," the Agencies argue, "the language of both the Order and the Notice digress from the Board's distinction between the 'implementation' of a policy, and the 'impact and effects' of such an implementation."[10] The Agencies contend that the order and the notice should be corrected with regard to the ePerformance system. "The reference to 'procedures' which constitute the implementation of the system, should be deleted."[11]

The Agencies further object that the order requires the same type of bargaining for the ePerformance system as it does for drug and alcohol testing. The Agencies contend that the two require separate treatment because section 1-613.53(b) does not apply to drug and alcohol testing. The Agencies claim that they did not contest the duty to bargain over the implementation or the impact and effects of the drug and alcohol testing program. The Agencies assert that the order and notice should be corrected to reflect the different duties to bargain, but the Agencies do not say what the correction should be.

Alternatively, the Agencies request the Board to provide clarification for the notice and order. They also request "that the date the prior Decision & Order herein becomes final be reset to reflect the date of the Decision & Order arising from the instant filing and any Union response."[12]

The Unions filed an Opposition to the amended motion for reconsideration. In their Opposition, the Unions observe that the Agencies cited no authority in support of their motion. The Unions state that in contrast "[l]ong-standing PERB precedent makes clear that an agency's

---

[10] Am. Mot. for Recons. 2.
[11] Am. Mot. for Recons. 3.
[12] Am. Mot. for Recons. 3.

obligation to bargain over 'impact and effects' encompasses the obligation to bargain 'with the exclusive representative of its employees over the impact or effect of, and procedures concerning, the implementation of . . . management rights decisions.'"[13] The parties' post-hearing briefs reflect their understanding of this principle.[14] The Unions state that the claim made by the Respondents that they did not contest the duty to bargain over the implementation and impact and effects of the drug and alcohol testing program is contrary to the record.[15]

II. Discussion

The Respondents have requested that the Board reset the date the decision and order becomes final to the date of the decision and order that arises from their motion for reconsideration. Where a motion for reconsideration is filed, the date the decision and order becomes final is reset by operation of Board Rules 559.2 and 559.3[16]

Regarding the merits, the wording of the order and the notice was neither a digression nor an error in need of correction. Opinion No. 1528 noted that the starting point of the Unions' post-hearing brief was "that management must bargain over the impact and effects of, and procedures concerning, a management rights decision."[17] The Board has repeatedly reaffirmed that duty. For example, the Board held that an agency's "refusal to bargain over the procedures and the effects and impact of its drug-testing program constituted an unfair labor practice."[18] As the Unions put it in their Opposition, "'procedures concerning' is part and parcel of 'impact and effects.'"[19] In its decisions affirming the duty to bargain upon request over the impact and effects of, and procedures concerning, the implementation of management rights, the Board also often refers elliptically to simply "impact and effects" or "impact and effect bargaining," sometimes in the same paragraph with the longer phrase.[20]

---

[13] Opp'n to Am. Mot. for Recons. 5 (quoting *AFGE Locals 631, 255, & 872 v. D.C. Water & Sewer Auth.,* 51 DC Reg. 3537, Slip Op. No. 721 at p. 4, PERB Case No. 03-U-34 (2003)).

[14] Opp'n to Am. Mot. for Recons. 4 (citing Post-Hearing Br. of Complainant 6 and Post-Hearing Br. of Resp't 8).

[15] Opp'n to Am. Mot. for Recons. 3.

[16] Rule 559.2 The Board's Decision and Order shall not become final if any party files a motion for reconsideration within ten (10) days after issuance of the decision, or if the Board reopens the case on its own motion within ten (10) days after issuance of the decision, unless the order specifies otherwise.

Rule 559.3 Upon the issuance of an Opinion on any motion for reconsideration of a Decision and Order, the Board's Decision and Order shall become final.

[17] Opinion No. 1528 at p. 3. The Unions consistently used that terminology in their post-hearing brief. Post-Hearing Br. of Complainant 2, 6, 8, 12, 13-14.

[18] *Teamsters Local No. 639 and D.C. Pub. Sch.*, 38 D.C. Reg. 5069, Slip Op. No. 279 at p. 3, PERB Case No. 90-A-09 (1991).

[19] Opp'n to Am. Mot. for Recons. 5.

[20] *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 62 D.C. Reg. 3544, Slip Op. No. 1506 at p. 8 n.41, PERB Case No. 11-U-50 (2014); *NAGE, Local R3-08 v. D.C. Homeland Security & Emergency Mgmt. Agency*, Slip Op. No.1468 at pp. 3-4, PERB Case No. 14-N-02 (May 13, 2004); *Washington Teachers' Union Local #6 v. D.C. Pub. Sch.*, 61 D.C. Reg. 1537, Slip Op. No. 1448 at pp. 2-4, PERB Case No. 04-U-25 (2014); *AFGE, AFL-CIO, Local 2978 v. D.C. Dep't of Health*, 59 DC Reg. 9783, Slip Op. No. 1267 at p. 2, PERB Case No. 11-U-33(2012) ("'[A]n exercise of management rights does not relieve the employer of its obligation to bargain over

All of those phrases simply extract the key words from the Board's explanation of the principle in its initial opinion on the subject.

> A distinction must be made, however, between the authority, on the one hand, to decide how many employees are needed, and the determination, on the other, of how the *effects* or *impact* of this decision are to be handled. The District of Columbia Board of Labor Relations (BLR) recognized this distinction in Federal City College Faculty Association and Federal City College, BLR Case No. TU001, Opinion No. 15 (April 12, 1977), involving the predecessor parties to the relationship involved in the present case. The holding there was that "the practical *impact* of the decision [to reduce force]... is negotiable but not the decision itself." The Opinion stated further that "[a]lso included within the scope of bargaining are the *procedures* for implementing the decision." More recently the California Public Employee Relations Board has held in Merced Community College District, 3NPER 11197 (CA., 11/17/80) that the "[c]ollege's decision to layoff employees was a managerial prerogative, but the college's refusal to bargain concerning the *effects* of the layoffs was unlawful."[21]

The Board's use of an abbreviated phrase to refer to the above principle does not imply that procedures concerning management rights are nonnegotiable. An agency has a duty to bargain "upon request, over the impact and effects, which include the procedures for implementing a management right."[22] Procedures concerning an exercise of a management right are as appropriate a subject of bargaining as the impact and effects of the exercise of a management right. The Kansas Public Employee Relations Board explained that "as a general rule procedural matters pose no significant threat of interference with the exercise of inherent managerial prerogatives pertaining to the determination of governmental policy."[23]

The only exception is reductions in force. While procedures for implementing a reduction in force as well as its impact and effects formerly were negotiable, the Omnibus Personnel

---

impact and effect of, and procedures concerning, the implementation of [that right].' Unions enjoy the right to impact and effects bargaining concerning a management rights decision only if they make a timely request to bargain.") (internal citation omitted); *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 59 D.C. Reg. 9742, Slip Op. No. 1026 at 12, PERB Case No. 07-U-24 (2010); *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).

[21] *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) (emphasis added).

[22] 45 D.C. Reg. 4771, Slip Op. No. 517 at p. 2, PERB Case No. 97-U-12 (1997).

[23] *Kan. Ass'n of Pub. Employees v. Kan. Adjutant General's Office*, No. 75-CAE-9-1990, 1991 WL 11694350, at *20 (Mar. 11, 1991).

Reform Act of 1997, known as the Abolishment Act, makes the procedures that it establishes for reductions in force nonnegotiable.[24]

The Agencies argue that because the Board distinguished between implementation, on the one hand, and impact and effects, on the other, the Board's order should be confined to impact and effects. In support of that distinction, the Board cited in Opinion No. 1528 *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, which states:

> The Board has consistently held that "management's rights under [D.C. Code § 1-617.08] do not relieve [management] of its obligation to bargain . . . over the impact or effects of, and procedures concerning the implementation of . . . management right decisions." *American Federation of Government Employees, Local 383 v. D. C. Department of Human Services*, 49 DCR 770, Slip Op. No. 418 at p. 4, PERB Case No. 94-U-09 (2002). However, the effects and impact of a non-bargainable management right decision upon terms and conditions of employment, are bargainable only upon request. Moreover, an Employer does not bargain in bad faith by merely unilaterally implementing a management right. The violation arises from the failure to provide an opportunity to bargain over the impact and effects once a request is made.[25]

In that paragraph the Board reiterated its consistent holding on the duty to bargain over the impact or effects of, and procedures concerning, the implementation of management rights decisions. The Board also stated that unilaterally implementing a management right, however, is permitted, implying that implementation is distinct from the procedures concerning implementation as well as from its impact and effects.

There is no reason for the order or the notice to treat the Agencies' bargaining duties with respect to the ePerformance system differently from its bargaining duties with respect to drug and alcohol testing. They both involve management rights that do not relieve management of its obligation to bargain over the impact and effects of, and procedures concerning, the implementation of management rights decisions. Contrary to the Agencies' unfounded claim, the Agencies refused to bargain over those matters with respect to both Programs and not just the ePerformance system.[26] They continued to contest their duty to bargain over the drug and alcohol

---

[24] *NAGE, Local R3-07 v. D.C. Office of Unified Commc'ns*, 61 D.C. Reg. 7353, Slip Op. No.1467 at p. 5-6, PERB Case No. 14-N-01 (2014).
[25] 59 D.C. Reg. 9742, Slip Op. No. 1026 at p. 12, PERB Case No. 07-U-24 (2010).
[26] Report & Recommendation 6.

testing program as well as the ePerformance system in the proceedings before the Board.[27] Consequently, the Board has ordered the Agencies to bargain over the procedures for and the impact and effects of the Programs. It has not ordered the Agencies to bargain over the implementation of the ePerformance system. The negotiability of a particular proposal regarding the ePerformance system that is alleged to concern the implementation of the ePerformance system and to be covered by section 1-613.53(b) can be determined in a negotiability appeal.

In view of the above, we find no basis for reversing or modify, in whole or in part, our Decision and Order in Opinion No. 1528. Therefore, the order and notice remain as issued.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondents' Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

By unanimous vote of Board Chairman Charles Murphy and Members Keith Washington, Ann Hoffman, and Yvonne Dixon

September 22, 2015

[27] The Agencies' answer raised the affirmative defense that the ePerformance system and the drug and alcohol testing program are impermissible subjects of bargaining. Answer 6 (ePerformance), 7 (drug and alcohol testing).

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 22d day of September 2015.

Andres M. Grajales
Deputy General Counsel
AFGE, Office of the General Counsel
80 F Street, NW Washington, DC 20001

Vincent Harris
D.C. Office of Labor Relations and
Collective Bargaining
441 4th St NW, Suite 820N Washington, DC 20001

/s/ David McFadden
David McFadden
Attorney-Advisor

Government of the District of Columbia

Public Employee Relations Board

In the Matter of: Candi Peterson, Complainant, v. Washington Teachers' Union, Respondent.	PERB Case Nos. 12-S-01 Opinion No. 1542

DECISION AND ORDER ON REMAND

This matter comes before the Board on remand from the D.C. Superior Court. The complainant, Candi Peterson, ("Peterson") filed with the court a petition for review of the dismissal of her case. The court granted the petition for review and remanded the case to the Board for an evidentiary hearing.[1] In accordance with the court's order, the Board vacates its prior opinions and orders a hearing in this matter.

I. Statement of the Case

In the summer of 2011, Peterson was serving as the general vice president of the Washington Teachers' Union ("Union") with the then-president of the Union, Nathan Saunders. At the time, both were also members of the Union's executive board. On July 26, 2011, Peterson and Saunders were involved in a heated verbal exchange at the end of a staff meeting. After that exchange, Saunders hand delivered a letter to Peterson that "removed" her from the payroll for failure to perform her duties. It instructed her that she would not be paid until the "situation" was rectified. The letter further stated that she should notify him of her plan of action to address her deficiencies and her date of return when she was ready to resume her role as general vice president. The letter concluded by informing her that she was not to perform any duties on behalf of the Union until Saunders gave his explicit and written approval. Saunders then scheduled an executive board meeting of the Union for August 4, 2011. At that meeting, the executive board adopted a resolution disciplining Peterson on two grounds: (1) interfering with Saunders'

[1] *Peterson v. D.C. Pub. Emp. Relations Bd.*, No. 2012 CA 003140 (D.C. Super. Ct. May 26, 2015).

performance of his duties and (2) publicly disclosing confidential internal Union discussions and defaming a fellow Union member.

On December 2, 2011, Peterson filed a standards of conduct complaint with the Board. The complaint alleged that by removing her from the position of general vice president the Union violated its constitution, its by-laws, and D.C. Official Code § 1-617.03(a)(1). The Board granted the Union's motion to dismiss the complaint.[2] In the decision, the Board found that the 120-day limitations period applicable to standards of conduct complaints began to run when Saunders delivered the letter on July 26, 2011, and that the complaint was filed more than 120 after that date.[3]

On February 17, 2012, Peterson filed a motion for reconsideration with the Board arguing that her Complaint was timely because the limitations period could not have begun until August 4, 2011, when the executive board adopted its resolution. For this reason, she argued that the Board's decision was based on insufficient evidence and, at a minimum, the Agency's rules required a hearing on the issue of timeliness. The Board denied the motion for reconsideration.[4]

On review, the Superior Court found that the Board's decision erroneously disregarded disputes in the record as to the timeliness issue contrary to Board Rule 520.9, which states, "If the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board shall issue a Notice of Hearing and serve it upon the parties." The court found that the record reflected that there was a factual issue as to whether Saunders had authority to discipline Ms. Peterson on July 26 and, regardless of the scope of his authority, there was a factual issue as to whether Saunders implemented the July 26 letter by removing Ms. Peterson from the Union's payroll or by preventing her from working for the Union. The court also questioned whether the discipline invoked by the executive board on August 4 differed from the discipline allegedly imposed by Saunders on July 26. The court ordered "that the case is remanded to Respondent the District of Columbia Public Employee Relations Board for an evidentiary hearing pursuant to the terms of this order."[5]

II. Conclusion

In accordance with the court's order, the Board vacates its prior decisions in this matter, Opinion Nos. 1242 and 1254, and pursuant to Board Rule 544.9 refers this matter to a hearing to develop a factual record and make appropriate recommendations. Prior to hearing, the

[2] *Peterson v. Washington Teachers' Union*, 59 D.C. Reg. 7234, Slip Op. No. 1242, PERB Case No. 12-S-01 (2012).
[3] *Id.* at 3.
[4] *Peterson v. Washington Teachers' Union*, Slip Op. No. 1254, PERB Case No. 12-S-01 (Mar. 28, 2012).
[5] *Peterson v. D.C. Pub. Emp. Relations Bd.*, No. 2012 CA 003140, slip op. at 17 (May 26, 2015).

complainant and the respondent are ordered to attend mandatory mediation pursuant to Board Rule 558.4.

ORDER

IT IS HEREBY ORDERED THAT:

1. Opinion Nos. 1242 and 1254 are vacated.

2. The standards of conduct claim will be referred to a hearing examiner for a hearing. That dispute will be first submitted to the Board's mediation program to allow the parties the opportunity to reach a settlement by negotiating with one another with the assistance of a Board appointed mediator.

3. 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.

September 22, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-S-01 was transmitted via File & ServeXpress to the following parties on this the 23d day of September 2015.

Charles E. Wagner, Esq.
Wagner & Associates **VIA FILE & SERVEXPRESS**
P.O. Box 1472
Silver Spring, Maryland 20911

Lee W. Jackson
James & Hoffman, P.C. **VIA FILE & SERVEXPRESS**
1130 Connecticut Avenue, NW, Suite 950
Washington, DC 20036

/s/ Sheryl Harrington
D.C. Public Employee Relations Board
1100 4th Street, SW, Suite E630
Washington, D.C. 20024

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Local 36, International Association of Firefighters,	)	PERB Case No. 13-N-04
Petitioner,	)	Opinion No. 1543
v.	)	
District of Columbia Department of Fire And Emergency Medical Services,	)	Decision and Order
Respondent.	)	

DECISION AND ORDER

This case is before the Board based upon an order of the D.C. Superior Court (Case No. 2014 CA 003025 P (MPA). In its ruling, the court affirmed in part and vacated in part the Board's decision in PERB Case No. 13-N-04. In accordance with the court's order, the Board issues this opinion vacating in part PERB Opinion No. 1445.

I. Statement of the Case

This case arises from the 2013 negotiations between the International Association of Firefighters ("Union") and the D.C. Fire and Emergency Medical Services ("Agency"). During the course of those negotiations, the Agency claimed that two proposals offered by the Union were non-negotiable. Article XX pertained to the Agency's selection criteria for Special Operations Companies (Rescue Squads, Hazardous Materials Unit, Fireboat) and Article 45B addressed tour of duty (hours of work, schedule and leave).

The issue of the negotiability of these two articles was raised in the instant negotiability appeal filed with PERB. In its July 8, 2013 brief, the Union noted that it had withdrawn its proposal on Article XX. The Union went on to explain that it relied on the specific notice in the

brief that the proposal was withdrawn and that the Union had notified the Agency of this withdrawal at the same time it had filed its brief. While the Union made no further reference in its brief to Article XX, the Agency addressed the substantive arguments of nonnegotiability as it related to both proposals in its brief and made no acknowledgment of the withdrawn proposal. However, sometime later, the Agency filed a motion reflecting the Agency's understanding that the Article XX proposal had been withdrawn.

On December 3, 2013, PERB issued Opinion No. 1445 finding that both Articles XX and 45B were non-negotiable. Two weeks later, the Union filed a motion for reconsideration asserting that the negotiability of Article XX had been withdrawn and was therefore improperly before PERB and that PERB erred in determining that Article 45B was non-negotiable. That motion was subsequently denied and the Union filed an appeal in D.C. Superior Court on May 16, 2014.

II. Analysis

The court ruled that Article XX was not properly before PERB. The court reasoned that there was substantial evidence that the Union withdrew the proposal. First, there was the statement in the brief that the Union had withdrawn its proposal.[1] Second, there was no reference in the Union's brief to the substance of the Article XX proposal.[2] While the court stated in its decision that the Union's statement of withdrawal could have been clearer, it did agree that both the statement of withdrawal in the brief and the absence of any substantive reference to the proposal in the brief were both substantial evidence that the proposal had been withdrawn.[3] Furthermore, the court stated that there is no authority in the PERB rules that require a party to file a motion for leave to withdraw a proposal in a negotiability appeal.[4] Absent any such rule, PERB erred in requiring a motion for leave to withdraw in this case.[5] Therefore the Court vacated PERB's finding of non-negotiability as it related to Article XX.[6]

III. Conclusion

Based on the foregoing, and in accordance with D.C. Official Code § 1-617.13(c), the Board finds that it erred in denying the Union's motion for reconsideration and, under the circumstances of this case, finding that Article XX was non-negotiable. The Board therefore vacates that portion of its decision and order in Slip Opinion 1445 to find, in accordance with the Superior Court, that Article XX is withdrawn.

---

[1] Id.
[2] Id at 6.
[3] Id at 7.
[4] Id at 8.
[5] Id at 9.
[6] Id at 9.

ORDER

IT IS HEREBY ORDERED THAT:

1. Slip Opinion 1445 is vacated in part.
2. Article XX is withdrawn.
3. 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

September 22, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-N-04, Op. No. 1543, was transmitted via U.S. Mail and e-mail to the following parties on this the 23d day of September, 2015.

Devki K. Virk
Bredhoff & Kaiser, P.L.L.C.
805 Fifteenth St. NW, 10th Floor
Washington, D.C. 20005

VIA FILE & SERVEXPRESS

Kevin M. Stokes
D.C. Office of Labor Relations and
Collective Bargaining
441 Fourth Street, N.W. Suite 820 North
Washington, D.C. 20001

VIA FILE & SERVEXPRESS

/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of: National Association of Government Employees Petitioner and District of Columbia Homeland Security and Emergency Management Agency Respondent	PERB Case No. 15-CU-01 Opinion No. 1544

Decision and Order on Compensation Unit Determination

I. Statement of the Case

On October 20, 2014, the National Association of Government Employees ("NAGE" or "Union") filed a Petition for Compensation Unit Determination ("Petition"), seeking to place certain employees into Compensation Unit 1 for compensation bargaining. On November 13, 2014, the District of Columbia Homeland Security and Emergency Management Agency ("HSEMA" or "Agency") filed comments to NAGE's Petition, consenting to the placement of certain employees and objecting to the placement of other employees contained in NAGE's Petition. Pursuant to Board Rule 503.4, HSEMA posted the required notice for fifteen (15) consecutive days. No comments to the Notice were received by the Board. The matter was referred to a Hearing Examiner, who issued a Report and Recommendation. No Exceptions were filed.

NAGE petitioned that the following unit of employees at HSEMA be included in Compensation Unit 1:

> All employees of the Homeland Security Emergency Management Agency including Emergency Operation and Information Specialist, Emergency Operation and Information Specialist Bilingual, Emergency Operation VIP Technicians, all other clerical employees, excluding managers, supervisors, and confidential employees engaged in personnel work other 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, (CMPA) D.C Law 2-139.[1]

NAGE is the certified exclusive bargaining representative for this unit.[2] NAGE asserted in its petition that a number of positions were covered by this certification.[3]

In the Agency's comments, the Agency consented to the inclusion of several of the positions in the Union's bargaining unit under Compensation Unit 1, but disputed the appropriateness of several other positions.[4] The Agency objected to certain positions in NAGE's Petition, because the Agency argued some of the positions were professional employees, who had not been afforded the opportunity to vote whether or not to be included in a unit with nonprofessional employees. The Agency also objected to the inclusion of several employees, who the Agency asserted were statutorily prohibited by the CMPA as managers or employees engaged in confidential work assignments.[5]

II. Hearing Examiner's Report and Recommendation

The Agency objected to several positions in the Petition, arguing that the Petition sought to cover nonprofessional and professional employees in the same bargaining unit without a vote by the professional employees to determine if they wished to bargain in the same unit as nonprofessional employees. At the hearing, the parties decided to settle issues regarding which positions were covered by NAGE's certification through the Board's unit clarification procedures.[6] After NAGE and the Agency agreed on those issues, the parties only disputed whether two employees should be included in the unit: a District of Columbia Statewide Interoperability Communications Coordinator and a Telecommunication Specialist.[7]

The Hearing Examiner first considered whether the two employees were "aligned with management" and prohibited from inclusion in the unit by D.C. Official Code § 1-617.09(b)(1). The Hearing Examiner found that the record did not support that the two disputed employees

---

[1] Petition at 2.
[2] Certification No. 152 (2011).
[3] Petition at 2-3.
[4] Agency Comments at 3.
[5] *Id.* at 5-9.
[6] HERR at 4.
[7] *Id.*

were "aligned with management," because the two employees did not perform duties that required them to develop policies and recommendations for HSEMA.[8]

The Hearing Examiner then considered whether the two employees were "confidential" employees and prohibited from inclusion in the unit by D.C. Official Code § 1-617.09(b)(2). Based on the record, the Hearing Examiner found that the two employees were not confidential employees, and were not involved in labor relations policy or negotiations of a collective bargaining agreement.[9]

The Hearing Examiner recommended that the two disputed employees should be included in Compensation Unit 1.[10]

Applying the Board's two-part test for a compensation unit determination, the Hearing Examiner found that the "the certified unit represented by the Petitioner for terms-and-conditions bargaining in PERB Case No. 10-RC-01, Certification 152 (2011) is also authorized as a unit for the purpose of negotiations concerning compensation and should be placed in Compensation Unit 1."[11] The Hearing Examiner found that the unit met both prongs of the Board's test: (1) the unit covered broad occupational groups that fell within Compensation Unit 1, and (2) placing the employees in Compensation Unit 1 would result in fewer pay systems.[12] The Hearing Examiner recommended that NAGE's unit of employees be placed in Compensation Unit 1.[13]

III. Discussion

No Exceptions were filed. "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."'[14]

A. Disputed employees were not managers or confidential employees

D.C. Official Code § 1-617.09(b) provides in relevant part:

> (b) A unit shall not be established if it includes the following:
>
> (1) Any management official or supervisor: Except, that with respect to fire fighters, a unit that includes both supervisors and nonsupervisors may be considered: Provided, further, that supervisors employed by the District

[8] *Id.* at 17.
[9] HERR at 18.
[10] *Id.* at 20.
[11] *Id.* at 19.
[12] *Id.* at 19 (citing *AFSCME, D.C. Council 20, Local 2401 v. D.C. Pub. Schs.*, 59 D.C. Reg. 4954, Slip Op. No. 962 at p. 3, PERB Case No. 08-CU-01 (2009)).
[13] *Id.* at 20.
[14] 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)).

of Columbia Public Schools may form a unit which does not include nonsupervisors;

(2) A confidential employee….

The Agency raised objections in its comments that two employees a District of Columbia Statewide Interoperability Communications Coordinator and a Telecommunication Specialist) were aligned with management.[15]

The Hearing Examiner in making her determination that two disputed employees were not "aligned with management" applied *NLRB v. Yeshiva University*, 444 U.S. 672 (1979), which was adopted by the Board.[16] The *Yeshiva University* Court defined managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer."[17] The majority further stated, "Managerial employees must exercise discretion within or even independently of, established employer policy and must be aligned with management."[18] The Hearing Examiner applied *AFGE, Local 2725 v. D.C. Department of Housing and Community Development* where the Board stated, in finding a position managerial, that "the employee who encumbers this position is one who formulates and effectuates management policies."[19] The Hearing Examiner considered this case law in finding that the disputed employees did not exercise discretionary powers that created policies used by the Agency.[20] The Board has reviewed the Hearing Examiner's analysis of the Board's case law, and finds that it is consistent with the Board's precedent.

Additionally, the Hearing Examiner determined that the disputed employees were not confidential employees. The Board notes that the Agency did not raise this objection in its Comments about the two disputed employees, and does not consider it a properly raised objection. Notwithstanding, the Board finds that the Hearing Examiner's analysis of the Board's case law is consistent with the Board's precedent. The Hearing Examiner relied on the Board's precedent that an employee "is properly excluded as confidential when his or her confidential role is 'sufficiently involved in labor relations and policy formation matters.'"[21] The Hearing Examiner found that the employees were not involved in labor relations or negotiated any labor relations issues and thus were not confidential employees consistent with the Board's precedent.[22]

---

[15] Comments at 7.
[16] The Board adopted the "aligned with management" test in *NAGE, Local R3-06 v. D.C. Water and Sewer Authority*, Slip Op. No. 635, PERB Case No. 99-U-04 (2000).
[17] *Yeshiva University*, 444 U.S. at 695, citing *NLRB v. Bell Aerospace Co.*, 416 US 267 at 288 (1974).
[18] *Id. at 683.*
[19] HERR at 16 (quoting *FGE, Local 2725 v. D.C. Department of Housing and Community Development*, PERB Case No. 97-UC-01).
[20] *Id.*
[21] *Id.* at 16 (citing *AFGE, Local 12 and D.C. Dep't of Employment Servs. and AFSCME*, Slip Op. No. 22, PERB Case No. 0R006 (1981), and *AFGE, Local 1978 and Dep't of Human Servs.,* Slip Op. No. 236, PERB Case No. 89-R-04 (1989)).
[22] HERR at 18.

B. Two-prong test for Compensation Unit determination

The Board authorizes compensation units pursuant to D.C. Code § 1-617.16(b), which provides:

> In determining an appropriate bargaining unit for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employers or employee groups as may be appropriate.

From this statutory language, the Board recognizes a two-part to determine an appropriate compensation unit: (1) the employees of the proposed unit comprise broad occupational groups; and (2) the proposed unit minimizes the number of different pay systems or schemes.[23] The Hearing Examiner analyzed whether the proposed unit of employees was appropriate for placement in Compensation Unit 1 under the Board's test. The Hearing Examiner made factual findings that the employees in the proposed unit occupy broad occupational groups consistent with Compensation Unit 1, and that placing the unit of employees in Compensation Unit 1 would reduce the number of different pay systems and pay schemes.[24] The Board finds that the Hearing Examiner's analysis was consistent with the Board's precedent.

IV. Conclusion

The Board has reviewed the record and the case law that the Hearing Examiner analyzed in making her Report and Recommendation. The Board finds that the Hearing Examiner's factual findings and recommendations are based on the record, reasonable, and consistent with the Board's precedent. Therefore, the Board adopts the Hearing Examiner's Report and Recommendations.

[23] *AFSCME, D.C. Council 20, Local 2401 v. D.C. Pub. Schs.*, 59 D.C. Reg. 4954, Slip Op. No. 962 at p. 3, PERB Case No. 08-CU-01 (2009).
[24] HERR at 19.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Petitioner's Compensation Unit Determination petition is granted.
2. The following employees are placed in Compensation Unit 1: All employees of the Homeland Security Emergency Management Agency including Emergency Operation and Information Specialist, Emergency Operation and Information Specialist Bilingual, Emergency Operation VIP Technicians, all other clerical employees, excluding managers, supervisors, and confidential employees engaged in personnel work other 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, (CMPA) D.C Law 2-139, under Certification No. 152.
3. The disputed employees (a District of Columbia Statewide Interoperability Communications Coordinator and a Telecommunication Specialist) 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.

September 22, 2015

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order PERB Case No. 15-CU-01 was served to the following parties via File & ServeXpress on this the 23rd day of September 2015:

Repunzelle Bullock, Esq.
Michael Levy, Esq.
Government of the District of Columbia
Office of Labor Relations & Collective Bargaining
441 4th Street, N.W., Suite 820 North
Washington, D.C. 20001

Robert J. Shore, Esq.
Lee A. Blackmon
NAGE/SEIU 5000
Federal Division/District of Columbia Headquarters
901 North Pitt Street, Suite 100
Alexandria, Virginia 22314

/s/ Sheryl V. Harrington
Sheryl V. Harrington
Administrative Assistant
Public Employee Relations Board
1100 4th Street, SW, Suite E630
Washington, D.C. 20024

District of Columbia REGISTER – November 6, 2015 – Vol. 62 - No. 46 014209 – 014689