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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-196, Fiscal Year 2016 Tax Revenue Anticipation Notes Act of 2015
- D.C. Council schedules a public hearing on Bill 21-415, Universal Paid Leave Act of 2015
- D.C. Council schedules a public roundtable on Street Harassment in the District of Columbia
- Board of Elections updates voter registration access regulations
- Department of Human Resources updates regulations for excepted service employees
- Department of Human Services proposes updates to the District of Columbia's public assistance payment levels
- Public Service Commission schedules a Public Interest Hearing to consider the Nonunanimous Full Settlement Agreement and Stipulation filed by Exelon Corporation, Pepco Holdings, Inc., and other Settling Parties
- Public Service Commission solicits comments on Washington Gas Light Company's 2015 Annual Reconciliation Filing

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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DISTRICT OF COLUMBIA
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CONTENTS

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

FINAL RULEMAKING

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

FINAL RULEMAKING CONT'D

PROPOSED RULEMAKING

EMERGENCY AND PROPOSED RULEMAKING

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY AND PROPOSED RULEMAKING CONT'D

NOTICES, OPINIONS, AND ORDERS
MAYOR'S ORDERS

BOARDS, COMMISSIONS, AND AGENCIES

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-196

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 7, 2015

To authorize the issuance of District of Columbia general obligation tax revenue anticipation notes to finance general governmental expenses for the fiscal year ending September 30, 2016.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2016 Tax Revenue Anticipation Notes Act of 2015".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Additional Notes" means District general obligation revenue anticipation notes described in section 9 that may be issued pursuant to section 472 of the Home Rule Act and that will mature on or before September 30, 2016, on a parity with the notes.

(2) "Authorized delegate" means the City Administrator, the Chief Financial Officer, or the Treasurer to whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act.

(3) "Available funds" means District funds required to be deposited with the Escrow Agent, receipts, and other District funds that are not otherwise legally committed.

(4) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel or co-bond counsel from time to time by the Chief Financial Officer.

(5) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia established pursuant to section 424(a)(1) of the Home Rule Act.

(6) "City Administrator" means the City Administrator established pursuant to section 422(7) of the Home Rule Act

(7) "Council" means the Council of the District of Columbia.

(8) "District" means the District of Columbia.

(9) "Escrow Agent" means any bank, trust company, or national banking association with requisite trust powers designated to serve in this capacity by the Chief Financial Officer.

(10) "Escrow Agreement" means the escrow agreement between the District and the Escrow Agent authorized in section 7.

(11) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(12) "Mayor" means the Mayor of the District of Columbia.

(13) "Notes" means one or more series of District general obligation revenue anticipation notes authorized to be issued pursuant to this act.

(14) "Receipts" means all funds received by the District from any source, including, but not limited to, taxes, fees, charges, miscellaneous receipts, and any moneys advanced, loaned, or otherwise provided to the District by the United States Treasury, less funds that are pledged to debt or other obligations according to section 9 or that are restricted by law to uses other than payment of principal of, and interest on, the notes.

(15) "Secretary" means the Secretary of the District of Columbia.

(16) "Treasurer" means the District of Columbia Treasurer established pursuant to section 424(a)(3)(E) of the Home Rule Act.

Sec. 3. Findings.

The Council finds that:

(1) Under section 472 of the Home Rule Act, the Council may authorize, by act, the issuance of general obligation revenue anticipation notes for a fiscal year in anticipation of the collection or receipt of revenues for that fiscal year. Section 472 of the Home Rule Act provides further that the total amount of general obligation revenue anticipation notes issued and outstanding at any time during a fiscal year shall not exceed 20% of the total anticipated revenue of the District for that fiscal year, as certified by the Mayor pursuant to section 472 of the Home Rule Act, as of a date not more than 15 days before each original issuance of the notes.

(2) Under section 482 of the Home Rule Act, the full faith and credit of the District is pledged for the payment of the principal of, and interest on, any general obligation revenue anticipation note.

(3) Under section 483 of the Home Rule Act, the Council is required to provide in the annual budget sufficient funds to pay the principal of, and interest on, all general obligation revenue anticipation notes becoming due and payable during that fiscal year, and the Mayor is required to ensure that the principal of, and interest on, all general obligation revenue anticipation notes is paid when due, including by paying the principal and interest from funds not otherwise legally committed.

(4) The Chief Financial Officer has advised the Council that, based upon the Chief Financial Officer's projections of anticipated receipts and disbursements during the fiscal year ending September 30, 2016, it may be necessary for the District to borrow to a sum not to exceed $600 million, an amount that does not exceed 20% of the total anticipated revenue of the District for such fiscal year, and to accomplish the borrowing by issuing general obligation revenue anticipation notes in one or more series.

(5) The issuance of general obligation revenue anticipation notes in a sum not to exceed $600 million is in the public interest.

Sec. 4. Note authorization.

(a) The District is authorized to incur indebtedness by issuing the notes pursuant to sections 472 and 482 of the Home Rule Act, in one or more series, in a sum not to exceed $600

million, to finance its general governmental expenses, in anticipation of the collection or receipt of revenues for the fiscal year ending September 30, 2016.

(b) The Chief Financial Officer is authorized to pay from the proceeds of the notes the costs and expenses of issuing and delivering the notes, including, but not limited to, underwriting, legal, accounting, financial advisory, note insurance or other credit enhancement, marketing and selling the notes, and printing costs and expenses.

Sec. 5. Note details.

(a) The notes shall be known as "District of Columbia Fiscal Year 2016 General Obligation Tax Revenue Anticipation Notes" and shall be due and payable, as to both principal and interest, on or before September 30, 2016.

(b) The Chief Financial Officer is authorized to take any action necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the notes, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the notes, including any redemptions applicable thereto and a determination that the notes may be issued in book-entry form;

(2) Provisions for the transfer and exchange of the notes;

(3) The principal amount of the notes to be issued;

(4) The rate or rates of interest or the method of determining the rate or rates of interest on the notes; provided, that the interest rate or rates borne by the notes of any series shall not exceed in the aggregate 10% per year calculated on the basis of a 365-day year (actual days elapsed); provided, further, that if the notes are not paid at maturity, the notes may provide for an interest rate or rates after maturity not to exceed in the aggregate 15% per year calculated on the basis of a 365-day year (actual days elapsed);

(5) The date or dates of issuance, sale, and delivery of the notes;

(6) The place or places of payment of principal of, and interest on, the notes;

(7) The designation of a registrar, if appropriate, for any series of the notes, and the execution and delivery of any necessary agreements relating to the designation;

(8) The designation of paying agent(s) or escrow agent(s) for any series of the notes, and the execution and delivery of any necessary agreements relating to such designations; and

(9) Provisions concerning the replacement of mutilated, lost, stolen or destroyed notes.

(c) The notes shall be executed in the name of the District and on its behalf by the manual signature of the Mayor or an authorized delegate. The official seal of the District or a facsimile of it shall be impressed, printed, or otherwise reproduced on the notes. If a registrar is designated, the registrar shall authenticate each note by manual signature and maintain the books of registration for the payment of the principal of and interest on the notes and perform other ministerial responsibilities as specifically provided in its designation as registrar.

(d) The notes may be issued at any time or from time to time in one or more issues and in one or more series.

Sec. 6. Sale of the notes.

(a) The notes of any series shall be sold at negotiated sale pursuant to a purchase contract or at competitive sale pursuant to a bid form. The notes shall be sold at a price not less than par plus accrued interest from the date of the notes to the date of delivery thereof. The purchase contract or bid form shall contain the terms that the Chief Financial Officer considers necessary or appropriate to carry out the purposes of this act. The Chief Financial Officer's execution and delivery of the purchase contract or bid form shall constitute conclusive evidence of the Chief Financial Officer's approval, on behalf of the District, of the final form and content of the notes. The Chief Financial Officer shall deliver the notes, on behalf of the District, to the purchasers upon receiving the purchase price provided in the purchase contract or bid form.

(b) The Chief Financial Officer may execute, in connection with each sale of the notes, an offering document on behalf of the District, and may authorize the document's distribution in relation to the notes being sold.

(c) The Chief Financial Officer shall take actions and execute and deliver agreements, documents, and instruments (including any amendment of or supplement to any such agreement, document, or instrument) in connection with any series of notes as required by or incidental to:

(1) The issuance of the notes;

(2) The establishment or preservation of the exclusion from gross income for federal income tax purposes of interest on the notes, the treatment of interest on the notes as not constituting an item of tax preference for purposes of the federal alternative minimum tax ("non-AMT"), if the notes are originally issued as non-AMT notes, and the exemption from District income taxation of interest on the notes (except estate, inheritance, and gift taxes);

(3) The performance of any covenant contained in this act, in any purchase contract for the notes, or in any escrow or other agreement for the security thereof;

(4) The provision for securing the repayment of the notes by a letter or line of credit or other form of credit enhancement, and the repayment of advances under any such credit enhancement, including the evidencing of such a repayment obligation with a negotiable instrument with such terms as the Chief Financial Officer shall determine; or

(5) The execution, delivery, and performance of the Escrow Agreement, a purchase contract, or a bid form for the notes, a paying agent agreement, or an agreement relating to credit enhancement, if any, including any amendments of any of these agreements, documents, or instruments.

(d) The notes shall not be issued until the Chief Financial Officer receives an approving opinion of Bond Counsel as to the validity of the notes and the establishment or preservation of the exclusion from gross income for federal income tax purposes of the interest on the notes and, if the notes are issued as non-AMT notes, the treatment of such interest as not an item of tax preference for purposes of the federal alternative minimum tax, and the exemption from the District income taxation of the interest on the notes (except estate, inheritance and gift taxes).

(e) The Chief Financial Officer shall execute a note issuance certificate evidencing the determinations and other actions taken by the Chief Financial Officer for each issue or series of the notes issued and shall designate in the note issuance certificate the date of the notes, the series designation, the aggregate principal amount to be issued, the authorized denominations of

the notes, the sale price, and the interest rate or rates on the notes. The Mayor shall certify in a separate certificate, not more than 15 days before each original issuance of a series, the total anticipated revenue of the District for the fiscal year ending September 30, 2016, and that the total amount of all general obligation revenue anticipation notes issued and outstanding at any time during the fiscal year will not exceed 20% of the total anticipated revenue of the District for the fiscal year. These certificates shall be delivered at the time of delivery of the notes and shall be conclusive evidence of the actions taken as stated in the certificates. A copy of each of the certificates shall be filed with the Secretary to the Council not more than 3 days after the delivery of the notes covered by the certificates.

Sec. 7. Payment and security.

(a) The full faith and credit of the District is pledged for the payment of the principal of, and interest on, the notes when due.

(b) The funds for the payment of the notes as described in this act shall be irrevocably deposited with the Escrow Agent pursuant to the Escrow Agreement. The funds shall be used for the payment of the principal of, and interest on, the notes when due, and shall not be used for other purposes so long as the notes are outstanding and unpaid.

(c) The notes shall be payable from available funds of the District, including, but not limited to, any moneys advanced, loaned, or otherwise provided to the District by the United States Treasury, and shall evidence continuing obligations of the District until paid in accordance with their terms.

(d) The Chief Financial Officer may, without regard to any act or resolution of the Council now existing or adopted after the effective date of this act, designate an Escrow Agent under the Escrow Agreement. The Chief Financial Officer may execute and deliver the Escrow Agreement, on behalf of the District and in the Chief Financial Officer's official capacity, containing the terms that the Chief Financial Officer considers necessary or appropriate to carry out the purposes of this act. A special account entitled "Special Escrow for Payment of District of Columbia Fiscal Year 2016 General Obligation Tax Revenue Anticipation Notes" is created and shall be maintained by the Escrow Agent for the benefit of the owners of the notes as stated in the Escrow Agreement. Funds on deposit, including investment income, under the Escrow Agreement shall not be used for any purposes except for payment of the notes or, to the extent permitted by the Home Rule Act, to service any contract or other arrangement permitted under subsections (k) or (l) of this section, and may be invested only as provided in the Escrow Agreement.

(e) Upon the sale and delivery of the notes, the Chief Financial Officer shall deposit with the Escrow Agent to be held and maintained as provided in the Escrow Agreement all accrued interest and premium, if any, received upon the sale of the notes.

(f)(1) The Chief Financial Officer shall set aside and deposit with the Escrow Agent funds in accordance with the Escrow Agreement at the time and in the amount as provided in the Escrow Agreement.

(2) If Additional Notes are issued pursuant to section 9(b), and if on the date set forth in the Escrow Agreement, the aggregate amount of principal and interest payable at

maturity on the outstanding notes, including any Additional Notes, less all amounts on deposit, including investment income, under the Escrow Agreement exceeds 90% of the actual receipts of District taxes (other than special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act), for the period August 15, 2016, until September 30, 2016, beginning on the date set forth in the Escrow Agreement, the Chief Financial Officer shall promptly, upon receipt by the District, set aside and deposit with the Escrow Agent the receipts received by the District after the date set forth in the Escrow Agreement, until the aggregate amount of principal and interest payable at maturity on the outstanding notes, including any Additional Notes as described above, is less than 90% of actual receipts of District taxes (other than special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act).

(3) The District covenants that it shall levy, maintain, or enact taxes due and payable during August 1, 2016, through September 30, 2016, to provide for payment in full of the principal of, and interest on, the notes when due. The taxes referred to in this paragraph shall be separate from special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, or taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act.

(4) The District covenants that so long as any of the notes are outstanding, it shall not grant, create, or permit the existence of any lien, pledge, or security interest with respect to its taxes due and payable during the period August 1, 2016, through September 30, 2016, or commit or agree to set aside and apply those tax receipts to the payment of any obligation of the District other than the notes. The taxes referred to in this paragraph shall not include special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, or taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act, or any real property tax liens created or arising in any fiscal year preceding the issuance of the notes.

(g) Before the 16th day of each month, beginning in August 2016, the Chief Financial Officer shall review the current monthly cash flow projections of the District, and if the Chief Financial Officer determines that the aggregate amount of principal and interest payable at maturity on the notes then outstanding, less any amounts and investment income on deposit under the Escrow Agreement, equals or exceeds 85% of the receipts estimated by the Chief Financial Officer to be received after such date by the District but before the maturity of the notes, then the Chief Financial Officer shall promptly, upon receipt by the District, set aside and deposit with the Escrow Agent the receipts received by the District on and after that date until the aggregate amount, including investment income, on deposit with the Escrow Agent equals or exceeds 100% of the aggregate amount of principal of and interest on the notes payable at their maturity.

(h) The Chief Financial Officer shall, in the full exercise of the authority granted the Chief Financial Officer under the Home Rule Act and under any other law, take actions as may be necessary or appropriate to ensure that the principal of and interest on the notes are paid when due, including, but not limited to, seeking an advance or loan of moneys from the United States Treasury if available under then current law. This action shall include, without limitation, the

deposit of available funds with the Escrow Agent as may be required under section 483 of the Home Rule Act, this act, and the Escrow Agreement. Without limiting any obligations under this act or the Escrow Agreement, the Chief Financial Officer reserves the right to deposit available funds with the Escrow Agent at his or her discretion.

(i) There are provided and approved for expenditure sums as may be necessary for making payments of the principal of, and interest on, the notes, and the provisions of the District of Columbia Appropriations Act, 2016, if enacted prior to the effective date of this act, relating to short-term borrowings are amended and supplemented accordingly by this section, as contemplated in section 483 of the Home Rule Act.

(j) The notes shall be payable, as to both principal and interest, in lawful money of the United States of America in immediately available or same day funds at a bank or trust company acting as paying agent, located in the District, and at not more than 2 co-paying agents that may be located outside the District, one of which shall be located in New York, New York. All of the paying agents shall be qualified to act as paying agents under the laws of the United States of America, of the District, or of the state in which they are located, and shall be designated by the Chief Financial Officer without regard to any other act or resolution of the Council now existing or adopted after the effective date of this act.

(k) In addition to the security available for the holders of the notes, the Chief Financial Officer is hereby authorized to enter into agreements, including any agreement calling for payments in excess of $1 million during fiscal year 2016, with a bank or other financial institution to provide a letter of credit, line of credit, or other form of credit enhancement to secure repayment of the notes when due. The obligation of the District to reimburse the bank or financial institution for any advances made under any such credit enhancement shall be a general obligation of the District until repaid and shall accrue interest at the rate of interest established by the Chief Financial Officer not in excess of 15% per year until paid.

(l) The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), and the Financial Institutions Deposit and Investment Amendment Act of 1997, effective March 18, 1998 (D.C. Law 12-56; D.C. Official Code § 47-351.01 *et seq.*), shall not apply to any contract which the Chief Financial Officer may from time to time determine to be necessary or appropriate to place, in whole or in part, including:

(1) An investment or obligation of the District as represented by the notes;

(2) An investment or obligation or program of investment; or

(3) A contract or contracts based on the interest rate, currency, cash flow, or other basis as the Chief Financial Officer may desire, including, without limitation, interest rate swap agreements; currency swap agreements; insurance agreements; forward payment conversion agreements; futures; contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices; contracts to exchange cash flows or a series of payments; and contracts to hedge payment, currency, rate, spread, or similar exposure, including, without limitation, interest rate floors, or caps, options, puts, and calls. The contracts or other arrangements also may be entered into by the District in connection with, or incidental to, entering into or maintaining any agreement that secures the notes. The contracts or other

arrangements shall contain whatever payment, security, terms, and conditions as the Chief Financial Officer may consider appropriate and shall be entered into with whatever party or parties the Chief Financial Officer may select, after giving due consideration, where applicable, to the creditworthiness of the counterparty or counterparties including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. In connection with, or incidental to, the issuance or holding of the notes, or entering into any contract or other arrangement referred to in this section, the District may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and any other terms and conditions as the Chief Financial Officer determines. Proceeds of the notes and any money set aside for payment of the notes or of any contract or other arrangement entered into pursuant to this section may be used to service any contract or other arrangement entered into pursuant to this section.

Sec. 8. Defeasance.

(a) The notes shall no longer be considered outstanding and unpaid for the purpose of this act and the Escrow Agreement, and the requirements of this act and the Escrow Agreement shall be deemed discharged with respect to the notes, if the Chief Financial Officer:

(1) Deposits with an Escrow Agent, herein referred to as the "defeasance escrow agent," in a separate defeasance escrow account, established and maintained by the Escrow Agent solely at the expense of the District and held in trust for the note owners, sufficient moneys or direct obligations of the United States, the principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, and interest payable at maturity on, all the notes; and

(2) Delivers to the defeasance escrow agent an irrevocable letter of instruction to apply the moneys or proceeds of the investments to the payment of the notes at their maturity.

(b) The defeasance escrow agent shall not invest the defeasance escrow account in any investment callable at the option of its issuer if the call could result in less than sufficient moneys being available for the purposes required by this section.

(c) The moneys and direct obligations referred to in subsection (a)(1) of this section may include moneys or direct obligations of the United States of America held under the Escrow Agreement and transferred, at the written direction of the Chief Financial Officer, to the defeasance escrow account.

(d) The defeasance escrow account specified in subsection (a) of this section may be established and maintained without regard to any limitations placed on these accounts by any act or resolution of the Council now existing or adopted after this act becomes effective, except for this act.

Sec. 9. Additional debt and other obligations.

(a) The District reserves the right at any time to: borrow money or enter into other obligations to the full extent permitted by law; secure the borrowings or obligations by the pledge of its full faith and credit; secure the borrowings or obligations by any other security and pledges of funds as may be authorized by law; and issue bonds, notes, including Additional

Notes, or other instruments to evidence the borrowings or obligations. The reserved right with regard to notes and Additional Notes issued pursuant to sections 471, 472, 475, and 490 of the Home Rule Act shall be subject to this act. No borrowings or other obligations, including Additional Notes, shall be entered into that would require an immediate set-aside and deposit under section 7(g) applied as of the date of the issuance.

(b)(1) The District may issue Additional Notes pursuant to section 472 of the Home Rule Act that shall mature on or before September 30, 2016, and the District shall covenant to set aside and deposit under the Escrow Agreement, receipts and other available funds for payment of the principal of, and the interest on, the Additional Notes issued pursuant to section 472 of the Home Rule Act on a parity basis with the notes.

(2) The receipts and available funds referred to in subsection (a) of this section shall be separate from the special taxes or charges levied pursuant to section 481(a) of the Home Rule Act, and taxes, if any, dedicated to particular purposes pursuant to section 490 of the Home Rule Act.

(3) Any covenants relating to any Additional Notes shall have equal standing and be on a parity with the covenants made for payment of the principal of, and the interest on, the notes.

(4) If Additional Notes are issued pursuant to section 472 of the Home Rule Act, the provisions of section 7 shall apply to both the notes and the Additional Notes and increase the amounts required to be set aside and deposited with the Escrow Agent.

(5) As a condition precedent to the issuance of any Additional Notes, the Chief Financial Officer shall deliver a signed certificate certifying that the District is in full compliance with all covenants and obligations under this act and the Escrow Agreement, that no set-aside and deposit of receipts pursuant to section 7(g) applied as of the date of issuance is required, and that no set-aside and deposit will be required under section 7(g) applied immediately after the issuance.

(c) Any general obligation notes issued by the District pursuant to section 471 of the Home Rule Act shall not be scheduled to be due and payable until after the earlier of the following:

(1) The stated maturity date of all outstanding notes and Additional Notes; or

(2) The date an amount sufficient to pay all principal and interest payable at maturity on the notes and the Additional Notes is on deposit with the Escrow Agent.

(d) Revenue notes of the District, which are payable from specified District revenue that is set aside for the payment of the revenue notes and that is included in the amount of receipts estimated by the Chief Financial Officer, pursuant to section 7(g), to be received after the proposed date of issue of the revenue notes and before the maturity of the notes, shall not be issued if a set-aside and deposit of receipts pursuant to section 7(g) applied as of the proposed date of the issuance of revenue notes would be required. In determining, for purposes of this subsection, whether a set-aside and deposit would be required, there shall be excluded from receipts estimated by the Chief Financial Officer to be received after the proposed date of issuance of revenue notes and before the maturity of the notes an amount equal to the estimated revenues set aside for the payment of revenue notes.

Sec. 10. Tax matters.

The Chief Financial Officer shall not take any action or omit to take any action, or invest, reinvest, or accumulate any moneys in a manner, that will cause the interest on the notes to be includable in gross income for federal income tax purposes or, if the notes were issued as non-AMT notes, to be treated as an item of tax preference for purposes of the federal alternative minimum tax. The Chief Financial Officer also shall take all actions necessary to be taken so that the interest on the notes will not be includable in gross income for federal income tax purposes or, if the notes were issued as non-AMT notes, be treated as an item of tax preference for purposes of the federal alternative minimum tax.

Sec. 11. Contract.

This act shall constitute a contract between the District and the owners of the notes authorized by this act. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

Sec. 12. District officials.

(a) The elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the notes or be subject to any personal liability by reason of the issuance of the notes.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the notes shall be valid and sufficient for all purposes, notwithstanding the fact that the official ceases to be that official before delivery of the notes.

Sec. 13. Authorized delegation of authority.

To the extent permitted by the District and federal laws, the Mayor may delegate to the City Administrator, the Chief Financial Officer, or the Treasurer the performance of any act authorized to be performed by the Mayor under this act.

Sec. 14. Maintenance of documents.

Copies of the notes and related documents shall be filed in the Office of the Secretary of the District of Columbia.

Sec. 15. Information reporting.

(a) Within 3 days after the Chief Financial Officer's receipt of the transcript of proceedings relating to the issuance of the notes, the Chief Financial Officer shall transmit a copy of the transcript to the Secretary to the Council.

(b) The Chief Financial Officer shall notify the Council within 30 days of any action taken under section 7(g).

ENROLLED ORIGINAL

Sec. 16. 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. 17. Effective date.

This act shall take effect upon enactment as provided in section 472(d)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 806; D.C. Official Code § 1-204.72(d)(1)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 7, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-197

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 7, 2015

To approve, on an emergency basis, multiyear Contract No. DCAM-14-CS-0123A with Nextility, Inc. to develop on-site solar power generation systems at approximately 34 District government buildings and to authorize payment for power generated by the systems for a 20-year period.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. DCAM-14-CS-0123A 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 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. DCAM-14-CS-0123A with Nextility Inc. to develop on-site solar power generation systems at approximately 34 District government buildings and authorize payment for the power generated by the systems for a 20-year period.

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
November 7, 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

B21-474 Walter Reed Development Omnibus Act of 2015

Intro. 11-2-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

B21-476 Walter Way Designation Act of 2015

Intro. 11-6-15 by Councilmember Allen and referred to the Committee of the Whole

PROPOSED RESOLUTIONS

PR21-414 People's Counsel Sandra Mattavous-Frye Confirmation Resolution of 2015

Intro. 11-2-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

PR21-415 District of Columbia Board of Elections Dionna Maria Lewis Confirmation Resolution of 2015

Intro. 11-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

PR21-416	District of Columbia Board of Elections Andrew T. "Chip" Richardson, III Confirmation Resolution of 2015 Intro. 11-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary
PR21-417	Marijuana for Medical Treatment Exemption Regulation Approval Resolution of 2015 Intro. 11-5-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services with comments from the Committee on Judiciary
PR21-419	Office of the Chief Medical Examiner Definitions Rulemaking Resolution of 2015 Intro. 11-6-15 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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

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

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

Announces a Public Hearing

on

- **B21-287, the "Youth Apprenticeship Advisory Committee Amendment Act of 2015"**
- **B21-399, the "Marion S. Barry Summer Youth Employment Expansion Amendment Act of 2015"**

Wednesday, December 16, 2015, 10:00 A.M.
John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Councilmember Vincent B. Orange, Sr., announces the scheduling of a public hearing by the Committee on Business, Consumer, and Regulatory Affairs, on B21-287, the "Youth Apprenticeship Advisory Committee Amendment Act of 2015" and B21-399, the "Marion S. Barry Summer Youth Employment Expansion Amendment Act of 2015". The public hearing is scheduled for Wednesday, December 16, 2015 at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

B21-287, the "Youth Apprenticeship Advisory Committee Amendment Act of 2015", would establish a Youth Apprenticeship Advisory Committee in the Department of Employment Services. The Committee would be responsible for evaluating the effectiveness of youth apprenticeship programs in the District and identifying ways to implement high school youth apprenticeship programs in the District. The Committee would be required, on a yearly basis, to submit a report of its findings and recommendations to the Council.

B21-399, the "Marion S. Barry Summer Youth Employment Expansion Amendment Act of 2015", would amend the Youth Employment Act of 1979 to authorize the Mayor to provide employment or work readiness training for youth participants between the ages of 14 and 24.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Monday, December 14, 2015. Each witness is requested to bring 20 copies of his/her

written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the public hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Wednesday, December 30, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 21-415, Universal Paid Leave Act of 2015

on

Wednesday, December 2, 2015
10:00 a.m., Council Chambers, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing before the Committee of the Whole on Bill 21-415, the "Universal Paid Leave Act of 2015." The hearing will be held at 10:00 a.m. on Wednesday, December 2, 2015 in Hearing Room 500, the Council Chambers, of the John A. Wilson Building.

The stated purpose of Bill 21-415 is to establish a universal paid leave system for all District residents and for workers who are employed in the District of Columbia. Specifically, the bill allows for 16 weeks of paid family or self-care leave and also amends the D.C. Family and Medical Leave Act of 1990 to extend job protections to individuals who have been employed for six months and worked at least 500 hours in a 12-month period. Currently, the law requires an individual to be employed for at least one year and to have worked at least 1,000 hours in a 12-month period.

The purpose of this hearing to receive testimony from advocates as to the benefits and drawbacks of the proposed legislation. Thus, this hearing will be limited to those invited to testify only. At least one additional hearing will be held on this legislation in January 2016 and will be open to the public to provide testimony.

While this hearing is limited to oral testimony from invited witnesses, written statements from the public will be made a part of the official record. Copies of 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. Questions about this or the subsequent hearings should be directed to Christina Setlow, Deputy Committee Director, at 734-4865. The record will close on a date to be announced in the notice of the final hearing on Bill 21-415.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE ON

The Department of Parks and Recreation Programming and Permitting

Monday, November 23, 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 23, 2015, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public oversight roundtable on the Department of Parks and Recreation's (DPR) programming options and yet-to-be issued permitting regulations. The roundtable will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

The purpose of the roundtable is to discuss both how DPR's programming options can best serve the community and how well-crafted permitting regulations can further that goal. DPR facilities offer a variety of programming. This roundtable will discuss how DPR decides what programming to offer to best meet the community's needs and achieve equity among genders and age groups. It will also examine how facilities can incorporate trauma-sensitive policies in its programs and operations to provide support to at-risk youth. Additionally, it will discuss how the distribution of fee-based use permits can improve access to recreation and the pending issuance of fee-based use regulations in accordance with D.C. Law 10-246; D.C. Official Code § 10-307 7a(b).

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on December 7, 2015.

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

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

Councilmember Vincent B. Orange, Sr., Chairperson Committee on Business, Consumer, and Regulatory Affairs Announces a Public Roundtable on

- **PR21-414, the "People's Counsel Sandra Mattavous-Frye Confirmation Resolution of 2015"**

Friday, November 13, 2015, 10:00 A.M. JOHN A. WILSON BUILDING, ROOM 412 1350 PENNSYLVANIA AVENUE, N.W. Washington, DC 20004

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public roundtable by the Committee on Business, Consumer, and Regulatory Affairs on PR21-414, the "People's Counsel Sandra Mattavous-Frye Confirmation Resolution of 2015". The public roundtable is scheduled for Friday, November 13, 2015 at 10:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004.

Individuals and representatives of organizations who wish to testify at the public roundtable are asked to contact Ms. Faye Caldwell, Special Assistant to the Committee on Business, Consumer, and Regulatory Affairs, at (202) 727-6683, or via e-mail at fcaldwell@dccouncil.us and furnish their name, address, telephone number, e-mail address and organizational affiliation, if any, by the close of business Thursday, November 12, 2015. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Wednesday, November 18, 2015. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY AND COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT
NOTICE OF JOINT PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON
COMMITTEE ON THE JUDICIARY

AND

COUNCILMEMBER ANITA BONDS, CHAIRPERSON
COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT

ANNOUNCE A JOINT PUBLIC ROUNDTABLE ON

STREET HARASSMENT IN THE DISTRICT OF COLUMBIA

Thursday, December 3, 2015, 10 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Thursday, December 3, 2015, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on the Judiciary, and Councilmember Anita Bonds, Chairperson of the Committee on Housing & Community Development, will hold a public roundtable on Street Harassment in the District of Columbia. The roundtable will take place in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 10 a.m.

"Street harassment" refers to a continuum of public harassment that can include vulgar remarks, heckling, insults, innuendo, stalking, leering, fondling, indecent exposure, and other forms of public humiliation, often focused on the individual's perceived gender, gender identity, race or ethnicity, or disability. Street harassment impairs the ability of District residents to move freely and safely and contributes to a broader culture of violence. The roundtable will provide an opportunity for stakeholders to identify additional steps that could be taken to better understand and address the issue.

The Committees invite the public to testify or to submit written testimony. Anyone wishing to testify at the roundtable should contact Kate Mitchell, Judiciary Committee Director, at (202) 727-8275, or via e-mail at kmitchell@dccouncil.us, and provide their name, telephone number, organizational affiliation, and title (if any) **by close of business, November 30, 2015**.

Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses should bring **fifteen copies** of their written testimony and, if possible, also submit a copy of their testimony electronically to kmitchell@dccouncil.us.

For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee on the Judiciary or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. The record will close at the end of the business day on December 18, 2015.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 13, 2015
Petition Date: December 28, 2015
Hearing Date: January 11, 2016

License No.: ABRA-090189
Licensee: Abdo F St., LLC
Trade Name: Abdotel
License Class: Retailer's Class "C" Hotel
Address: 2224 F Street, N.W.
Contact: Erin Sharkey: 202-686-7600

WARD 2 ANC 2A SMD 2A07

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

NATURE OF SUBSTANTIAL CHANGES
Request to add 2 Summer Gardens with total of 60 seats on roof top, 32 seats for the courtyard and a Sidewalk Café with a total of 26 seats.

CURRENT HOURS OF OPERATION FOR INSIDE PREMISES
Sunday through Saturday- 24 Hours

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES
Sunday through Thursday 8:00am to 2:00am, Friday and Saturday 8:00am to 3:00am

PROPOSED HOURS OF OPERATION FOR SUMMER GARDEN AND SIDEWALK CAFE
Sunday through Saturday- 24 Hours

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SUMMER GARDEN AND SIDEWALK CAFÉ
Sunday through Thursday 8:00am to 2:00am, Friday and Saturday 8:00am to 3:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 13, 2015
Petition Date: December 28, 2015
Hearing Date: January 11, 2016

License No.: ABRA-090241
Licensee: Charoen DC, Inc
Trade Name: Absolute Noodle
License Class: Retailer's Class "C" Restaurant
Address: 772 5th Street, N.W.
Contact: Yodchai Horcharoen: (202) 789-0022

WARD 2 ANC 2C SMD 2C03

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

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Sidewalk Cafe with seating for 20.

CURRENT HOURS OF OPERATION ON PREMISE
Sunday through Thursday 11 am - 12 am, Friday and Saturday 11 am – 2 am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE
Sunday through Thursday 11 am – 10:30 pm, Friday and Saturday 11 am – 11 pm

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUMPTION FOR SIDEWALK CAFE
Monday through Friday 11 am – 10 pm, Saturday and Sunday 12 pm – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

Posting Date: **November 13, 2015
Petition Date: **December 28, 2015
Hearing Date: **January 11, 2016

License No.: ABRA-093308
Licensee: Ultimo, LLC
Trade Name: Divino Grill
License Class: Retailer's Class "C" Restaurant
Address: 1633 17th Street, N.W.
Contact: Felix Nelson Ayala: (202) 232-0437

WARD 2 ANC 2B SMD 2B04

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

NATURE OF SUBSTANTIAL CHANGE
Applicant is seeking to request an Entertainment Endorsement. Entertainment to include a live drag show with DJ.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11:30 am - 11 pm, Friday & Saturday 11:30 am – 2 am

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 11:30 am - 11 pm, Friday & Saturday 11:30 am – 12 am

PROPOSED HOURS OF LIVE ENTERTAINMENT
Sunday and Wednesday 9:00 pm - 11 pm, Friday & Saturday 9:00 pm – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date: **October 23, 2015
Petition Date: **December 7, 2015
Hearing Date: **December 21, 2015

License No.: ABRA-093308
Licensee: Ultimo, LLC
Trade Name: Divino Grill
License Class: Retailer's Class "C" Restaurant
Address: 1633 17th Street, N.W.
Contact: Felix Nelson Ayala: (202) 232-0437

WARD 2 ANC 2B SMD 2B04

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

NATURE OF SUBSTANTIAL CHANGE
Applicant is seeking to request an Entertainment Endorsement. Entertainment to include a live drag show with DJ.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11:30 am - 11 pm, Friday & Saturday 11:30 am – 2 am

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFE
Sunday through Thursday 11:30 am - 11 pm, Friday & Saturday 11:30 am – 12 am

PROPOSED HOURS OF LIVE ENTERTAINMENT
Sunday and Wednesday 9:00 pm - 11 pm, Friday & Saturday 9:00 pm – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	November 13, 2015
Petition Date:	December 28, 2015
Roll Call Hearing Date:	January 11, 2016
Protest Hearing Date:	March 9, 2016
License No.:	ABRA-100894
Licensee:	Nobu DC LLC
Trade Name:	Nobu
License Class:	Retailer's Class "C" Restaurant
Address:	2501 M Street, N.W.
Contact:	Stephen J. O'Brien: (202) 625-7700

WARD 2 ANC 2A SMD 2A02

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 9, 2016 at 1:30pm.

NATURE OF OPERATION

First class, high quality, full-service "Nobu" restaurant, including a full-service bar, take-out service, and private events. An innovative new style of Japanese cuisine. Live entertainment during private events. No nude performances. Number of seats inside premises is 345. Total Occupancy Load is 370. Summer Garden with 40 seats.

HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION AND LIVE ENTERTAINMENT

Sunday through Saturday 10am-12:30am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN

Sunday through Saturday 10am-11pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	November 13, 2015
Petition Date:	December 28, 2015
Hearing Date:	January 11, 2016
License No.:	ABRA-060011
Licensee:	Three Brothers, LLC
Trade Name:	Rioja Market
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.

CURRENT HOURS OF OPERATION
Sunday through Saturday 7am – 12am

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: November 13, 2015
Petition Date: December 28, 2015
Hearing Date: January 11, 2016

License No.: ABRA-092192
Licensee: Fernando Postigo
Trade Name: Sol Mexican Grill
License Class: Retailer's Class "C" Tavern
Address: 1251 H Street, N.E.
Contact: Fernando Postigo: (202) 808-2625

WARD 6 ANC 6A SMD 6A02

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

NATURE OF SUBSTANTIAL CHANGE
Requests a Change of Hours for operation, alcoholic beverage sales and consumption and live entertainment.

CURRENT HOURS OF OPERATION
Sunday through Thursday 11:00am to 11:00pm, Friday and Saturday 11:00am to 3:00am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday 11:00am to 10:45pm, Friday and Saturday 11:00am to 2:00am

CURRENT HOURS OF LIVE ENTERTAINMENT
No Entertainment Sunday through Wednesday, Thursday through Saturday 6:00pm to 1:00am

PROPOSED HOURS OF OPERATION
Sunday through Thursday 11:00am to 2:00am, Friday and Saturday 11:00am to 3:00am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday 11:00am to 1:45am, Friday and Saturday 11:00am to 2:45am

PROPOSED HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday 11:00am to 1:00am, Friday and Saturday 11:00am to 2:30am

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PUBLIC INTEREST HEARING AND COMMUNITY HEARING

FORMAL CASE NO. 1119, IN THE MATTER OF THE JOINT APPLICATION OF EXELON CORPORATION, PEPCO HOLDINGS, INC., POTOMAC ELECTRIC POWER COMPANY, EXELON ENERGY DELIVERY COMPANY, LLC AND NEW SPECIAL PURPOSE ENTITY, LLC FOR AUTHORIZATION AND APPROVAL OF PROPOSED MERGER TRANSACTION,

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice of a public interest hearing to be held pursuant to Section 130.11 of the Commission's Rules of Practice and Procedure[1] to consider the Nonunanimous Full Settlement Agreement and Stipulation ("Settlement Agreement") filed on October 6, 2015 by Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC ("Joint Applicants"); the Office of the People's Counsel; the District of Columbia Government; District of Columbia Water and Sewer Authority; National Consumer Law Center; National Housing Trust; National Housing Trust Enterprise Preservation Corporation; and the Apartment and Office Building Association of Metropolitan Washington (collectively, the "Settling Parties").[2] The public interest hearing will convene Wednesday, December 2, 2015, at 10:00 a.m. in the Commission Hearing Room, 1325 G Street, N.W., Suite 800, Washington, DC 20005, and continue on Thursday and Friday, December 3 and 4, 2015, respectively, if necessary. Only parties in the case will be permitted to participate in the public interest hearing.

A Community Hearing will convene Tuesday, November 17, 2015, at 10:00 a.m. in the Commission Hearing Room, 1325 G Street, N.W., Suite 800, Washington, DC 20005, for the purpose of allowing interested persons who are not parties to this proceeding and wish to comment on the Settlement Agreement to do so at this hearing.

BACKGROUND

On April 30, 2014, Exelon Corporation ("Exelon") announced Exelon's purchase of Pepco Holdings, Inc. ("PHI"). On June 18, 2014, the Joint Applicants filed the Joint Application for approval by the Commission, pursuant to D.C. Code §§ 34-504 and 34-1001, for a change of

[1] 15 DCMR § 130.11 (1992).

[2] *Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction* ("*Formal Case No. 1119*"), Motion of the Joint Applicants to Reopen the Record in Formal Case No. 1119 to Allow for Consideration of Nonunanimous Full Settlement Agreement and Stipulation, or for Other Alternative Relief, filed October 6, 2015 ("Motion to Reopen").

control of Pepco to be effected by the Proposed Merger of PHI with Purple Acquisition Corp. ("Merger Sub"), a wholly owned subsidiary of Exelon.[3]

The Commission convened four (4) community hearings seeking input from the public on the Joint Application. The hearings were held between December 17, 2014, and January 20, 2015, at various times and locations throughout the District of Columbia. Eleven days of evidentiary hearings were held on March 30–April 8, 2015 and April 20–22, 2015. On May 27, 2015, the record closed.

On August 27, 2015, the Commission issued Order No. 17947, which denied the Joint Application and found that the proposed merger was not in the public interest.[4] On September 28, 2015, the Joint Applicants filed an Application for Reconsideration of Order No. 17947.[5]

On October 6, 2015, the Joint Applicants filed a Motion to Reopen the Record in *Formal Case No. 1119* to allow for consideration of the Settlement Agreement.[6] Among other things, the Joint Applicants requested "that the Commission toll consideration of the Application for Reconsideration . . . for such period of time as the Commission requires to fully consider the merits of the Settlement Agreement" and "toll the time for responses to the Application for Reconsideration."[7]

By Order issued on October 26, 2015, the Commission tolled the deadline for action on the merits of the Joint Applicants' Application for Reconsideration and the filing of responses to the Application until the Commission renders a decision on the Settlement Agreement or until the Commission determines otherwise.[8] In an Order issued October 28, 2015, the Commission granted the Motion to Reopen the Record in *Formal Case No. 1119* to allow for consideration of the Settlement Agreement and set forth the procedural schedule pertaining to such consideration.[9]

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3 *See Formal Case No. 1119,* Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction, p. 1, filed June 18, 2014 ("Joint Application").

4 *Formal Case No. 1119*, Order No. 17947, rel. August 27, 2015.

5 *Formal Case No. 1119,* Application of the Joint Applicants for Reconsideration of Order No. 17947, filed September 28, 2015.

6 *Formal Case No. 1119*, Motion of the Joint Applicants to Reopen the Record in Formal Case No. 1119 to Allow for Consideration of Nonunanimous Full Settlement Agreement and Stipulation, or for Other Alternative Relief, filed October 6, 2015 ("Motion to Reopen").

7 *Formal Case No. 1119,* Motion to Reopen at 11, 13.

8 *Formal Case No. 1119*, Order No. 18009, rel. October 26, 2015 ("Order No. 18009").

9 *Formal Case No. 1119,* Order No. 18011, rel. October 28, 2015 ("Order No. 18011").

PUBLIC INTEREST HEARING

The purpose of this public interest hearing is to determine if the proposed Settlement Agreement is in the public interest pursuant to Section 130.11 of the Commission's Rules of Practice and Procedure.[10] During the course of the hearing, the settling parties will present witnesses to testify regarding the proposed Settlement Agreement and may be cross-examined by Nonsettling Parties and questioned by the Commission on whether the Settlement Agreement is in the public interest.[11] The Commission also notifies the Nonsettling Parties that they may be subject to cross-examination by the Settling Parties and may be questioned by the Commission.

The hearing will be streamed live on the Commission's website, www.dcpsc.org, and the video archived at http://www.dcpsc.org/public_meeting/index.asp.

COMMUNITY HEARING

A Community Hearing will convene on Tuesday, November 17, 2015, at 10:00 a.m. in the Commission Hearing Room, 1325 G Street, N.W., Suite 800, Washington, DC 20005. Interested persons who are not parties to this proceeding and wish to comment on the Settlement Agreement at this hearing may do so by notifying the Commission's Secretary in writing at the address or email address listed in the final paragraph of this Notice prior to the date of the hearing. Representatives of organizations shall be permitted a maximum of five (5) minutes for oral presentation. Individuals shall be permitted a maximum of three (3) minutes for oral presentation. The submission of copies of written statements is encouraged by the Commission.

ADDITIONAL INFORMATION

Copies of the proposed Settlement Agreement may be obtained by contacting the Office of the Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, DC 20005 or by visiting the Commission's website at www.dcpsc.org. The proposed Settlement Agreement will also be located on the Commission's eDocket system in *Formal Case No. 1119* and can be obtained at http://www.dcpsc.org/edocket/docketsheets_pdf_FS.asp?caseno=FC1119&docketno=959&flag=D&show_result=Y.

Interested persons who are not parties to this proceeding may also submit written comments or statements regarding the proposed Settlement Agreement to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C. 20005, or by email at Psc-commissionsecretary@dc.gov. on or before December 18, 2015, the date the record closes.

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[10] 15 DCMR § 130.11 (1992).

[11] 15 DCMR § 130.12 (1992).

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, FEBRUARY 2, 2016
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD TWO

18844A
ANC-2B
Application of Alexander Pitt, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, and the open court requirements under § 406, to construct a third-floor addition to an existing one-family dwelling in the DC/R-5-B District at premises 2131 N Street N.W. (Square 69, Lot 181).

WARD FOUR

19162
ANC-4C
Application of William McGovern, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the non-conforming structure requirements under § 2001.3, to construct an additional floor with roof deck to an existing one-family dwelling in the R-4 District at premises 3901 Illinois Avenue N.W. (Square 3314, Lot 26).

WARD SEVEN

19166
ANC-7F
Application of The Department of General Services of DC, pursuant to 11 DCMR § 3104.1, for a special exception from the new rooftop mechanical equipment requirements under § 411.11 (as per § 411.6), to allow the installation of new rooftop mechanical equipment to an existing school building in the R-1-B District at premises 4601 Texas Avenue S.E. (Square 5351, Lot 878).

WARD FIVE

19168
ANC-5D
Application of Getachew B Afework, pursuant to 11 DCMR § 3104.1, for a special exception from the conversion to apartment house requirements pursuant to § 336, to permit the enlargement of a pre-1958 residential building into an eight-unit apartment house in the R-4 District at premises 1258 Holbrook Terrace N.E. (Square 4055, Lot 839).

WARD TWO

19171 **Application of Matcap LLC**, pursuant to 11 DCMR § 3103.2, for variances
ANC-2F from the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, the alley lot garage setback requirements under § 2300.4, and the record lot requirements under § 3202.3, to construct a two-story carriage house with ground-floor private garage and upper-floor accessory storage in the R-5-B District at premises (rear) 12 Logan Circle N.W. (Square 241, Lot 837).

WARD TWO

19172 **Application of The Department of General Services of DC**, pursuant to
ANC-2B 11 DCMR § 3104.1, for a special exception from the new rooftop mechanical equipment requirements under § 411.11 (as per § 411.6), to allow the installation of new rooftop mechanical equipment to an existing school building in the R-4 District at premises 2425 N Street N.W. (Square 23, Lot 803).

PLEASE NOTE:

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

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF RESCHEDULED[1] PUBLIC HEARING

TIME AND PLACE: **Thursday, January 28, 2016, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 04-33G (Amendments to Chapter 26, Inclusionary Zoning)

THIS CASE IS OF INTEREST TO ALL ANCs

On February 2, 2015, a petition was submitted to the Zoning Commission (Commission), filed by the Coalition for Smarter Growth, et. al., to amend Chapter 26, Inclusionary Zoning (IZ) (Exhibit 2, Z.C. Case No. 04-33G). The Office of Planning (OP) submitted its report in support of setting the petition down for a public hearing on July 6, 2015, noting that they had several major concerns with the text as proposed in the petition. OP also recommended that the Commission set down alternate text to be considered as part of the same case. On July 13, 2015, the Commission set down the petition and alternate OP text amendments for a public hearing.

Coalition for Smarter Growth, et. al. Petition

The proposed substantive amendments of the petition filed by the Coalition for Smarter Growth, et. al., are summarized in the following table:

Section	Summary Amendment
2602 Applicability	Apply the IZ regulations to developments in both the Downtown Development (DD) and Southeast Federal Center (SEFC) Overlay Districts after December 31, 2017.
2603 Set-Aside Requirements	• Increase the required minimum percentage of residential gross floor area set aside for targeted households from the current 8% to 10% to a single 12%; and • Require the set-aside be the greater of 12% of the gross floor area (GFA) or 75% of bonus density; • In rental projects, target households at or below 50% of the Medium Family Income (MFI)[2]; • In for-sale projects, target households at or below 70% of MFI; • Specify that the Mayor or the DC Housing Authority shall have the right to purchase units for the purpose of leasing units, but only to low and very low income households; and • Increase the set aside requirement in the Saint Elizabeth's Districts from

[1] This hearing was previously scheduled for Thursday, November 19, 2015.
[2] US Department of Housing and Urban Development (HUD) uses the term Median Family Income (MFI) and not Area Median Income (AMI); any text amendments will reflect the change in terminology from AMI to MFI.

	8% to 10% of GFA.
2604 Bonus Density	• Increase the permitted bonus density from 20% to 22%; • Remove all lot occupancy restrictions for all IZ projects in in all zones specified in § 2604.2 (R-5-E, CR,C-2-A/B/C, C-3-A, W-1/2/3 and SP-1/2); • Permit an additional 10 feet of height as a matter of right for projects that include IZ units in all zones specified in § 2604.2, for a total of 20 feet beyond matter-of-right heights without IZ; and • Further reduce the permitted lot widths as a special exception in the R-2 through R-4 zones.

Proposed new text is shown in **bold** type and text to be deleted is shown in ~~strikethrough~~.

1. ***Amendments proposed by the petitioner pertaining to Chapter 26.***

Amend the following sections of Chapter 26 as follows:

2601 DEFINITIONS

Moderate-income household – a household of one (1) or more individuals with a total annual income adjusted for household size equal to between fifty-one percent (51%) and ~~eighty percent (80%)~~ **seventy percent (70%)** of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

2602 APPLICABILITY

2602.3 This chapter shall not apply to:

(e) Properties located in any of the following areas:

(1) The Downtown Development or Southeast Federal Center Overlay Districts **until December 31, 2017, after which this chapter shall apply;**

2603 SET-ASIDE REQUIREMENTS

2603.1 Except as provided in § 2603.8, an inclusionary development ~~for which the primary method of construction does not employ steel and concrete frame structure located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0 or W-1 District~~ shall devote the greater of ~~ten per cent (10%)~~ **twelve percent (12%)** of the gross floor area being devoted to residential use or seventy-five percent (75%) of the bonus density being utilized for inclusionary units.

~~2603.2~~ ~~An inclusionary development of steel and concrete frame construction located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, SP, USN, W-2, or W-3 Zone District shall devote the greater of eight percent (8%) of the gross floor area being devoted to residential use or fifty percent (50%) of the bonus density utilized for inclusionary units.~~

2603.3 ~~Except as provided in § 2603.9, Inclusionary~~ Developments ~~located in R-3 through R-5-E, C-1, C-2-A, StE, W-0, and W-1 Zone Districts~~ offering **dwelling units for rent** shall set aside ~~fifty percent (50%) of~~ inclusionary units for eligible low-income households~~ and fifty percent (50%) of inclusionary units for eligible moderate-income households~~. ~~The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.~~

2603.4 Developments **offering for-sale dwelling units** ~~located in CR, C-2-B through C-3-C, USN, W-2 through W-3, and SP Zone Districts~~ shall set aside ~~one hundred percent (100%) of~~ inclusionary units for eligible moderate-income households.

2603.5 The Mayor or the District of Columbia Housing Authority shall have the right to purchase up to twenty-five percent (25%) of inclusionary units in a for-sale inclusionary development **for the purpose of leasing these units to low households** in accordance with such procedures as are set forth in the Act.

…

2603.7 An inclusionary development ~~of steel and concrete frame construction located~~ in a StE District shall devote no less than ~~eight percent (8%)~~ **ten percent (10%)** of the gross floor area being devoted to residential use in a StE District for inclusionary units.

2604 BONUS DENSITY

2604.1 Inclusionary developments subject to the provisions of this chapter, except those located in the StE District, may construct up to ~~twenty percent (20%)~~ **twenty-two percent (22%)** more gross floor area than permitted as a matter of right ("bonus density"), subject to all other zoning requirements (as may be modified herein) and the limitations established by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910

2604.2 Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and **no restrictions on** lot occupancy **for zones with greater density than R-4 zones** in order to achieve the bonus density.

Base	Matter-of-Right Zoning Constraints			Petitioners' Proposed IZ Modification	
	Lot Occupancy	Zoning Height (feet)	Zoning FAR	~~Lot Occupancy~~	Height (feet)
R-5-E	75%	90	6.00	~~90%~~	~~90~~ **100**
CR	75%	90	6.00	~~80%~~	~~100~~ **110**
C-2-A	60%	50	2.50	~~75%~~	~~50~~ **60**
C-2-B	80%	65	3.50	~~80%~~	~~70~~ **80**
C-2-C	80%	90	6.00	~~90%~~	~~90~~ **100**
C-3-A	75%	65	4.00	~~80%~~	~~65~~ **75**
W-1	80%	40	2.50	~~80%~~	~~50~~ **60**
W-2	75%	60	4.00	~~75%~~	~~80~~ **90**
W-3	75%	90	6.00	~~80%~~	~~100~~ **110**
SP-1	80%	65	4.00	~~80%~~	~~70~~ **80**
SP-2	80%	90	6.00	~~90%~~	~~90~~ **100**

2604.3 Inclusionary developments in R-2 through R-4 zoning districts may use the minimum lot dimensions as set forth in the following table, **and additional lot width modifications in order to achieve the bonus density:**

Base Zone	IZ Zoning Modifications		
	IZ Min. Lot Area (square feet)	Min. Lot Width (feet)	Min. Lot Width (feet) Special Exception
R-2 Detached	3,200	40	~~32~~ **30**
R-2 Semi-Detached	2,500	30	~~25~~ **23**
R-3	1,600	20	~~16~~ **15**
R-4	1,500	18	~~16~~ **15**

2608 **APPLICABILITY DATE**

2608.2 The provisions ~~revised on XXXXX~~ of this chapter **amended by Z.C. Order No. 04-33G** shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to ~~March 14, XXXX 2008~~ **[THE EFFECTIVE DATE OF THIS AMENDMENT].**

Office of Planning Alternative Text

OP proposed alternative text to that proposed by the Petitioner. Within the alternative text proposed by OP, OP also included a limited second alternative relative to set-aside requirements and targeted households (Alternative 2 (OP)). The Alternative 2 (OP) addresses the targeted

household income based on whether the IZ units are rental or for-sale units. The proposed substantive amendments of the OP alternate text are summarized in the following table:

Section	Summary Amendment
2601 Definitions	• Add a new definition of Bedroom, Maximum Resale Price; • Add a new definition of Median Family Income as part of Option 2; and • Amend definition of Eligible Household (Option 2).
2602 Applicability 2602.1(d)	Provide for voluntary participation in the IZ program where it would not otherwise be required
2603 Set-Aside Requirements; 2603.3 2603.4 2603.5	• Move the C-2-B, C-3-A, SP-1 and W-2 zone districts to the group of zone districts that must target half of the IZ units to households at 50% of the MFI; or • Permit flexibility in occupancy by allowing units that have remained unoccupied for an extended period of time; or when increases in fees make units either unaffordable to target household or have a significant negative impacts on the Maximum Resale Price; and • Allow the Mayor to purchase a minimum of one unit and up to any amount agreed upon with the developer.
Alternative 2 (OP); 2603.3	• Alternative 2 (OP) would establish a targeted MFI by tenure type; for rental households: consolidate the MFI from 50% and 80% to a single target of 60% of the MFI, and for-sale IZ units to 80 % of the MFI.
2607	• Offer an administratively handled matter of right off-site provision within 2,640 feet (one-half mile) of the on-site requirement provided it results in 20% more square feet set-aside for IZ units.
New Section	• Provide flexibility for a developer to do fewer for-sale units at 60% MFI instead of more units at 80% MFI.
Technical corrections, clarifications and updates (various sections)	• Change the terminology from “Area Median Income” (AMI) to “Median Family Income” (MFI); • Provide greater clarity on requirement calculations, bedrooms and pricing; • Improve administration, monitoring and enforcement; and • Fixes minor errors and omissions.

Public Comment is requested on the following amendments to the Zoning Regulations and the alternative 2 (OP). Proposed new text is shown in **bold** type and text to be deleted is shown in ~~strikethrough~~.

2. Amendments pertaining to Chapter 26 as proposed by OP in the alternative.

Amend the following sections of Chapter 26 as follows:

2600 GENERAL PROVISIONS

2600.2 It is the intent of the Zoning Commission to promulgate only such regulations as are necessary to establish the minimum obligations of property owners applying for building permits or certificates of occupancy under an Inclusionary Zoning Program. All other aspects of the program, including the setting of maximum purchase prices and rents, the minimum sizes of the units, the selection and obligations of eligible households, **administrative flexibility to ensure occupancy** and the establishment of enforcement mechanisms such as covenants and certifications shall be as determined by the Council and Mayor of the District of Columbia.

2601 DEFINITIONS

2601.1 When used in the chapter, the following terms and phrases shall have the meanings ascribed:

…

Bedroom – a room with immediate access to an exterior window and a closet that is designated as a "bedroom" or "sleeping room" on construction plans submitted in an application for a building permit for an Inclusionary Development.

Maximum Resale Price (MRP) – As defined by the formula found in Title 14 Chapter 22.

….

Inclusionary unit **–** a unit set aside for sale or rental to an eligible low- and moderate-income household as required by this chapter, **by a Zoning Commission order granting a planned unit development in which the applicant has proffered to provide more inclusionary units than required under this chapter**, or by order of the Board of Zoning Adjustment pursuant to § 2607.

2602 APPLICABILITY

2602.1 Except as provided in § 2602.3, the requirements and incentives of this chapter shall apply to developments that:

(a) Are mapped within the R-2 through R-5-D, C-1 through C-3-C, USN, CR, SP, StE, **HE,** and W-~~1~~**0** through W-3 Zone Districts, unless exempted pursuant to § 2602.3; **and**

(b) **Are new construction or additions of gross floor area that would result in** ~~Have~~ ten (10) or more dwelling units **constructed concurrently or in phases on a lot or; on contiguous lots, including those divided by an alley, if the lots were under common ownership, control, or affiliation within one (1) year prior to the application for the first building permit;** ~~(including off-site inclusionary units); and~~

(c) **Were in existence prior to August 14, 2009, have ten (10) or more dwelling units on a lot; or on contiguous lots, including those divided by an alley and there is an increase of fifty percent (50%) or more of its gross floor area; or** ~~Are~~

~~\either:~~

~~(1) New multiple-dwellings;~~

~~(2) New one-family dwellings, row dwellings, or flats constructed concurrently or in phases on contiguous lots or lots divided by an alley, if such lots were under common ownership at the time of construction; or~~

~~(3) An existing development described in subparagraph (i) or (ii) for which a new addition will increase the gross floor area of the entire development by fifty percent (50%) or more.~~

(d) Is a semi-attached, attached or multi-family residential development not described in §§ 2602.1(b) or (c) or that is located in one of the areas exempted by § 2602.3(e) and the owner agrees to abide by the set-aside and other requirements of this chapter provided, the square footage required to be set aside by § 2603 achieves a minimum of one (1) inclusionary unit. Properties located in the areas identified by § 2602.3(e)(3) through (6) may not use the modifications to height, lot occupancy, or minimum lot area or width permitted by §§ 2604.2 and 2604.3.

2602.2 A development with less than ten (10) dwelling units shall become subject to this Chapter upon the filing of an application for a building permit to add one or more dwelling units to the development within a ~~two~~ **three (3)**-year period after the issuance of the ~~last certificate of occupancy~~ first **building permit**, if the

construction for which application has been filed would result in the development having ten (10) or more dwelling units. …

2602.7 A development exempted under § 2602.3(f) shall be subject to the following provisions:

(a) The development shall set aside ~~for low or moderate income households~~ affordable dwelling units **for households earning no greater than eighty percent (80%) of the MFI** ("Exempt Affordable Units") equal to at least the gross square footage that would have been required pursuant to §§ 2603.1 and 2603.2.~~The terms "low income household" and "moderate oncome household" shall have the same meaning as given them by the federal or District funding source, or financing or subsidizing entity, and shall hereinafter be referred to collectively as "Targeted Households";~~

(b) The Exempt Affordable Units shall be sold or rented in accordance with the pricing structure established by the federal or District funding source, or financing or subsidizing entity, for so long as the project exists;

(c) The requirements set forth in § 2602.7(a) and (b) shall be stated as declarations within a covenant approved by the District; and

(d) The approved covenant shall be recorded in the land records of the District of Columbia prior to the date that the first application for a certificate of occupancy is filed for the project; except that for developments that include one-family dwellings, the covenant shall be recorded before the first purchase agreement or lease is executed.

2603 SET-ASIDE REQUIREMENTS

2603.1 Except as provided in § 2603.8, an inclusionary development ~~for which the primary method of construction~~ **that** does not employ **Type I construction as defined by12 DCMR A § 602.2**[3] ~~steel and concrete frame structure~~ **to construct the majority of dwelling units** located in an R-2 through an R-5-B District or in a C-1, C-2-A, W-0, or W-1 district shall devote the greater of ten percent (10%) of the gross floor area being devoted to residential use or seventy-five (75%) of the bonus density ~~being utilized~~ for inclusionary units.

[3] That provision states:

602.2 Type 1 … construction are those types of construction in which the building elements listed in table 601 are of noncombustible materials, except as permitted by Section 603 and elsewhere in this Code.

2603.2 An inclusionary development **that employs Type I construction as defined by 12 DCMR A § 602.2** ~~of steel and concrete frame construction~~ **to construct the majority of dwelling units** located in the zone districts stated in § 2603.1 or any development located in a C-2-B, C-2-C, C-3, CR, R-5-C, R-5-D, SP, USN, W-2, or W-3 Zone District shall devote the greater of eight percent (8%) of the gross floor area being devoted to residential use or fifty percent (50%) of the bonus density ~~utilized~~ for inclusionary units.

2603.3 Except as provided in § 2603.9, inclusionary developments located in R-**2**~~3~~ through R-5-**D**~~E~~, C-1, C-2-A, **C-2-B, C-3-A, SP-1,** StE, W-0 ~~and~~ **through** W-**2**~~1~~ Districts shall set aside fifty percent (50%) of inclusionary units for eligible low-income households and fifty percent (50%) of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.

2603.4 Developments located in CR, C-2-C~~, through~~ C-3-C, USN**,** ~~W-2 through~~ W-3, and SP-**2** Zone Districts shall set aside one hundred percent (100%) of inclusionary units for eligible moderate-income households.

2603.5 The Mayor or the District of Columbia Housing Authority shall have the right to purchase ~~up to~~ **the greater of one (1) inclusionary for-sale unit or** twenty-five percent (25%) of **for-sale** inclusionary units**, or any number or percentage agreed to by the owner of the Inclusionary Development** ~~in a for-sale inclusionary development~~ in ~~accordance with such procedures as are set forth in the Act~~.

…

2603.7 An inclusionary development **located in a StE District that employs Type I construction as defined by 12 DCMR A § 602.2** ~~of steel and concrete frame construction~~ **to construct the majority of dwelling units** ~~located in a StE District~~ shall devote no less than eight percent (8%) of the gross floor area being devoted to residential use in ~~a StE District~~ **for inclusionary units. An inclusionary development located in a StE District that does not employs Type I construction as defined by 12 DCMR A § 602.2 to construct the majority of dwelling units shall devote no less than ten percent (10%) of the gross floor area being devoted to residential use in a for inclusionary units.** [4]

2603.10 When dwelling units are located in cellar space or enclosed building projections extending into public space, then the entire development's residential floor area within those spaces shall be included for purposes of

[4] This second sentence was once § 2603.6 but was inadvertently repealed

calculating the minimum set-aside requirements of §§ 2603.1, 2603.2, and 2603.7.

2603.11 In a for sale inclusionary development, the gross floor areas required set aside for sale to eligible moderate-income households may be reduced by twenty percent (20%) provided all the units are set aside to households earning sixty percent (60%) of the MFI.

2604 BONUS DENSITY

2604.2 Inclusionary developments in zoning districts listed in the chart below may use the following modifications to height and lot occupancy in order to achieve the bonus density:

Base Zone	Matter-of-Right Zoning Constraints			IZ Zoning Modifications	
	Lot Occupancy	Height (feet)	FAR	Lot Occupancy	Height (feet)
~~R-5-E~~	~~75%~~	~~90~~	~~6.00~~	~~90%~~	~~90~~
CR	75%	90	6.00	80%	100
C-2-A	60%	50	2.50	75%	50
C-2-B	80%	65	3.50	80%	70
C-2-C	80%	90	6.00	~~90~~**80%**	~~90~~ **100**
C-3-A	75%	65	4.00	80%	65
C-3-C	n/a	90	6.5	n/a	~~90~~ **100**
W-1	80%	40	2.50	80%	50
W-2	75%	60	4.00	75%	80
W-3	75%	90	6.00	80%	100
SP-1	80%	65	4.00	80%	70
SP-2	80%	90	6.00	90%	90

2604.3 Inclusionary developments in R-2 through R-4 zoning districts may use the minimum lot dimensions as set forth in the following table:

Base Zone	IZ Zoning Modifications		
	IZ Min. Lot Area (square feet)	Min. Lot Width (feet)	Min Lot Width (feet) Special Exception
R-2 Detached	3,200	40	32
R-2 Semi-Detached	2,500	30	25
R-3	1,600	20	16
R-4	1,500	18	16

2604.4 Increases in FAR obtained as a result of variances granted by the Board of Zoning Adjustment shall be treated as bonus density for the purposes of calculating the applicable maximum set aside requirement under § 2603.

2605 DEVELOPMENT STANDARDS

2605.4 The interior amenities of inclusionary units (such as finishes and appliances) shall be comparable to the market-rate units, but may be comprised of less expensive materials and equipment **so long as the interior amenities are durable, of good quality, and consistent with contemporary standards for new housing**.

…

2605.6 Inclusionary units shall not be overly concentrated on any floor**, tenure or dwelling type including multiple-dwellings, one (1)-family dwellings, or flats** of a**n Inclusionary Development** ~~project~~.

…

2605.7 In an Inclusionary Development subject to 2602.1 (c) or 2602.2, Inclusionary Units may be located solely in the new addition provided all the existing units were occupied at the application for the addition's building permit and all other requirements of this chapter are met.

2606 EXEMPTION FROM COMPLIANCE

2606.1 The Board of Zoning Adjustment is authorized to grant partial or complete relief from the requirement of § 2603 upon a showing that compliance (whether on site, offsite or a combination thereof) would deny ~~the applicant~~ **an IZ Development owner** economically viable use of its land.

2606.2 No application **from an owner of an Inclusionary Development** for a variance from the requirements of § 2603.2 may be granted until the Board of Zoning Adjustment has voted to deny an application for relief pursuant to this section or § 2607.

2606.3 Notwithstanding § 2602.5, an owner/occupant of an inclusionary unit may sell the unit at a price greater than that established by the Mayor pursuant to § 103 of the Act if permitted by the Zoning Commission pursuant to the calendar provisions of § 3030 if the owner/occupant demonstrates:

(a) Condominium or Homeowner association fees have increased to make the unit unaffordable to other Eligible Households as defined § 2602;

(b) The application for relief includes written confirmation of § 2606.3(a) from the Director of the Department of Housing and Community Development; and

(c) The inclusionary zoning covenant required by § 105 of the Act remains in effected and the unit is sold at the Maximum Resale Price (MRP) if the income of the Eligible Household purchasing the unit does not exceed one hundred percent (100%) of the MFI; or

(d) If the inclusionary zoning covenant is terminated and the unit is sold above the MRP, a fee equal to any net proceeds from the sale that are above the MRP is deposited into the District's Housing Trust Fund as defined by § 2499.

2607 OFF-SITE COMPLIANCE

2607.1 **Some or all of the set-aside requirements of § 2603 may be constructed off-site to another location within two thousand six hundred forty feet (2,640 ft.) of the inclusionary development provided:**

(a) The square footage of the set-aside requirement constructed off-site is twenty percent (20%) greater than what would have been required for the inclusionary development; and

(b) All other provisions of this section have been met.

2607.~~1~~**2** The Board of Zoning Adjustment is authorized to permit some or all of the set-aside requirements of § 2603 to be constructed off-site **anywhere within the District of Columbia** upon proof, based upon a specific economic analysis, that compliance on-site would impose an economic hardship. Among the factors that may be considered by the BZA in determining the existence of economic hardship are:

2607.~~2~~**3** **Both a building permit applications for an inclusionary development made pursuant to § 2607.1 and Board of Zoning Adjustment applications made pursuant to § 2607.2** ~~An applicant who has demonstrated the existence of economic hardship~~ shall further demonstrate that the off-site development:

~~(a) Is located within the same census tract as the inclusionary development;~~

~~(b)~~**(a)** Consists of new construction for which no certificate of occupancy has been issued;

~~(c)~~**(b)** Is at a location suitable for residential development;

~~(d)~~**(c)** Has complied with or will comply with all on-site requirements of this chapter as are applicable to it;

~~(e)~~**(d)** Has not received any development subsidies from federal or District government programs established to provide affordable housing;

~~(f)~~**(e)** Will provide inclusionary units comparable in type to the market-rate units being created in their place, with gross floor areas of not less than ninety-five percent (95%) of the gross floor area of such market-rate units, and of a number no fewer than the number of units that would otherwise have been required on-site;

~~(g)~~**(f)** Will not have more than thirty percent (30%) of its gross floor area occupied by inclusionary units that satisfy the set-aside requirement of other properties, including the property that is the subject of the Board of Zoning Adjustment application; and

~~(h)~~**(g)** Has not utilized bonus density beyond that provided by § 2604.1.

2607.3 **All dwelling units as are required to be reserved in the off-site development shall be deemed inclusionary units for the purposes of this chapter and the Act.**

2607.5 ~~No order granting~~ **The** off-site compliance shall ~~become effective~~ **not relieve an inclusionary development of its entire set-aside requirement** until a covenant, found legally sufficient by the Office of the Attorney General, has been recorded in the land records of the District of Columbia between the owner of the off-site development and the Mayor. A draft covenant, executed by the owner of the offsite property, shall be attached to an application for relief under this section.

2607.7 Upon the recordation of the covenant, the set-aside requirements permitted to be accounted off-site shall be deemed to be the legal obligation of the current and future owners of the off-site development. ~~All dwelling units as are required to be reserved in the off-site development in accordance with the BZA order shall be deemed inclusionary units for the purposes of this Chapter and the Act.~~

3. Amendments proposed by OP pertaining to Filing Fees.

Amend § 3040 as follows:

3040 FILING FEES

3040.7 No fee shall be charged for applications pursuant to § 2606.3.

Alternative 2 (OP)

The Commission and OP are also interested in hearing testimony on the issue in Alternative 2 (OP) which focuses on targeted households and MFI based on whether the IZ units are rental or for-sale. In addition to the OP proposed text amendments, Alternative 2 (OP) would require the following alternate text amendments to Chapter 26.

4. Amendments proposed by OP pertaining to Alternative 2 (OP): § 2601 Definitions and §2603 Set-Aside Requirements).

2603 SET-ASIDE REQUIREMENTS

2601.1 When used in the chapter, the following terms and phrases shall have the meanings ascribed:

Eligible household - one (1) or more persons certified by the Mayor as **not exceeding the applicable maximum income levels of § 2603.3.** ~~being a low- or moderate-income household pursuant to the Act.~~

~~**Low income household** - a household of one or more individuals with a total annual income adjusted for household size equal to less than fifty percent (60%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.~~

Median Family Income (MFI) - the Median Family Income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for family size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers

~~**Moderate-income household** - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty-one percent (51%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act~~

2603 SET-ASIDE REQUIREMENTS

2603.3 Except as provided in § 2603.9, i**nclusionary units resulting from set asides required by §§ 2603.1 and 2603.2 shall be rented or sold as follows:**

(a) Rental units shall be rented only to eligible household earning sixty percent (60%) percent of the MFI; and

(b) For-sale units shall be sold only to eligible household earning eighty percent (80%) percent of the MFI.

~~2603.3 Inclusionary developments located in R-2 through R-5-D, C-1, C-2-A, StE, W-0 and W-1 Districts shall set aside fifty percent (50%) of inclusionary units for eligible low-income households and fifty percent (50%) of inclusionary units for eligible moderate-income households. The first inclusionary unit and each additional odd number unit shall be set aside for low-income households.~~

~~2603.4 Developments located in CR, C-2-B through C-3-C, USN, W-2 through W-3, and SP Zone Districts shall set aside one hundred percent (100%) of inclusionary units for eligible moderate-income households~~

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 *et seq.*)

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of § 3021.

How to participate as a witness.

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

Time limits.

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

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

1.	Organizations	5 minutes each
2.	Individuals	3 minutes each

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

Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record. Written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **January 7, 2016, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 13-09 (Stanton Square, LLC – 1st-Stage and Consolidated PUDs & Related Map Amendment @ Square 5877)

THIS CASE IS OF INTEREST TO ANC 8B and ANC 8A

On May 23, 2013, Stanton Square, LLC (the "Applicant") provided notice of its intent to file an application for a planned unit development ("PUD") and related Zoning Map amendment for the 8.1 acre property bound by Stanton, Elvans and Pomeroy Roads, S.E., which is known as Lot 122 in Square 5877 (the "Subject Property"). The Subject Property is located in the Fort Stanton/Hillsdale neighborhood approximately one-half mile north of the Suitland Parkway. The Subject Property is bound by Stanton Road to the west, Elvans Road to the south and east, the former Wilkinson Elementary School directly to the north, and Pomeroy Road to the northwest. The Subject Property is currently undeveloped.

The Subject Property is currently included in the R-3 Zone District and the moderate-density residential land use category on the District of Columbia's Comprehensive Plan Future Land Use Map. In November of 2007, the Zoning Commission approved a PUD project and Zoning Map amendment application (Z.C. Case No. 05-35) which rezoned the Subject Property to the R-5-A Zone District. Z.C. Case No. 05-35 expired, so the Subject Property returned to the R-3 Zone District.

On May 31, 2013, the Applicant filed PUD and Zoning Map amendment applications with the Zoning Commission (Z.C. Case No. 13-09). The Applicant proposed the development of a project that included a mixed-income residential community on the lower five acres of the Subject Property, and a community service center campus on the upper three acres of the Subject Property. The Applicant originally requested approval of a Consolidated PUD application and Zoning Map Amendment for the residential community (rezoning this portion of the Subject Property to the R-5-A Zone District). The Applicant also originally requested approval of a first-stage PUD application and Zoning Map amendment for the community service center campus (rezoning this portion of the Subject Property to the SP-1 Zone District). In response to comments that the Applicant received from representatives of the community and ANC 8B, the Applicant decided not to move forward with the project as originally proposed and filed with the Zoning Commission on May 31, 2013.

On June 3, 2015, the Applicant filed an updated set of plans and description of the project which noted the changes that were made to the unit-mix and residential types, and the partnership with Martha's Table and Community of Hope to be the anchors for the community service center campus. The project still includes a mixed-income residential community on the lower five acres of the Subject Property, and a community service center campus on the upper three acres of the Subject Property. The Applicant is proposing a consolidated PUD application and Zoning Map amendment for the residential community (rezoning this portion of the Subject Property to the R-5-B Zone District). The Applicant is now proposing a consolidated and first-stage PUD application and Zoning Map amendment for the community service center campus (rezoning this portion of the Subject Property to the SP-1 Zone District).

The residential community will consist of approximately 128 residential units included in three multi-family buildings and 42 townhouses. The multi-family residential units will vary in size from 1-3 bedrooms and the townhouses will have three bedrooms. Twelve of the multi-family residential units will be reserved for permanent supportive housing units. The multi-family residential buildings will be approximately 50 feet in height and the townhouses will range from 29-50 feet tall. The residential community will include approximately 219,000- 238,000 square feet of gross floor area. The floor area ratio ("FAR") for the residential community will be approximately 1.29-1.40. The residential community will include approximately 146 parking spaces.

The R-5-B Zone District permits a maximum FAR of 1.8 as a matter-of-right and 3.0 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 permits a maximum height of 60 feet.

The consolidated PUD application for the community service center campus will include a 54,000-square-foot building that will be occupied by Martha's Table and Community of Hope. Martha's Table will use 42,000 square feet of the building for early childhood programming, nutrition and wellness services, and after-school programming. Community of Hope will use 12,000 square feet of the building for employment and behavioral services counseling. This building will be approximately 32 feet tall, will have a FAR of approximately 0.66, and will include approximately 37 parking spaces.

The first-stage PUD application for the community service center campus will include a building with a height of approximately 45 feet. This building is expected to have a density of 0.92 FAR and a surface parking lot of approximately 24 parking spaces.

The SP-1 Zone District permits a maximum density of 4.0 FAR for residential use and 2.5 for other uses as a matter-of-right. A PUD project in the SP-1 Zone District is permitted a maximum density of 4.5 FAR for residential use and 3.5 for other uses. The maximum height allowed as a matter-of-right in the SP-1 Zone District is 65 feet. A PUD project in the SP-1 Zone District permits a maximum height of 75 feet.

The Office of Planning provided its report on July 17, 2015, and the case was set down for hearing on July 27, 2015. The Applicant provided its prehearing statement on October 19, 2015. This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

How to participate as a witness.

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

How to participate as a party.

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

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

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

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

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

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

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

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

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at http://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in the District of Columbia Election Code of 1955, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2014 Repl.)), hereby gives notice of final rulemaking action to adopt amendments to the following chapters in Title 3 (Elections and Ethics), of the District of Columbia Municipal Regulations (DCMR): Chapter 1 (Organization of the Board of Elections and Ethics); Chapter 2 (Political and Ethical Conduct of Board Members and Employees); Chapter 3 (Advisory Opinions of the Board); Chapter 5 (Voter Registration); Chapter 6 (Eligibility of Candidates); Chapter 7 (Election Procedures); Chapter 8 (Tabulation and Certification of Election Results); Chapter 9 (Filling Vacancies), Chapter 10 (Initiative and Referendum); Chapter 11 (Recall of Elected Officials); Chapter 14 (Candidate Nominations: Political Party Primaries for Presidential Preference and Convention Delegates); Chapter 15 (Candidate Nominations: Electors of President and Vice-President of the United States); Chapter 16 (Candidate Nomination: Delegate to the U.S. House of Representatives, Mayor, Chairman and Members of the Council of the District of Columbia, Attorney General, U.S. Senator, U.S. Representative, Members of the State Board of Education, and Advisory Neighborhood Commissioner); and Chapter 17 (Candidates: Members and Officials of Local Committees of Political Parties and National Committee Persons).

The proposed amendments bring the rules into conformity with the Voter Registration Access and Modernization Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-158; 62 DCR 003604 (March 27, 2015)), and the Primary Date Alteration Amendment Act of 2014, effective May 2, 2015 (D.C. Law 20-273; 62 DCR 006644 (May 22, 2015)).

A Notice of Proposed Rulemaking with respect to these amendments was published in the *D.C. Register* on August 14, 2015 at 62 DCR 011185. No comments on the proposed rules were received during the public comment period, and no substantive changes have been made to the regulations as proposed.

The rules were adopted as final at a regular Board meeting on Wednesday, November 4, 2015, and they will become effective upon publication of this notice in the *D.C. Register*.

Chapter 1 of Title 3 DCMR, ELECTIONS AND ETHICS, is amended in its entirety to read as follows:

CHAPTER 1 ORGANIZATION OF THE BOARD OF ELECTIONS

100 ESTABLISHMENT AND AUTHORITY OF THE BOARD OF ELECTIONS

100.1 The District of Columbia Board of Elections is established under § 3 of the District of Columbia Election Act, approved August 12, 1955 (69 Stat. 699; D.C. Official Code §§ 1-1001.02, 1-1103.05(a) (2014 Repl.)).

100.2 The District of Columbia Board of Elections is vested with authority to administer and enforce the provisions of the District of Columbia Election Act, as amended, the District of Columbia Campaign Finance Reform and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 446; D.C. Official Code §§ 1-1101.01 *et seq*. (2014 Repl.)).

100.3 The Board is composed of three (3) members, no more than two (2) of whom shall be members of the same political party, who are appointed by the Mayor and confirmed by the Council of the District of Columbia.

100.4 The Mayor designates, from time to time, the Chairperson of the Board.

100.5 The Board shall appoint an Executive Director who is primarily responsible for the administrative operations of the Board, including personnel liaison, budget submission, accounting, management of data processing systems, procurement of supplies and services, maintenance of voter records, election preparation, and other duties as delegated or assigned by the Board.

100.6 The Board shall appoint a General Counsel who shall be the Board's chief legal advisor and primarily responsible for representing the Board in all judicial proceedings relating to local elections, campaign finance, conflict of interest and lobbying laws. The General Counsel shall perform other duties delegated or assigned by the Board.

100.7 The Executive Director and the General Counsel shall be accountable solely to the Board.

101 OFFICE OF CAMPAIGN FINANCE

101.1 The Office of the Director of Campaign Finance is established by law under the jurisdiction of the District of Columbia Board of Elections.

101.2 The Administrator of the Office of Campaign Finance is the "Director of Campaign Finance," who is appointed by, and serves at the pleasure of, the Board.

101.3 The Director of Campaign Finance is responsible for the administrative operations of the Board pertaining to the Campaign Finance Act and other duties delegated or assigned by the Board.

102 ORGANIZATION OF THE BOARD OF ELECTIONS

102.1 Except as provided otherwise by statute, a quorum of the Board shall consist of no less than two (2) members of the Board and shall be necessary to conduct official Board business.

102.2 At the beginning of each calendar year, a preliminary schedule of regular meetings for the year, which the Board has discretion to change, will be published in the *D.C. Register*.

102.3 The Board may hold a pre-meeting immediately prior to commencing a regular meeting for the sole purpose of administrative action, which does not include the deliberation or taking of official action.

102.4 Regularly scheduled Board meetings shall be held on the first Wednesday of each month, or at least once each month, at a time to be determined by the Board. Additional meetings may be called as needed by the Board.

102.5 Notice of all regular and additional meetings of the Board will be published on the Board's web site at least forty-eight (48) hours in advance, except in the case of emergency.

102.6 The Board may exercise its discretion and reschedule a regular meeting or call special meetings when necessary with reasonable notice to the public.

102.7 The Board encourages comments on any issue under the jurisdiction of the Board at its regular meetings and will provide the public with a reasonable opportunity to appear before the Board and offer such comments.

102.8 To ensure the orderly conduct of public Board meetings, public comments may be limited with respect to the number of speakers permitted and the amount of time allotted to each speaker; however, the Board will not discriminate against any speaker on the basis of his or her position on a particular matter.

102.9 Any member of the public who intends to comment regarding any agenda item or any issue under the jurisdiction of the Board is encouraged to notify the Board in advance of his or her intent to do so, providing his or her name and the topic on which he or she wishes to speak. Such notification may be provided by e-mail to ogc@dcboee.org, by fax to (202) 741-8774, by telephone at (202) 727-2194, by mail to 441 4th Street, NW, Suite 270 North, Washington, DC 20001, or in person at the Board's office. No person shall be prevented from speaking at a Board meeting simply because he or she has not provided advance notice of his or her intent to do so.

102.10 Members of the public who wish to submit items for consideration by the Board shall do so in writing one (1) week in advance. Failure to submit an item in advance as required may, within the Board's discretion, result in the matter being continued until the next regularly scheduled meeting.

103 EXECUTIVE SESSIONS

103.1 For the purposes of this chapter, the term "executive session" means a Board meeting where the public, employees of the Board, or any other persons may be excluded.

103.2 The Board may enter into executive session, and discuss any matter upon which it will not vote, make resolutions or rulings, or take action of any kind, including the following:

(a) Personnel matters, including the recruitment, appointment, employment, assignment, promotion, discipline, compensation, removal, or resignation of employees, or other individuals over whom it has jurisdiction;

(b) Employee disciplinary actions;

(c) General Counsel briefings on litigation strategy;

(d) Confidential proceedings under the Campaign Finance Act;

(e) Quasi-judicial deliberations;

(f) Matters which would result in the disclosure of information specifically exempted from disclosure by statute;

(g) Matters which would result in the disclosure of trade secrets and commercial or financial information;

(h) Matters which would involve a clear and unwarranted invasion of privacy, an accusation of a crime, or formal censure; and

(i) Matters which would result in the disclosure investigatory records compiled for law enforcement purposes.

104 ORDERS OF THE BOARD

104.1 The Chairperson shall approve or disapprove Board orders in writing with his or her signature, as may be appropriate.

104.2 The Chairperson shall be legally bound to administer a Board order notwithstanding the fact that he or she may have disapproved the order.

105 WRITTEN COMMUNICATIONS

105.1 For the purposes of this chapter, the term "written communications" means letters, memoranda, or other documents.

105.2 All requests for documents shall be handled in accordance with procedures set forth in the District of Columbia Freedom of Information Act.

105.3 Where a majority of the Board votes to issue a communication, the Chairperson or the Chairperson's designee may sign the document and issue it on behalf of the Board.

Chapter 2 is amended in its entirety to read as follows:

CHAPTER 2 POLITICAL AND ETHICAL CONDUCT OF BOARD MEMBERS AND EMPLOYEES

200 ESTABLISHMENT AND AUTHORITY OF THE BOARD OF ELECTIONS
201 POLITICAL ACTIVITY OF MEMBERS AND EMPLOYEES OF THE BOARD
202 POLITICAL ACTIVITY OF POLLING PLACE OFFICIALS
203 ETHICAL CONDUCT

200 ESTABLISHMENT AND AUTHORITY OF THE BOARD OF ELECTIONS

200.1 The purpose of this chapter is to establish standards of conduct for members and employees of the District of Columbia Board of Elections and polling place officials for their official activities in order to maintain public confidence in the integrity of those persons responsible for the administration of the election laws and the conduct of the electoral process in the District of Columbia.

200.2 The provisions of this chapter shall solely govern the political and ethical conduct of the members and employees of the Board and polling place officials and are not intended to be exclusive of rules governing the ethical conduct of all District of Columbia Government employees.

201 POLITICAL ACTIVITY OF MEMBERS AND EMPLOYEES OF THE BOARD

201.1 Except as provided in this section, nothing in this chapter shall be construed as prohibiting the members or employees of the Board from doing any of the following:

(a) Exercising the right to vote at any election conducted in the District of Columbia or elsewhere;

(b) Signing any nominating, initiative, referendum or recall petition; or

(c) Attending candidate forums.

201.2 No member or employee of the Board shall:

(a) Be a candidate or nominee for any elected office;

(b) Hold any office in any political party or political committee; or

(c) Participate in the activities of or contribute to any political committee of any candidate for District office or for or against any ballot measure in the District of Columbia.

201.3 A member or employee of the Board shall not engage in any activity, including attending political dinners, fundraisers, parties, meetings or conferences which would imply support of or opposition to a local candidate or group of candidates for office, as defined in § 9900, a local political party or political committee, or an initiative, referendum, or recall measure to appear on the ballot in the District of Columbia.

202 POLITICAL ACTIVITY OF POLLING PLACE OFFICIALS

202.1 Polling place officials shall be governed by the provisions of this section while employed by the Board. A polling place official is employed by the Board during any hours that he or she is performing services for the Board.

202.2 A polling place official shall not:

(a) Be a candidate or nominee for any elected office, except that a polling place official may be a candidate for office of Advisory Neighborhood Commissioner. In such instances, the polling place official shall not be assigned to work at a precinct within the Advisory Neighborhood Commission Single-Member District in which he or she is a candidate for office;

(b) Hold any office in any political party or political committee; or

(c) Participate in the activities of any candidate or political committee for or against any ballot measure in the election held in the District of Columbia.

202.3 Political activity conducted by polling place officials prior to employment will not disqualify a polling place official from service.

203 ETHICAL CONDUCT

203.1 A member or employee of the Board shall not directly or indirectly give any person who is not a member or employee of the Board access to official information obtained through or in connection with his or her employment which has not been released to the general public or which is not a matter of public record.

203.2 A member or employee of the Board shall not solicit or accept, either directly or through the intercession of others, any fee, gift, gratuity, favor, loan, entertainment, or other thing of monetary value from any person, organization, or entity which:

(a) Has obtained, or is seeking to obtain, contractual or other business or financial relations with the Board;

(b) Conducts operations or activities that are regulated or examined by the Board; or

(c) Has interests that may be favorably affected by the action or inaction of the member employee in the performance of his or her official duties.

203.3 The restrictions set forth in § 203.2 of this section shall not apply to any of the following:

(a) Obvious personal relationships, such as those that exist between an employee or member and his or her parents, children, or spouse;

(b) The acceptance of food and refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting;

(c) The acceptance of loans from financial institutions on customary terms to finance the acquisition of a car, home, appliance, or other personal items;

(d) The acceptance of unsolicited advertising or promotional materials such as pens, pencils, note pads, calendars, and like items of nominal intrinsic value; or

(e) The acceptance of a voluntary gift of nominal value of a cash donation in a nominal amount which is presented on a special occasion such as marriage, illness, or retirement.

203.4 A member or employee of the Board shall not directly or indirectly use or allow the use of government property of any kind, including office machines, motor vehicles, materials, supplies or funds, for other than officially approved activities.

203.5 Without prior approval of the Board, a member or employee of the Board shall not accept any reimbursement for expenses or receive any other honorarium or fee for any service, speech, or other activity which is rendered as a result of his or her official duties with the Board, whether or not such activities were performed during official working hours.

203.6 Board members and employees shall not engage in any employment which is incompatible with the full and proper discharge of their government responsibilities.

203.7 No Board member or employee shall do indirectly (by, through, or with other persons) those acts or actions which the Board member or employee are prohibited from doing directly under the restrictions set forth in this chapter.

203.8 An employee shall promptly report to his or her immediate supervisor any attempt to direct or otherwise unlawfully influence the discharge of that employee's official duties.

Section 301, REQUESTS FOR ADVISORY OPINIONS, of Chapter 3, ADVISORY OPINIONS OF THE BOARD, is amended to read as follows:

301 REQUESTS FOR ADVISORY OPINIONS

301.1 A request for an advisory opinion shall be in writing, signed by the requestor and filed with the General Counsel to the Board of Elections.

301.2 Upon receipt of a request for an advisory opinion relative to the Campaign Finance Act, the General Counsel shall transmit a copy of the request for an advisory opinion to the Director of Campaign Finance.

301.3 A request for an advisory opinion shall contain the following:

(a) The full name, residence address, and telephone number of the requestor; and

(b) A clear and concise statement of the facts relating to the specific transaction or activity which constitute a violation of the law.

Chapter 5 is amended in its entirety to read as follows:

CHAPTER 5 VOTER REGISTRATION

500 GENERAL REQUIREMENTS AND QUALIFICATIONS
501 VOTER REGISTRATION INFORMATION
502 QUALIFIED UNIFORMED SERVICES AND OVERSEAS VOTERS
503 [REPEALED]

500 GENERAL REQUIREMENTS AND QUALIFICATIONS

500.1 No person shall be registered to vote in the District of Columbia unless he or she:

(a) Is a qualified elector as defined by D.C. Official Code § 1-1001.02(2) (2014 Repl.); and

(b) Executes a voter registration application by signature or mark on a form approved by the Board or by the Election Assistance Commission attesting that he or she meets the requirements as a qualified elector.

500.2 A person is a "qualified elector" if he or she:

(a) For a primary election, is at least seventeen (17) years of age and will be eighteen (18) on or before the next general election, or for a general or special election, is at least eighteen (18) years of age on or before the date of the general or special election;

(b) Is a citizen of the United States;

(c) Is not incarcerated for the conviction of a crime that is a felony in the District;

(d) Has maintained a residence in the District for at least thirty (30) days preceding the next election and does not claim voting residence or the right to vote in any state or territory; and

(e) Has not been adjudged legally incompetent to vote by a court of competent jurisdiction.

500.3 An applicant shall provide the following information on a voter registration application:

(a) Applicant's complete name;

(b) Applicant's current and fixed residence address in the District;

(c) Applicant's date of birth;

(d) Applicant's original signature; and

(e) Applicant's Department of Motor Vehicles (DMV)-issued identification number in the case of an applicant who has been issued a current and valid driver's license, or the last four (4) digits of the applicant's social security number. If an applicant for voter registration has not been issued a current and valid driver's license or a social security number, the Board shall assign the applicant a unique identifying number which shall serve to identify the applicant for voter registration purposes.

500.4 A person who is otherwise a qualified elector may pre-register on or after his or her sixteenth (16th) birthday, but he or she shall not vote in any primary election unless he or she is at least seventeen (17) years of age and will be eighteen (18) on or before the next general election or in any general or special election unless he or she is at least eighteen (18) years of age on or before the date of the general or special election.

500.5 An applicant for voter registration who is unable to sign or to make a mark on a voter registration application due to a disability may apply with the assistance of another person as long as the individual's voter registration application is accompanied by a signed affidavit from the person assisting the applicant which states the following:

(a) That he or she has provided assistance to the applicant;

(b) That the applicant is unable to sign the registration form or to make a mark in the space provided for his or her signature;

(c) That he or she has read or explained the information contained in the application and the voter declaration to the applicant, if the applicant cannot read the information; and

(d) That he or she has read or explained the penalties for providing false information on the registration application, if the applicant cannot read the information.

500.6 If the applicant is unable to sign his or her name, the applicant may place his or her mark in the space provided for his or her signature and have that mark witnessed by the person assisting by having the witness also sign the voter registration application.

500.7 If an applicant for voter registration fails to provide the information required for registration, the Registrar or his or her designee shall make reasonable attempts to notify the applicant of the failure. A reasonable attempt to notify the applicant may include a phone call, letter, or email. The Registrar shall choose the most efficient method of communication based upon the contact information provided by the applicant.

500.8 Unless otherwise specified in this chapter, a voter registration application, or a notice of change of name, address, or party affiliation status, is considered to be received by the Board upon acknowledgement of receipt by the Board's date-stamp.

500.9 Unless otherwise specified in this chapter, the effective date of registration, or updates thereto, shall be the date that the application was received.

500.10 The current and fixed residence address provided by a voter will be used to send any official communications required by law to the voter unless the voter provides an alternative mailing address.

500.11 The information that the voter provides to the Board, such as that voter's current and fixed residence, shall be sufficiently precise to enable the Board to assign the voter to the appropriate Ward, Precinct, and Advisory Neighborhood Commission Single-Member District ("ANC SMD").

500.12 Any applicant who provides on a voter registration application a registration address to which mail cannot be delivered by the U.S. Postal Service shall additionally provide to the Board a designated mailing address to facilitate any official communications required by law.

500.13 Any applicant utilizing these procedures to fraudulently attempt to register shall be subject to the same criminal sanctions pursuant to D.C. Official Code § 1-1001.14(a) (2014 Repl.).

500.14 The Board's official Voter Registration Application cannot be altered in any way for use by another individual or organization for the purpose of registering electors in the District of Columbia.

501 VOTER REGISTRATION INFORMATION

501.1 Upon written request, the Board shall provide to any person a list of the registered qualified electors of the District of Columbia or any ward, precinct or ANC SMD therein.

501.2 The Board may furnish selective lists according to party affiliation, date of registration, ward, precinct, or ANC SMD, voter history, or any other permissible category.

501.3 The Board shall make requested voter registration information available to the public on electronic or magnetic medium, or on any media in use by the Board at the time of the request.

501.4 The following items of information contained in voter registration records are confidential and shall not be considered public information subject to disclosure to the general public:

(a) Full or partial social security numbers;

(b) Dates of birth;

(c) Email addresses or phone numbers;

(d) The identity of the voter registration agency at which the voter registered; and

(e) The residence and mailing addresses of any registered qualified elector whose residence address has been made confidential pursuant to § 501.8.

501.5 Complete voter registration records, including date of birth and social security numbers, shall be released to the District of Columbia Superior Court upon request.

501.6 Cumulative data based on the items of information listed in § 501.4 may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data.

501.7 A voter's signature on registration records, either on a paper record or application or an electronically captured image, may be viewed by the public but may not be copied or traced except by Board officials for election administration purposes. Any such copy or tracing is not a public record.

501.8 A registered qualified elector's address shall be considered public information until the registered qualified elector or his or her representative presents a copy of a court order to the Registrar directing the confidentiality of the qualified elector's address. If the order is received more than forty-five (45) days before an election, the elector's address shall be immediately removed from all voter records available for public inspection. If the order is received within forty-five (45) days of the election, the address shall be removed as soon as practicable but in no instance later than seven (7) days following an election. Any address made confidential pursuant to this subsection shall remain confidential for as long as the court shall order.

502 QUALIFIED UNIFORMED SERVICES AND OVERSEAS VOTERS

502.1 A person shall qualify as a uniformed services or overseas voter to vote in elections conducted in the District of Columbia if he or she is:

(a) A uniformed services voter or an overseas voter who is registered to vote in the District;

(b) A uniformed services voter whose voting residence is in the District and who otherwise satisfies the District's voter eligibility requirements;

(c) An overseas voter who, before leaving the United States, was last eligible to vote in the District and, except for a District residence requirement, otherwise satisfies the District's voter eligibility requirements;

(d) An overseas voter who, before leaving the United States, would have been last eligible to vote in the District had the voter then been of voting age, and except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements; or

(e) An overseas voter who is not described in paragraphs (c) or (d) and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements, if:

(1) The District is the last place where a parent or legal guardian of the voter was or would have been eligible to vote before leaving the United States; and

(2) The voter has not previously registered to vote in any other state.

502.2 A uniformed services voter is an individual who is qualified to vote and is:

(a) A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard who is on active duty;

(b) A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States;

(c) A member on activated status of the National Guard or state militia; or

(d) A spouse or dependent of an individual described in paragraphs (a) – (c).

502.3 An overseas voter is a United States citizen who is outside the United States.

502.4 Qualified uniformed services and overseas voters shall inform the Board of their status as such by:

(a) The use of a Federal Post Card Application (FPCA) or a Federal Write-In Ballot (FWAB);

(b) The use of an overseas address on an approved voter registration application or ballot application; or

(c) The inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a qualified uniformed services or overseas voter.

503 [REPEALED]

504 REGISTRATION THROUGH VOTER REGISTRATION AGENCIES (VRAs)

504.1 The designated voter registration agencies (VRAs) in the District of Columbia are:

(a) The Department of Motor Vehicles (DMV);

(b) The Department of Corrections;

(c) The Department of Youth Rehabilitation Services;

(d) The Office on Aging;

(e) The Department of Parks and Recreation;

(f) The Department of Human Services; and

(g) Department on Disability Services.

504.2 The Mayor of the District of Columbia may designate any other executive branch agency of the District of Columbia government as a VRA by filing written notice of the designation with the Board.

504.3 The Board must approve the voter registration application that each VRA provides.

504.4 Each voter registration application submitted to the Board through a VRA shall be considered an update of any previous voter registration by an applicant who is already listed as a registered voter or whose name appears on the inactive list of registered voters, unless the applicant indicates that a change of address is not for voter registration purposes.

505 VOTER REGISTRATION APPLICATION DISTRIBUTION AGENCIES

505.1 A qualified elector may obtain the Board's official Voter Registration Application from a voter registration application distribution agency, including the following:

(a) The District of Columbia Public Library;

(b) The DC Fire and Emergency Medical Services Department;

(c) The Metropolitan Police Department; and

(d) Any other executive agency the Mayor shall designate in writing.

505.2 The Board shall provide sufficient quantities of its official Voter Registration Application for distribution to the public.

505.3 Nothing in this section shall be deemed to require or permit employees of a voter registration application distribution agency to accept completed voter registration applications for delivery to the Board or to provide assistance in completing any voter registration applications.

506 [REPEALED]

507 [REPEALED]

508 REGISTRATION THROUGH THE DEPARTMENT OF MOTOR VEHICLES

508.1 The Department of Motor Vehicles (DMV) and the Board of Elections shall jointly develop a voter registration application that shall allow an applicant who wishes to register to vote to do so by the use of a single form that contains the necessary information required for the issuance, renewal, or correction of the applicant's driver's permit or non-driver's identification card in any motor vehicle services office.

508.2 Completion of the voter registration portion of the application form shall not be a requirement of an individual's application for a driver's permit or non-driver's identification card.

508.3 Each application form shall automatically serve as an application to register to vote in the District of Columbia, unless the applicant fails to sign the voter registration portion of the form.

508.4 A voter registration application shall not be accepted by the Board unless it contains the signature of the applicant.

508.5 Each voter registration application shall be considered as updating any previous voter registration by an applicant who is already listed as a registered voter, or whose name appears on the inactive list of registered voters, unless a voter indicates that a change of address is not for voter registration purposes.

508.6 Upon the receipt of a voter registration application or a notice of change of address, the DMV shall in a consistent manner indicate the date of its receipt on the portion of the form used by the Board for voter registration and registration update purposes.

508.7 A voter registration application or to update information on an existing voter registration shall be considered received by the Board on the date that it was accepted by the DMV.

508.8 The DMV shall transmit each completed voter registration application or notice of change of a name, address, or party not later than ten (10) days after the date of acceptance by the DMV, except that if a voter registration application is accepted within five (5) days before the last day for registration-by-mail, the application shall be transmitted to the Board not later than five (5) days after the date of its acceptance.

508.9 The Director of the DMV shall do the following:

(a) Ensure that each agency site is supplied with an adequate number of combined Motor Vehicles/voter registration applications; and

(b) Submit in writing and answer any questions as the chief administrative officer of the Board of Elections or the Board may prescribe that relate to

the administration and enforcement of the National Voter Registration Act of 1993, the National Voter Registration Act Conforming Amendment Act of 1994, and the Help America Vote Act of 2002.

509 VOTER REGISTRATION APPLICATION PROCESSING: BY MAIL

509.1 Prior to the thirtieth (30th) day preceding an election, a qualified elector, or a person who is qualified to register (pursuant to D.C. Official Code § 1-1001.07 (a-2) (2014 Repl.)), may register to vote, or change his or her name, address, or party affiliation status by mailing a complete voter registration application to the Board.

509.2 If the registration-by-mail deadline falls on a Saturday, Sunday, or holiday, the deadline shall be extended to the next business day.

509.3 The Board shall immediately process mailed voter registration applications and registration update notifications received postmarked by not later than the thirtieth (30th) day preceding any election.

509.4 Mailed voter registration applications and update notifications considered received during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.

509.5 The Board shall immediately process timely completed non-postmarked voter registration applications and registration update notifications mailed and received not later than the twenty-third (23rd) day preceding any election.

509.6 A voter registration application, or a notice of change of name, address, or party affiliation status, which is delivered by mail and postmarked by the United States Postal Service is considered received by the Board on the date of the postmark.

509.7 A voter registration application, or a notice of change of name, address, or party affiliation status, shall be considered to be received by the Board:

(a) Upon acknowledgement of receipt by an agency date-stamp if it is delivered without a postmark; or

(b) On the parcel's shipping date if it is delivered by common carrier.

509. 8 The Board will take reasonable steps to investigate the timely completion of non-postmarked voter registration applications, or notices of change of name, address, or party, by checking tracking numbers or any other information available.

509.9 Individuals who have not previously voted in a federal election in the District and who register to vote by mail shall present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid government-issued photo identification, a copy of a current (the issue, bill, or

statement date is no earlier than ninety (90) days before the election at issue) utility bill, bank statement, government check, or paycheck, or other government-issued document that shows the name and address of the voter.

509.10 Subsection 509.9 shall not apply to:

(a) Individuals whose registration application includes either a DMV-issued identification number or at least the last four (4) digits of his or her social security number and with respect to whom the Board has been able to match the provided information with an existing identification record bearing the same number, name, and date of birth as provided in such registration application; and

(b) Individuals entitled to vote otherwise than in person under Federal law.

510 VOTER REGISTRATION APPLICATION PROCESSING: IN-PERSON AT THE BOARD OF ELECTIONS' OFFICE OR A VOTER REGISTRATION AGENCY (VRA)

510.1 Prior to the thirtieth (30th) day preceding an election, a qualified elector (pursuant to § 500.2), or a person who is qualified to pre-register (pursuant to § 500.4), may appear in-person at the Board's office, and by extension, a voter registration agency (VRA), and do the following:

(a) Submit a voter registration application; or

(b) Submit a notice of a change of name, address, or party affiliation status.

510.2 On or after the thirtieth (30th) day preceding an election, a qualified elector may submit a voter registration application or a notice of change of name or address at the Board's office or a VRA. A qualified elector may change his or her party affiliation status up to the thirtieth (30^{th}) day preceding a primary election. Requests for change of party affiliation status received during the thirty (30) days that precede a primary election shall be held and processed after the election. A change in party affiliation status occurs when a voter:

(a) Changes his or her party registration from one political party to another;

(b) Changes his or her party registration from "no party (independent)" to a political party; or

(c) Changes his or her party registration from a political party to "no party (independent)."

510.3 A qualified elector may appear in person at the Board's office to complete and sign the Board's official Voter Registration Application between the hours of 8:30

a.m. and 4:45 p.m., Monday through Friday. The Executive Director, or his or her designee, may expand the weekly hours, and may specify other days on which the Board may accept voter registration applications, based on the level of registration activity. Public notice of the expansion of weekly hours shall be provided at least twenty-four (24) hours in advance.

510.4 A voter registration application or a notice of a change of name, address, or party affiliation status that is submitted in-person at the Board's office or a VRA shall be considered to be received by the Board on the date that it is submitted at the Board's office or the voter registration agency.

511 VOTER REGISTRATION APPLICATION PROCESSING: DIGITAL VOTER SERVICE SYSTEM

511.1 Prior to the thirtieth (30th) day preceding an election, a qualified elector (pursuant to § 500.2), or a person who is qualified to pre-register (pursuant to § 500.4), may use the Board's digital voter service system to:

(a) Submit a voter registration application; or

(b) Submit a notice of a change of name, address, or party affiliation status.

511.2 On or after the thirtieth (30th) day preceding an election, a qualified elector may submit a voter registration application or a notice of change of name or address through the Board's digital voter service system. A qualified elector may change his or her party affiliation status up to the thirtieth (30^{th}) day preceding a primary election. Requests for change of party affiliation status received during the thirty (30) days that precede a primary election shall be held and processed after the election. A change in party affiliation status occurs when a voter:

(a) Changes his or her party registration from one political party to another;

(b) Changes his or her party registration from "no party (independent)" to a political party; or

(c) Changes his or her party registration from a political party to "no party (independent)."

511.3 A voter registration application or a notice of a change of name, address, or party affiliation status that is submitted through the Board's digital voter service system shall be considered to be received by the Board on the date that it is submitted.

511.4 Each voter registration application and notice of a change of name, address, or party affiliation status that is submitted through the Board's digital voter service system shall be executed by an electronic signature provided directly to the Board by the applicant.

511.5 If an applicant submits a voter registration application or notice of a change of name, address, or party affiliation status through the Board's digital voter service system, but does not provide an electronic signature directly to the Board in accordance with § 511.4(a), the Board shall request, and the DMV shall furnish, an electronic copy of the applicant's signature for the purpose of executing the application submitted for acceptance and approval, provided the applicant:

(a) Provides his or her DMV-issued identification number; and

(b) Affirmatively consents to the use of that signature as the signature for the application submitted.

512 VOTER REGISTRATION APPLICATION PROCESSING FOR QUALIFIED UNIFORMED SERVICES AND OVERSEAS VOTERS

512.1 A qualified uniformed services or overseas voter may use any federally- or District-approved voter registration application, including their electronic equivalents, to register to vote or update his or her registration. For the purpose of this section, a "voter registration application" shall include the following:

(a) A Federal Post Card Application (FPCA);

(b) The declaration accompanying a Federal Write-In Absentee Ballot (FWAB declaration);

(c) The Board's Voter Registration Application; or

(d) Any other voter registration application.

512.2 The Board shall process voter registration applications that are received electronically or mailed prior to the thirtieth (30th) day preceding an election, provided that the Board shall also process timely completed non-postmarked voter registration applications mailed and received not later than the twenty-third (23rd) day preceding any election.

512.3 A voter registration application which is delivered by mail and postmarked by the United States Postal Service is considered received by the Board on the date of the postmark.

512.4 A voter registration application delivered by common carrier will be considered received by the Board on the parcel's shipping date.

512.5 A voter registration application delivered without a postmark is considered to be received by the Board upon acknowledgement of receipt by an agency date-stamp.

512.6 The Board will take reasonable steps to investigate the timely completion of non-postmarked voter registration applications by checking tracking numbers, or any other information available.

512.7 All voter registration applications considered received during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.

513 VOTER REGISTRATION APPLICATION PROCESSING: AT THE POLLS, EARLY VOTING CENTERS, AND DURING IN-PERSON ABSENTEE VOTING

513.1 A qualified elector may register during the in-person absentee voting period specified in § 717 of this title, at an early voting center designated by the Board, or on Election Day by appearing in person at the polling place for the precinct in which the individual maintains residence, by completing the Board's official Voter Registration Application.

513.2 Valid proof of residence is any official document showing the voter's name and a District of Columbia home address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current (the issue, bill, or statement date is no earlier than 90 days before the election at issue) utility bill, bank statement, government check, paycheck;

(c) A government-issued document that shows the name and address of the voter; or

(d) Any other official document that shows the voter's name and District of Columbia residence address, including leases or residential rental agreements, occupancy statements from District homeless shelters, and tuition or housing bills from colleges or universities in the District.

513.3 Voters who fail to provide valid proof of residence during the in-person absentee voting period, at an early voting center, or on Election Day must provide such proof in order to complete registration.

513.4 Registered voters shall be permitted to submit notices of change of address or change of name during the in-person absentee voting period, at an early voting center, or at a polling place on Election Day.

513.5 A registered voter shall not change his or her party affiliation status during the in-person absentee voting period, at an early voting center, or at a polling place on Election Day during a primary election. Requests for change of party affiliation status received during the in-person absentee voting period, at an early voting center, or at a polling place on Election Day during a primary election shall be held and processed after the election. A change in party affiliation status occurs when a voter:

(a) Changes his or her party registration from one political party to another;

(b) Changes his or her party registration from "no party (independent)" to a political party; or

(c) Changes his or her party registration from a political party to "no party (independent)."

513.6 A voter registration application, or a notice of change of name, address, or party affiliation status, received pursuant to this section is considered to be received by the Board upon acknowledgement of receipt by the Board's date-stamp.

514 NOTIFICATION OF ACCEPTANCE OF REGISTRATION OR CHANGE OF REGISTRATION

514.1 Within nineteen (19) calendar days after the receipt of a voter registration application, the Registrar shall mail a non-forwardable voter registration notification to the applicant advising him or her of the acceptance or rejection of the registration application. If the application is rejected, the notification shall include the reason or reasons for the rejection and shall inform the voter of his or her right to either submit additional information as requested by the Board, or appeal the rejection pursuant to D.C. Official Code § 1-1001.07(f) (2014 Repl.).

514.2 In the event that the notification advising the applicant of acceptance of his or her voter registration is returned to the Board as undeliverable, the Registrar shall mail the notice provided in D.C. Official Code § 1-1001.07(j)(1)(B) (2014 Repl.).

514.3 As soon as practicable after the election, the Board shall mail each registered voter who filed a change of address at the polls on Election Day a non-forwardable address confirmation notice to the address provided in the written affirmation on the Special Ballot Envelope. If the United States Postal Service returns the address confirmation notification as "undeliverable" or indicating that the registrant does not live at the address provided in the written affirmation on the Special Ballot Envelope, the Board shall notify the Attorney General of the District of Columbia.

515 CHANGES IN REGISTRATION: NAME

515.1 A registered voter shall notify the Board in writing of a name change due to marriage, divorce, or by order of a court within thirty (30) days of the applicable event.

515.2 The Board shall process name changes received pursuant to the monthly report furnished by the Superior Court of the District of Columbia in accordance with D.C. Official Code § 1-1001.07(k)(3) (2014 Repl.).

515.3 Prior to the thirtieth (30th) day preceding an election, a registered voter may give notice of change of name by:

(a) Completing a change of name on a voter registration application;

(b) Filing a change of name by signed letter or postal card which includes the following information;

(1) Former and current name;

(2) Address; and

(3) Date of birth;

(c) Filing a change of name through the DMV or a voter registration agency (VRA) pursuant to D.C. Official Code § 1-1001.07(d) (2014 Repl.); or

(d) Completing any other form prescribed for this purpose by the Board.

515.4 On or after the thirtieth (30th) day preceding an election, a registered voter may change his or her name in-person at the Board's office or a VRA. Requests for change of name other than those made in-person during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.

516 CHANGES IN REGISTRATION: ADDRESS

516.1 A registered voter who moves from the address at which he or she is registered to vote shall notify the Board, in writing, of the current residence address.

516.2 Prior to the thirtieth (30th) day preceding an election, a registered voter may give notice of change of address by:

(a) Mailing to the Board or filing in-person at the Board's office a completed voter registration application;

(b) Mailing to the Board a signed letter or postal card which includes the following information:

(1) The voter's name;

(2) Former and current address; and

(3) Date of birth;

(c) Completing and filing a voter registration application through the DMV or a voter registration agency (VRA) pursuant to D.C. Official Code § 1-1001.07(d) (2014 Repl.); or

(d) Completing any other form prescribed for this purpose by the Board.

516.3 On or after the thirtieth (30th) day preceding an election, a registered voter may change his or her address in-person at the Board's office, a VRA, an early voting center, or on Election Day at the polling place serving the address listed on the Board's registration records pursuant to D.C. Official Code § 1-1001.07(i)(4)(A) (2014 Repl.). Requests for change of address other than those made in-person during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.

516.4 A voter who wishes to change his or her residence on Election Day at the polling place serving the address listed on the Board's registration records must present valid proof of his or her current residence. Valid proof of residence is any official document showing the voter's name and a District of Columbia home address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current (the issue, bill, or statement date is no earlier than 90 days before the election at issue) utility bill, bank statement, government check, paycheck;

(c) A government-issued document that shows the name and address of the voter; or

(d) Any other official document that shows the voter's name and District of Columbia residence address, including, but not limited to, leases or residential rental agreements, occupancy statements from District homeless shelters, and tuition or housing bills from colleges or universities in the District.

516.5 Requests for change of address other than those made in-person during the thirty (30) days that immediately precede and include the date of the election shall be held and processed after the election.

517 CHANGES IN REGISTRATION: POLITICAL PARTY

517.1 Prior to the thirtieth (30th) day preceding a primary election, a registered voter may give notice of change of party affiliation status by:

(a) Completing a change of party affiliation status on a Voter Registration Application;

(b) Filing a change of party affiliation status by signed letter or postal card which includes the following information:

(1) The voter's name;

(2) Former and new party affiliation status;

(3) Address; and

(4) Date of birth;

(c) Filing a change of party affiliation status through the DMV or a voter registration agency pursuant to D.C. Official Code § 1-1001.07(d) (2014 Repl.); or

(d) Completing any other form prescribed for this purpose by the Board.

517.2 Requests for changes to a political party affiliation status considered received during the thirty (30) days that immediately precede and include the date of the primary election shall be held and processed after the election. The effective date for changes made pursuant to such requests shall be the day after the primary election.

517.3 A change in party affiliation status occurs when a voter:

(a) Changes his or her party registration from one political party to another;

(b) Changes his or her party registration from "No Party (Independent)" to a political party;

(c) Changes his or her party registration from a political party to "No Party (Independent)."

518 SYSTEMATIC VOTER ROLL MAINTENANCE PROGRAM: BIENNIAL MAIL CANVASS

518.1 In January of each odd-numbered year, the Board shall confirm the residence address of each registered voter who did not confirm his or her address through

the voting process or file a change of address at the polls in the preceding general election by mailing a first class non-forwardable canvass postcard to the residence address listed on the Board's records.

518.2 If the Postal Service returns the postcard and provides a new address for the registrant that is within the District of Columbia, the Board shall change the address on its records accordingly and then mail to both old and new addresses a forwardable notice advising the registrant that their address in the voter records has been changed to reflect the Postal Service information.

518.3 If the Postal Service returns the postcard as undeliverable and provides a new address for the registrant outside the District of Columbia, the Board shall mail a forwardable notice to both the old and new address, informing the registrant how to register to vote in their new jurisdiction or correct the address information obtained from the Postal Service.

518.4 If the Postal Service returns the postcard to the Board as undeliverable and indicates that no new address is available, the Board shall mail to the registrant at his or her last known address the forwardable notice specified in § 518.3.

518.5 The forwardable notices issued to registrants whose initial non-forwardable mailings were returned by the Postal Service shall include a pre-addressed and postage- paid return notification postcard to enable the registrant to confirm or correct any address information obtained from the Postal Service.

518.6 Upon mailing of the forwardable notice to any registrant whose initial mailing the Postal Service returned as undeliverable, either with a new address outside the District or an indication that no new address was available, the Board shall designate the registrant's voter registration status as inactive on the voter roll, effective on the date of the mailing of the notice.

518.7 Where a registered voter who has been designated inactive on the voter roll fails to respond to the forwardable notice and fails to vote during the period beginning on the date the notice was mailed and ending on the day after the second subsequent general election for federal office, the registrant's name shall be removed from the voter roll.

518.8 Where a registered voter who has been designated inactive on the voter roll provides the Board with a current residence address, or votes in any election, prior to the day following the second general election for federal office occurring thereafter, the inactive designation shall be removed from the registrant's record.

518.9 A registrant included in the group defined by § 518.1 who has requested a separate mailing address in their voter record shall be initially mailed a notification addressed to the mailing address, asking the registrant to confirm his

or her residence address on the voter roll by not later than thirty (30) days of the date of the mailing of the notice.

518.10 Where a registrant who has been mailed the notification in § 518.9 fails to confirm or correct their residence address, in writing, within thirty (30) days of the mailing of the notice, the Board shall issue a non-forwardable canvass postcard to the residence address as provided in § 518.1 of this chapter.

518.11 In the event that the Biennial Mail Canvass is delayed, the Board shall conduct the canvass as soon as practicable thereafter.

518.12 Consistent with procedures of the Biennial Mail Canvass, the Board shall issue the forwardable notices defined in § 518.5 whenever official mail sent to a registrant in the normal course of business is returned to the Board by the Postal Service.

518.13 Consistent with procedures of the Biennial Mail Canvass, the Board shall update a registrant's address or designate a registrant's voter registration status as inactive based on the return to the Board by the Postal Service of official mail sent to a registrant in the normal course of business.

518.14 Where the Board learns, or has reason to believe, that a registrant does not reside at the address listed on the voter registration application, the Board may issue the notice defined in § 518.1 to confirm the registrant's address, and proceed accordingly.

519 VOTER ROLL MAINTENANCE PROGRAM

519.1 The Board may utilize information obtained from the United States Postal Service, the National Change of Address System (NCOA), and the DMV, which identifies registrants who have moved from the addresses listed on the Board's records.

519.2 As part of its systematic voter roll maintenance program, the Board may develop additional procedures to identify and remove from the voter roll registrants who are deceased and no notification was received from the Bureau of Vital Statistics, who have moved from the District and no notification was received from the registrant or the United States Postal Service, or who otherwise no longer meets the qualifications as a duly registered voter.

519.3 If the Board learns that a registered voter has changed his or her residence address and has failed to inform the Board, in writing, of his or her current residence address, the registrant shall be mailed a non-forwardable notice, to the address listed on the voter roll.

519.4 The Board may utilize information obtained from returned juror summons issued by mail by the District of Columbia Superior Court to identify registrants who no longer meet the qualifications as a duly registered voter.

519.5 In the event that a juror summons is returned to the District of Columbia Superior Court by the United States Postal Service as undeliverable, or which provides a new address within or outside the District of Columbia, the Board shall mail a non-forwardable notice to the address to the voter's registration, as provided in § 518 of this chapter.

519.6 The Board may use other information provided to the District of Columbia Superior Court by the registrant to identify registrants who no longer meet the qualifications as a registered voter.

519.7 The Board's Executive Director may enter into agreements with other Chief State Election Officials for the purpose of verifying information on its statewide voter registration list to ensure the accuracy of the District's voter registry.

520 CANCELLATION OF VOTER REGISTRATION: GENERAL GROUNDS AND PROCEDURES

520.1 The grounds for cancellation of registration by the Board shall be the following:

(a) Death of the voter;

(b) Change in residence from the District of Columbia;

(c) Signed authorization from a voter, or written notification from the voter that he or she is not a qualified elector;

(d) Incarceration following a felony conviction;

(e) Successful challenge to voter registration;

(f) Falsification of information on the voter registration application;

(g) Declaration of mental incompetence by a court of competent jurisdiction; and

(h) In the case of a registrant whose registration is deemed inactive, failure to provide the Board with a current residence address in the District, in writing, or failure to vote in any election in accordance with D.C. Official Code § 1-1001.07(i)(4)(B)(2014 Repl.) by not later than the day after the date of the second general election for federal office that occurs after the date of the notice described in this section.

520.2 Where the Board cancels or proposes to cancel a voter's name from the registration roll, under § 520.1, notification to the person, as applicable to the cause of cancellation, shall be made by first class (forwardable) mail, except where authorization for removal has been provided by signature of the voter, or where the voter's registration is being removed from the list of registrations deemed inactive.

520.3 In the event that the Board learns, through the regular course of business, that a voter is otherwise unqualified to be a registered elector in the District of Columbia, the Registrar shall notify the registrant of this fact.

520.4 The notice shall include the information on which the Registrar bases the decision and shall state that the registrant must respond within fourteen (14) days from the date of the mailing of the notice or be cancelled from the voter roll.

520.5 The Registrar shall make a determination with respect to the elector's eligibility within ten (10) days of receipt of a response from the registrant.

520.6 The determination shall be sent by first class mail to the registrant.

520.7 Within fourteen (14) days of mailing the notice, the registrant may appeal, in writing, the Registrar's determination to the Board.

520.8 The Board shall conduct a hearing and issue a decision within thirty (30) days of receipt of written notice of the appeal.

520.9 Requests for cancellation of voter registration received less than thirty (30) days preceding an election shall be held and processed after that election.

521 CANCELLATION OF VOTER REGISTRATION: CHALLENGE AND REQUEST FOR ADDITIONS TO REGISTRATION ROLL

521.1 Any duly registered voter may:

(a) "Challenge" the registration of any person whom the voter believes is fictitious, deceased, disqualified, or ineligible to vote on grounds other than a failure to give notice of a change of address; and

(b) "Request" the addition of any person whose name has been erroneously omitted or cancelled from the registration roll.

521.2 The Board shall not accept a voter registration challenge or application for correction of the voter roll after the forty-fifth (45th) day preceding an election.

521.3 During the period beginning on the ninetieth (90th) day before any election and ending on the forty-fifth (45th) day before any election, the Board shall expedite the process as further described in this section.

521.4 Requests for the correction of the voter roll or the challenge of the right to vote of any person named on the voter roll shall be in writing and shall include any evidence in support of the challenge that the registrant is not a qualified elector.

521.5 The Board shall send notice to any person whose registration has been challenged, at the address listed on the Board's record, along with a copy of any evidence filed in support of the challenge.

521.6 The notice sent to a person whose registration has been challenged shall be sent to the address listed on the Board's records, and shall include a statement that the registrant must respond to the challenge not later than thirty (30) days from the date of the mailing of the notice, or ten (10) days if the challenge is received between ninety (90) and forty-five (45) days from the election, or be cancelled from the voter roll.

521.7 The Registrar shall make a determination with respect to the challenge, based on any evidence presented, within ten (10) days of receipt of the challenged registrant's response, or three (three) days if the challenge is received between ninety (90) and forty-five (45) days from the election.

521.8 After making a determination with respect to the challenge, the Registrar shall notify, by first class mail, both the challenged registrant and the person who filed the challenge.

521.9 Within fourteen (14) days of the date that the Registrar of Voters' notice is mailed, or five (5) days if the challenge is received between ninety (90) and forty-five (45) days from the election, any aggrieved party may appeal the Registrar's determination to the Board.

521.10 The Board shall conduct a hearing and issue a decision within thirty (30) days of receipt of the written appeal notice, or ten (10) days if the challenge is received between ninety (90) and forty-five (45) days from the election.

521.11 With respect to a request for the addition of a person to the voter roll, if the Board's records indicate that the omission or cancellation was proper, the Board shall send notice of its determination, by first-class (forwardable) mail, to both the individual named in the request and the person who filed the request. The notice shall advise both parties that the person whose name was removed from the registration roll is required to submit a new voter registration application in order to become registered.

Section 602, AFFIRMATION OF WRITE-IN CANDIDACY OF AN APPARENT WINNER, of Chapter 6, ELIGIBILITY OF CANDIDATES, is amended to read as follows:

602 AFFIRMATION OF WRITE-IN CANDIDACY

602.1 In the case of a primary election, a write-in nominee who wishes to perfect his or her candidacy shall file with the Board an Affirmation of Write-in Candidacy on a form provided by the Board not later than 4:45 p.m. on the day immediately following the election.

602.2 In the case of a general or special election, a write-in nominee who wishes to perfect his or her candidacy shall file with the Board an Affirmation of Write-in Candidacy on a form provided by the Board not later than 4:45 p.m. on the third (3rd) day immediately following the election.

602.3 Nothing in this section shall prohibit an individual seeking to declare write-in candidacy from filing an Affirmation of Write-in Candidacy prior to write-in nomination, provided that the determination of the write-in candidate's eligibility shall proceed in accordance with this chapter. Write-in nominees who fail to submit the documents required by this section within the prescribed times shall be deemed to be ineligible candidates.

602.4 The Affirmation of Write-in Candidacy form shall contain the same information required for the Declaration of Candidacy described in this chapter.

602.5 Each write-in candidate shall swear under oath or affirm before a District of Columbia notary or Board official that the information provided in the Affirmation of Write-in Candidacy is true to the best of his or her knowledge and belief.

602.6 If a write-in nominee is an apparent winner of an election contest, the Executive Director or his or her designee shall issue a preliminary determination as to the eligibility of the write-in nominee if such nominee has perfected his or her candidacy on or before the prescribed deadline. No eligibility determination shall be made for affirmants who are not apparent winners.

602.7 Notice of the determination shall be served immediately by mail upon any affirmant found to be ineligible.

602.8 The determination of eligibility shall be based solely upon information contained in the Affirmation of Write-In Candidacy and upon information contained in other public records and documents as may be maintained by the Board. The criteria used for determining eligibility to be a candidate shall be limited to the appropriate statutory qualifications for the particular office sought.

602.9 The determination shall in no way be deemed to preclude further inquiry into or challenge to such individual's eligibility for candidacy or office made prior to the certification of election results by the Board and based upon information which is not known to the Board at the time of the preliminary determination, or upon evidence of changed circumstances.

602.10 If a write-in winner is declared ineligible after the election, no winner shall be declared.

Chapter 7 is amended in its entirety to read as follows:

CHAPTER 7 ELECTION PROCEDURES

700 [REPEALED]
701 [REPEALED]
702 [REPEALED]
703 EARLY VOTING CENTERS
704 OPENING AND CLOSING OF POLLS ON ELECTION DAY
705 POLLING PLACE OFFICIALS
706 POLL WATCHERS AND ELECTION OBSERVERS
707 [REPEALED]
708 CHALLENGE TO VOTER QUALIFICATIONS: AT THE POLLS OR EARLY VOTING CENTERS
709 CONTROL OF ACTIVITY AT EARLY VOTING CENTERS, POLLING PLACES, AND BALLOT COUNTING PLACES
710 ASSISTANCE TO VOTERS
711 VOTING BOOTH
712 SECRECY OF THE BALLOT
713 VOTE CASTING PROCEDURES: REGULAR BALLOT
714 VOTE CASTING PROCEDURES: SPECIAL BALLOT
715 SPECIAL BALLOT APPEAL RIGHTS
716 SPOILED BALLOTS
717 ABSENTEE BALLOTS
718 ABSENTEE BALLOTS FOR QUALIFIED UNIFORMED AND OVERSEAS VOTERS
719 EMERGENCY ABSENTEE BALLOTS
720 FEDERAL ELECTORS AND ABSENTEE FEDERAL BALLOT
721 CHALLENGE TO VOTER QUALIFICATIONS: ABSENTEE BALLOTS RECEIVED ELECTRONICALLY OR BY MAIL
722 PROHIBITION OF LABELS, STICKERS, AND AUTHORIZATION OF HAND STAMPS FOR CASTING WRITE-IN VOTES ON PAPER BALLOTS
723 CLOSING THE POLLS
724 COLLECTION AND TRANSFER OF BALLOTS AND OTHER POLLING PLACE MATERIALS
725 [RESERVED]

703 EARLY VOTING CENTERS

703.1 For each primary and general election, qualified electors may choose to cast a full ballot for their precinct at early voting centers according to procedures established by the Board.

703.2 The Board shall designate no fewer than eight (8) early voting centers, with at least one (1) early voting center located within each ward.

703.3 Satellite early voting centers shall be open from the second Sunday preceding Election Day to the Saturday prior to Election Day from the hours of 8:30 a.m. to 7 p.m. The Board's office shall serve as the early voting center for the in-person absentee voting period for the hours specified in this chapter.

703.4 All persons standing in line at an early voting center at the time the early voting center closes shall be permitted to vote, if otherwise qualified.

703.5 Election results from early voting shall not be released until the polls close on Election Day.

704 OPENING AND CLOSING OF POLLS ON ELECTION DAY

704.1 Polling places in which elections are to be held shall be opened at 7:00 a.m. on the date required by law for the election and shall remain open for voting until 8:00 p.m., except in instances when the time established for closing the polls is extended pursuant to a federal or District of Columbia court order or Board order.

704.2 All persons standing in line at a polling place at the close of polls shall be permitted to vote, if otherwise qualified.

704.3 At the close of polls, a polling place official shall take a position at the end of any existing line of prospective voters, and only persons standing in front of the official at that time shall be permitted to vote.

704.4 The Board may extend polling hours at a precinct in order to resolve unforeseen emergency situations on Election Day. If voting at a precinct is interrupted on Election Day by an emergency situation, the Board will convene an emergency meeting to consider whether the situation warrants the extension of polling place hours and, if applicable, how long polling place hours will be extended.

705 POLLING PLACE OFFICIALS

705.1 The operations of polling places and ballot counting places shall be conducted by officials designated by the Board.

705.2 The official in charge of each polling place shall be known as the Precinct Captain.

705.3 The duties of the Precinct Captain may be delegated by the Board or by the Precinct Captain to another official, who shall be known as the Alternate Precinct Captain.

705.4 Except as provided in § 705.5, all polling place officials shall be qualified registered electors in the District of Columbia.

705.5 The Board may appoint individuals who are not qualified registered electors to serve as polling place officials, if the individual:

(a) Is at least sixteen (16) years of age on the day that he or she will be a polling place official;

(b) Resides in the District of Columbia; and

(c) Is enrolled in or has graduated from a public or private secondary school or an institution of higher education.

705.6 All polling place officials shall:

(a) Complete at least four (4) hours of training;

(b) Receive certification by the Board; and

(c) Take and sign an oath of office to honestly, faithfully, and promptly perform the duties of office.

705.7 A polling place official's past performance shall be considered before appointing him or her as a polling place official in a subsequent election.

705.8 Unless otherwise provided, Board employees working at early voting centers shall have the same authority and duties as the Precinct Captain and other polling place officials.

706 POLL WATCHERS AND ELECTION OBSERVERS

706.1 Each candidate and each proponent or opponent of a proposed ballot measure may petition the Board for credentials authorizing poll watchers at any early voting centers, polling places and/or ballot counting places.

706.2 Persons who wish to witness the administration of elections, including nonpartisan or bipartisan, domestic or international organizations, who are not affiliated with a candidate or ballot measure may petition the Board for

credentials authorizing election observers at any early voting center, polling place, and/or ballot counting place.

706.3 Each petition shall be filed with the Board, not less than two (2) weeks before each election and shall be on a form furnished by the Board. The Board reserves the right to accept petitions filed less than two (2) weeks before each election.

706.4 At the time of filing, the poll watcher petition form shall contain the following information:

(a) The name, address, telephone number, and signature of the candidate or ballot measure proponent or opponent ("applicant");

(b) The office for which the applicant is a candidate or the short title of the measure which the applicant supports or opposes;

(c) The name, address, email address, and telephone number of the poll watcher supervisor, if one is designated by the candidate, proponent, or opponent;

(d) The locations where access credentials are sought;

(e) The names, addresses, email addresses, and telephone numbers of at least two (2) and not more than three (3) persons who are authorized to collect the poll watcher badges from the Board on behalf of the candidate or ballot measure proponent or opponent for distribution to the authorized poll watchers; and

(f) A certificate from the applicant that each poll watcher selected shall conform to the regulations of the Board with respect to poll watchers and the conduct of the election.

706.5 At the time of filing, the election observer petition form shall contain the following:

(a) The name, address, email address, and telephone number of the organization or individual seeking credentials;

(b) The name, address, email address, and telephone number of the election observer supervisor, if a person is designated by an organization;

(c) The names, addresses, email addresses, and telephone numbers of all observers who will be receiving badges;

(d) The locations where access credentials are sought;

(e) The names, addresses, email addresses, and telephone numbers of at least one (1) and not more than three (3) persons who are authorized to collect the election observer badges from the Board on behalf of the organization or individual seeking credentials for distribution to the authorized election observers; and

(f) A certificate from the applicant that each election observer selected shall conform to the regulations of the Board with respect to election observers and the conduct of the election.

706.6 The Board may limit the number of poll watchers or election observers to ensure that the conduct of the election will not be obstructed or disrupted, except that:

(a) Each qualified candidate shall be entitled to one (1) poll watcher in each of the precincts where his or her name appears on the ballot.

(b) Each proponent or opponent of a ballot measure who has timely filed a verified statement of contributions with the Office of Campaign Finance shall be entitled to one (1) poll watcher in each precinct where the ballot measure appears on the ballot.

706.7 Notwithstanding Subsection 706.6, the Board reserves the right to rotate credentialed poll watchers and election observers in and out of early voting centers, polling places, and/or ballot counting places on an equitable basis in the event of space constraints.

706.8 The Executive Director shall make a ruling on poll watcher and election observer petitions not less than ten (10) days prior to an election. The Board reserves the right to accept petitions filed less than ten (10) days prior to an election.

706.9 In making a determination of the number of watchers or observers allowed, the Executive Director shall consider the following:

(a) The number of candidates or requesting organizations;

(b) Whether the candidates are running as a slate;

(c) The number of proponents and opponents of measures and proposed Charter amendments;

(d) The physical limitations of the polling places and counting place; and

(e) Any other relevant factors.

706.10 Within twenty-four (24) hours of a denial, the Executive Director shall issue a public notice with respect to any denial of a petition for credentials.

706.11 If a place cannot accommodate all those seeking credentials, the Board may grant preference to poll watchers over election observers, and organizations over individuals.

706.12 The Board shall issue a badge for each authorized poll watcher or election observer, with space for the watcher's or observer's name and the name of the candidate or party represented by the watcher, or any organization being represented by the observer. Badges shall also be issued for each authorized watcher representing the proponents or opponents of ballot measures.

706.13 Badges shall be numbered consecutively, and consecutive numbers issued to each candidate, organization, proponent, or opponent.

706.14 All badges shall be worn by the authorized poll watcher or election observer in plain view at all times when on duty at the polling place or counting place.

706.15 An authorized alternate poll watcher or election observer may, in the discretion of the watcher or observer supervisor, be substituted for a watcher or observer at any time; provided, that notice is first given to the designated representative of the Board at the polling place or counting place.

706.16 A poll watcher shall be allowed to perform the following acts:

(a) Observe the count;

(b) Unofficially ascertain the identity of persons who have voted;

(c) Report alleged discrepancies to the Precinct Captain; and

(d) Challenge voters in accordance with the procedures specified in this chapter, if the watcher is a registered qualified elector.

706.17 An election observer shall be allowed to perform the following acts:

(a) Observe the count;

(b) Unofficially ascertain the identity of persons who have voted; and

(c) Report alleged discrepancies to the Precinct Captain.

706.18 No poll watcher or election observer shall, at any time, do any of the following:

(a) Touch any official record, ballot, voting equipment, or counting form;

(b) Interfere with the progress of the voting or counting;

(c) Assist a voter with the act of voting;

(d) Talk to any voter while the voter is in the process of voting, or to any counter while the count is underway; provided, that a watcher or observer may request that a ballot be referred for ruling on its validity to a representative of the Board;

(e) In any way obstruct the election process; or

(f) Use any video or still cameras inside the polling place while the polls are open for voting, or use any video or still camera inside the counting center, if such use is disruptive or interferes with the administration of the counting process.

706.19 A candidate may not serve as a poll watcher in any early voting center or polling place.

706.20 If a poll watcher or election observer has any question, or claims any discrepancy or error in the voting or the counting of the vote, the watcher or observer shall direct the question or complaint to the election official in charge. In each polling place, the Precinct Captain shall be the representative of the Board to whom the poll watchers or election observers shall direct all questions and comments. In counting places, the Executive Director shall identify those representatives to whom poll watchers and election observers shall direct all questions and comments.

706.21 Any poll watcher or election observer who, in the judgment of the Board or its designated representative, has failed to comply with any of the rules contained in this section, or has engaged in some other prohibited activity or misconduct, may be requested to leave the polling place or the counting center.

706.22 If a poll watcher or election observer is requested to leave, that watcher's or observer's authorization to use credentials shall be cancelled, and he or she shall leave the polling place or counting place forthwith.

706.23 An authorized alternate poll watcher or election observer may be substituted for a watcher or observer who has been removed.

708 CHALLENGE TO VOTER QUALIFICATIONS: AT THE POLLS OR EARLY VOTING CENTERS

708.1 Challenges to voter qualifications where the voter is present at the time of the challenge shall be conducted according to the procedures of this section. Challenges to a voter's registration, as described in D.C. Official Code § 1-

1001.07(e)(5), may occur only pursuant to § 521, and may not occur at the polls or early voting centers.

708.2 Any duly registered voter may challenge the qualifications of a prospective voter in a primary, special, or general election.

708.3 Any challenge to the qualifications of a prospective voter shall be in writing on a form provided by the Board, and shall indicate the name of the person challenged, the basis for the challenge, and the evidence provided to support the challenge.

708.4 The challenger shall also sign an affidavit declaring under penalty of perjury that the challenge is based upon substantial evidence which he or she believes in good faith shows that the person challenged is not a qualified elector of the District.

708.5 After receiving a challenge or making a challenge on his or her own initiative, the Precinct Captain shall give the challenged voter an opportunity to respond.

708.6 The Precinct Captain shall review the evidence presented and shall:

(a) Affirm the challenge upon a finding that it is based on substantial evidence specific to the voter being challenged and probative of the challenged voter's status as a qualified elector, or;

(b) Deny the challenge upon a finding that it is not based on substantial evidence specific to the voter being challenged and probative of the challenged voter's status as a qualified elector.

708.7 The Precinct Captain shall record the decision and the rationale for the decision on a form provided by the Board.

708.8 If the Precinct Captain denies the challenge, he or she shall inform the challenger that the challenger may appeal the decision to the Board and shall give the challenger copies of the rules regarding challenges and appeals to the Board.

708.9 Any appeal of the Precinct Captain's decision to deny the challenge shall be made either before the challenged voter casts a ballot, or before either the challenger or the challenged voter leaves the polling place, whichever is earlier.

708.10 If the challenger does not appeal the Precinct Captain's decision to deny the challenge, the challenged voter shall cast a regular ballot.

708.11 If the challenger appeals the Precinct Captain's decision to deny the challenge, the Precinct Captain shall state, over the telephone, the facts of the case to a Board hearing officer authorized to rule on the appeal for the Board.

708.12 Either a Board member, the Board's Executive Director, or the Board's Registrar of Voters may serve as the Board's hearing officer for the appeal.

708.13 The hearing shall be recorded and transcribed, and the transcript shall serve as the official case record, along with the written documentation, as specified in § 708.7, of the Precinct Captain's initial decision to deny the challenge.

708.14 The hearing officer shall take testimony under oath from the challenger, the person challenged, the Precinct Captain, and any witnesses who wish to testify.

708.15 Each person who testifies before the hearing officer shall state for the record their name as recorded on the Board's voter registration list, their residence address, mailing address and telephone number, and their role in the challenge.

708.16 The hearing officer shall receive evidence and testimony and shall then close the hearing.

708.17 After reviewing all evidence pertaining to the challenge and making a decision based upon his or her determination of whether the challenger has presented substantial evidence that is specific to the voter being challenged and probative of the challenged voter's status as a qualified elector, the hearing officer shall either:

(a) Affirm the Precinct Captain's decision to deny the challenge, in which case the challenged voter shall cast a regular ballot; or

(b) Overturn the Precinct Captain's decision to deny the challenge, in which case the challenged voter shall cast a "challenged" special ballot, pursuant to § 714.1(j).

708.18 If the Precinct Captain affirms the challenge, or if the Board's hearing officer overturns the decision of the Precinct Captain to deny a challenge, the Precinct Captain shall allow the challenged voter to cast a "challenged" special ballot, pursuant to § 714.1(j).

709 CONTROL OF ACTIVITY AT EARLY VOTING CENTERS, POLLING PLACES, AND BALLOT COUNTING PLACES

709.1 The Precinct Captain shall have full authority to maintain order, pursuant to the Election Act, the regulations contained in this section, and directives of the Executive Director, General Counsel and their designees, including full authority to request police officials to enforce lawful orders of the Precinct Captain.

709.2 The only persons who shall be permitted to be present in early voting centers, polling places, or ballot counting places are the following:

(a) Designated representatives of the Board;

(b) Police officers;

(c) Duly qualified poll watchers and election observers;

(d) Persons actually engaged in voting; and

(e) Other persons authorized by the Board.

709.3 The only activity which shall be permitted in the portion of any building used as an early voting center, polling place, or ballot counting place shall be the conduct of the election. No partisan or nonpartisan political activity, or any other activity which, in the judgment of the Precinct Captain, may directly or indirectly interfere with the orderly conduct of the election, shall be permitted in, on, or within a reasonable distance outside the building used as an early voting center, polling place, or ballot counting place.

709.4 For the purposes of this section, the term "political activity" shall include, without limitation, any activity intended to persuade a person to vote for or against any candidate or measure or to desist from voting.

709.5 The distance deemed "reasonable" shall be approximately fifty feet (50 ft.) from any door used to enter the building for voting. The exact distance shall be determined by the Precinct Captain, depending on the physical features of the building and surrounding area. Wherever possible, the limits shall be indicated by a chalk line, or by some other physical marker at the polling place.

709.6 A person shall be warned to cease and desist his or her conduct upon any instance of the following:

(a) Violation of the Election Act or regulations contained in this section;

(b) Failure to obey any reasonable order of the Board or its representative(s); or

(c) Acting in a disorderly manner in, or within a reasonable distance outside the building used as an early voting center, polling place, or ballot counting place.

709.7 If the person committing the violation(s) fails to cease and desist, a member of the Metropolitan Police Department of the District of Columbia shall be requested to evict the person or take other appropriate action.

710 ASSISTANCE TO VOTERS

710.1 Any voter who requires assistance in voting may be given assistance by a person of the voter's choice, other than a poll watcher or election observer, the voter's employer or agent of that employer, or officer or agent of the voter's union.

710.2 The Board shall ensure that capable assistance shall be made available to any requesting voter.

710.3 The Board shall provide in each early voting center and precinct one (1) or more polling place officials specifically trained to assist voters upon their request.

710.4 Any person giving assistance shall assist only upon the request of the voter and in accordance with the wishes of the voter.

710.5 The Precinct Captain shall ensure that a record is made of the provision of such assistance to the voter and the nature of the voter's need for assistance.

710.6 Assistance provided to a voter may include, though not necessarily be limited to, the following:

(a) Marking the ballot in accordance with the voter's expressed wishes;

(b) Reading the ballot to a voter whose vision is impaired or who cannot read;

(c) Recording a write-in vote as designated by the voter; and

(d) Completing a form for the voter who cannot do so because of disability, advanced age, or illiteracy.

710.7 No person or official providing voter assistance shall in any way influence or attempt to influence a voter's choice in voting, nor shall the person or official disclose to anyone how the voter voted. Any person who violates this section may, upon conviction, be subject to a $10,000 fine or imprisonment up to five years, or both, pursuant to D.C. Official Code § 1-1001.14(a).

710.8 Written instructions on the operation of the voting process shall be available to all voters. A trained polling place official shall also be available to explain the voting process.

710.9 All voters shall have the opportunity, if desired, to mark a demonstration ballot prior to entering the voting booth.

711 VOTING BOOTH

711.1 Except as provided in this chapter, a voter shall enter a voting booth alone to mark his or her ballot.

711.2 A voter may take sample ballots and any other materials as he or she may desire into the voting booth.

711.3 No voter shall go into a booth that is already occupied, nor shall a voter, poll watcher, election observer, or polling place official communicate with or disturb the occupant of any booth.

711.4 Each voter shall mark the ballot promptly and shall leave the booth.

711.5 No person may occupy a voting booth except for the purpose of voting or for the purpose of rendering assistance to a voter, pursuant to the D.C. Election Act and the provisions of § 710.

711.6 Voting booths shall provide privacy for the voter while voting.

712 SECRECY OF THE BALLOT

712.1 Before any optical scan voting equipment ("OSVE") is used for deposit of voted ballots, the Precinct Captain shall:

(a) Inspect the interior of the OSVE to show any voters and/or watchers that all ballot receiving areas are empty;

(b) Secure and lock the ballot receiving areas of the OSVE;

(c) Produce a zero-printout and, after ascertaining that vote totals opposite all voting positions are set at zero (0000), sign said printout; and

(d) Inspect OSVE counter display to insure that it reads zero (0000).

712.2 From the time of the procedure specified in § 712.1 until the close of the polls, the polling official attending the OSVE shall ascertain that:

(a) Only official ballots are deposited in the OSVE;

(b) Nothing is removed from the OSVE; and

(c) The secrecy of each voter's ballot is preserved.

712.3 Each voter shall pass his or her voted paper ballot through the OSVE before leaving the early voting center or polling place.

712.4 Provision shall be made for maintaining the secrecy of the voted ballot while the voter carries it from voting booth to OSVE.

712.5 The OSVE's shall be attended by a polling place official at all times, from the opening of the polls until the ballots, memory cards, or other electronic media are returned to the counting center.

713 VOTE CASTING PROCEDURES: REGULAR BALLOT

713.1 A duly registered voter is a qualified elector under § 500.2, who resides at the residence address as that address appears on the Board's records, and either:

(a) Has registered to vote prior to the date that in-person absentee voting begins at the Board's office; or

(b) Registers after the date that in-person absentee voting begins at the Board's office and has had their residence confirmed by the Board.

713.2 Only duly registered voters shall be permitted to cast a regular ballot.

713.3 An elector shall be permitted to cast a regular ballot in the primary election of a political party if he or she:

(a) Is a duly registered voter whose voter registration application indicates an affiliation with the party holding the primary election; and

(b) Has not changed his or her party affiliation status during the thirty (30) days preceding a primary election. A change in party affiliation status occurs when a voter:

(1) Changes his or her party registration from one political party to another;

(2) Changes his or her party registration from "no party (independent)" to a political party; or

(3) Changes his or her party registration from a political party to "no Party (independent)."

713.4 On Election Day, each duly registered voter shall cast a regular ballot at the polling place serving the residence address of the registered voter, provided that a duly registered voter may cast a special ballot at a precinct that is not his or her precinct of residence.

713.5 During the hours of voting, the Board shall place in each early voting center and polling place an alphabetical list (poll book) of all persons registered in that precinct and eligible to vote in the election.

713.6 A listing of the registrants contained in the poll book shall be available for public inspection.

713.7 The information printed on the poll book in each polling place shall include the name, address, party affiliation (where applicable), and ANC Single-Member District (where applicable) of each duly registered voter residing in the precinct.

713.8 When a duly registered voter appears to vote, the voter shall state aloud his or her name and address. The designated election official shall then locate and verify the voter's name, address, party affiliation, and ANC Single-Member District (where applicable) from the poll book.

713.9 The voter shall confirm the accuracy of the name, address, party affiliation, and ANC Single-Member District where applicable, before signing the poll book, or other record prescribed by the Board. Such signature shall be deemed confirmation that the voter's information is correct as shown on the Board's records.

713.10 After signing, the polling place official shall perform the following duties:

(a) Issue a Voter Card to the voter;

(b) Require that the voter's full name be printed on the Voter Card, and if applicable, party and ballot style; and

(c) Direct the voter to the appropriate polling place official to obtain a ballot.

713.11 The designated polling place official shall be responsible for the following:

(a) Receiving the Voter Card;

(b) Announcing clearly and publicly the name and party on the Voter Card in a primary election, and the name and ANC Single-Member District on the Voter Card in a general election;

(c) Ascertaining whether the voter will vote using the optical scan voting equipment (OSVE) or the direct recording electronic (DRE) voting equipment;

(d) Issuing to each voter the ballot(s) to which he or she is entitled; and

(e) Depositing the Voter Card in a container provided for that purpose.

713.12 The voter shall complete his or her ballot and submit such ballot according to instructions provided.

713.13 In the event that the OSVE becomes inoperable for any reason during the election process, voters shall place voted ballots into the auxiliary ballot box. All ballots deposited in this auxiliary box shall be tabulated after the polls close, either at the polling place if the machine regains operability or at a counting place.

713.14 In the event that the DRE voting equipment becomes inoperable for any reason during the election process, voters shall be directed to use the OSVE. The Board shall make reasonable accommodations to voters, who by reason of disability or preference, wish to vote using the DRE equipment.

713.15 Any repairs conducted on either the OSVE or DRE equipment will be performed in the presence and view of:

(a) An election official who shall note in writing all repair activity; and

(b) Designated poll watchers and election observers, if any in that precinct, who will be provided with any available information pertaining to system activity.

714 VOTE CASTING PROCEDURES: SPECIAL BALLOT

714.1 Uses for a Special Ballot (or Provisional Ballot) include instances where the voter:

(a) Votes in a precinct that does not serve the address listed on the Board's registration records;

(b) Is listed as an absentee voter on the alphabetical or supplemental lists of registered voters (poll book) in the precinct but claims that he or she has not voted by absentee ballot;

(c) Is listed on the poll book in the precinct but claims, in a primary election, that the party affiliation indicated on the listing is in error;

(d) Is listed on the poll book in the precinct but claims, in a general election, that the ANC Single-Member District indicated on the listing is in error;

(e) Alleges that his or her name has been erroneously omitted from the poll book, or alleges that his or her name or address is incorrectly printed on the poll book;

(f) Has moved from the address listed on the Board's registration records and presents himself or herself to vote at the precinct serving his or her current residence address;

(g) Has been challenged pursuant to this chapter, and that challenge is accepted;

(h) Votes in an election for federal office as a result of a federal or District of Columbia court order, or any other order, extending the statutory poll-closing time;

(i) Has not previously voted in a federal election in the District and who registers to vote by mail and fails to present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid government-issued photo identification, a copy of a current (the issue, bill, or statement date is no earlier than ninety (90) days before the attempt to register and/or vote, whichever is applicable) utility bill, bank statement, government check, or paycheck, or other government-issued document that shows his or her name and address; or

(j) Resides temporarily at a District of Columbia licensed nursing home or assisted living facility, or at a qualified retirement home and casts a ballot at such facility.

714.2 An individual whose eligibility to vote in the election cannot be determined during the in-person absentee voting period, at an early voting center, or at a polling place on Election Day because of one (1) or more of the reasons cited in § 714.1 shall vote by Special Ballot.

714.3 Notwithstanding § 714.1(a), a voter whose residence is served by a polling place that has been identified as inaccessible pursuant to Section 8 of the Voting Accessibility for the Elderly and Handicapped Act may vote a regular ballot at another, accessible polling place if he or she:

(a) Is a senior citizen or a person with a disability; and

(b) Contacts the Board in writing by no later than the seventh (7^{th}) day prior to Election Day to request that a complete ballot for his or her precinct of residence be brought to the accessible polling place on Election Day.

714.4 A voter casting a Special Ballot shall complete, with the assistance of a designated polling place official, a Special Ballot Envelope which shall provide space for the following information:

(a) The name and current residence of the voter;

(b) The reason for voting the Special Ballot;

(c) The voter's DMV-issued identification number or last four (4) digits of the voter's social security number;

(d) The voter's date of birth;

(e) The precinct in which the voter is casting the ballot; and

(f) Any other information as may be necessary to determine if the person is qualified to vote.

714.5 The outside of the Special Ballot Envelope shall contain a statement warning the voter of the criminal penalties for making a false representation as to his or her qualifications for voting and an affirmation signed by the voter attesting to the following:

(a) That to the best of his or her knowledge and belief, he or she is a registered voter in the District of Columbia, or if he or she is not registered to vote, that he or she meets the qualifications for voter registration;

(b) That he or she resides at the residence provided; and

(c) That the information contained on the outside of the Special Ballot Envelope is truthful and complete.

714.6 Before being permitted to vote by Special Ballot, the voter shall sign the affirmation printed on the Special Ballot Envelope.

714.7 The designated polling place official shall witness the voter signing the affirmation printed on the Special Ballot Envelope.

714.8 Designated polling officials shall issue the following to each voter casting a special ballot:

(a) A voter card with the word "SPECIAL" placed thereupon;

(b) Ballot(s);

(c) An inner envelope to ensure the secrecy of the ballot; and

(d) Written notification of appeal rights if the voter's special ballot is rejected in whole or in part.

715 SPECIAL BALLOT APPEAL RIGHTS

715.1 A voter's act of signing a challenged or Special Ballot Envelope shall be deemed the filing of an appeal by the voter of the refusal by the Board's Registrar of Voters to permit the voter to vote by regular ballot, and a waiver of personal

notice from the Board of any denial or refusal to a later count of the challenged or Special Ballot.

715.2 The Board shall provide the voter, at the time of voting or after a challenge to an absentee ballot has been upheld pursuant to § 721.18, with written notice that indicates the manner by which he or she may learn whether the Executive Director has decided to count or reject, in whole or in part, the voter's Special Ballot, and of the dates scheduled for hearings for voters whose Special Ballots are rejected to contest the Executive Director's preliminary determination if they petition to do so.

715.3 Not later than the day after each election, the Board shall enable any voter who has voted a Special Ballot to learn of the Executive Director's preliminary decision to count or reject his or her ballot along with the reason(s) for each decision by accessing either a dedicated section of the Board's website or a telephone service which shall be maintained during regular business hours.

715.4 Not later than the second (2^{nd}) day after the date of any election, the Board shall, upon petition of the voter, conduct a hearing for the voter to contest the Executive Director's preliminary determination to reject the voter's Special Ballot.

715.5 The Board shall review the information provided on the Special Ballot Envelope as well as all other available evidence pertaining to the eligibility of each voter casting a Special Ballot, and shall make a decision about whether to count or reject each special ballot.

715.6 At the hearing, the voter may appear and give testimony on the question of the Executive Director's preliminary decision to reject the Special Ballot.

715.7 The Board shall make a final determination to either count or reject the voter's Special Ballot no later than the day after the date of the hearing.

715.8 The voter may appeal an adverse decision of the Board to the Superior Court of the District of Columbia within one (1) business day after the date of the Board's decision. The decision of the court shall be final and not appealable.

716 SPOILED BALLOTS

716.1 If a voter makes a mistake in marking a ballot or erroneously defaces or tears a ballot, he or she may surrender the spoiled ballot to a polling place official, who shall furnish the voter with another ballot.

716.2 The polling place official shall request the voter place the spoiled ballots into the spoiled ballot envelope.

716.3 The voter shall seal the envelope and shall return it to the polling official before an additional ballot can be issued.

716.4 A polling place official shall not issue more than three (3) ballots (one (1) original, two (2) replacements) to any voter. Before the polling place official issues the second (2nd) ballot, the polling place official shall inform the voter that the voter may have only one (1) additional ballot after the first (1st) replacement ballot. Before the polling place official issues the third (3rd) ballot, the polling place official shall inform the voter that it will be the last ballot issued to the voter.

716.5 When a voter receives a replacement ballot, the voter shall have the option of receiving a paper or electronic ballot.

717 ABSENTEE BALLOTS

717.1 Except as provided in this chapter, a duly registered voter may make a written request for an absentee ballot electronically, by mail, or in person at the Board's office.

717.2 A duly registered voter may request absentee ballots for all elections in the current calendar year.

717.3 Except as provided in § 719, no person shall be permitted to obtain an absentee ballot or execute an application for an absentee ballot for another registered voter.

717.4 A mailed or electronically received request for an absentee ballot shall be received from the registered voter by no later than the seventh (7th) day preceding the date of the election.

717.5 A request for an absentee ballot shall include the following:

(a) The voter's name;

(b) Election(s) for which the absentee ballot is requested;

(c) Address from which the voter is registered to vote;

(d) Voter's current residence address, if different from the address listed on the Board's records;

(e) Address to which the absentee ballot shall be delivered, if applicable;

(f) Voter's DMV-issued identification number, the last four (4) digits of the voter's social security number, or the voter's unique voter identification number issued by the Board;

(g) Voter's date of birth; and

(h) Voter's original signature.

717.6 An absentee ballot request sent electronically will be considered to contain an original signature.

717.7 Each absentee ballot request that is submitted through the Board's digital voter service system shall be executed by an electronic signature provided directly to the Board by the applicant.

717.8 If an applicant submits an absentee ballot request through the Board's digital voter service system, but does not provide an electronic signature directly to the Board in accordance with § 717.7, the Board shall request, and the DMV shall furnish, an electronic copy of the applicant's signature for the purpose of executing the request submitted for acceptance and approval, provided the applicant:

(a) Provides his or her DMV-issued identification number; and

(b) Affirmatively consents to the use of that signature as the signature for the request submitted.

717.9 A duly registered elector may request an absentee ballot in person not earlier than fifteen (15) days preceding the election.

717.10 If a duly registered voter who requests an absentee ballot by mail provides a residence address that is different from the residence address listed on the Board's records, the application to vote absentee shall also be considered a request for a change of address.

717.11 Prior to returning the voted absentee ballot to the Board, a voter shall confirm the accuracy of his or her name, address, party affiliation, and ANC Single-Member District, where applicable, as it appears on the Board's records by signing either the absentee ballot envelope, or if voting an absentee ballot in person, the poll book or other record prescribed by the Board. Such signature shall be deemed an affirmation that the voter's information is correct as shown on the Board's records.

717.12 An absentee ballot may be returned to the Board by any of the following ways:

(a) Mail;

(b) Brought to any polling place for deposit in the special ballot box on Election Day; or

(c) Delivered to the Board's office at any time before the close of the polls on Election Day.

717.13 All mailed (postmarked and non-postmarked) absentee ballots shall be received no later than 8:00 p.m. on the day of the election.

717.14 During the period for in-person absentee voting, the Board shall be open from the third Monday preceding Election Day through the Saturday before Election Day (except legal holidays), from 8: 30 a.m. until 7:00 p.m.

717.15 A duly registered voter who was mailed an absentee ballot and attempts to vote on Election Day or at an early voting center shall vote by special ballot.

717.16 An absentee ballot shall be counted as being cast in the ward and precinct where the voter resides, provided that the voter signs the absentee ballot envelope to certify that the voter has voted the ballot and has not voted in any other jurisdiction or in any other manner in the election.

717.17 Pursuant to D.C. Official Code § 1-1001.09 (2014 Repl.), no employee of the Board shall reveal the name(s) of the candidate(s) for whom an individual has voted or whether an individual voted for or against any initiative, referendum, or recall measure, or Charter amendment. Any employee who violates this section may, upon conviction, be subject to a ten thousand dollar ($10,000) fine or imprisonment up to five (5) years, or both, pursuant to D.C. Official Code § 1-1001.14(a) (2014 Repl.).

718 ABSENTEE BALLOTS FOR QUALIFIED UNIFORMED SERVICES AND OVERSEAS VOTERS

718.1 Qualified uniformed services and overseas voters may request an absentee ballot by using the Federal Post Card Application (FPCA), the declaration accompanying a Federal Write-In Absentee Ballot (FWAB declaration), or if already registered, by making a written request to the Board.

718.2 A qualified uniformed services or overseas voter's request for an absentee ballot may be delivered to the Board electronically or by mail.

718.3 All requests for absentee ballots shall be received by no later than the Saturday prior to Election Day.

718.4 An absentee ballot request from a uniformed services or overseas voter shall be treated as a valid, standing request for an absentee ballot for any and all elections that fall within the election cycle in which the request was received, unless the voter requests absentee ballots for a different time period.

718.5 A request for an absentee ballot from a qualified uniformed services or overseas voter shall include the following:

(a) The voter's name;

(b) Election(s) for which the absentee ballot is requested;

(c) Address from which the voter is registered to vote;

(d) Voter's current residence address, if different from the address listed on the Board's records;

(e) Preference of either mail, email or fax delivery of ballot;

(f) Mailing address, email address, or fax number to which the absentee ballot shall be delivered;

(g) Email address;

(h) Voter's DMV-issued identification number, the last four (4) digits of the voter's social security number, or the voter's unique voter identification number issued by the Board;

(i) Voter's date of birth; and

(j) Voter's original signature.

718.6 A qualified uniformed services or overseas voter may choose to have his or her absentee ballot electronically transmitted or delivered by mail. If no preference is given, the absentee ballot shall be delivered by mail.

718.7 The Board shall transmit blank absentee ballots by no later than forty-five (45) days before the election if the absentee ballot application is received at least forty-five (45) days before an election. If the request is received less than forty-five (45) days before an election for federal office, the Board shall transmit the absentee ballot to the voter within two business days of the receipt of the request, and in accordance with District law in a manner that expedites the transmission of the ballot.

718.8 Prior to returning the voted absentee ballot to the Board, a qualified uniformed services or overseas voter shall confirm the accuracy of his or her name, address, party affiliation, and ANC Single-Member District, where applicable, as it appears on the Board's records by signing either the absentee ballot envelope, or if the absentee ballot is returned electronically, a separate downloadable attestation form. Such signature shall be deemed an affirmation that the voter's information is correct as shown on the Board's records.

718.9 A qualified uniformed services or overseas voter who submits his or her ballot electronically shall provide and sign the following statement on a separate document: "I understand that by electronically submitting my voted ballot I am voluntarily waiving my right to a secret ballot."

718.10 If, at the time of completing an absentee ballot and accompanying materials, a duly registered qualified uniformed services or overseas voter has declared under penalty of perjury that the ballot was timely submitted, the voter's ballot shall not be rejected on the basis that it has either a late or unreadable postmark, or no postmark at all.

718.11 All absentee ballots shall be received not later than 8:00 p.m. on the day of the election.

718.12 The Board may take reasonable steps to investigate the timely completion of non-postmarked absentee ballots by checking tracking numbers or any other information available.

718.13 If the voter chooses to use the FWAB, the Board will accept the ballot for all contests in which the voter is eligible to cast votes.

719 EMERGENCY ABSENTEE BALLOTS

719.1 A duly registered voter may apply for an emergency absentee ballot, through a duly authorized agent, at the office of the Board from the sixth (6th) day prior to any election to the time the polls close on Election Day, under the following circumstances:

(a) The voter is physically unable to be present at the polls as the result of an illness or accident occurring after the deadline for requesting to vote absentee by mail;

(b) The voter, having expected to recover from an illness by election day and vote at the polls, finds that after the deadline for requesting an absentee ballot by mail has passed, he or she is physically unable to vote at the poll on election day; or

(c) The voter is serving on a sequestered jury on election day.

719.2 A duly registered voter shall apply to vote by emergency absentee ballot according to the following procedure:

(a) The registered voter shall, by signed affidavit on a form provided by the Board, set forth:

(1) The reason why he or she is unable to be present at the polls on the day of the election; and

(2) Except as provided in § 719.3, a designated voter registered in the District of Columbia to serve as agent for the purpose of delivering the absentee ballot to the voter.

(b) Upon receipt of the application, the Executive Director, or his or her designee, if satisfied that the person cannot, in fact, be present at the polling place on the day of the election shall issue to the voter, through the voter's duly authorized agent, an absentee ballot which shall be marked by the voter, placed in a sealed envelope and returned to the Board before the close of the polls on election day.

(c) The person designated as agent shall, by signed affidavit on a form prescribed by the Board, state the following:

(1) That the ballot will be delivered by the voter who submitted the application for the ballot; and

(2) That the ballot shall be marked by the voter and placed in a sealed envelope in the agent's presence, and returned, under seal to the Board by the agent.

719.3 An officer of the court in charge of a jury sequestered on election day may act as agent for any registered voter sequestered regardless of whether the officer is a registered voter in the District.

719.4 The Board shall advise all agents, in writing, that pursuant to D.C. Official Code §§ 1-1001.12 and 1-1001.14 (2014 Repl.), it is unlawful to do any of the following:

(a) Vote or attempt to vote more than once in any election; or

(b) Purloin or secret any of the votes cast in any election.

720 FEDERAL ELECTORS AND ABSENTEE FEDERAL BALLOT

720.1 A person who is absent from the District shall qualify to vote as a federal elector in federal elections conducted in the District of Columbia under the provisions of the Voting Rights Act of 1965.

720.2 A qualified federal elector is a citizen of the United States residing outside of the District of Columbia who meets the following requirements:

(a) Resided or was domiciled in the District of Columbia who has moved into another state or territory and does not meet the voter registration residency requirements of that state or territory;

(b) Is at least seventeen (17) years of age and will be eighteen (18) years of age on or before the next general election;

(c) Has not been adjudged legally incompetent to vote; and

(d) Is not incarcerated for conviction of a felony in the District.

720.3 Any qualified federal elector may make a written request to vote an absentee Federal Ballot. Such request may be made electronically, by mail, or in person at the Board's office, and shall include the following:

(a) The voter's name;

(b) A statement that the applicant requests a ballot for federal offices;

(c) Address from which the voter was previously registered to vote in the District;

(d) Address to which the absentee ballot shall be delivered, if applicable;

(e) The voter's DMV-issued identification number or the last four (4) digits of the voter's social security number;

(f) The voter's date of birth; and

(g) The voter's original signature.

720.4 An absentee Federal Ballot request sent electronically will be considered to contain an original signature.

720.5 A mailed or electronically submitted request for an absentee Federal Ballot shall be received from the registered voter by no later than the seventh (7th) day preceding the date of the election.

720.6 A qualified federal elector may request an absentee Federal Ballot in person not earlier than fifteen (15) days preceding the election, and not later than 7:00 p.m. on the Saturday preceding the election.

720.7 Prior to returning the voted absentee Federal Ballot to the Board, a voter shall confirm the accuracy of his or her name, address, party affiliation, and ANC Single-Member District, where applicable, as it appears on the Board's records by signing either the absentee ballot envelope, or if voting an absentee ballot in

person, the Master Index or other record prescribed by the Board. Such signature shall be deemed an affirmation that the voter's information is correct as shown on the Board's records.

720.8 An absentee Federal Ballot may be returned to the Board by any of the following ways:

(a) Mail;

(b) Brought to any polling place for deposit in the special ballot box on Election Day; or

(c) Delivered to the Board's office at any time before the close of the polls on Election Day.

720.9 All mailed (postmarked and non-postmarked) absentee Federal Ballots shall be received not later than the close of polls) on the day of the election.

720.10 The Board may take reasonable steps to investigate the timely completion of non-postmarked absentee Federal Ballots by checking tracking numbers or any other information available.

721 CHALLENGE TO VOTER QUALIFICATIONS: ABSENTEE BALLOTS RECEIVED ELECTRONICALLY OR BY MAIL

721.1 The provisions of this section are inapplicable to absentee ballot requests submitted by covered voters, as that term is defined in D.C. Official Code § 1-1061.02(2).

721.2 Challenges to voter qualifications where the voter seeks to cast an absentee ballot by mail shall be conducted according to the procedures of this section. Challenges to the qualifications of an elector who seeks to cast an emergency absentee ballot, as provided under § 719, are specifically exempted. Challenges to a voter's registration, as described in D.C. Official Code § 1-1001.07(e)(5), may occur only pursuant to § 521.

721.3 The Board shall post in its office and on its website a list of all prospective voters who have submitted requests for absentee ballots electronically or by mail for three (3) days beginning on the seventh (7^{th}) day preceding an election.

721.4 During the three (3) day posting period, any duly registered voter may challenge the qualifications of any prospective voters who have submitted requests for absentee ballots electronically or by mail.

721.5 Any challenge to the qualifications of a prospective voter shall be in writing on a form provided by the Board, and shall indicate the name of the person challenged,

the basis for the challenge, and the evidence provided to support the challenge. The challenge form shall be submitted in-person at the Board's Office.

721.6 The challenger shall also sign an affidavit declaring under penalty of perjury that the challenge is based upon substantial evidence which he or she believes in good faith shows that the person challenged is not a qualified elector of the District.

721.7 The voter's signature on the request for an absentee ballot shall serve as an affidavit from the voter that he or she is a qualified elector of the District.

721.8 On the same day that the challenge is submitted at the Board's Office, the absentee ballot official shall review the evidence presented and shall:

(a) Affirm the challenge upon a finding that it is based on substantial evidence specific to the voter being challenged and probative of the challenged voter's status as a qualified elector, or;

(b) Deny the challenge upon a finding that it is not based on substantial evidence specific to the voter being challenged and probative of the challenged voter's status as a qualified elector.

721.9 The absentee ballot official shall record the decision and the rationale for the decision on a form provided by the Board.

721.10 If the absentee ballot official denies the challenge, The absentee ballot official shall inform the challenger that the challenger may appeal the decision to the Board and shall give the challenger copies of the rules regarding challenges and appeals to the Board. Any appeal from a decision to deny the challenge must be made immediately.

721.11 If the challenger does not appeal the absentee ballot official's decision to deny the challenge, the absentee ballot shall be counted as a regular ballot.

721.12 If the challenger appeals the absentee ballot official's decision to deny the challenge, the absentee ballot official shall state the facts of the case to a Board hearing officer authorized to rule on the appeal for the Board.

721.13 Either a Board member, the Board's Executive Director, or the Board's Registrar of Voters official may serve as the Board's hearing officer for the appeal.

721.14 The hearing shall be recorded and transcribed, and the transcript shall serve as the official case record, along with the written documentation of the absentee ballot official's initial decision to deny the challenge.

721.15 The hearing officer shall take testimony under oath from the challenger, the challenged voter (if available), the absentee ballot official, and any witnesses who wish to testify.

721.16 Each person who testifies before the hearing officer shall state for the record their name as recorded on the board's voter registration list, their residence address, mailing address and telephone number, and their role in the challenge.

721.17 The hearing officer shall receive evidence and testimony and shall then close the hearing.

721.18 After reviewing all evidence pertaining to the challenge and making a decision based upon his or her determination of whether the challenger has presented substantial evidence that is specific to the voter being challenged and probative of the challenged voter's status as a qualified elector, the hearing officer shall either:

(a) Affirm the absentee ballot official's decision to deny the challenge, in which case the challenged voter's absentee ballot shall be counted as a regular ballot; or

(b) Overturn the absentee ballot official's decision to deny the challenge, in which case the challenged voter's absentee ballot and envelope shall be considered a special ballot and envelope.

721.19 If the absentee ballot official affirms the challenge, or if the Board's hearing officer overturns the decision of the absentee ballot official to deny a challenge, the voter's absentee ballot and envelope shall be considered a special ballot and envelope, marked as such, and handled pursuant to §§ 714 and 715.

722 PROHIBITION OF LABELS, STICKERS, AND AUTHORIZATION OF HAND STAMPS FOR CASTING WRITE-IN VOTES ON PAPER BALLOTS

722.1 The use of stickers and adhesive labels as a way of exercising the write-in method of voting is prohibited. Any write-in vote cast in this manner shall be deemed invalid.

722.2 The use of a stamp by a voter to imprint the name of a write-in candidate in the appropriate space on the voter's ballot shall be permitted under the following circumstances:

(a) Where the stamp serves only to print the name of the write-in candidate on the voter's paper ballot; and

(b) Where the stamp does not affix any adhesive or other foreign material on the voter's ballot.

722.3 Any voter may bring into a polling place or early voting center in any election where paper ballots are being cast a stamp for the purpose of exercising the write-in vote option, consistent with § 722.2, for the voter's personal use, provided that the voter must carry the stamp out of the polling place or early voting center with him once he or she has voted. Any stamps left in the polling place or early voting center shall be discarded by election workers.

722.4 Any candidate, campaign organization, or individual may provide or distribute a stamp to voters for their use in exercising their write-in option in any election by any means including the distribution of a stamp outside of a polling place or early voting center where paper ballots are being cast, provided that the distribution shall occur outside the fifty foot (50 ft.) line, within which no political activity is permitted.

722.5 No one may distribute any stamp device to any voter or any other person within the fifty foot (50 ft.) line from an early voting center or polling place entrance or inside any early voting center or polling place.

723 CLOSING THE POLLS

723.1 Immediately after the last voter has voted, the Precinct Captain or his or her designee(s) shall in the presence and view of designated poll watchers:

(a) Remove all voted ballots from the OSVE, and secure them in a transfer case for delivery to the Counting Center;

(b) Remove any ballots that have been deposited either in the emergency ballot entry slot in the OSVE or in an auxiliary ballot box, enter these ballots into the automatic tabulating system, secure these ballots in the transfer case referred to in § 723.1(a) and seal the transfer case with a signed certificate;

(c) Request and confirm the close of polls and produce the total vote count tape for all contests on the ballot in that precinct;

(d) Enter the reading from the OSVE's public counter onto the total vote count tape;

(e) Remove and sign the total vote count tape, and seal it for delivery to the counting center; and

(f) Place the OSVE's memory card, or other electronic media, and the DRE's tabulation cartridge into a transfer case which shall be sealed with a signed certificate for delivery to the Counting Center.

723.2 The Precinct Captain shall then prepare a complete accounting of ballots issued to that polling place, in accordance with and on forms provided by the Board.

723.3 The accounting of ballots shall include the following numbers of ballots:

(a) Voted;

(b) Spoiled;

(c) Not used; and

(d) Received.

723.4 Upon completion of voting, a summary count of votes (for each contest) at each precinct shall be posted in a conspicuous place that can be seen from the outside of the polling place.

723.5 At each precinct, Precinct Captains shall prepare a report which indicates the numbers of:

(a) Votes cast;

(b) Persons who signed in;

(c) Voter-verifiable records that arrived at the polling place before the polls opened;

(d) Voter-verifiable records that were used; and

(e) Unused voter-verifiable records.

723.6 The Precinct Captain shall keep a record of the names and addresses of individuals who:

(a) Attempted to register on election day but could not provide proof of residence; and

(b) Successfully registered on election day and voted.

723.7 Precinct Captain reports and records shall be made available for public inspection at a reasonable date following an election.

723.8 In accordance with directives of the Board, the transfer cases containing the voted ballots, OSVE memory card or other electronic media, and DRE tabulation cartridges shall be returned to the Counting Center promptly following the closing of the polls.

723.9 Unvoted ballots and other election materials and paraphernalia shall be returned to the custody of the Board as directed.

724 COLLECTION AND TRANSFER OF BALLOTS AND OTHER POLLING PLACE MATERIALS

724.1 All ballots cast in any election, as well as the OSVE memory cards or other electronic media, and DRE tabulation cartridges, shall be collected and transferred from precincts to the Counting Center by designated transport teams.

724.2 The transport team shall issue a receipt to the Precinct Captain for all items.

724.3 The reception team at the Counting Center shall issue to the transport team a receipt for the transfer cases containing voted ballots, OSVE memory cards or other electronic media, and DRE tabulation cartridges.

724.4 Other polling place materials shall be transferred from precincts to a place designated by the Board.

724.5 Unused or spoiled ballots, the Master Index Lists, and all other materials relating to voting and which are required for the official canvass, shall be placed in secured storage.

724.6 The official designated to receive the other polling place materials shall issue a receipt for same to the transport team.

724.7 The seal of each transfer case shall be inspected and certified as to its condition.

724.8 Inspection and certification of the seal shall be performed twice by the following:

(a) The first time by the transport team upon receipt of transfer cases at the polling place; and

(b) The second time by the reception team upon receipt of transfer cases at the Counting Center.

724.9 The certification shall include the following:

(a) Precinct number;

(b) Ballot box number;

(c) Condition of seal; and

(d) Any defects observed.

724.10 The certification shall be signed by members of the team making the certification.

724.11 At the Counting Center, each transfer case shall be marked as inspected before being delivered to a ballot inspection team or sorting team.

724.12 If there is more than one (1) transfer case for a single polling place, all cases shall be delivered to one (1) inspection or sorting team.

725 [REPEALED]

Chapter 8 is amended in its entirety to read as follows:

CHAPTER 8 TABULATION AND CERTIFICATION OF ELECTION RESULTS

800 VOTING SYSTEM STANDARDS

800.1 Each voting system used in an election in the District of Columbia shall:

(a) Meet or exceed the voting system standards set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. §§ 15301 *et seq*.), and/or be federally certified;

(b) Create a voter-verifiable record of all votes cast;

(c) Be capable without further modification of creating, storing, and exporting an anonymous separate machine record of each voter-verifiable record, showing each choice made by the voter;

(d) Produce an input to or generate a final report of the election, and interim reports as necessary;

(e) Generate system status and error messages;

(f) Produce an audit log;

(g) Accommodate interactive visual and non-visual presentation of information to voters;

(h) Permit voting in absolute secrecy and be constructed so that no person can see or know for whom any other elector has voted or is voting, except when a voter requests assistance pursuant to § 710;

(i) Permit each elector to vote at any election for all persons and offices for whom and for which the elector is lawfully entitled to vote, whether or not the name of any such person appears pre-printed on a ballot;

(j) Preclude each elector from voting for any candidate or upon any question for whom or upon which the elector is not entitled to vote, from voting for more persons for any office than the elector is entitled to vote for, and from voting for any candidates for the same office upon any question more than once;

(k) Permit each elector to vote for as many persons for an office as the elector is entitled to vote for, and to vote for or against any question upon which the elector is entitled to vote;

(l) Permit each elector to change the elector's vote for any candidate or upon any ballot question, up until the time the elector casts and records the elector's vote;

(m) Be durably constructed of material of good quality, and in a form that shall be safely transportable;

(n) Be constructed that a voter can quickly and easily learn the method of operating it and cast a vote for all candidates of the voter's choice, and when operated properly shall register and record correctly and accurately every vote cast:

(o) Not provide to a voter any type of receipt or voter confirmation that the voter legally may retain after leaving the polling place; and

(p) Provide locks and seals by which, immediately after the polls are closed or the operation of the machine is completed, no further changes to the internal counters can be allowed.

800.2 The Executive Director, or his or her designee, shall complete acceptance testing of new voting equipment to ensure that each unit of voting equipment meets or exceeds the voting system standards described in this section and any other specifications required by procurement contract.

801 PRE-ELECTION LOGIC AND ACCURACY TESTING

801.1 In preparation for any election, Board employees shall conduct complete testing of the automatic tabulation system before the use of the system.

801.2 Before each election, every unit of voting equipment shall be subject to public testing referred to as logic and accuracy testing ("L&A testing").

801.3 Notice of the L&A testing period shall be provided to candidates, proponents and opponents of measures, party officials, the news media, and to any other public representatives the Board deems appropriate, at least seven (7) days before the L&A testing period begins.

801.4 Notice of the final public L&A test shall be provided to candidates, proponents and opponents of measures, party officials, the news media, and to any other public representatives the Board deems appropriate, at least forty-eight (48) hours before the final public L&A test shall occur.

801.5 An L&A test shall verify the conditions required of the voting equipment, and that each unit of voting equipment is correctly configured for the specifics of that election. Conditions required of the voting equipment are:

(a) Each unit of voting equipment contains correct ballot information, including the names or texts of all applicable candidates, contests, and ballot questions;

(b) Tabulation is accurate and consistent; and

(c) All required components of the voting equipment, including specifications mandated by the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq*., are functional.

801.6 Each unit of voting equipment shall be tested by recording test votes from a predetermined script, verifying that it is possible to vote for each candidate or each answer to a question on the ballot, and that these votes are tabulated correctly.

801.7 The predetermined script shall include valid votes, overvotes, and blank votes for each candidate and each answer to a ballot question.

801.8 Equipment shall not be approved unless it produces the exact count of the predetermined script, rejects all improper votes, and meets all other test criteria. If a unit of voting equipment fails L&A testing, it shall not be used in the election and shall be subject to review.

801.9 The final public L&A test shall conclude by setting all vote totals to zero and emptying the physical or electronic ballot boxes, and then sealing the systems prior to their official use for the election.

801.10 After the final public L&A test has been successfully completed, all test votes, test results, and the computer programs tested shall be kept in sealed containers and shall not be removed from such containers except in the presence of two or more witnesses not affiliated with the Board, or two (2) or more credentialed election observers or poll watchers not of the same political party or organizational affiliation.

801.11 The voting equipment configuration tested during the L&A testing period shall be the same configuration used during the early voting period and on Election Day.

802 VALIDITY OF BALLOTS

802.1 The Executive Director, or his or her designee, shall make determinations on the validity of ballots.

802.2 Any election official who is uncertain whether a ballot is partially or totally invalid shall refer the ballot to the Executive Director, or his or her designee, for a determination.

802.3 Any poll watcher or election observer who is uncertain whether a ballot is partially or totally invalid may refer the ballot to the Executive Director, or his or her designee, for a determination.

802.4 Except as provided in this section, only official ballots shall be valid and counted. An official ballot is a sheet of paper, or electronic card, filmstrip or other device that has been approved by the Board for use during an election on which votes are recorded and stored for purposes of tabulation. For DRE machines, the official ballot shall be the electronic card which records and stores the elector's votes, except that the voter-verified paper audit trail (VVPAT) shall be the official ballot of record during all occurrences of manual tabulation, including audits and recounts.

802.5 Pursuant to Chapter 7 of this title, if a qualified uniformed services or overseas voter chooses to use a Federal Write-In Absentee Ballot, or chooses to electronically submit his or her ballot, it shall be duplicated, and the duplicated ballot shall be treated as an official ballot and deemed valid.

802.6 If a precinct was authorized by the Board to use reproductions of official paper ballots because of an emergency, the reproductions shall be duplicated and the duplicated ballots shall be considered official ballots and deemed valid.

802.7 If a ballot marked "Challenged" or "Special" is placed in a ballot box and received at a counting place other than in a Special Ballot Envelope, it shall be deemed invalid.

803 VALIDITY OF VOTES

803.1 Overvotes or otherwise improper votes shall be deemed invalid and not counted. Improper votes shall include, but are not limited to, votes which the voter is not lawfully able to cast.

803.2 Any overvote or otherwise improper vote in one (1) or more contests shall not invalidate the entire ballot but only the votes cast in that contest. All correctly cast votes on such a ballot shall be counted. The number of votes rejected because of overvote or otherwise improper vote shall be reported.

803.3 An undervote shall not invalidate the entire ballot, except that a ballot cast without any marks shall not be tallied. If a voter fails to mark a choice for a contest or ballot question, only those contests and questions that were unmarked shall not be counted.

803.4 A write-in vote shall not be adjudged valid, and shall not be tallied and recorded, unless the voter has written, or used a stamp to imprint, the name of the write-in candidate on a blank line provided for write-in voting and has not marked the voting position on an equal number of votes allowed for that office. Any write-in vote cast using a sticker or adhesive label shall be invalid.

803.5 When a voter writes a person's name in the proper space for write-ins for an office, it is a vote for that person, notwithstanding:

(a) The appearance of that person's name in pre-printed form on the ballot as a candidate for the same office;

(b) The voter's failure to fill in the empty oval which appears to the left of the candidate's pre-printed name; or

(c) The voter's failure to fill in the empty oval which appears to the left of the space designated for write-in candidates.

803.6 In the case of a write-in vote, no ballot should be regarded as defective due to unclear writing, misspelling of a candidate's name, or by abbreviation, addition, omission or use of a wrong initial in the name, so long as voter intent can be determined.

803.7 If a voter circles a candidate's name, draws an arrow pointing to a candidate's name, circles the empty oval to the left of the candidate's name, uses a check, asterisk, or any other mark in a manner that clearly indicates his or her intended choice, the vote shall count as a vote for that candidate, provided, that the mark is not a distinguishing mark as defined in § 803.9.

803.8 A ballot properly marked by filling in the empty oval to the left of the candidate or ballot question is valid even though it contains an additional mark, provided that the additional mark is not a distinguishing mark as defined in § 803.9.

803.9 A distinguishing mark is a mark (whether a letter, figure, or character) that serves to separate and distinguish a particular ballot from other ballots cast at the election. The mark itself shall be to furnish evidence of an unlawful intention on the part of the voter to identify the ballot after the vote has been cast, such as the voter's initials, or a mark known to belong to the voter.

804 MARKING OF BALLOTS BY ELECTION OFFICIALS

804.1 No election official shall make a mark on any ballot, except for the following reasons:

(a) Upon the voter's request, to assist a voter with the act of voting;

(b) To note whether a ballot is partially or totally invalid;

(c) To indicate the ballot's status as a Special Ballot; or

(d) To facilitate vote counting procedures, when authorized by the Executive Director or his or her designee.

804.2 The notations of validity or invalidity shall be contained within administrative procedures.

805 SPECIAL BALLOT BOX INSPECTION

805.1 A special ballot box inspection team shall perform the following functions for the ballots of each precinct and early voting center:

(a) Open special ballot box containers and remove all ballot envelopes;

(b) Separate all ballot envelopes into three (3) groups:

(1) Special ballot envelopes;

(2) Curbside ballot envelopes; and

(3) Absentee ballot envelopes which were delivered to a polling place on Election Day;

(c) Record the number of each type of ballot envelope for each precinct or early voting center.

805.2 Members of the special ballot box inspection team shall not open any ballot envelopes, but shall deliver them unopened to a representative designated by the Executive Director.

805.3 Special ballot envelopes gathered pursuant to this section shall be processed in conformity with § 807.

805.4 Curbside ballot envelopes gathered pursuant to this section shall be processed in conformity with § 806.

805.5 Absentee ballot envelopes gathered pursuant to this section shall be processed in conformity with § 808.

806 TABULATION PROCEDURES

806.1 The tabulation of votes shall be started immediately on Election Day after the close of polls and shall be conducted under the direct supervision of the Executive Director or his or her designee.

806.2 Whenever votes are counted by machines, the Executive Director shall utilize personnel qualified to operate the system. Additional personnel may be employed to perform such tasks as may be deemed necessary by the Executive Director.

806.3 Only those persons authorized by the Board, including credentialed poll watchers and election observers, shall be admitted to the Counting Center while tabulation is in progress.

806.4 All valid ballots shall be counted by mechanical tabulation unless otherwise determined by the Executive Director.

806.5 Special Ballots, together with any damaged ballots received from the polling places, shall be tabulated separately at a time designated by the Executive Director.

806.6 The valid votes recorded on damaged ballots shall be reproduced on duplicate ballots, in the presence of watchers, with the original and the reproduced ballots marked for identification with corresponding serial numbers.

806.7 The reproduced duplicate ballots, which have converted the votes on the damaged ballots to a machine readable form, shall be tabulated by machine.

806.8 Federal write-in absentee ballots shall be reproduced and tabulated in the same manner as damaged ballots, in accordance with §§ 806.6 - 806.7.

806.9 A Special Ballot cast by a voter who votes in a precinct that does not serve the address listed on the Board's registration records shall not be counted.

806.10 A count of the number of ballots tallied for a precinct, ballots tallied by groups of precincts and city-wide, shall be accumulated.

806.11 The total of votes cast for each candidate whose name appears pre-printed on the ballot shall be calculated by precinct and city-wide.

806.12 The total number of write-in votes marked by voters shall be reported for each contest.

806.13 The total number of votes cast for each write-in nominee shall be calculated only in contests where there is no candidate printed on the ballot in order to determine a winner, or where the total number of write-in votes reported, under § 806.12, is sufficient to elect a write-in candidate.

806.14 Following tabulation of all ballots, a consolidated report shall be produced showing the total votes cast and counted for all offices and ballot questions. Unless otherwise mandated by the Board, the consolidated ballot report shall be made by precinct.

807 SPECIAL BALLOT TABULATION

807.1 The review and tabulation of Special Ballots shall:

(a) Be conducted separately from the review and tabulation of all other ballots;

(b) Be conducted publicly; and

(c) Otherwise be conducted in the same manner as regular ballots, insofar as those procedures do not conflict with the provisions of this section.

807.2 All Special Ballot Envelopes shall remain sealed until the voter's eligibility has been preliminarily determined by the Executive Director.

807.3 A Special Ballot shall be eligible to be tabulated when the Executive Director has determined that:

(a) If the voter registered to vote at the polls or an early voting center, the voter cast the Special Ballot at the precinct in which the voter maintains residence or at an early voting center designated by the Board;

(b) The voter is a qualified elector of the District of Columbia; and

(c) The voter did not otherwise vote in the same election.

807.4 Not later than the day after each election, the Executive Director shall issue preliminary determinations to count or reject each Special Ballot cast during an election.

807.5 The Executive Director or his or her designee shall record on the back of the Special Ballot Envelope whether the Special Ballot was accepted, either in full or in part, or rejected and, if rejected, the reason why the Special Ballot was rejected.

807.6 If the Executive Director rejects a Special Ballot, the Special Ballot Envelope shall remain sealed. All rejected Special Ballots, Special Ballot Envelopes, along with any voter eligibility information gathered shall be enclosed in containers marked with the words "Rejected Special Ballots and Envelopes" and the date of the election. Pursuant to § 715, the voter may appeal to the Board the Executive Director's preliminary determination to reject the voter's Special Ballot.

807.7 All Special Ballots cast by voters whose eligibility has been verified shall be tabulated on the day following an election, in accordance with the rules contained in this chapter.

808 ABSENTEE BALLOT TABULATION

808.1 The provisions of this section shall govern the tabulation of absentee ballots submitted to the Board electronically or by mail, or those delivered to an early voting center or polling place on Election Day.

808.2 The handling and tabulation of absentee ballots shall:

(a) Be conducted separately from the tabulation of all other ballots;

(b) Be conducted publicly; and

(c) Otherwise be conducted in the same manner as non-absentee regular ballots, insofar as those procedures do not conflict with the provisions of this section.

808.3 All absentee ballots received by the Board shall be tabulated on Election Day after polls have closed.

808.4 Prior to tabulation, the Executive Director's designee shall verify that the voter signed the absentee ballot envelope.

808.5 In preparation for tabulation, the Executive Director's designee shall open the outer mailing envelopes, and remove the inner secrecy envelope which contains the absentee ballot. Inner secrecy envelopes shall be sorted by ward and precinct.

808.6 Working precinct by precinct, the Executive Director's designee shall:

(a) Open the inner secrecy envelopes, being careful not to damage the ballot inside. If an absentee ballot is damaged in this process, the valid votes shall be reproduced on duplicate ballots, in accordance with the rules of this chapter; and

(b) Inspect the absentee ballots for machine tabulation acceptability. All absentee ballots that are identified as not being machine readable shall be removed and reproduced on duplicate ballots in accordance with the rules of this chapter.

808.7 The absentee ballot shall be tabulated and counted as being cast in the ward and precinct in which the voter resides.

809 VOTE COUNTING BY HAND

809.1 The rules of this section shall apply to all instances when manual vote tabulation may occur, including, but not limited to, manual tabulation required by law and this chapter, discretionary manual tabulation, tabulation of write-ins, audits, and recounts.

809.2 Validity of ballots and votes shall be determined pursuant to the rules of this chapter.

809.3 Whenever votes cast on DRE machines are counted by hand, the voter-verified paper audit trail (VVPAT) shall be the ballot of record. Whenever the VVPAT is damaged or illegible, the cast ballot audit log shall become the ballot of record and be reproduced in accordance with vendor guidelines and public manner.

809.4 The counting shall be conducted by counting teams of two (2) or more officials. An election official known as the "Counting Team Captain" shall be designated as being in charge of one or more counting teams as determined by the Executive Director, or his or her designee. The counting shall proceed according to

administrative proceed according to administrative procedures established by the Executive Director.

810 DISCRETIONARY MANUAL TABULATION

810.1 Notwithstanding instances when manual tabulation is required by law or this chapter, the Board may order that ballots be manually inspected and tabulated under the following circumstances:

(a) Upon the filing of a recount petition, when it appears that a disproportionate number of potential undervotes or overvotes have occurred in a particular precinct, or to determine whether write-in votes have been cast that affect vote totals for candidates whose names are pre-printed on the ballot;

(b) When there is evidence of a machine miscount or malfunction; or

(c) When it is determined by the Board that manual tabulation is necessary to ascertain correct vote totals.

810.2 When manual tabulation is ordered pursuant to this section:

(a) Validity of ballots and votes and tabulation procedures shall conform to the rules specified in this chapter;

(b) Only the ballots for those precincts and contests designated by the Board shall be manually tabulated; and

(c) The Board shall direct that the tabulation be conducted at a time that is practicable.

811 BALLOT ACCOUNTING

811.1 Following the tabulation of all votes, a full accounting of official ballots shall be made prior to certification of the official election results.

811.2 The accounting of official ballots shall include the following:

(a) For each precinct, and for each party in a primary election, the sum of the number of ballots issued to the voters, less the number of spoiled ballots, should equal the total number of ballots cast in the precinct;

(b) For each precinct, and for each party in a primary election, the sum of the number of cards issued to voters and exchanged for ballots, plus the number of special ballots, should equal the total number of voters;

(c) For each precinct, and for each party in a primary election, upon completion of the election day count and exclusive of special and absentee ballots, the sum of the number of polling place ballots counted plus the number of special ballots cast should equal the totals from §§ 811.2(a) and (b);

(d) For each entire election and for each type of ballot used in it, the sum of the number of absentee ballots issued to voters electronically, by mail, in person, by affidavit (emergency), spoiled absentee ballots, plus the number of absentee ballots remaining unused, should equal the total number of absentee ballots;

(e) For each entire election and for each type of ballot used in it, the sum of the number of absentee ballots cast, absentee ballots spoiled, and absentee ballots not returned, should equal the total number of absentee ballots issued to voters; and

(f) For each Single-Member District, the total number of Single-Member District ballots cast should equal the sum of the ballots cast in each precinct servicing that Single-Member District.

811.3 Following tabulation, the ballots and VVPATS for each precinct shall be transferred to a secure and locked storage location where they shall remain secured for twenty-two (22) months; thereafter, if no election contest or other proceeding is pending in which the ballots may be needed as evidence, the ballots may be destroyed.

811.4 The Board shall retain and store all data processing materials related to the vote counting from the time the canvass is completed until the expiration of the period for challenging elections in an secured area and conforming to data security practices outlined in EAC Election Management Guidelines - Security—Voting Equipment and Peripheral Devices.

812 POST-ELECTION MANUAL AUDIT

812.1 A manual audit conducted pursuant to this section shall conform to the rules of this chapter.

812.2 After each General and Special election, the Executive Director shall conduct a public manual audit of at least:

(a) All ballots cast, including absentee ballots, in one precinct per Ward or at least five percent of all precincts participating in an election, whichever number is greater;

(b) Five percent (5%) of Special Ballots cast and counted; and

(c) Five percent (5%) of ballots cast at early voting centers.

812.3 The manual audit shall entail counting of ballots cast on the machines selected for the audit and comparing the results of this count with the results shown by the results tape produced by the machine used to tabulate those ballots during the election.

812.4 The Executive Director shall take appropriate measures to ensure that spoiled or defective ballots are not tallied as valid ballots in the manual audit process, except that a damaged or illegible VVPAT may be recreated pursuant to § 808.3 and deemed valid.

812.5 The manual audit shall be:

(a) Announced no later than three (3) business days after the tabulation has been completed, but no fewer than twenty-four (24) hours in advance of the audit; and

(b) Conducted in public view such that members of the public are able to verify the tally, but are unable either to touch ballots and other official materials or to interfere in any way with the manual audit process.

812.6 At least one precinct from each ward shall be selected for participation in the audit. The precincts audited shall be selected randomly from each ward, such that each precinct in a ward shall have an equal chance of being selected for the manual audit.

812.7 The Executive Director may select additional precincts in his or her discretion.

812.8 The contests subject to the manual audit shall be publicly selected at random and shall include:

(a) At least one (1) District-wide contest (office or ballot question); and

(b) At least two (2) ward-wide contests.

812.9 If there is no District-wide contest in an election, the Executive Director shall select sufficient ward-wide contests to adequately verify machine results.

812.10 In addition to the randomly-selected contests described in § 812.8, the Executive Director shall select at least one additional contest for audit. Additional contest(s) audited may be selected due to allegations of voting equipment anomalies, requests from candidates, random sampling, or other factors at the discretion of the Executive Director. If additional contest audits are performed as a result of a candidate request, the Board shall determine whether such audit is material to the

outcome of the election and may impose a fee paid by the requesting candidate to the Board. The amount of the fee imposed shall not be greater than the actual cost of conducting the audit for the additional contest. The Board's rejection of a request for an audit shall not preclude a candidate from petitioning for a recount pursuant to § 815.

812.11 Individuals performing the manual audit shall:

(a) Not be assigned to tally the results from a precinct in which that individual served as a poll worker on Election Day; and

(b) Not at any time before or during the manual audit be informed of the corresponding machine tally results.

812.12 Individuals performing the manual audit shall be assembled into teams of at least four individuals such that there will be one person to call the ballot result, at least two persons to tally the ballot result, and at least one person to witness the process.

812.13 Each audit team shall be provided with a set of ballots associated with a machine that has been selected for the audit and advised as to which contest they are responsible for auditing.

812.14 The audit team shall make a record of vote marking errors, including the nature of the marking error, and how the vote was interpreted, if voter intent could be determined pursuant to the rules specified in § 803.

(a) Votes which were not properly marked, but that the audit team was able to determine voter intent, pursuant to the rules specified in § 803, shall be counted.

(b) Votes which were not properly marked and the audit team could not determine voter intent, pursuant to the rules specified in § 803, shall not be counted.

812.15 If the initial manual audit reveals a discrepancy between the machine result and the manual audit tally result which yields an error rate greater than one quarter (0.25) of a percent of votes cast in the contest being audited, or twenty percent (20%) of the margin of victory (whichever is less), and such discrepancy is not attributed to marking errors, a second manual shall be conducted by the same team.

812.16 If the second manual audit confirms the discrepancy described in Subsection 812.15, the Board shall randomly-select another precinct in each ward in which the contest appeared on the ballot and audit:

(a) All ballots cast, including absentee ballots, in one precinct per Ward or at least five percent of all precincts participating in an election, whichever number is greater;

(b) Five percent (5%) of Special Ballots cast and counted; and

(c) Five percent (5%) of ballots cast at early voting centers.

812.17 If the additional precinct manual audit confirms the discrepancy described in Subsection 812.15, the Board shall audit all ballots cast in the contest.

812.18 The results derived from the manual audits shall be considered the true and correct results of the election contests at issue.

812.19 All machines found to have an error rate greater than that referenced in Subsection 812.15 shall be examined and repaired before they may be used in future elections.

812.20 The Executive Director or his or her designee shall include a report, which shall be made public on its website, on the results of the manual audit before the certification of the official election results. Such report shall:

(a) Identify any discrepancies between the machine count and the manual tally;

(b) Describe how each of these discrepancies was resolved; and

(c) Describe further investigations or actions to be taken, if any.

813 CERTIFICATION OF ELECTION RESULTS

813.1 The Board shall certify the results of each election.

813.2 The Board shall publish the results of each election and the nominees or winners in the *D.C. Register* and on the Board's website.

814 AUTOMATIC RECOUNT

814.1 The Board shall conduct an automatic recount:

(a) If, in any election for President and Vice-President of the United States, Delegate to the House of Representatives, Mayor, Chairman of the Council, member of the Council, Attorney General, at-large member of the Board of Education, or member of the Board of Education, the certified election results show a margin of victory for a candidate that is

less than one percent (1%) of the total votes cast for that office. The cost of such recount shall not be charged to any candidate;

(b) If, in any contest involving an initiative, referendum, or recall measure, the difference between the number of votes for and against the measure is less than one percent (1%) of the total votes cast in that contest; or

(c) If so ordered by the D.C. Court of Appeals pursuant to a petition to review an election, whether or not a recount has been previously conducted or requested.

815 PETITIONS FOR RECOUNT, RECOUNT DEPOSITS, AND REFUNDS OF RECOUNT DEPOSITS

815.1 Any qualified candidate in any election may, within seven (7) days after the Board certifies the election results, petition the Board for a recount of the ballots cast in that election. Such petition shall be in writing and shall specify the precincts in which the recount shall be conducted.

815.2 Upon receipt of a recount petition, the Board shall prepare an estimate of:

(a) The costs to perform the recount; and

(b) The number of hours to complete the recount.

815.3 If the petitioner chooses to proceed, the petitioner shall deposit fifty dollars ($50.00) for each precinct included in the recount.

815.4 Deposits shall be paid by certified check or money order made payable to the order of the "D.C. Treasurer." No cash will be accepted.

815.5 The petitioner shall not be required to make a deposit for or pay the cost of any recount in any election where the difference between the number of votes received by the petitioner and the number of votes received by the person certified as having been elected to that office is:

(a) In the case of a ward-wide contest, less than one percent (1%) of the total valid ballots cast in the contest or less than fifty (50) votes, whichever is less; or

(b) In the case of an at-large contest, less than one percent (1%) of the total valid ballots cast in the contest or less than three hundred fifty (350) votes, whichever is less; and

(c) In the case of an Advisory Neighborhood Commission Single-Member District contest, less than ten (10) votes.

815.6 If the recount changes the result of the election, the entire amount deposited by the petitioner shall be refunded.

815.7 If the result of the election is not changed, the petitioner is liable for the actual cost of the recount, minus the deposit already made.

815.8 If the results of the election are not changed as a result of the recount, but the cost of the recount was less than fifty dollars ($50.00) per precinct, the difference shall be refunded to the petitioner.

815.9 A candidate may, at any time, request in writing that the recount be terminated and the Board shall refund the deposit remaining for any uncounted precincts.

816 RECOUNT PROCEDURES

816.1 The Executive Director shall conduct recount proceedings in accordance with provisions of this section.

816.2 The validity of ballots and votes recounted shall be determined pursuant to the provisions of this chapter.

816.3 Manual tabulation of votes in a recount proceeding shall be conducted in accordance with the provisions of this chapter.

816.4 Within two (2) days following the Board's determination to grant a recount petition or a court order directing the Board to conduct a recount, notice of recount proceedings shall be delivered by courier to all qualified candidates for the contest being recounted. Public notice of recount proceedings shall be posted on the Board's website at least twenty-four (24) hours in advance of the commencement of the recount.

816.5 Each candidate, or organizational group in support of or opposition to a ballot question, in a contest involved in a recount shall be permitted to have no more than two (2) poll watchers at all phases of the recount, regardless of whether the candidate properly applied for poll watcher credentials pursuant to § 706.

816.6 Apart from the election officials necessary to conduct the recount, priority of access to the place where the recount will occur will first be given to the candidate, or organizational groups in support of or opposition to a ballot question, in the contest being recounted. Space permitting, poll watchers and election observers credentialed pursuant to § 706, then members of the public, shall also be given access.

816.7 For paper ballots, recount officials shall rerun all official ballots through a tabulator and count only the votes for the office or ballot question at issue in the

recount. All ballots which are not machine readable shall be tabulated manually, pursuant to the rules provided in this chapter.

816.8 For ballots cast on a DRE machine, the recount officials shall open the containers with the voter-verified paper audit trail ("VVPAT") printouts and manually count the results of the recounted contest from the printout. Whenever the VVPAT is damaged or illegible, the VVPAT shall be reproduced in accordance with vendor guidelines and in a public manner.

816.9 At the conclusion of the recount proceedings, a recount results report shall be presented to the Board and posted on the Board's website. The Board shall determine the number of votes received by each candidate as a result of the recount, but shall not make a new certification of the results of the election unless the outcome of the contest has changed as a result of the recount.

816.10 There shall be only one (1) recount per contest.

816.11 Results of the recount are final and not appealable.

817 POST GENERAL ELECTION SUMMARY REPORT

817.1 Within ninety (90) days following every general election, the Board shall publish on its website a report ("post general election summary report") containing the following information:

(a) The total number of ballots cast and counted, with subtotals for each type of ballot;

(b) The total number of spoiled and special ballots not counted;

(c) The total number of persons registered to vote more than thirty (30) days preceding the election, broken down by party, ward, and precinct;

(d) The number of persons who registered to vote between thirty (30) days preceding the election and the date of the election;

(e) The number of persons who registered to vote at an early voting center;

(f) The number of persons who registered to vote on Election Day;

(g) The number of polling place officials at each precinct, broken down by position title;

(h) Copies of any unofficial summary reports generated by the Board on election night;

(i) A summary of issues identified in Precinct Captain or Area Representative reports;

(j) Performance measurement data of polling place officials;

(k) A description of any irregularities experienced on Election Day;

(l) Recommendation for means by which the efficiency, accuracy, and speed of counting and reporting election results can be improved, including equipment or technology and an estimate of associated costs; and

(m) Any other relevant information.

Chapter 9 is amended in its entirety to read as follows:

CHAPTER 9 FILLING VACANCIES

900 FILLING VACANCIES

900.1 This chapter governs the procedures of the District of Columbia Board of Elections in the event a vacancy occurs in any of the following offices prior to the expiration of the term of office:

(a) The Mayor of the District of Columbia;

(b) The Chairman of the Council of the District of Columbia;

(c) At-large and ward Members of the Council of the District of Columbia;

(d) The Attorney General for the District of Columbia;

(e) At-large and ward members of the State Board of Education; and

(f) Delegate to the House of Representatives.

900.2 A vacancy shall exist in the offices specified in this section when any of the following occurs during the public official's term of office:

(a) Resignation;

(b) Death; or

(c) Declaration of vacancy by a court.

900.3 A vacancy shall also exist in the offices of Mayor, Member of the Council of the District of Columbia, Attorney General, or Member of the State Board of Education whenever a recall election is conducted and, as a result of that recall election, an elected officer is removed from office.

901 VACANCY IN THE OFFICE OF MAYOR

901.1 When the Mayor resigns his or her office prior to expiration of the term, the resignation shall be in writing and in duplicate.

901.2 The Mayor shall forward one (1) duplicate original of the resignation to the Chairman of the Council and one (1) duplicate original to the Chairman of the D.C. Board of Elections (Board).

901.3 Within five (5) working days of receipt of the duplicate resignation, the Board shall certify the seat vacant, effective as provided by the resignation, and issue notification as provided in this chapter.

901.4 When the Mayor dies while still serving his or her term of office, the Board shall, within five (5) working days of notice of the death of the Mayor, certify the seat vacant and issue the appropriate notification as provided in this chapter.

901.5 When a vacancy in the office of Mayor is declared by court order, the Board shall, as soon as practicable after a court declaration, notify the Chairman of the Council of the vacancy by registered mail.

901.6 When a vacancy in the office of Mayor occurs as a result of a recall election, the Board shall, as soon as practicable after certification of the election results, certify the seat vacant and issue the appropriate notification as provided in this chapter.

902 VACANCY IN THE OFFICE OF CHAIRMAN OF THE COUNCIL

902.1 When the Chairman resigns his or her office prior to expiration of the term, the resignation shall be in writing and in duplicate.

902.2 The Chairman shall forward one (1) duplicate original of the resignation to the Mayor and one (1) duplicate original to the Chairperson of the D.C. Board of Elections.

902.3 Within five (5) working days of receipt of the duplicate resignation, the Board shall certify the seat vacant, effective as provided by the resignation, and issue notification as provided in this chapter.

902.4 When the Chairman dies while still serving his or her term of office, the Board shall, within five (5) working days of notice of the death of the Chairman, certify the seat vacant and issue the appropriate notification as provided in this chapter.

902.5 When a vacancy in the office of Chairman of the Council is declared by court order, the Board shall, as soon as practicable after the court declaration, notify the Mayor of the vacancy by registered mail.

902.6 When a vacancy in the office of Chairman of the Council occurs as a result of a recall election, the Board shall, as soon as practicable after certification of the election results, certify the seat vacant and issue the appropriate notification as provided in this chapter.

903 VACANCY IN THE OFFICE OF MEMBER OF THE COUNCIL

903.1 When a member of the Council resigns his or her office prior to the expiration of the term, the resignation shall be in writing and in duplicate.

903.2 The resigning member of the Council shall forward one (1) duplicate original of the resignation to the Mayor and one (1) duplicate original to the Chairperson of the D.C. Board of Elections.

903.3 Within five (5) working days of receipt of the duplicate resignation, the Board shall certify the seat vacant, effective as provided by the resignation, and issue the appropriate notification as provided in this chapter.

903.4 When a member of the Council dies while still serving his or her term of office, the Board shall, within five (5) working days of notice of the death of the member of the Council, certify the seat vacant and issue the appropriate notification as provided in this chapter.

903.5 When a vacancy in the office of Member of the Council is declared by court order, the Board shall, as soon as practicable after the court declaration, notify the

Chairman of the Council of the vacancy by registered mail and provide any other notice as required in this chapter.

903.6 When a vacancy occurs in the office of Member of the Council as a result of a recall election, the Board shall, as soon as practicable after certification of the election results, certify the seat vacant and issue the appropriate notification as provided in this chapter.

904 VACANCY IN THE OFFICE OF ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

904.1 When the Attorney General resigns his or her office prior to expiration of the term, the resignation shall be in writing and in triplicate.

904.2 The resigning Attorney General shall forward one (1) triplicate original of the resignation to the Mayor, one (1) triplicate original to the Chief Deputy Attorney General, and one (1) triplicate original to the Chairperson of the D.C. Board of Elections.

904.3 Within five (5) working days of receipt of the resignation, the Board shall certify the seat vacant, effective as provided by the resignation, and issue the appropriate notification as provided in this chapter.

904.4 When the Attorney General dies while still serving his or her term of office, the Board shall, within five (5) working days of notice of the death, certify the seat vacant and issue the appropriate notification as provided in this chapter.

904.5 When a vacancy in the office of Attorney General is declared by court order, the Board shall, as soon as practicable after the court declaration, notify the Chief Deputy Attorney General of the vacancy by registered mail.

904.6 When a vacancy in the office of Attorney General occurs as a result of a recall election, the Board shall, as soon as practicable after certification of the election results, do the following:

(a) Certify the seat vacant;

(b) Notify the Chief Deputy Attorney General; and

(c) Issue the appropriate notification as provided in this chapter.

905 VACANCY IN THE OFFICE OF ELECTED MEMBER OF THE STATE BOARD OF EDUCATION

905.1 When a member of the State Board of Education resigns his or her office prior to expiration of the term, the resignation shall be in writing and in duplicate.

905.2 The resigning member of the State Board of Education shall forward one (1) duplicate original of the resignation to the Mayor and one (1) duplicate original to the Chairperson of the D.C. Board of Elections.

905.3 Within five (5) working days of receipt of the duplicate resignation, the Board shall certify the seat vacant, effective as provided by the resignation, and issue the appropriate notification as provided in this chapter.

905.4 When a member of the State Board of Education dies while still serving his or her term of office, the Board shall, within five (5) working days of notice of the death of the member of the State Board of Education, certify the seat vacant and issue the appropriate notification as provided in this chapter.

905.5 When a vacancy in the office of Member of the State Board of Education is declared by court order, the Board shall, as soon as practicable after the court declaration, notify the President of the State Board of Education of the vacancy by registered mail.

905.6 When a vacancy in the office of Member of the State Board of Education occurs as a result of a recall election, the Board shall, as soon as practicable after certification of the election results, do the following:

(a) Certify the seat vacant;

(b) Notify the State Board of Education; and

(c) Issue the appropriate notification as provided in this chapter.

906 VACANCY IN THE OFFICE OF DELEGATE TO THE HOUSE OF REPRESENTATIVES

906.1 When the Delegate to the House of Representatives resigns his or her office prior to expiration of the term, the resignation shall be in writing and in triplicate.

906.2 The Delegate shall forward one (1) triplicate original of the resignation to the Mayor, one (1) triplicate original to the Speaker of the House of Representatives, and one (1) triplicate original to the Chairperson of the D.C. Board of Elections.

906.3 Within five (5) working days of receipt of the resignation, the Board shall certify the seat vacant effective as provided by the resignation and issue the appropriate notification as provided in this chapter.

906.4 When the Delegate to the House of Representatives dies while still serving his or her term of office, the Board shall within five (5) working days of notice of the

death of the Delegate to the House of Representatives, certify the seat vacant, and issue the appropriate notification as provided in this chapter.

906.5 When a vacancy in the office of Delegate to the House of Representatives is declared by court order, the Board shall, as soon as practicable after the court declaration, notify the Mayor of the vacancy by registered mail.

907 PUBLIC NOTICE OF VACANCY AFTER BOARD CERTIFICATION

907.1 As soon as practicable after a formal order by the D.C. Board of Elections or a court declaring any vacancy in the offices enumerated in § 900.1, the Board publish notice of the vacancy in the *D.C. Register* and on the Board's website.

907.2 If a formal order by the Board or a court is entered declaring a vacancy in a party-affiliated at-large seat on the Council, the Board shall inform the Chairperson of the party to which the Councilmember belongs of the vacancy by registered mail and of the rules directing the required action.

907.3 If a formal order by the Board or a court is entered declaring a vacancy in a non-party-affiliated at-large seat on the Council, the Board shall inform the Council of the District of Columbia of the vacancy and of the rules relating to the appropriate action.

908 APPOINTMENT PENDING SPECIAL ELECTION: PARTY-AFFILIATED AT-LARGE COUNCIL SEAT

908.1 Within a reasonable period after receiving notice from the D.C. Board of Elections of a vacancy in a party-affiliated at-large council seat, the central (state) committee of that party shall appoint a qualified elector registered with the same party to fill the office until the D.C. Board of Elections holds a special election and certifies the winner as provided by D.C. Official Code § 1-204.01(d)(2) (2012 Repl.).

908.2 The central (state) committee of the party appointing a registered qualified elector affiliated with its party shall be currently registered as a political committee with the D.C. Board of Elections and have on file with the Board a certified copy of the organization's current constitution and by-laws.

908.3 The elector appointed to the Council pursuant to the Charter and these rules shall, within thirty (30) days of the appointment, comply with the requirements of D.C. Official Code §§ 1-1106.02(a) and (b) (2012 Repl.).

909 APPOINTMENT PENDING SPECIAL ELECTION: NON-PARTY AFFILIATED AT-LARGE COUNCIL SEAT

909.1 Within a reasonable period of time after receiving notice from the D.C. Board of Elections of a vacancy in a non-party affiliated at-large seat, the Council of the District of Columbia shall appoint a qualified elector who is not affiliated with any political party.

909.2 The elector appointed Councilmember at-large shall fill the office until the D.C. Board of Elections holds a special election and certifies the winner, as provided by D.C. Official Code § 1-204.01(d)(2) (2012 Repl.).

909.3 The elector appointed to the Council pursuant to the Charter and this chapter shall, within thirty (30) days of the appointment, comply with the requirements of D.C. Official Code § 1-1106.02(a) and (b) (2012 Repl.).

910 SPECIAL ELECTIONS

910.1 The D.C. Board of Elections shall conduct a special election in order to elect an individual to serve the unexpired portion of the term of office vacated, except that no special election shall be conducted when:

(a) A vacancy occurs in the office of Delegate on or after May 1st of the last year of the Delegate's term of office; or

(b) A vacancy occurs in the office of member of the Board of Education on or after February 1st of the last year of the term of the affected office.

910.2 At the time of the certification of a vacancy, the Board shall, if applicable, call a special election. A call for a special election shall include the following:

(a) The date upon which the special election is to be held;

(b) The date upon which nomination petition forms will be made available to candidates; and

(c) Other relevant election calendar information.

910.3 A special election held pursuant to this chapter shall be held on a Tuesday occurring at least seventy (70) days and not more than one hundred seventy-four (174) days after the date on which such vacancy occurs, which the Board determines, based on a totality of the circumstances, taking into account, *inter alia*, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation.

910.4 Within seven (7) days after the certification of a vacancy, the Board shall make available nomination petition forms to candidates seeking nomination to fill the vacancy.

910.5 The qualifications for ballot access of candidates and the rules governing the access in any special election held to fill a vacancy shall be the same as those for direct nomination to the office in any general election, as provided for in D.C. Official Code § 1- 1001.08(j) (2012 Repl.) and Chapter 16 of this title.

910.6 All elections provided in this section are special elections, even though the balloting may be at the same time as a previously scheduled primary or general election.

Section 1004, NON-RESIDENT CIRCULATORS, of Chapter 10, INITIATIVE AND REFERENDUM, is amended to read as follows:

1004 NON-RESIDENT CIRCULATORS

1004.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of the measure in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears under oath or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1004.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current (the issue, bill, or statement date is no earlier than ninety (90) days before the beginning of the petition circulation period) utility bill, bank statement, government check, or paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

Section 1104, NON-RESIDENT CIRCULATORS, of Chapter 11, RECALL OF ELECTED OFFICIALS, is amended to read as follows:

1104 NON-RESIDENT CIRCULATORS

1104.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of the measure in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears under oath or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations; and

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1104.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current (the issue, bill, or statement date is no earlier than ninety (90) days before the beginning of the petition circulation period) utility bill, bank statement, government check, or paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

Section 1404, NON-RESIDENT CIRCULATORS, of Chapter 14, CANDIDATE NOMINATIONS: POLITICAL PARTY PRIMARIES FOR PRESIDENTIAL PREFERENCE AND CONVENTION DELEGATES, is amended to read as follows:

1404 NON-RESIDENT CIRCULATORS

1404.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of (and office sought by) the candidate in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears under oath or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1404.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current (the issue, bill, or statement date is no earlier than ninety (90) days before the beginning of the petition circulation period) utility bill, bank statement, government check, or paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

Section 1504, NON-RESIDENT CIRCULATORS, of Chapter 15, CANDIDATE NOMINATIONS: ELECTORS OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES, is amended to read as follows:

1504 NON-RESIDENT CIRCULATORS

1504.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of (and office sought by) the candidate in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears under oath or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1504.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current (the issue, bill, or statement date is no earlier than ninety (90) days before the beginning of the petition circulation period) utility bill, bank statement, government check, or paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

Section 1600, GENERAL PROVISIONS, of Chapter 16, CANDIDATE NOMINATION: DELEGATE TO THE U.S. HOUSE OF REPRESENTATIVES, MAYOR, CHAIRMAN AND MEMBERS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, ATTORNEY GENERAL, U.S. SENATOR, U.S. REPRESENTATIVE, MEMBERS OF HE STATE BOARD OF EDUCATION, AND ADVISORY NEIGHBOORHOOD COMMISSIONER, is amended to read as follows:

1600 GENERAL PROVISIONS

1600.1 This chapter governs the process by which candidates seek nomination to the offices of Delegate to the U.S. House of Representatives, Mayor, Chairman and Members of the Council of the District of Columbia, Attorney General, U.S. Senator, U.S Representative, Members of the State Board of Education, and Advisory Neighborhood Commissioner.

1600.2 For purposes of this chapter, unless otherwise provided, the following terms shall be defined as follows:

(a) The term "authorized political party" means a political party that was organized prior to and continuously from the passage of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code §§ 1-1001.01 *et seq.*), or whose name has been approved by the Board pursuant to the rules of this chapter;

(b) The term "major party" means an authorized political party which is qualified to hold a party primary for partisan offices pursuant to D.C. Official Code § 1-1001.08(h)(2);

(c) The term "minor party" means an authorized political party which is not qualified to hold a party primary for partisan offices pursuant to D.C. Official Code § 1-1001.08(h)(2);

(d) The term "District partisan office" means the offices of Delegate to the U.S. House of Representatives, Mayor, Chairman and Members of the Council of the District of Columbia, Attorney General, U.S. Senator, and U.S Representative;

(e) The term "direct nomination" ("nominated directly") means seeking nomination during an election other than a primary pursuant to D.C. Official Code § 1-1001.08(j)(1);

(f) The term "qualified petition circulator" means an individual who is:

(i) At least 18 years of age; and

(ii) Either a resident of the District of Columbia, or a resident of another jurisdiction who has registered as a petition circulator with the Board in accordance with this chapter.

(g) The term "independent" refers to an individual who is not affiliated with any authorized political party.

1600.3 Each candidate for District partisan office shall seek nomination as a candidate who is either:

(a) Registered with a major party;

(b) Registered with a minor party; or

(c) Registered as an independent.

1600.4 Any person who seeks nomination as a candidate for District partisan office and who is registered with a major party shall be required to seek nomination during such political party's primary election. No person who is registered with a major party shall be nominated directly as a candidate for District partisan office in any general election.

1600.5 No person shall be nominated directly for District partisan office in a general election if such person's name was printed upon a ballot of any immediately preceding primary election for that office.

1600.6 Notwithstanding Subsections 1600.4 and 1600.5, a major party may nominate an individual to fill a vacancy in the position of candidate and be placed on the ballot as that party's candidate for a District partisan office in a general election pursuant to D.C. Official Code §§ 1-1001.10(b)(1) and (d)(1). The individual the major party nominates may appear on the general election ballot provided that:

(a) He or she meets the qualifications for holding the office sought; and

(b) The party submits the individual's name to the Board on or before the fifty-fourth (54^{th}) day before the general election.

1600.7 Each candidate seeking nomination of any authorized political party shall be registered with such party.

1600.8 No person who is registered with any authorized political party shall be permitted to seek direct nomination as an independent candidate.

Section 1604, NON-RESIDENT CIRCULATORS, is amended in its entirety to read as follows:

1604 NON-RESIDENT CIRCULATORS

1604.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of (and office sought by) the candidate in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears under oath or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations; and

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1604.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current (the issue, bill, or statement date is no earlier than ninety (90) days before the beginning of the petition circulation period) utility bill, bank statement, government check, or paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

Section 1704, NON-RESIDENT CIRCULATORS, of Chapter 17, CANDIDATES: MEMBERS AND OFFICIALS OF LOCAL COMMITTEES OF POLITICAL PARTIES AND NATIONAL COMMITTEE PERSONS, is amended in its entirety to read as follows:

1704 NON-RESIDENT CIRCULATORS

1704.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:

(a) Provides the name of (and office sought by) the candidate in support of which he or she will circulate the petition;

(b) Provides his or her name, residential address, telephone number, and email address;

(c) Swears under oath or affirms that he or she is at least eighteen (18) years of age;

(d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations; and

(e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

1704.2 Each non-resident petition circulator shall present proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Acceptable forms of proof of residence include:

(a) A copy of a current and valid government-issued photo identification;

(b) A copy of a current (the issue, bill, or statement date is no earlier than ninety (90) days before the beginning of the petition circulation period) utility bill, bank statement, government check, or paycheck;

(c) A copy of a government-issued document; or

(d) A copy of any other official document, including leases or residential rental agreements, occupancy statements from homeless shelters, or tuition or housing bills from colleges or universities.

DEPARTMENT OF ENERGY & ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Revision of the Sulfur Content Requirements for Fuel Oil

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 (2013 Repl.)); Sections 107(4) and 110 of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.07(4) and 8-151.10 (2013 Repl.)); Mayor's Order 2006-61, dated June 14, 2006; and Mayor's Order 2015-191, dated July 23, 2015, is adopting the following amendments to Chapters 1 (Air Quality-General Rules), 5 (Air Quality-Source Monitoring and Testing), and 8 (Air Quality-Asbestos, Sulfur, Nitrogen Oxides, and Lead) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

The primary purpose of this rulemaking is to amend 20 DCMR § 801 to reduce the permissible sulfur content of commercially available "home heating" fuel oils used in oil-burning combustion units in the District, and to specify record-keeping and reporting requirements. This rulemaking also bans the use of No. 5 and heavier fuel oils, as there are no known users of these higher-polluting fuels in the District at this time. Finally, the District is adding one definition and amending one definition in 20 DCMR § 199, and is amending 20 DCMR § 502.6 related to fuel oil testing requirements.

The proposed regulations were first published in the *D.C. Register* on June 20, 2014 at 61 DCR 006214, followed by a Notice of a Public Hearing posted in the *D.C. Register* on June 27, 2014 at 61 DCR 006384. This Notice of Final Rulemaking follows the Notice of Second Proposed Rulemaking published on July 3, 2015, at 62 DCR 9314, and includes non-substantial revisions that clarify the original intent of the rules, and, in response to comments submitted by the public, reduce the administrative burden of the rules by allowing a product transfer document that meets federal requirements (such as a bill of lading) to meet the datum requirements related to fuel sulfur content and fuel grade.

These rules were adopted as final on October 16, 2015, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 1, AIR QUALITY - GENERAL RULES, of Title 20 DCMR, ENVIRONMENT, is amended as follows:

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

Section 199 is amended to add the following definition:

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

The definition of Distillate oil in Section 199 is amended to read as follows:

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

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

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

Subsection 502.6 is amended to read as follows:

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

(a) To obtain fuel samples:

(1) ASTM D 270, "Standard Method of Sampling Petroleum and Petroleum Products;"

(2) ASTM D 4057, "Practice for Manual Sampling of Petroleum and Petroleum Products;" or

(3) ASTM D 4177, "Standard Practice for Automatic Sampling of Petroleum and Petroleum Products;"

(b) To determine the fuel oil grade: ASTM D 396, "Standard Specification for Fuel Oils;"

(c) To determine the sulfur concentration of fuels:

(1) ASTM D 129, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method);"

(2) ASTM D 1266, "Standard Test Method for Sulfur in Petroleum Products (Lamp Method);"

(3) ASTM D 1552, "Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method";

(4) ASTM D 2622, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry;"

(5) ASTM D 4294, "Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry;" or

(6) ASTM D 5453, "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence;" and

(d) Other methods developed or approved by the Department or the Administrator of the United States Environmental Protection Agency (EPA).

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

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

801 SULFUR CONTENT OF FUEL OILS

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

801.2 On and after July 1, 2016, commercial fuel oil that is purchased, sold, offered, stored, transported, or used in the District shall meet the following requirements, unless otherwise specified in § 801.5:

(a) Number two (No. 2) commercial fuel oil shall not contain sulfur in excess of five hundred parts per million (500 ppm) by weight, or five one-hundredths percent (0.05%) by weight;

(b) Number four (No. 4) commercial fuel oil shall not contain sulfur in excess of two thousand five hundred parts per million (2,500 ppm) by weight, or twenty-five one-hundredths percent (0.25%) by weight; and

(c) Number five (No. 5) and heavier fuel oils are prohibited.

801.3 On and after July 1, 2018, the purchase, sale, offer for sale, storage, transport, or use of number two (No. 2) commercial fuel oil is prohibited if it contains more than fifteen parts per million (15 ppm) or fifteen ten-thousandths percent (0.0015%) by weight of sulfur, unless otherwise specified in § 801.5.

801.4 Fuel oil that was stored in the District by the ultimate consumer prior to the applicable compliance date in §§ 801.2 or 801.3, which met the applicable maximum sulfur content at the time it was stored, may be used in the District after the applicable compliance date.

801.5 When the United States Environmental Protection Agency (EPA) temporarily suspends or increases the applicable limit or percentage by weight of sulfur content of fuel required or regulated by EPA by granting a waiver in accordance with Clean Air Act § 211(c)(4)(C) provisions, the federal waiver shall apply to corresponding limits for fuel oil in the District as set forth in §§ 801.2 or 801.3.

801.6 If a temporary increase in the applicable limit of sulfur content is granted under § 801.5:

(a) The suspension or increase in the applicable limit will be granted for the duration determined by EPA; and

(b) The sulfur content for number two (No. 2) and lighter fuel oils may not exceed five hundred parts per million (500 ppm) by weight.

801.7 Unless precluded by the Clean Air Act or the regulations thereunder, subsections 801.2 and 801.3 shall not apply to:

(a) A person who uses equipment or a process to reduce the sulfur emissions from the burning of a fuel oil, provided that the emissions may not exceed those that would result from the use of commercial fuel oil that meets the applicable limit or percentage by weight specified in §§ 801.2 or 801.3;

(b) The owner or operator of a stationary source where equipment or a process is used to reduce the sulfur emissions from the burning of a fuel oil, provided that the emissions may not exceed those that would result from the use of commercial fuel oil that meets the applicable limit or percentage by weight specified in §§ 801.2 or 801.3; and

(c) Commercial fuel oil that is transported through the District but is not intended for purchase, sale, offering, storage, or use in the District.

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

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

(a) On or after the applicable compliance dates specified in §§ 801.2 and 801.3, at the time of delivery, the transferor of commercial fuel oil shall provide to the transferee an electronic or paper record of the fuel data described as follows, which must legibly and conspicuously contain the following information:

(1) The date of delivery;

(2) The name, address, and telephone number of the transferor;

(3) The name and address of the transferee;

(4) The volume of fuel oil being sold or transferred;

(5) The fuel oil grade; and

(6) The sulfur content of the fuel oil as determined using the sampling and testing methods specified in § 801.8, which may be expressed as the maximum allowable sulfur content.

(b) All applicable records required under paragraph (a) shall be maintained in electronic or paper format for not less than three (3) years;

(c) An electronic or paper copy of the applicable records required under paragraph (a) shall be provided to the Department upon request;

(d) The ultimate consumer shall maintain the applicable records required under (a) in electronic or paper format for not less than three (3) years, unless the transfer or use of the fuel oil occurs at a private residence;

(e) A product transfer document that meets federal requirements, such as a Bill of Lading, may be used for the data in paragraphs (a)(1) through (a)(6) and shall be considered a certification that the information is accurate; and

(f) The Department may opt to require supplemental sampling and testing of the fuel oil to confirm the certifications.

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

Section 899 is amended to add the following definitions:

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

(Amendments to Section 3620 of 16 DCMR)

The Director of the Department of Health, pursuant to the authority set forth in Section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 ("the Act"), effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.05 (2012 Repl.)), Sections 4902(a) and (b) of the Department of Health Functions Clarification Act of 2001 (Act), effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(a)(5) and (b) (2012 Repl.)), and Mayor's Order 2004-46, dated March 22, 2004, hereby gives notice of the intent to amend § 3620 of Chapter 36 (Department of Health (DOH) Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking deletes duplicate provisions appearing in Section 3620 of the Notice of Final Rulemaking for Food and Food Operations Infractions published in the *D.C. Register* on December 5, 2014 at 61 DCR 012472, by retaining Subsection 3620.3 as written, deleting Subsection 3620.4, and replacing it with Subsection 3620.5; renumbering the remaining sections; and correcting minor errors.

The Department of Health did not receive any comments on the Notice of Proposed Rulemaking, which was published in the *D.C. Register* at 62 DCR 011279 on August 14, 2015, and no changes were made to this Notice of Final Rulemaking. These rules were adopted as final on October 13, 2015, and will take effect immediately upon publication of this notice in the *D.C. Register*.

Chapter 36, DEPARTMENT OF HEALTH (DOH) INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended to read as follows:

3620 FOOD AND FOOD OPERATIONS INFRACTIONS

3620.1 [RESERVED]

3620.2 Violation of the following Imminent Health Hazards of Title 25-A DCMR as determined by the Department of Health shall be a Class 2 infraction:

(a) Operating a food establishment without a valid Certificate of Occupancy in violation of § 4408.1(i) [P];

(b) Operating a food establishment without a license in violation of §§ 4300.1 [Pf] and 4408.1(k)(1) [P];

(c) Operating a food establishment with an expired license in violation of §§ 4300.2 [Pf] and 4408.1(k)(2) [P];

(d) Operating a food establishment with a suspended license in violation of §§ 4300.3 [Pf], 4718, and 4408.1(k)(3) [P];

(e) Operating a depot, commissary or service support facility that services a mobile food unit without a valid license to operate issued by the Mayor in violation of §§ 3700.7 [P], 4300.1 [Pf], and 4408.1(l)(7) [P];

(f) Operating a depot, commissary or service support facility that services a mobile food unit with a license that has been suspended for violations of this chapter and applicable provisions of this Code in violation of §§ 3700.8 [P], 4300.3 [Pf], 4718, and 4408.1(l)(8) [P];

(g) Operating a mobile food unit without a valid Health Inspection Certificate issued by the Department in violation of §§ 3700.5 [P], 3706.1(a) – (f) [P], and 4408.1(l)(5) [P];

(h) Operating as a food vendor without a license in violation of §§ 3700.1 [P], 4300.1 [Pf], and 4408.1(l)(1) ;

(i) Operating as a food vendor with an expired license in violation of §§ 3700.2 [Pf], and 4408.1(l)(2) [P];

(j) Operating as a food vendor with a suspended license in violation of §§ 3700.3 [Pf], 4718, and 4408.1(l)(3) [P];

(k) Operating a residential kitchen in a bed and breakfast without a license in violation of §§ 3800.1 [P] and 4300.1 [Pf];

(l) Operating a residential kitchen in a bed and breakfast with an expired license in violation of §§ 3800.1 [P] and 4300.1 [Pf];

(m) Operating a residential kitchen in a bed and breakfast with a suspended license in violation of §§ 3800.3 [P], 4300.3 [Pf] and 4718;

(n) Operating as a caterer without a license in violation of §§ 3900.1[P] and 4300.1 [Pf];

(o) Operating as a caterer with an expired license in violation of § 3900.2 [Pf];

(p) Operating as a caterer with a suspended license in violation of §§ 3900.3[P] and 4718;

(q) Operating a food establishment without a full-time person-in-charge who is a certified food protection manager recognized by the Department in violation of §§ 203.1[P] and 203.3 [P];

(r) Operating a food establishment without a full-time person-in-charge who is a certified food protection manager recognized by the Department and who is present at the food establishment during all hours of operation in violation of §§ 200.1[Pf], 200.2, 200.3, 203, 4408.1(k)(4)[P], or 4408.1(k)(5) [P];

(s) Operating a food establishment without a full-time person-in-charge who is a certified food protection manager recognized by the Department and who is able to demonstrate knowledge in violation of §§ 201 and 4408.1(k)(6) [P];

(t) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit without a Food Protection Manager Certificate and a DOH-Issued Certified Food Protection Manager Identification Card during all hours of operation in violation of §§ 203[P], 3700.4[P], 3800.2[P], 3900.4[P], and 4408.1(k)(4) [P];

(u) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with extensive fire damage that affects the establishment's ability to operate in compliance with this Code [P] in violation of § 4408.1(a) [P];

(v) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit with a flood or serious flood damage that affects the establishment's ability to operate in compliance with this Code [P] in violation of § 4408.1(b) [P];

(w) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with an extended interruption of electrical services that affects the establishment's ability to operate in compliance with this Code in violation of § 4408.1(c) [P];

(x) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with an interruption of water service resulting in insufficient capacity to meet water demands throughout the establishment that affects the establishment's ability to operate in compliance with this Code in violation of §§ 2305.1[P], and 4408.1(d) [P];

(y) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with a sewage backup that affects

the establishment's ability to operate in compliance with this Code in violation of § 4408.1(e)[P];

(z) Misuse of poisonous or toxic materials in a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit in violation of § 4408.1(f)[P];

(aa) Onset of an apparent foodborne illness outbreak in a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit in violation of § 4408.1(g)[P];

(bb) Operating a food establishment in a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with gross insanitary occurrence or condition or other circumstances that may endanger public health in violation of § 4408.1(h)[P];

(cc) Failing to minimize or eliminate the presence of insects, rodents, or other pests in a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit in violation of §§ 3210.1(a) through (d)[Pf], and 4408.1(j)[P];

(dd) Selling, exchanging or delivering, or having in his or her custody or possession with the intent to sell or exchange, or expose, or offer for sale or exchange, any article of food which is adulterated in violation of §§ 4408.1(k)(7)[P], 4408.1(l)(12)[P] or 4408.1(m)(14)[P], and D.C. Official Code § 48-101 (2012 Repl.);

(ee) Operating a food establishment without hot water in violation of §§ 1808.1[Pf], 1809.1(a) through (d)[Pf], 1810.1[P], 1811.1, 2002.1(a)-(b)[P], 2305.1[Pf], 2305.2[Pf], 2402.1[Pf], 4408.1(k)(8)[P], 4408.1(l)(13), or 4408.1(m)(15)[P];

(ff) Operating with incorrect hot or cold holding temperatures for potentially hazardous foods that do not comply with this Code and that cannot be corrected during the course of the inspection in violation of Chapter 10[P], and §§ 4408.1(k)(9)[P], 4408.1(l)(14)[P], or 4408.1(m)(16)[P];

(gg) Operating a food establishment, including but not limited to catered establishment, mobile food unit, depot, or commissary or service support facility that services a mobile food unit, with six (6) or more PRIORITY ITEMS or six (6) or more PRIORITY FOUNDATION ITEMS, or a

combination thereof, which cannot be corrected on site during the course of the inspection in violation of § 4408.1(k)(10)^{P};

(hh) Failing to hire a D.C. licensed Pesticide Operator/contractor in violation of §§ 3210.2^{Pf}, 4408.1(k)(11)^{P};

(ii) Failing to allow access to the Department's representatives during the food establishment's hours of operation and other reasonable times as determined by the Department in violation of § 4402.1, 4408.1(k)(12)^{P}, and 4408.1(m)(17)^{P};

(jj) Hindering, obstructing, or in any way interfering with any inspector or authorized Department personnel in the performance of his or her duty in violation of §§ 4408.1(k)(13)^{P}, 4408.1(l)(15)^{P}, 4408.1(m)(18)^{P}, and D.C. Official Code § 48-108 (2012 Repl.);

(kk) Failing to designate a non-smoking area in a restaurant with a capacity of 50 or more in violation of § 4408.1(k)(14)^{P}, and D.C. Official Code § 7-1703.01(a) or (b) (2012 Repl.); or

(ll) Using a deep fryer or other cooking equipment that requires a hood suppression system, except with written approval from the District of Columbia Fire and Emergency Medical Services Department in violation of §§ 3703.1^{P} and 4408.1(l)(9)^{P}.

3620.3 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 3 (Food Employee/Applicant Health) shall be a Class 2 infraction:

(a) Failing to notify the Department when a food employee is jaundiced or diagnosed with an illness due to a pathogen specified in § 300.4 in violation of § 301.1^{Pf};

(b) Failing to prohibit a conditional employee who exhibits or reports a symptom or reports a diagnosed illness specified in §§ 300.3 through 300.5 from becoming a food employee until the conditional employee satisfies the requirements for reinstatement associated with specific symptoms or diagnosed illnesses as specified in § 307 in violation of § 302.1^{P};

(c) Failing to prohibit a conditional employee who will work as a food employee in a food establishment that serves a highly susceptible population when the conditional employee reports a history of exposure specified in §§ 300.6 and 300.7 from becoming a food employee until the conditional employee satisfies the requirements associated with

specific symptoms or diagnosed illnesses as specified in § 307.10 in violation of § 302.2 [P];

(d) Failing to exclude a food employee as specified in § 305, and § 306.1(a) and § 306.2(a), except as provided in § 307, when the food employee exhibits or reports a symptom or reports a diagnosed illness or a history of exposure as specified in §§ 300.3 through 300.7 in violation of § 303.1(a) [P];

(e) Failing to restrict a food employee as specified in § 306, except as provided in § 307, when the food employee exhibits or reports a symptom or reports a diagnosed illness or a history of exposure as specified in §§ 300.3 through 300.7 in violation of § 303.1(b)[P];

(f) Failing to exclude food employee from a food establishment when the food employee is symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, *Shigella* spp., or Enterohemorragic or Shiga Toxin Producing Escherichia *colia* in violation of § 305.1[P];

(g) Failing to exclude a food employee who is jaundiced from the food establishment when the onset of jaundice occurred within seven (7) calendar days in violation of § 305.2(a)[P];

(h) Failing to exclude a food employee who is diagnosed with an infection from hepatitis A virus within fourteen (14) calendar days after the onset of any illness symptoms, or within seven (7) calendar days after the onset of jaundice in violation of § 305.2(b)[P];

(i) Failing to exclude a food employee who is diagnosed with an infection from hepatitis A virus without developing symptoms in violation of § 305.2(c)[P];

(j) Failing to exclude a food employee who is diagnosed with an infection from *Salmonella Typhi*, or reports a previous infection with *Salmonella Typhi* within the past three (3) months without having received antibiotic therapy in violation of § 305.3[P];

(k) Failing to exclude a food employee, who is diagnosed with an infection from Norovirus, *Shigella spp*., or Enterohemorrhagic or Shiga Toxin-Producing Escherichia *coli*, and is asymptomatic, from a food establishment that serves a highly susceptible population in violation of § 306.1(a) [P];

(l) Failing to restrict a food employee, who is diagnosed with an infection from Norovirus, *Shigella spp*., or Enterohemorrhagic or Shiga Toxin-Producing Escherichia *coli*, and is asymptomatic, from a food

establishment that does not serve a highly susceptible population in violation of § 306.1(b) [P];

(m) Failing to exclude a food employee who is ill with symptoms of acute onset of sore throat with fever from a food establishment that serves a highly susceptible population in violation of § 306.2(a) [P];

(n) Failing to restrict a food employee who is ill with symptoms of acute onset of sore throat with fever from a food establishment that does not serve a highly susceptible population in violation of § 306.2(b) [P];

(o) Failing to restrict a food employee who is infected with a skin lesion containing pus, such as a boil or infected wound that is open or draining and not properly covered as specifying in § 300.3(e)P in violation of § 306.3 [P]; or

(p) Failing to restrict a food employee who has been exposed to a foodborne pathogen as specified in §§ 300.6 and 300.7 from a food establishment that serves a highly susceptible population in violation of § 306.4 [P].

3620.4 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 5 (Hygienic Practices of Food Employees); Chapter 6 (Characteristics of Food); Chapter 7 (Sources, Specifications, and Original Containers and Records for Food); Chapter 8 (Protection of Foods from Contamination after Receiving); Chapter 9 (Destruction of Organisms of Public Health Concern); Chapter 10 (Limitation of Growth of Organisms of Public Health Concern); Chapter 11 (Food Identity, Presentation, and On-Premises Labeling); Chapter 12 (Contamination or Adulterated Food); and Chapter 13 (Special Requirements for Food for Highly Susceptible Populations) shall be a Class 3 infraction:

(a) Failing to prohibit an employee from eating, drinking, chewing gum or using any form of tobacco in areas where the contamination of exposed food, clean equipment, utensils, linens, unwrapped single-service and single-use articles, or other items needing protection can result, except as in designated areas, in violation of § 500.1;

(b) Failing to prohibit food employees who are experiencing persistent sneezing, coughing, or runny nose that causes discharges from the eyes, nose, or mouth from working with exposed food, clean equipment, utensils, linens, or unwrapped single-service or single-use articles in violation of § 501.1;

(c) Failing to prohibit food employees from caring for, or handling animals that are allowed on the premises of a food establishment pursuant to

§§ 3214.2(b) through (e), except as specified in § 503.2, in violation of § 503.1;

(d) Using, offering or selling prohibited food from an unapproved source in violation of § 600, or §§ 700 through 706;

(e) Receiving potentially hazardous food that is not at the required temperature in violation of § 707.1[P] through § 707.5 [Pf];

(f) Receiving food that contains unapproved additives or additives that exceed amounts specified in 21 C.F.R. §§ 170 through 180; 21 C.F.R. §§ 181 through 186; and 9 C.F.R. Subpart C Section 424.21(b) in violation of § 708.1[P];

(g) Receiving shell eggs that are not clean and sound, and that exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in C.F.R. United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200, *et seq.*, administered by the Agricultural Marketing Service of the USDA in violation of § 709.1;

(h) Receiving egg and milk products that are not pasteurized as specified by the USDA or the C.F.R. in violation of §§ 710.1[P] through 710.4 [P];

(i) Receiving food packages that are not in good condition so that the food is exposed to adulteration or potential contaminants in violation of § 711.1[Pf];

(j) Receiving ice for use as a food or a cooling medium that is not made from drinking water in violation of § 712.1[P];

(k) Receiving shellstock in containers that do not bear legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the Food Code in violation of §§ 714.1[Pf] through 714.3 [Pf];

(l) Failing to ensure that shellstock tags remain attached to the container in which the shellstock was received until the container is empty, except as specified in § 717.4, in violation of § 717.1[Pf];

(m) Failing to retain shellstock tags or labels for ninety (90) calendar days from the date the container is emptied using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served as specified in § 717.2 in violation of §§ 717.3[Pf] and 717.4(a) [Pf];

(n) Failing to ensure shellstock removed from one (1) container are not commingled with shellstock from another container with certification

numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer in violation of § 717.4(b) [Pf];

(o) Failing to prominently display easily understood pull dates on the containers of all pasteurized fluid milk, fresh meat, poultry, fish, bread products, eggs, butter, cheese, cold meat cuts, mildly processed pasteurized products, and potentially hazardous foods sold in food-retail establishments which are pre-wrapped foods and not intended for consumption on premises in violation of § 718.1;

(p) Failing to retain the original pull date on food that is rewrapped and prominently display the word "REWRAPPED" on the new package in violation of § 718.2;

(q) Failing to obtain pre-packaged juice from a processor with a HACCP system as specified in 21 C.F.R. Part 120 Hazard Analysis and Critical Control (HACCP) Systems in violation of § 719.1(a) [Pf];

(r) Failing to obtain pre-packaged juice that has been pasteurized or otherwise treated to attain a five (5)-log reduction of the most resistant microorganism of public health significance as specified in 21 C.F.R. Part 120.24 Process Controls in violation of § 719.1(b)[P];

(s) Failing to prevent food employees from contaminating ready-to-eat food with his or her bare hands in violation of §§ 800.1 through 800.4;

(t) Failing to prevent food employees from contaminating food by using a utensil more than once to taste food that is to be sold or served in violation of § 801.1[P];

(u) Failing to protect food from cross contamination, except as provided for by § 802.2, in violation of §§ 802.1(a) through (h);

(v) Failing to substitute pasteurized eggs or egg products for raw shell eggs in the preparation of foods as specified in violation of §§ 804.1(a) or (b)[P];

(w) Failing to protect food from contamination that may result from the addition of unsafe or unapproved food or color additives, or unsafe or unapproved levels of approved food and color additives as specified in § 708 in violation of §§ 805.1(a) and (b)[P];

(x) Applying sulfiting agents to fresh fruit and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B_1 in violation of § 805.2(a)[P];

(y) Serving or selling food specified in § 805.2(a) that is treated with sulfiting agents before receipt by the food establishment, except for grapes, which are not included in this subsection, in violation of § 805.2(b)[P];

(z) Failing to prevent contamination of food through contact with equipment and utensils that are not cleaned as specified in Chapter 19 and sanitized as specified in Chapter 20 of the Food Code, or are not single-serve and single-use articles in violation of §§ 809.1(a) or (b)[P];

(aa) Failing to protect food from contamination by consumers in violation of §§ 822.1 through 822.3 or §§ 823.1 through 823.2;

(bb) Failing to cook raw animal foods such as eggs, fish, meat, poultry, and foods containing raw animal foods at required temperatures and holding times in violation of §§ 900.1[P] through 900.4;

(cc) Failing to properly cook raw animal foods in a microwave as specified in violation of §§ 901.1(a) through (d);

(dd) Failing to freeze throughout raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish at required temperatures and time controls, except as specified in § 903.2, in violation of § 903.1 [P];

(ee) Failing to heat ready-to-eat foods or to reheat potentially hazardous foods for hot holding at required temperatures and time controls, except as provided, in violation of §§ 906.1[P] through 906.5;

(ff) Failing to comply with required temperatures and time controls for cooling methods for hot and cold holding and for food display in violation of §§ 1003 through 1006;

(gg) Failing to clearly date mark at the time of preparation ready-to-eat, potentially hazardous foods held refrigerated at required temperatures and time controls for more than twenty-four (24) hours in violation of §§ 1007.1[Pf] through 1007.6;

(hh) Failing to discard ready-to-eat, potentially hazardous foods, prepared and held refrigerated at required temperatures and time controls for more than twenty-four (24) hours, which was not consumed within the time specified in § 1007.1 in violation of § 1008.2[P];

(ii) Failing to comply with requirements when using time as a public health control in violation of § 1009;

(jj) Failing to obtain a variance before smoking food as a flavor enhancement, curing food, brewing alcoholic beverages, using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food so that it is not potentially hazardous in violation of § 1010.1;

(kk) Failing to obtain a variance before packaging food using a reduced oxygen method of packaging except as specified in Section 1011 where a barrier to *Clostridium botulinum* in addition to refrigeration exists, before custom processing animals that are for personal use as food and not for sale or service in a food establishment, or before preparing food by another method that is determined by the Department to require a variance in violation of § 1010.1;

(ll) Failing to control the growth and toxin formation of *Clostridium botulinum* where a food establishment packages foods using a reduced oxygen method of packaging and *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form in violation of § 1011.1^{P};

(mm) Failing to have a HACCP Plan and maintain specific information as required where a food establishment packages foods using a reduced oxygen packaging methods and *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form in violation of §§ 1011.2^{Pf} and $4205.1(d)^{Pf}$;

(nn) Failing to provide written notification to consumers of the potential health risks associated with eating animal food that is raw, undercooked, or not otherwise processed to eliminate pathogens where the food establishment offers such foods in ready-to-eat form or as a raw ingredient in another ready-to-eat food, (except as specified in §§ 900.3, 900.4 and 1300.1), in violation of § 1105.1;

(nn) Failing to discard or recondition food that is unsafe, adulterated, or not honestly presented as specified in § 600 in violation of § 1200.1;

(oo) Failing to discard food that is not from an approved source as specified in §§ 700 through 706, in violation of § 1200.2;

(pp) Failing to discard ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified in § 301 in violation of § 1200.3;

(qq) Failing to discard food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily

discharges, such as nasal or oral discharges, or other means in violation of § 1200.4; or

(rr) Failing to comply with specialized requirements for serving, re-serving or offering for sale food to a highly susceptible population in violation of § 1300.

3620.5 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 14 (Materials Used for Construction and Repair of Equipment, Utensils and Linens); Chapter 15 (Design and Construction of Equipment, Utensils, and Linens); Chapter 18 (Maintenance and Operation of Equipment and Utensils); Chapter 19 (Cleaning of Equipment and Utensils); and Chapter 20 (Sanitization of Equipment and Utensils); shall be a Class 3 infraction:

(a) Failing to use utensils or food-contact surfaces of equipment that are constructed of materials in violation of §§ 1400.1(a) through (e) [P];

(b) Using ceramic, china and crystal utensils, and decorative utensils, such as hand painted ceramic or china that are in contact with food that are not lead-free or contain excessive levels of lead in violation of § 1402.1 [P];

(c) Using pewter alloys containing lead in excess of five hundredth of a percent (0.05%) as food contact surfaces in violation of § 1402.2 [P];

(d) Using copper and copper alloy such as brass in contact with acidic food that has a pH below six (6) such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator, except as specified in § 1403.2, in violation of § 1403.1 [P];

(e) Using galvanized metal for utensils or food-contact surfaces of equipment that are used in contact with acidic food that has a pH below six (6) such as vinegar, fruit juice or wine in violation of § 1404.1 [P];

(f) Using single-service and single-use articles made of materials in violation of § 1409.1 [P];

(g) Using food temperature measuring devices with sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used, in violation of § 1501.1 [P];

(h) Failing to use multi-use food-contact surfaces that are smooth; free of breaks, open seams, cracks, chips, pits, and similar imperfections; free of sharp internal angles, corners, and crevices; and that have smooth welds and joints in violation of § 1502.1 [Pf];

(i) Failing to use multi-use food-contact surfaces that are accessible for cleaning and inspection in violation of §§ 1502.2(a) through (c) [Pf];

(j) Using a machine that vends potentially hazardous food that is not equipped with an automatic control that prevents the machine from vending food if there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified in Chapters 6 through 13, and until the machine is serviced and restocked with food that has been maintained at temperatures specified in Chapters 6 through 13 in violation of § 1523.1 [P];

(k) Failing to maintain hot water temperature at 77°C (171°F) or above when immersion of equipment in hot water is used for sanitizing equipment in a manual operation in violation of § 1810.1 [P];

(l) Failing to use a chemical sanitizer in a sanitizing solution for a manual or mechanical operation at contact times specified in § 2002.2 that meets criteria specified in § 3404 Sanitizer, Criteria in accordance with the EPA-registered label use instructions, in violation of § 1813.1[P];

(m) Failing to use a chlorine solution that has a minimum temperature based on the concentration and pH of the solutions in violation of § 1813.2 [P];

(n) Failing to use an iodine solution in violation of §§ 1813.3(a) through (c) [P];

(o) Failing to use a quaternary ammonium compound solution in violation of §§ 1813.4(a) through (c) [P];

(p) Failing to use a test kit or other device to accurately determine the concentration of a sanitizer solution in violation of § 1815.1[Pf];

(q) Failing to provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers in a food establishment that operates without facilities specified in Chapters 19 and 20 for cleaning and sanitizing kitchenware and tableware in violation of § 1817.1[P];

(r) Re-using single-service and single-use articles in violation of § 1818.1;

(s) Re-using serving containers for mollusk and crustacean shells in violation of § 1819.1;

(t) Failing to keep equipment food-contact surfaces and utensils clean to sight and touch in violation of § 1900.1[Pf];

(u) Failing to keep food-contact surfaces of cooking equipment and pans free of encrusted grease deposits and other soil accumulations in violation of § 1900.2;

(v) Failing to keep nonfood-contact surfaces of equipment free of an accumulation of dust, dirt, food residue, and other debris in violation of § 1900.3;

(w) Failing to clean equipment food-contact surfaces and utensils as specified in violation of §§ 1901.1 through 1901.5 [P];

(x) Failing to return empty containers to a regulated food processing plant for cleaning and refilling with food in violation of § 1910.1; or

(y) Failing to sanitize equipment, food-contact surfaces, and utensils before use after cleaning at the required temperature and hold time, frequency, and methods in violation of §§ 2001.1 through 2002[P].

3620.6 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 23 (Water); Chapter 24 (Plumbing System); Chapter 25 (Mobile Water Tank and Mobile Food Establishment Water Tank); Chapter 26 (Sewage, Other Liquid Waste, and Rainwater); Chapter 27 (Refuse, Recyclables, and Returnables); Chapter 29 (Design, Construction, and Installation of Physical Facilities); Chapter 30 (Numbers and Capacities of Physical Facilities); and Chapter 31 (Location and Placement of Physical Facilities) shall be a Class 3 infraction:

(a) Use drinking water from a system other than the District of Columbia public water system or other approved sources in violation of §§ 2300.1, 2302.1, or 2304.1 [P];

(b) Failing to flush and disinfect drinking water system before placing it in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system in violation of § 2301.1 [P];

(c) Failing to use nondrinking water for non-culinary purposes only in violation of § 2304.2 [P];

(d) Failing to use a water source and system that is of sufficient capacity to meet peak water demands of the food establishment in violation of § 2305.1 [Pf];

(e) Failing to use a hot water generation and distribution systems that are of sufficient capacity to meet peak hot water demands throughout the food establishment in violation of § 2305.2 [Pf];

(f) Failing to provide hot or cold water under pressure to all fixtures, equipment, and nonfood equipment that are required to use hot or cold water, (except as specified in § 2308), in violation of § 2306.1 [Pf];

(g) Receiving water from a source that is not from an approved public water main, or is not from a water source constructed, maintained, and operated according to 40 C.F.R. § 141 – National Primary Drinking Water Regulations and District of Columbia drinking water quality standards in violation of §§ 2307.1(a)- (b) [Pf];

(h) Failing to provide water meeting the requirements specified in §§ 2300 through 2306 to a mobile facility, temporary food establishment without a permanent water supply, or a food establishment with a temporary interruption of its water supply in violation of §§ 2308.1(a) through (e) [Pf];

(i) Conveying water through a plumbing system and hoses that are not constructed and repaired with approved materials according to the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of §§ 2400.1, or 2401.1 [P];

(j) Using a water filter that is not made of safe materials in violation of § 2400.2 [P];

(k) Failing to use an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment that is at least twice the diameter of the water supply inlet and that is not less than twenty-five millimeters (25mm) or one inch (1 in.) in violation of § 2403.1 [P];

(l) Failing to install a backflow or backsiphonage prevention device on a water supply system that meets American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device in violation of § 2404.1[P];

(m) Failing to provide hand washing sinks for employees' use as specified in § 2411, in accordance with the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2406.1 [Pf];

(n) Failing to provide toilets for employees' use and convenience in accordance with the D.C. Plumbing Code Supplement of 2013,

incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of §§ 2407.1[P] ;

(o) Failing to install a plumbing system that precludes backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment in violation of § 2409.1[P];

(p) Failing to locate a handwashing sink to allow convenient use by employees in food preparation, food dispensing, and warewashing areas and in, or immediately adjacent to, toilet rooms in violation of § 2411.1 [Pf];

(q) Failing to provide areas in which fresh meat is handled with its own handwashing sink located not more than twenty feet (20 ft.) or less from where the meat is handled in violation of § 2411.5 [P];

(r) Failing to maintain a handwashing sink so that it is accessible at all times for employees' use in violation of § 2414.1 [Pf];

(s) Using a handwashing sink for purposes other than for handwashing in violation of § 2414.2 [Pf];

(t) Failing to use an automatic handwashing facility in accordance with the manufacturer's instructions in violation of § 2414.3 [Pf];

(u) Operating with a prohibited cross-connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality in violation of § 2415.1 [P];

(v) Failing to durably identify piping of nondrinking water system so that it is distinguishable from piping that carries drinking water in violation of § 2415.2 [Pf];

(w) Failing to schedule inspection and service of water treatment device or backflow preventer in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and failing to maintain records demonstrating inspection and service by person in charge in violation of § 2416.1 [Pf];

(x) Failing to clean and maintain a reservoir that is used to supply water to a device such as a produce fogger in accordance with manufacturer's specifications or in accordance with the procedures specified in § 2712.2, whichever is more stringent in violation of §§ 2417.1 through 2417.2 [P];

(y) Failing to repair and maintain a plumbing system in good repair in accordance with the D.C. Plumbing Code Supplement of 2013,

incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2418.1;

(z) Failing to install a filter that does not pass oil or oil vapors in the air supply line between the compressor and drinking water system when compressed air is used to pressurize a water tank system in violation of § 2507.1 [P];

(aa) Failing to flush and sanitize a water tank, pump, and hoses before placing items in service after construction, repair, modification, and periods of nonuse in violation of § 2510.1 [P];

(bb) Using a water tank, pump, and hoses used for conveying drinking water for other purposes, except as provided in § 2513.2, in violation of § 2513.1 [P];

(cc) Using a direct connection between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed, except as specified in §§ 2602.2 through 2602.4, in violation of § 2602 [P];

(dd) Failing to convey sewage to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated in accordance with the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2604.1 [P];

(ee) Failing to remove sewage and other liquid waste, including grease collection, from an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created in violation of §§ 2605.1 or 2605.2 [Pf];

(ff) Failing to maintain copies of the food establishment's professional service contract in violation of § 2605.1 (a) through (c) [Pf];

(gg) Failing to dispose of sewage through an approved facility that is a public sewage treatment plant or an individual sewage disposal system that is sized, constructed, maintained, and operated in accordance with the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2607.1 [P];

(hh) Failing to have and use one (1) or more food waste grinders that are conveniently located near an activity or activities which generate food wastes in violation of § 2607.2 [P];

(ii) Operating commercial food waste grinders that are not connected to a drain that is a minimum of two inches (2 in.) fifty-one millimeters (51 mm) in diameter in violation of § 2607.3 [P];

(jj) Operating commercial food waste grinders that are not connected and trapped separately from any other fixture or sink compartments, and that is not provided with a supply of cold water in accordance the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR), in violation of § 2607.3 [P];

(kk) Failing to maintain copies of the food establishment's professional service contract in violation of §§ 2717.2(a) through (c) [Pf];

(ll) Operating a food establishment with toilet rooms that open directly into a room used for the preparation of food for service to the public in violation of § 2911.1 [Pf];

(mm) Operating a food establishment with toilet rooms that are not provided with tight-fitting and self-closing doors in accordance the D.C. Plumbing Code Supplement of 2013, incorporating the International Plumbing Code of 2012 as amended by the D.C. Plumbing Code Supplement of 2013 (Subtitle F of 12 DCMR) (excepted as specified in § 2911.2), in violation of § 2911.1 [Pf];

(nn) Failing to provide each handwashing sink or group of two (2) adjacent sinks with a supply of hand cleaning liquid, powder, or bar soap in violation of § 3001.1 [Pf];

(oo) Failing to provide each handwashing sink or group of adjacent sinks with required items in violation of §§ 3002.1(a) through (d) [Pf];

(pp) Failing to provide a supply of toilet tissue to each toilet in violation of § 3007.1 [Pf];

(qq) Failing to maintain restrooms consisting of a toilet room or toilet rooms, proper and sufficient water closets, and sinks that are conveniently located and readily accessible to all employees as specified in § 3101.3 in violation § 3101.1;

(rr) Failing to display gender-neutral signs on the door of all single-occupancy toilet rooms that read "Restroom," or that have a universally recognized pictorial indicating that persons of any gender may use each restroom, in accordance with 4 DCMR § 802.2 in violation of § 3101.2; or

(ss) Failing to segregate and hold products held by the licensee for credit, redemption, or return to the distributor, including damaged, spoiled, or recalled products in designated areas that are separated from food, equipment, utensils, linen, and single-service and single-use articles in violation of § 3103.1 [Pf].

3620.7 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 32 (Maintenance and Operation of Physical Facilities), Chapter 33 (Certifications, Labeling and Identification of Poisonous or Toxic Materials); Chapter 34 (Operational Supplies and Applications of Poisonous or Toxic Materials; and Chapter 35 (Stock and Retail Sale of Poisonous or Toxic Materials) shall be a Class 3 infraction:

(a) Using food preparation sinks, hand washing lavatories, and warewashing equipment to clean maintenance tools, to prepare or hold maintenance materials, or disposal of mop water and similar liquid wastes in violation of § 3204.1 [Pf];

(b) Failing to maintain copies of the food establishment's professional service contract and service schedule, which includes the documents specified in §§ 3210.1(a) through (c), in violation of § 3210.2 [Pf];

(c) Failing to maintain the premises free of insects, rodents, and pests and to minimize the presence of insects, rodents, and pests on the premises in violation of § 3210.1[Pf];

(d) Failing to maintain the premises of a food establishment free of unnecessary items and litter in violation of § 3213.1;

(e) Failing to prohibit live animals on the premises, except as specified in §§ 3214.2 and 3214.3, in violation of § 3214.1 [Pf];

(f) Failing to store live or dead fish bait so that contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot occur in violation of § 3214.3;

(g) Using a pest extermination service that does not possess a current certification as a District Licensed Pesticide Operator issued by the District's Department of the Environment, Toxic Substances Division, Pesticide Program in violation of § 3300.1 [Pf];

(h) Allowing the application of restricted-use pesticides by an individual who is not a licensed certified commercial applicator or a registered employee working under the direct supervision of a licensed commercial or public applicator in violation of § 3300.2 [Pf];

(i) Using containers of poisonous or toxic materials and personal care items that do not bear a legible manufacturer's label in violation of § 3301.1 [Pf];

(j) Failing to clearly and individually identify working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies with the common name of the material in violation of § 3302.1 [Pf];

(k) Failing to properly store poisonous or toxic materials so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles in violation of §§ 3400.1(a) and (b) [P];

(l) Allowing poisonous or toxic materials that are not required for the operation and maintenance of the food establishment on the premises of a food establishment, except as specified in § 3401.2, in violation of § 3401.1 [Pf];

(m) Using poisonous or toxic materials in violation of D.C. pesticide laws in violation of §§ 3402.1 and 3402.2 [P];

(n) Using a container previously used to store poisonous or toxic materials to store, transport, or dispense food in violation of § 3403.1 [P];

(o) Applying chemical sanitizers and other chemical antimicrobials to food-contact surfaces that do not meet the requirements of 40 C.F.R. § 180.940 – Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions), in violation of § 3404.1 [P];

(p) Using chemicals to wash peel raw, whole fruits and vegetables that do not meet the requirements of 21 C.F.R. § 173.315 – Chemicals used in washing or to assist in the peeling of fruits and vegetables, in violation of § 3405.1 [P];

(q) Using ozone that does not meet the requirements of 21 C.F.R. § 173.368 – Ozone, as an antimicrobial agent in a food establishment for the treatment, storage, and processing of fruits and vegetables that do not meet the requirements of 21 C.F.R. § 173.368 – Ozone, in violation of § 3405.2;

(r) Using chemicals as boiler water additives that do not meet the requirements of 21 C.F.R. § 173.310 – Boiler water additives, in violation of § 3406.1 [P];

(s) Using drying agents in conjunction with sanitization that contain components not approved in violation of §§ 3407.1(a) through (e), and § 3407.2 [P];

(t) Using lubricants that do not meet the requirements specified in 21 C.F.R. § 178.3570 – Lubricants with incident food contact, in violation of § 3408.1 [P];

(u) Using restricted- use pesticides that do not meet the requirements specified in 40 C.F.R. part 152 subpart I – Classification of Pesticides, in violation of § 3409.1 [P];

(v) Using rodent bait that is not contained in a covered, tamper-resistant bait station in violation of § 3410.1 [P];

(w) Using tracking powder pesticide in a food establishment, except as specified in § 3411.2, in violation of § 3411.1 [P];

(x) Allowing medicines not necessary for the health of the employees in a food establishment, except for medicines that are stored or displayed for retail sale, in violation of § 3412.1 [Pf];

(y) Failing to properly label, as specified in § 3301, and locate medicines that are for employees' use in a food establishment to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles in violation of § 3412.2 [P];

(z) Failing to label, as specified in § 3301, first aid supplies that are for employees' use in a food establishment in violation of § 3414.1(a) [Pf];

(aa) Failing to store first aid supplies that are for employees' use in a food establishment in a kit or container that is located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles in violation of § 3414.1(b) [P];

(bb) Failing to meet the requirements for medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator in violation of § 3413.1 [P];

(cc) Storing and displaying poisonous or toxic materials for retail sale without physically separating or partitioning by a wall or structure to prevent the contamination of food, equipment, utensils, and single-service and single-articles in violation § 3500.1(a) [P]; or

(dd) Locating poisonous or toxic materials above food, equipment, utensils, linens, and single-service and single-use articles in violation of § 3500.1(b) [P].

3620.8 Violation of the following Priority, Priority Foundation, or Core Public Health Items in Chapter 37 (Mobile Structures & Temporary Stands); Chapter 38 (Residential Kitchens in Bed And Breakfast Operations); Chapter 39 (Caterers); Chapter 40 (Catered Establishments); Chapter 41 (Code Applicability); and Chapter 42 (Plan Submission and Approval) shall be a Class 3 infraction:

(a) Possessing, preparing or vending any food requiring further processing from its original state aboard a mobile food unit without meeting the requirements of §§ 3700.4 and 3701 in violation of § 3700.6 [P];

(b) Possessing, preparing, selling, offering to sale, or giving away any food requiring further processing from its original state without the submission of a HACCP Plan, Parasite Destruction Letter, or Risk Control Plan depending on the food and/or process as requested by the Department in violation of § 3701.1 [P];

(c) Failing to submit to the Department an original and one (1) copy of a "Hazard Analysis Work Sheet" and a "HACCP Plan" on forms provided by the Department in accordance with Chapter 42 in violation of §§ 3701.2, or 3701.3 [P];

(d) Failing to submit HACCP Plans for review every six (6) months in conjunction with the issuance of a vendor's Health Inspection Certificate in violation of § 3701.4 [P];

(e) Implementing changes to a HACCP Plan's operating procedures, menu, ingredients or other products without the Department's approval in violation of § 3701.5 [P];

(f) Using propane in violation of § 3702.1(a)-(d) [P];

(g) Operating a mobile food unit without a current motor vehicle registration that is conspicuously displayed on the mobile food unit in violation of §§ 3704.1 and 3713.1(h) [P];

(h) Failing to prepare and protect food in a depot, commissary, or service support facility in accordance with the Food Code Regulations in violation of § 3708.1 [P];

(i) Failing to obtain food from approved sources in sound condition and safe for human consumption in violation of § 3708.2 [P];

(j) Failing to maintain food temperature requirements in violation of §§ 3708.5(a)-(b), 3708.6 [P];

(k) Failing to comply with employee health and hygiene requirements in Chapter 3 and 4 in violation of § 3709.1 [P];

(l) Failing to construct and maintain food service preparation and storage areas to prevent the entry of pests and other vermin in accordance with §§ 3210, 3211, and 3213 in violation of § 3711.1 [P];

(m) Failing to comply with § 700 and all applicable provisions of the Food Code Regulations in violation of § 3712.1(a)-(x) [P];

(n) Failing to conspicuously display on the vending vehicle, vending cart or vending stand, all required documents in violation of §§ 3713.1(a)-(h) [P];

(o) Failing to comply with all applicable provisions of the Food Code Regulations in violation of §§ 3714.2(a)-(d) [P];

(p) Failing to operate residential kitchens in bed & breakfast operations in compliance with § 700 and all applicable provisions of the Food Code Regulations in violation of §§ 3806.1(a)-(x) [P];

(q) Failing to use a currently licensed and inspected food establishment, which complies with the Food Code Regulations, as the caterer's base of operations in violation of § 3901.1 [P];

(r) Failing to comply with § 700 and all applicable provisions of the Food Code Regulations in violation of § 3903.1 [P];

(s) Failing to maintain a catered establishment's contract with a licensed caterer or licensed food establishment and other required documents on the premises in violation of §§ 4000.2(a)-(e) and (f)(1)-(8) [P];

(t) Failing to provide an approved refrigerator for the storage of potentially hazardous food (time/ temperature control for safety food) in violation of § 4001.1 [P];

(u) Failing to remove potentially hazardous food (time/temperature control for safety food) from transport container and store in an approved refrigerator until served in violation of § 4001.1 [P];

(v) Maintaining potentially hazardous food (time/temperature control for safety food) temporarily in transport containers that do not maintain proper temperatures in accordance with Chapters 7 through 13 in violation of § 4001.1 [P];

(w) Failure of catered establishment to obtain a "Food Establishment License" in violation of § 4000.1(a) [P];

(x) Failure of catered establishment to maintain a current copy of its contract on the premises in violation of §§ 4000.2(a) through (f) [P];

(y) Failing to serve milk in original individual commercially filled containers received from the distributor, or from an approved bulk milk dispenser, or poured from a commercially filled container of not more than one gallon (1 gal.) capacity in violation of § 4001.2 [P];

(z) Failing to immediately refrigerate milk in violation of § 4001.2 [P];

(aa) Operating a catered establishment which receives food that is prepared elsewhere and transported hot or cold in individually portioned and protected servings without meeting the requirements set forth in §§ 4002.1(a)-(g) in violation of § 4002.1 [P];

(bb) Operating a catered establishment which receives and distributes hot or cold food that is prepared elsewhere and transported ready-to-serve in bulk containers without meeting the requirements set forth in §§ 4003.1(a)-(j) in violation of §§ 2305 and 4003.1 [P];

(cc) Operating a catered establishment which reheats food that is prepared elsewhere and transported in bulk containers without meeting the requirements set forth in §§ 4003.1(a)-(k) in violation of 4004.1 [P];

(dd) Failing to comply with a variance granted by the Department in violation of § 4104.2(a) [P]; or

(ee) Failing to maintain and provide to the Department upon request records in violation of §§ 4101, 4104.2(b), 4201.1, or 4202 [P].

3620.9 Violations of Title 25-A DCMR that are not cited elsewhere in Section 3620 shall be Class 4 infractions.

D.C. DEPARTMENT OF HUMAN RESOURCES

NOTICE OF FINAL RULEMAKING

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-609.01, 1-609.02(c), and 1-609.03(a) *et seq*. (2014 Repl.)), hereby gives notice of amendments to Chapter 9 (Excepted Service) of Title 6 (Personnel), Subtitle B (Government Personnel) of the District of Columbia Municipal Regulations (DCMR).

These rules would: (1) amend § 902 (Excepted Service Qualifications and Other Appointment Requirements) to require that all persons appointed to the Excepted Service be subject to a credit check and criminal background check; (2) amend § 911 (Pre-Employment Travel, Relocation, and Temporary Housing Allowance) to limit the amount of pre-employment travel expenses, relocation expenses, and temporary housing allowance that can be provided to an Excepted Service employee in accordance with the section; and (3) add a new § 921 (Appointment to Inspector, Commander and Assistant Chief of Police in the Excepted Service) to the chapter. Additionally, further amendments are made to §§ 905, 908, and 999. In addition, as amendments to provisions in § 915 (Certificate of Good Standing Filing Requirement), require Council approval, these provisions are not being amended by way of this notice.

No comments were received and no changes were made to the Notice of Proposed Rulemaking published on August 7, 2015 at 62 DCR 010691. These rules were adopted as final on November 2, 2015 and will become effective upon publication of this notice in the *D.C. Register*.

D.C. PERSONNEL REGULATIONS

Chapter 9, EXCEPTED SERVICE, of Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended as follows:

900 APPLICABILITY

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

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

901 EXCEPTED SERVICE CLASSIFICATION SYSTEM AND STANDARDS

901.1 Notwithstanding the provisions in § 903 of this chapter on the establishment of the new Excepted Service Pay Schedule, the classification system or systems in effect on December 31, 1979 shall remain in effect until the adoption of a new

classification system or systems pursuant to § 1102 of the CMPA (D.C. Official Code § 1-611.02 (2012 Repl.)), and shall be the system utilized to classify Excepted Service positions.

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

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

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

902 EXCEPTED SERVICE QUALIFICATIONS AND OTHER APPOINTMENT REQUIREMENTS

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

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

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

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

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

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

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

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

performance, and replaced the salary schedule structure for Excepted Service positions consisting of pay levels and ten (10) steps.

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

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

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

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

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

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

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

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

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

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

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

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

903.7 Except as otherwise determined by the Mayor (or designee), or personnel authority, an annual salary increase for an employee paid under the ES Schedule shall become effective on the last full biweekly pay period in the calendar year (pay period number twenty-six (26)), or pay period number twenty-seven (27), as may occur from time to time).

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

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

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

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

903.10 An annual salary increase may consist of:

(a) A market adjustment;

(b) A merit-pay increase based on performance as specified in § 903.7(a); or

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

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

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

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

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

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

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

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

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

904 EXCEPTED SERVICE POSITIONS

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

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

(1) The City Administrator;

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

(3) The Auditor of the District of Columbia;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

905 METHOD OF MAKING EXCEPTED SERVICE APPOINTMENTS

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

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

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

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

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

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

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

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

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

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

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

906 EXCEPTED SERVICE APPOINTMENTS OF CAREER SERVICE OR EDUCATIONAL SERVICE EMPLOYEES

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

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

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

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

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

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

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

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

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

907 EMPLOYEE RIGHTS

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

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

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

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

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

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

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

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

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

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

909 RESIDENCY AND DOMICILE REQUIREMENTS

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

910 SPECIAL CONSIDERATION FOR PLACEMENT AND ADVANCEMENT

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

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

(b) Persons appointed as Capital City Fellows.

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

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

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

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

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

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

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

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

911.7 If an individual violates an agreement under § 911.5, the money paid by the District government for expenses will become a debt due to the District government and will be recovered by set-off against accrued pay or any other

amount due the individual, in accordance with Chapter 29 of this subtitle, and by other lawful collection actions.

912 PERFORMANCE INCENTIVES AND INCENTIVE AWARDS FOR EXCEPTED SERVICE EMPLOYEES

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

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

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

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

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

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

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

913 SEVERANCE PAY

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

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

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

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

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

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

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

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

914 PERFORMANCE EVALUATION SYSTEM FOR EXCEPTED SERVICE EMPLOYEES

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

Sections 916 – 919 are RESERVED.

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

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

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

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

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

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

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

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

(c) A candidate hired after December 31, 1980 will be ineligible for promotion to the rank of Battalion Fire Chief if his or her record includes a

suspension action for a period of fourteen (14) days or more within the three (3) years prior to submission of his or her application for promotion.

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

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

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

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

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

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

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

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

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

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

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

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

A new Section 921 is added as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

999 DEFINITIONS

999.1 The following definitions apply to this chapter:

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

Administrative law judge – A person whose duties, in whole or substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged primarily in adjudicatory functions on behalf of an agency, rather than investigative,

prosecutory or advisory functions, including, but not limited to any person who bears the title Hearing Officer, Hearing Examiner, Attorney Examiner, Administrative Law Judge, Administrative Judge, or Adjudication Specialist.

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

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

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

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

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

Days – calendar days, unless otherwise specified.

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

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

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

(b) Certain members of boards or commissions.

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

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

(a) The Baltimore, MD Primary Metropolitan Statistical Area (PMSA), consisting of Anne Arundel County, Baltimore County, Carroll County, Harford County, Howard County, Queen Anne's County, and Baltimore City;

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

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

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

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

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

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

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

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

DEPARTMENT OF HUMAN SERVICES
ECONOMIC SECURITY ADMINISTRATION

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Human Services (DHS), pursuant to the authority set forth in Section 552 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.52 (2012 Repl.)), Mayor's Reorganization Plan No. 3 of 1986, and the authority set forth in Mayor's Order 2006-50, dated April 13, 2006, hereby gives notice of its intent to amend Chapter 72 (Standards of Assistance and Payment Levels in Public Assistance Programs) and Chapter 58 (Temporary Assistance for Needy Families) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules will establish new payment levels for recipients of the following benefits: Temporary Assistance for Needy Families (TANF) (D.C. Official Code § 4-205.52); General Assistance for Children (D.C. Official Code § 4-205.05a); Interim Disability Assistance (IDA) (D.C. Official Code § 4-204.07); and Program on Work, Employment and Responsibility (POWER) (D.C. Official Code § 4-205.78). The proposed rules will also amend 29 DCMR § 5814.5 to refer to the new payment levels enumerated in Chapter 72.

The purpose of the proposed rule is to modify the District of Columbia's (District) public assistance payment levels for District of Columbia residents who have been participating in the TANF, General Assistance for Children, IDA, and POWER public benefit programs. The rules increase payment levels by one point six percent (1.6%) in accordance with the published increase in the Consumer Price Index (CPI) for all items in the preceding calendar year as required by D.C. Official Code § 4-205.52(d-1) and (c-3)(3). In addition, the rules modify specific sections of 29 DCMR § 5814.5 to direct the application of the modified payment levels for public benefits, pursuant to Chapter 72.

The Director gives notice of the intent to take final rulemaking action in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

Chapter 72, STANDARDS OF ASSISTANCE AND PAYMENT LEVELS IN PUBLIC ASSISTANCE PROGRAMS, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 7200, STANDARDS OF ASSISTANCE AND PAYMENT LEVELS, is amended to read as follows:

7200 STANDARDS OF ASSISTANCE AND PAYMENT LEVELS

7200.1 For the purposes of payments under TANF (D.C. Official Code § 205.52), POWER (D.C. Official Code § 4-205.78), General Assistance for Children (D.C. Official Code § 4-205.05a) and Interim Disability Assistance (D.C.

Official Code § 4-204.07), effective October 1, 2007, the District of Columbia's payments levels are adjusted as set forth in § 7200.2.

7200.2 Pursuant to D.C. Official Code § 4-205.52(d), the payment levels set forth in this subsection shall apply to public assistance payments made after October 1, 2015.

Family Size	Standards of Assistance	Payment Level
1	$ 450	$278
2	560	$346
3	712	$441
4	870	$539
5	1,002	$621
6	1,178	$731
7	1,352	$837
8	1,494	$925
9	1,642	$1,018
10	1,786	$1,105
11	1,884	$1,166
12	2,024	$1,254
13	2,116	$1,311
14	2,232	$1,382
15	2,316	$1,435
16	2,432	$1,507
17	2,668	$1,652
18	2,730	$1,691
19	2,786	$1,725

7200.3 Pursuant to Section 552 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.52), a TANF recipient who has received TANF benefits for more than sixty (60) months, whether or not consecutive months, shall be eligible to receive no more than the payment levels set forth in § 7200.4.

7200.4 Effective October 1, 2015, the payment levels set forth in this subsection shall apply to recipients who have received TANF benefits for more than sixty (60) months:

Family Size	Standards of Assistance	Payment Level
1	$ 450	$97
2	560	$122
3	712	$154
4	870	$189
5	1,002	$217

6	1,178	$256
7	1,352	$294
8	1,494	$324
9	1,642	$357
10	1,786	$387
11	1,884	$408
12	2,024	$439
13	2,116	$459
14	2,232	$484
15	2,316	$502
16	2,432	$527
17	2,668	$578
18	2,730	$591
19	2,786	$604

Chapter 58, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 5814, INCOME DISREGARDS, is amended as follows:

Subsection 5814.5 is amended to read as follows:

5814.5 After application of these disregards in §5814.4, the remaining income shall be compared to the Standard of Assistance for the applicable family unit size as specified in the District of Columbia Public Assistance Act of 1982, as amended. If the remaining income is less than the Standard of Assistance, the income shall be compared to the payment standard for the applicable family unit size as specified in the District of Columbia Public Assistance Act of 1982, as amended. The payment levels set forth in Chapter 72 of Title 29 DCMR shall apply to payments made as of October 1, 2015.

All persons who desire to comment on these proposed rules should submit their comments in writing to the Department of Human Services, 64 New York Avenue, N.E., 6th Floor, Washington, D.C. 20002, Attn: Anthea Seymour, Administrator, Economic Security Administration or by email to Anthea.Seymour@dc.gov. All comments must be received by the Department of Human Services not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of these rules and related information may be obtained by writing to the above address, or by calling the Department of Human Services at (202) 671-4200.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Acting Director of the Department of Behavioral Health ("the Department"), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 7-1141.02, 7-1141-04, 7-1141.06 and 7-1141.07 (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of a new Chapter 25, entitled "Health Home Certification Standards", of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of Chapter 25 is to create standards for Core Service Agencies (CSAs) that seek certification as Health Home providers. A Health Home is a service delivery model that focuses on providing comprehensive care coordination centered on improving the management of chronic behavioral and physical health conditions. Health homes organize person-centered care plans that facilitate access to physical health services, behavioral health care, community-based services and supports for individuals determined eligible for Health Home services by the Department. Care coordination is provided through a team based approach and involves all health care practitioners, family members, and other social support networks identified by the consumer as relevant and necessary. The goal of the Health Homes service delivery model is to improve the health and life expectancy of consumers and reduce avoidable health care costs, specifically preventable hospital admissions, readmissions, and avoidable emergency room visits, for consumers and the enrolled Health Home population as a whole.

Health Home services are Medicaid reimbursable.

Issuance of these rules on an emergency basis is necessary to ensure the provision of a care coordination services that should have a direct impact on the health of consumers. Without such a service consumers in general are expected to have a life expectancy of twenty-five years less than average. Therefore, emergency action is necessary for the in order to allow Health Home services to begin as soon as possible to ensure the health, welfare, and safety of consumers.

This first notice of the emergency and proposed rulemaking was adopted on October 22, 2015. and will remain in effect for one hundred twenty (120) days or until February 19, 2016, unless superseded by publication of another rulemaking notice in the *D.C. Register*.

The Acting Director also gives notice of the intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Subtitle A, MENTAL HEALTH, of Title 22 DCMR, HEALTH, is amended by adding a new Chapter 25 to read as follows:

CHAPTER 25 HEALTH HOME CERTIFICATION STANDARDS

2500 HEALTH HOME PROGRAM

2500.1 These rules establish the requirements and process for certifying a Mental Health Rehabilitation Services (MHRS) Core Services Agency (CSA) as a Health Home provider in the District of Columbia.

2500.2 A Health Home is an MHRS CSA that serves as the coordinating entity for services offered to a person with a mental illness (consumer) who has or is at risk of developing co-occurring chronic medical conditions. The provider is the central point for coordinating patient-centered and population-focused care for both behavioral health and other medical services. The Health Home provider is compensated on a per member per month (PMPM) basis to coordinate care between itself as the behavioral health provider, and other physical and specialty health care providers and community-based services and supports. The purpose and goal of individualized care coordination is to increase collaboration and integration of behavioral, health and community based services, improve management of chronic conditions, and reduce avoidable health care costs, specifically for hospital admissions, readmissions and emergency room visits.

2501 CERTIFICATION REQUIREMENTS

2501.1 No person or entity shall operate a Health Home unless certified in accordance with this chapter.

2501.2 The following minimum eligibility requirements shall apply to any CSA seeking certification as a Health Home:

(a) Current certification as an MHRS CSA in accordance with Chapter 34 of this subtitle;

(b) Current enrollment as a D.C. Medicaid provider for the delivery of MHRS;

(c) Use of the Department of Behavioral Health's (the Department's), data management system for all Health Home-related services and functions;

(d) No current or pending exclusions, suspensions or debarment from any federal or D.C. healthcare program; and

(e) Demonstrated ability through readiness assessments and training to comply with the terms and requirements of this chapter.

2501.3 An MHRS CSA seeking certification shall submit an application in a format established by the Department.

2501.4 The Department shall process applications for certification as a Health Home provider in accordance with the procedures for MHRS certification in Subsection 3401 of Chapter 34 of this subtitle.

2501.5 Initial certification as a Health Home program is effective for a one (1)-year period. Certification shall remain in effect until it expires, is revoked or the provider is re-certified in accordance with Section 2502 of this chapter.

2501.6 The Department's certification shall specify the number of Health Home teams certified at each provider. A Health Home team can serve up to three hundred (300) individuals and consists of the following staff: Health Home Director, Primary Care Liaison, Nurse Care Manager (s) and Care Coordinators. No provider shall add additional Health Home teams unless the addition is approved by the Department.

2501.7 Certification is not transferable to any other organization.

2501.8 Nothing in these rules shall be interpreted to mean that certification is a right or an entitlement. Certification as a provider depends upon the Director's assessment of the need for additional Health Home providers.

2501.9 Corrective action plans and decertification of Health Home providers shall comply with the procedures set forth in Chapter 34 of this subtitle.

2502 RECERTIFICATION REQUIREMENTS

2502.1 Recertification applications shall be processed in accordance with the requirements in Section 3401 of Chapter 34 and Section 2501 of this chapter.

2502.2 Subject to Subsection 2502.3, recertification is effective for a two (2)-year period from the date of issuance of recertification by the Department.

2502.3 The Department may conditionally recertify a Health Home for a period not to exceed one (1) year if the Health Home has not met one or more terms of its HCA during the previous certification period. The Department shall issue and enforce a Corrective Action Plan (CAP) for any conditional recertification. The Department shall not recertify any Health Home that has failed to satisfy the terms of the CAP.

2502.4 Recertification is not transferable to any other provider organization.

2503 EXEMPTIONS FROM CERTIFICATION STANDARDS

2503.1 Upon good cause shown, the Department may, at its discretion, exempt a provider from a certification standard if the exemption does not jeopardize the health and safety of clients, infringe on client rights, or diminish the quality of the service

delivery.

2503.2 If the Department approves an exemption, such exemption shall end on the expiration date of the program certification, or at an earlier date if specified by the Department, unless the provider requests renewal of the exemption and renewal is granted by the Department prior to expiration of its certificate or the earlier date set by the Department.

2503.3 The Department may revoke an exemption that it determines is no longer appropriate.

2503.4 All requests for an exemption from certification standards must be submitted in writing to the Department.

2504 HEALTH HOME SERVICES ELIGIBILITY

2504.1 To be eligible for Health Home services, a consumer shall:

(a) Be eligible for Medicaid;

(b) Be diagnosed as having a serious and persistent mental illness;

(c) Be enrolled in a CSA; and

(d) Consent to be enrolled in a Health Home and authorize the disclosure of his or her mental health, physical health and other relevant information for the purpose of integrating primary and behavioral health care and services.

2504.2 A consumer currently enrolled in Assertive Community Treatment is not eligible to receive Health Home services.

2504.3 A consumer may only be enrolled with one (1) Health Home at a time.

2505 HEALTH HOME SERVICES

2505.1 Health Home providers shall provide the following services to each Health Home enrollee in an individualized manner as determined by the consumer's care plan:

(a) Comprehensive Care Management;

(b) Care Coordination;

(c) Comprehensive Transitional Care;

(d) Health Promotion;

(e) Individual and Family Support Services; and

(f) Referral to Community and Social Support Services.

2506 COMPREHENSIVE CARE MANAGEMENT

2506.1 Comprehensive Care Management is the assessment and identification of health risks leading to the development and implementation of a care plan that addresses these health risks and the individualized needs of the whole person. Care plan development will be led by qualified practitioners operating within their scope of practice with input from members of the Health Home team and external resources.

2506.2 Comprehensive Care Management consists of the:

(a) Assessment of health risks and identification of high risk sub groups;

(b) Identification of service needs of consumers and construction of a comprehensive care plan addressing physical and behavioral health chronic conditions, current health status, and goals for improvement (see Section 2512 in this chapter);

(c) Assignment of different care management roles for a consumer to members of the Health Home Team;

(d) Construction of standardized, evidence-based protocols and clinical pathways for mental health, physical health, social, employment, and economic needs;

(e) Monitoring of the consumer and population health status and service use;

(c) Development and dissemination of reports on satisfaction, health status, cost and quality to guide Health Home service delivery and design; and

(d) Development of partnerships with physical health care providers and community-based entities in order to facilitate the sharing of information and timely responses to each consumer's needs.

2507 CARE COORDINATION

2507.1 Care Coordination is the implementation of the comprehensive care plan through appropriate linkages, referrals, coordination and follow-up to needed services and support. Care Coordination provides assistance with the identification of individual strengths, resources, preferences and choices. Care Coordination is a function shared by the entire Health Home Team and may involve:

(a) Developing strategies and supportive mental health intervention for avoiding out-of-home placement and building stronger family support skills and knowledge of the consumer's strengths and limitations;

(b) Providing telephonic reminders of appointments;

(c) Providing telephonic consults and outreach;

(d) Communicating with family members;

(e) Identifying outstanding items on patient visit summaries such as referrals, immunization, self-management goal support and health education needs;

(f) Assisting with medication reconciliation;

(g) Making appointments;

(h) Providing patient education materials;

(i) Assisting with arrangements such as transportation, directions and completion of durable medical equipment requests;

(j) Obtaining missing records and consultation reports;

(k) Participating in hospital and emergency room (ER) transition care; and

(l) Coordination with other health care providers.

2508 COMPREHENSIVE TRANSITIONAL CARE

2508.1 Comprehensive Transitional Care is a set of actions designed to ensure the coordination and continuity of health care as consumers transfer between different locations or different levels of care. Comprehensive transitional care includes assistance with discharge planning from inpatient settings. It also includes:

(a) Contact with the consumer within forty-eight (48) hours of the completed transition;

(b) Outreach to consumers to ensure appropriate follow-up after transitions;

(c) Ensuring visits for consumers with the appropriate health and community-based service providers following the completed transition;

(d) Developing strategies and supportive mental health interventions that reduce the risk for or prevent out-of-home placements for adults and

builds stronger family support skills and knowledge of the adult's strengths and limitations; and

(e) Developing mental health relapse prevention and illness management strategies and plans.

2509 HEALTH PROMOTION

2509.1 Health Promotion services involve the provision of health education to the consumer and as appropriate the consumer's family member(s) and significant others specific to his/her chronic illness or needs as identified in the initial assessment and ongoing as services are provided. This service may include but is not limited to:

(a) Providing consumer education and development of self-monitoring and health management related to consumers' particular chronic conditions as well as in connection with healthy lifestyle and wellness; these may include nutrition counseling, substance abuse prevention, smoking prevention and cessation and physical activity;

(b) Assisting with medication reconciliation;

(c) Developing and implementing health promotion campaigns;

(d) Connecting consumers with peer and recovery supports including self-help and self-management and advocacy groups;

(e) Mental health education, support and consultation to consumers' families and their support system, which is directed exclusively to the well-being and benefit of the consumer; and

(f) Assisting the consumer in symptom self-monitoring and self-management for the identification and minimization of the negative effects of psychiatric symptoms, which interfere with the consumer's daily living, financial management, personal development, or school or work performance.

2510 INDIVIDUAL AND FAMILY SUPPORT SERVICES

2510.1 Individual and family support services include the ways a Health Home supports the consumers and their support teams (including families and authorized representatives) in meeting the range of psychosocial needs and accessing resources (*e.g.*, medical transportation; language interpretation; appropriate literacy materials; and other benefits to which they may be eligible or need). The services provide for continuity in relationships between the consumers/families

with their physicians and other health service providers and can include communicating on the consumers' and families' behalf.

2510.2 Individual and Family Support Services include:

(a) Assistance and support for the consumer in stressor situations;

(b) Mental health education, support and consultation to consumers' families and their support systems, which is directed exclusively to the well-being and benefit of the consumers;

(c) Developing mental health relapse prevention and illness management strategies and plans;

(d) Activities that facilitate the continuity in relationships between consumer/family and physician and care manager;

(e) Advocacy on a consumers' behalf to identify and obtain needed resources such as medical transportation and other benefits for which they may be eligible;

(f) Consumer education on how to self-manage their chronic condition;

(g) Providing opportunities for the families to participate in consumers' assessment and care treatment plan developments;

(h) Efforts that ensure that Health Home services are delivered in a manner that is culturally and linguistically competent; and

(i) Efforts that promote personal independence and empower the consumers to improve their own environment and health. This may include engagement with consumers' families in identifying solutions to improve consumers' health and environment and helping consumers and their families with consumer's authorizations to access the consumers' health record information or other clinical information.

2511 REFERRAL TO COMMUNITY AND SOCIAL SUPPORT SERVICES

2511.1 Referral to Community and Social Support Services includes the provision of referrals to a wide array of support services that will help consumers overcome access or service barriers, increase self-management skills and achieve overall health. Specifically, this activity involves facilitating access to support and assistance for consumers to address medical, behavioral, educational, social, and community issues that may impact overall health.

2511.2 The types of community and social support services to which consumers will be referred may include, but are not limited to:

(a) Wellness programs, including smoking cessation, fitness, weight loss programs;

(b) Specialized support groups (*i.e.*, cancer, diabetes support groups, and others);

(c) Substance use recovery support groups ;

(d) Housing resources;

(e) The Supplemental Nutrition Assistance Program;

(f) Legal assistance resources;

(g) Faith-based organizations; and

(h) Access to employment and educational program or training.

2512 COMPREHENSIVE CARE PLAN

2512.1 A Comprehensive Care Plan (CCP) is the authorizing document for the delivery of all Health Home services.

2512.2 The development of a CCP shall include:

(a) Active participation and partnership with the consumer;

(b) A comprehensive physical health, behavioral health and socioeconomic assessment;

(c) The consumer's goals as identified by the comprehensive assessment and the timeframes and strategies for addressing each;

(d) The delineation of the specific roles and responsibilities of the members of the Health Home Team who are assisting the consumer in achieving his/her goals;

(e) The signature of all participants in the development of the CCP including the Nurse Care Manager as the approving authority for the CCP; and

(f) All services the Health Home provider delivers to the consumer.

2512.3 The CCP shall be updated every one-hundred eighty (180) days or more often if the consumer's needs or acuity level changes.

2512.4 The consumer's Individual Recovery Plan (IRP), developed in accordance with Section 3408 of Chapter 34 of this title shall be incorporated into the CCP and may be used to satisfy the behavioral health assessment referenced in Subsection 2512.2(b) above. The IRP may be developed within the CCP but the requirements of Subsection 3408 of Chapter 34 of this title must be satisfied.

2513 HEALTH HOME STAFFING REQUIREMENTS

2513.1 Health Homes shall have the following staff:

(a) Health Home Director;

(b) Nurse Care Manager(s);

(c) Primary Care Liaison; and

(d) Care Coordinator(s)

2513.2 The Health Home Director shall be responsible for managing the CSA's Health Home program. The Health Home Director shall have a Master's level education in a health-related field. There shall be a point five (.5) Full Time Equivalent staff person for every Health Home Team of three hundred (300) consumers.

2513.3 The Nurse Care Manager shall be an Advanced Practice Registered Nurse (APRN) or Registered Nurse (RN) with relevant experience and expertise in care of physical health care. The Nurse Care Manager shall lead and/or manage team-based assessment, care plan development and care plan implementation activities. The Health Home provider shall ensure one (1) full-time Nurse Care Manager per one hundred and fifty (150) enrolled Health Home consumers.

2513.4 The Primary Care Liaison shall be a Medical Doctor or APRN. The Primary Care Liaison shall be licensed in the District of Columbia and have experience in the care and treatment of the serious mentally ill. The Health Home provider shall ensure one (1) full-time Primary Care Liaison per five hundred (500) Health Home enrollees. The responsibilities of the Primary Care Liaison shall include the following:

(a) Provide medical consultation to the Health Home team;

(b) Coordinate care with external medical and behavioral health providers; and

(c) Assist with developing effective Health Home comprehensive care management and coordination of care protocols involving community and hospital medical providers.

2513.5 A Care Coordinator shall have a Bachelor's degree in a health or public health-related field with training in a care coordinator role or equivalent experience, skills and aptitudes to meet functional requirements of the Health Home care coordinator role. A Care Coordinator shall provide supports to the Health Home team and individual consumers as part of the implementation of the CCP activities. The ratio of a Care Coordinator to consumers shall not exceed 1:60.

2513.6 Responsibilities of the Care Coordinator shall include the following:

(a) Provide and assist in the provision of Home Health services as stated on the care plan;

(b) Coordinate behavioral health care, substance abuse, and health care services informed by evidence-based clinical practice guidelines, including prevention of mental illness and substance use disorders;

(d) Coordinate access to preventive and health promotion services;

(e) Coordinate access to chronic illness management, including self-management support to individuals and their families; and

(f) Coordinate access to individual and family supports, including referral to community, social support, and recovery services.

2513.7 Care Coordinators shall provide services under the supervision of a Qualified Practitioner.

2513.8 All Health Homes shall provide Health Home services in accordance with their HCA with the Department.

2514 ACUITY LEVELS

2514.1 The Department shall assign each Health Home consumer into either a high- or low-acuity category.

2514.2 A High Acuity adult consumer is a consumer with serious and persistent mental illness and at least one (1) high-cost condition (*i.e.*, cancer; coronary artery disease; diabetes; peripheral vascular disease; congestive heart failure; cirrhosis; HIV; lung disease; multiple sclerosis; quadriplegia; seizure disorders; rheumatoid arthritis) and a history in the past year of:

(a) A high-cost chronic medical condition and one (1) non-psychiatric hospitalization; or

(b) Two (2) or more non-psychiatric hospitalizations; or

(c) One (1) psychiatric hospitalization.

2514.3 A low-acuity consumer is an adult consumer with serious and persistent mental illness who does not qualify as a high-acuity consumer.

2515 HEALTH HOME REIMBURSEMENT

2515.1 The Department shall require all CSAs certified as Health Home providers to enter into an HCA with the Department. All payment for services shall be implemented through terms and conditions contained in the HCA and the D.C. Medicaid program.

2515.2 A CSA also certified as a Health Home may not bill MHRS Community Support for a consumer enrolled in the Health Home.

2515.3 Reimbursement for Health Home services is on a PMPM rate as published by the Department of Health Care Finance. The month time period shall begin on the first (1st) of the month and end on the last day of the month. In order to qualify for the monthly rate, Health Home providers shall provide and document the required services provided during the month for which reimbursement is claimed.

2515.4 For a consumer enrolled in a high-acuity band, the Health Home shall provide, at a minimum, and shall document in the consumer's chart the following services, at least one of which must be provided as a face-to-face service:

(a) Two (2) care management services; and

(b) At least two (2) other Health Home services.

2515.5 For a consumer enrolled in a low-acuity band, the Health Home shall provide at a minimum one (1) care management service and one (1) other Health Home service.

2515.6 Only one (1) Health Home will receive payment for delivering Health Home services to a consumer in a particular month.

2516 HEALTH HOMES RECORDS AND DOCUMENTATION REQUIREMENTS

2516.1 Each Health Home shall utilize the Department's electronic record system, iCAMS, for documenting and billing all Health Home services.

2516.2 Health Home providers shall maintain all Health Home consumer information in accordance with federal and District privacy laws and the Department's Privacy Manual.

2516.3 Health Home providers shall document each Health Home service and activity in the consumer's iCAMS record. Any claim for services shall be supported by written documentation which clearly identifies the following:

(a) The specific service type rendered;

(b) The date, duration, and actual time, a.m. or p.m. (beginning and ending), during which the services were rendered;

(c) Name, title, and credentials of the person who provided the services;

(d) The setting in which the services were rendered;

(e) Confirmation that the services delivered are contained in the consumer's CCP;

(f) Identification of any further actions required for the consumer's well-being raised as a result of the service provided;

(g) A description of each encounter or service by the Health Home team member which is sufficient to document that the service was provided in accordance with this chapter; and

(h) Dated and authenticated entries, with their authors identified, which are legible and concise, including the printed name and the signature of the person rendering the service, diagnosis and clinical impression recorded in the terminology of the International Statistical Classification of Diseases and Related Health Problems – 9 (ICD-9 CM) or subsequent revisions, and the service provided.

2516.4 No Health Home provider shall be reimbursed for a claim for services that does not meet the requirements of this section or is not documented in accordance with this section.

2516.5 Health Home providers shall implement a compliance program that regularly reviews submitted claims and identifies errors and overpayments. Health Home providers shall repay any paid claims that do not meet reimbursement criteria within sixty (60) days of discovery.

2599 DEFINITIONS

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

Behavioral Health Care – care that promotes the well-being of individuals by intervening and preventing incidents of mental illness, substance abuse, or other health concerns.

Chronic Physical Condition – a somatic health condition, such as asthma, cardiovascular disease, diabetes, substance use disorder, and/or Human Immunodeficiency Virus.

Comprehensive Care Plan or CCP – an individualized plan to provide health home services to address a consumer's behavioral and physical chronic conditions, based on assessment of health risks and the consumer's input and goals for improvement.

Consumer – a person who seeks or receives mental health services or mental health supports funded or regulated by the Department.

Core Services Agency or CSA – a community-based provider that has entered into a Human Care Agreement with the Department to provide specific MHRS in accordance with the requirements of Chapter 34 of this subtitle.

Cultural and Linguistic Competence - a set of congruent behaviors, attitudes and policies that come together in a system, agency or among professionals that enables effective work in cross-cultural situations. Culture refers to integrated patterns of health human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, institutions of racial, ethnic, religious or social groups. Competence implies having the capacity to function effectively as individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities.

Department of Behavioral Health or DBH – the District of Columbia agency that regulates the District's mental health and substance abuse treatment system for adults, children, and youth.

Health Home – an entity that is certified by the Department of Behavioral Health, that uses a patient-centered approach to coordinate a consumer's behavioral, primary, acute or other specialty medical health care services.

Health Home Team – the Health Home staff that delivers services to a specific group of consumers in their assigned Health Home teams. A Health Home Team includes the Health Home Director, Primary Care Liaison, Nurse Care Manager(s) and Care Coordinator(s).

High Cost Chronic Medical Conditions – medical conditions that create the need for intensive or long-term treatment and therefore make the cost of the individual's treatment higher than the average Medicaid beneficiary

Mental Health Rehabilitation Services or MHRS –palliative services provided by a Department-certified community mental health provider to consumers in accordance with the District of Columbia State Medicaid Plan, the Medical Assistance Administration (MAA) (now Department of Health Care Finance (DHCF))/ Department Interagency Agreement, and Chapter 34 of this subtitle.

Qualified Practitioner – a psychiatrist, psychologist, licensed independent clinical social worker, advance practice registered nurse, registered nurse, licensed professional counselor or licensed independent social worker.

Serious and Persistent Mental Illness – a diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the DSM-IV or its ICD-9-CM equivalent (and subsequent revisions) with the exception of DSM-IV "V" codes, substance abuse disorders, intellectual disabilities and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness.

Specialty Provider – a community-based organization MHRS provider certified by Department to provide specialty services either directly or through contract.

All persons desiring to comment on the subject matter of this emergency and proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed the Department of Behavioral Health at 64 New York Avenue, N.E., 2nd Floor, Washington, D.C. 20002, or e-mailed to Suzanne Fenzel, Deputy Director, Office of Strategic Planning, Policy and Evaluation, at Suzanne.Fenzel@dc.gov. Copies of the proposed rules may be obtained from www.DBH.dc.gov or from the Department of Behavioral Health at the address above.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl.)) and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code §7-771.05(6) (2014 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Section 903 entitled "Outpatient and Emergency Room Services" of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The effect of these rules is to provide supplemental payments to eligible hospitals located within the District of Columbia that participate in the Medicaid program for outpatient hospital services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Medicaid beneficiaries who are in need of outpatient hospital services. By taking emergency action, this proposed rule will ensure appropriate and needed payments to District hospitals and allow Medicaid beneficiaries access to needed outpatient medical services.

The corresponding amendment to the District of Columbia State Plan for Medical Assistance ("State Plan") requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The Council has approved the State Plan through the Fiscal Year 2016 Budget Support Act of 2015, approved August 11, 2015 (D.C. Act 21-148). These rules shall become effective for outpatient hospital services provided by Medicaid participating hospitals located within the District of Columbia occurring on or after: (1) October 1, 2015, if the corresponding State Plan amendment has been approved by CMS with an effective date of October 1, 2015; or (2) the effective date established by CMS in its approval of the corresponding State Plan amendment, whichever is later. If approved, DHCF will publish a notice which sets forth the effective date of the rules.

The emergency rulemaking was adopted on November 3, 2015, and shall become effective for outpatient hospital services occurring on or after November 3, 2015, if the corresponding State Plan amendment has been approved by CMS with an effective date of November 3, 2015, or the effective date established by CMS in its approval of the corresponding State Plan, whichever is later. The emergency rules will remain in effect for one hundred and twenty days (120) after adoption, or until March 2, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 903, OUTPATIENT AND EMERGENCY ROOM SERVICES, is amended by adding the following new Subsection 903.31:

903.31 Beginning FY 2016, each eligible hospital shall receive a supplemental hospital access payment calculated as set forth below:

(a) Except as provided in Subsection (c) and (d), for visits and services beginning October 1, 2015, and ending on September 30, 2016, quarterly access payments shall be made to each eligible private hospital. Each payment shall be an amount equal to each hospital's Fiscal Year (FY) 2013 outpatient Medicaid payments divided by the total in District private hospital FY 2013 hospital outpatient Medicaid payments, and multiplied by one quarter (1/4) of the total outpatient private hospital access payment pool. The total outpatient private hospital access payment pool shall be equal to the total available spending room under the private hospital outpatient Medicaid upper payment limit for FY 2016 as determined by the State Medicaid agency;

(b) Applicable private hospital FY 2013 outpatient Medicaid payments shall include all outpatient Medicaid payments to Medicaid participating hospitals located within the District of Columbia except for the United Medical Center;

(c) In no instance shall a Disproportionate Share Hospital (DSH) hospital receive more in quarterly access payments than the hospital-specific DSH limit, as adjusted by the District in accordance with the District's State Plan for Medical Assistance (State Plan). Any private hospital quarterly access payments that would otherwise exceed the adjusted hospital-specific DSH limit, shall be distributed to the remaining qualifying private hospitals based on each hospital's FY 2013 outpatient Medicaid payments relative to the total qualifying private hospital FY 2013 outpatient Medicaid payments;

(d) For visits and services beginning October 1, 2015, quarterly access payments shall be made to the United Medical Center. Each payment shall be equal to one quarter (1/4) of the public hospital access payment pool. The total public hospital access payment pool shall be equal to the lessor of the available spending room under the District-operated hospital outpatient Medicaid upper payment limit for FY 2016, and the United Medical Center DSH limit as adjusted by the District in accordance with the State Plan;

(e) Payments shall be made fifteen (15) business days after the end of the quarter for the Medicaid visits and services rendered during that quarter; and

(f) For purposes of this section, the term Fiscal Year shall mean dates beginning on October 1st and ending on September 30th.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the D.C. Register. Additional copies of these rules are available from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02 (2014 Repl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 50 (Medicaid Reimbursement for Personal Care Services), of Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR).

Personal Care Aide (PCA) services are health-related services that are provided to individuals because they are unable to perform one or more activities of daily living such as bathing, dressing, toileting, ambulation, or feeding oneself as a result of a medical condition or cognitive impairment causing a substantial disability. These amendments provide DHCF with the tools to increase oversight and closely monitor the quality and appropriateness of services being delivered to beneficiaries. Emergency action is necessary to preserve the safety, health, and wellness of existing recipients of PCA services by ensuring that beneficiaries have continued and uninterrupted access to quality services. These rules govern eligibility for Medicaid reimbursement of PCA services. These emergency and proposed rules amend the previously published rules by: (1) establishing that an order for PCA services can be written by an Advanced Practice Registered Nurse, in addition to a physician; (2) changing the re-assessment period to once every twelve (12) to eighteen (18) months to align the assessment date with the Medicaid renewal date, instead of every six (6) months; (3) expanding PCA services by adding the following reimbursable tasks – (a) "cueing" to assist a beneficiary with the performance of routine activities of daily living; (b) measuring and recording a beneficiary's height and weight; (c) implementing universal precautions to ensure infection control; (d) assisting with telephone use; and (e) shopping for items related to promoting the patient's nutritional status and other health needs that relate ─ to the scope of services; (4) eliminating the need for a physician's signature on plans of care subsequent to the initial plan of care but requiring that all subsequent plans of care be approved by DHCF or its agent; (5) requiring that records be maintained for a period of ten (10) years, or when all audits have been completed, whichever is longer; (6) removing the one thousand and forty (1040) hour cap on receipt of services, and establishing that the limit on a beneficiary's PCA service hours shall be determined by the PCA service authorization in an amount not to exceed eight (8) hours per day, seven (7) days per week; (7) establishing that although Medicaid reimbursement of PCA is prohibited in living arrangements which includes personal care as part of the reimbursed service, beneficiaries residing in assisted living facilities may receive reimbursement of PCA services upon prior authorization by DHCF or its agent; (8) clarifying that parents of adult children are not considered legally responsible relatives and may provide PCA services; (9) adding that if a beneficiary is also receiving Adult Day Health Program (ADHP) services under the 1915(i) State Plan Option on the same day that PCA services are

delivered, the combination of both PCA and ADHP services shall not exceed a total of twelve (12) hours per day; (10) clarifying existing terms to eliminate ambiguity and simplify interpretation; and (11) adjusting the rates to incorporate: (a) the benefits requirement under the Patient Protection and Affordable Care Act of 2010, approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat. 119), as amended, and supplemented by the Health Care and Education Reconciliation Act of 2010, approved January 5, 2010 (Pub. L. No. 111-152, 124 Stat. 1029) and the District of Columbia Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code §§ 32-131.10 and 131.33 (2012 Repl.)); and (b) administrative costs following the recent review of the FY 2013 Home Health Agencies cost reports.

The corresponding amendment to the District of Columbia State Plan for Medicaid Assistance (State Plan) requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). Except for Section 5015 governing reimbursement, implementation of these emergency and proposed rules is contingent upon approval of the corresponding State Plan amendment by CMS, with an effective date of October 27, 2015 or the effective date established by CMS in its approval of the corresponding State Plan amendment, whichever is later.

The emergency rulemaking was adopted on October 27, 2015. Section 5015 governing reimbursement became effective for dates of services beginning October 27, 2015. The remaining rules will become effective October 27, 2015 if the corresponding State Plan amendment is approved by CMS with an effective date of October 27, 2015 or the effective date established by CMS in its approval of the corresponding State Plan amendment, whichever is later. The emergency rules shall remain in effect for one hundred and twenty (120) days or until February 24, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 50, MEDICAID REIMBURSEMENT FOR PERSONAL CARE SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

CHAPTER 50 MEDICAID REIMBURSEMENTS FOR PERSONAL CARE AIDE SERVICES

5000 GENERAL PROVISIONS

5000.1 These rules establish the standards and conditions of participation for home care agencies providing Medicaid reimbursable personal care aide (PCA) services under the District of Columbia Medicaid Program's State Plan for Medical Assistance (Medicaid State Plan).

5000.2 Medicaid reimbursable PCA services support and promote the following goals:

(a) To provide cueing or necessary hands-on assistance with the activities of daily living to beneficiaries who are unable to perform one or more activities of daily living; and

(b) To encourage home and community-based care as a preferred and cost-effective alternative to institutional care.

5001 PROVIDER QUALIFICATIONS

5001.1 A Provider receiving Medicaid reimbursement for PCA services shall:

(a) Be a home care agency licensed pursuant to the requirements for home care agencies as set forth in the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code, §§ 44-501 *et seq*. (2012 Repl.)), and implementing rules; and

(b) Be enrolled as a Medicare home health agency qualified to offer skilled services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act (42 U.S.C. §§ 1395x and 1395bbb), and 42 C.F.R. § 484.

5001.2 An applicant seeking Medicaid reimbursement as a Provider under the Medicaid Program shall submit a Medicaid Provider Enrollment Application to the Department of Health Care Finance (DHCF), execute a Provider Agreement and be enrolled as a Provider.

5001.3 A Provider seeking Medicaid reimbursement under an executed Medicaid Provider Agreement shall comply with all legal obligations under Federal and District laws, including the provider's obligations to take reasonable steps to provide beneficiaries who are Limited English Proficient (LEP) with meaningful access to their services pursuant to the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 20-39; D.C. Official Code §§ 2-1401.01 *et seq*.) and Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. §§ 2000d *et seq*.), Section 504 of the Rehabilitation Act of 1973 (Pub. L. No. 93-112; 29 U.S.C. §§ 701 *et seq*.), 42 C.F.R. Parts 80, 84, and 90, and the Americans with Disabilities Act of 1990, effective January 1, 2009 (Pub. L. No. 101-336; 42 U.S.C. §§ 12101 *et seq*.).

5001.4 Each Provider application shall contain, but not be limited to, the following:

(a) Name, address, and business email of the applicant's organization and location of the applicant's place of business. An applicant shall submit a separate application for each place of business from which the applicant intends to offer District of Columbia Medicaid program services;

(b) Answers sufficient to meet requirements as set forth in 42 C.F.R. § 455, subpart B: Disclosure of Information by Providers and Fiscal Agents;

(c) Names, license numbers, and National Provider Identifier (NPI) numbers of all individuals providing PCA services or nursing services from the National Plan and Provider Enumeration System (NPPES) as of the date of the application to become a District of Columbia Medicaid Provider;

(d) The applicant's U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) Medicare Supplier Letter issued pursuant to 42 C.F.R. § 424.510 to evidence enrollment of the applicant in the Medicare program;

(e) A copy or copies of all contracts held between the applicant and any staffing agency pertaining to the delivery of PCA services;

(f) A copy or copies of license(s) held by the employees of any staffing agency or agencies used by the Provider for the delivery of PCA services;

(g) The applicant's NPI number as required by the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub.L. No 104-191; 110 Stat. 1936);

(h) A copy of the applicant's surety bond, pursuant to requirements set forth in § 5011 of this chapter; and

(i) A copy of a Certificate of Registration or Certificate of Authority, if required by District law or rules.

5001.5 A Provider shall submit a new Medicaid Provider Enrollment Application within thirty (30) days after any change in business ownership. Re-enrollment or continued enrollment in the Medicaid program after any change in business

ownership shall be conditioned upon the Provider's compliance with all applicable Federal and District requirements.

5001.6 A Provider shall submit a new Medicaid Provider Enrollment Application and successfully re-enroll in the D.C. Medicaid program at least every five (5) years starting from the date of execution of its most recent Provider Agreement.

5001.7 A Provider shall accept referrals from, and provide requested information to DHCF or its designated agent.

5002 ELIGIBILITY REQUIREMENTS

5002.1 To be eligible to receive PCA services, a Medicaid beneficiary must meet all of the following qualifications:

(a) Be unable to independently perform one or more activities of daily living for which PCA services are needed;

(b) Be in receipt of a written order for PCA services in accordance with Subsections 5006.1 and 5006.2; and

(c) Be in receipt of a PCA Service Authorization in accordance with Section 5003.

5003 PCA SERVICE AUTHORIZATION REQUEST AND SUBMISSION

5003.1 Except as provided in Subsection 5003.8, in order to be reimbursed by Medicaid, PCA services shall not be initiated or provided on a continuing basis by a Provider without a PCA Service Authorization from DHCF or its designated agent that, for each beneficiary, identifies the amount, duration and scope of PCA services authorized and the number of hours authorized.

5003.2 A Medicaid beneficiary who is seeking PCA services for the first time shall submit a request for a PCA Service Authorization to DHCF or its designated agent in writing, accompanied by a copy of the physician's or Advanced Practice Registered Nurse's (APRN) written order for PCA services that complies with the requirements set forth under this chapter.

5003.3 DHCF or its designated agent shall be responsible for conducting a face-to-face assessment of each beneficiary using a standardized assessment tool to determine each beneficiary's need for assistance with activities of daily living that the beneficiary is unable to perform. The assessment shall:

(a) Confirm and document the beneficiary's functional limitations and personal goals with respect to long-term care services and supports;

(b) Be conducted in consultation with the beneficiary or the beneficiary's representative;

(c) Document the beneficiary's unmet need for services, taking into account the contribution of informal supports and other resources in meeting the beneficiary's needs for assistance; and

(d) Document the amount, frequency, duration, and scope of PCA services needed.

5003.4 Based upon the results of the face-to-face assessment conducted in accordance with Subsection 5003.3, DHCF or its authorized agent shall issue to the beneficiary a PCA Service Authorization that specifies the amount, frequency, duration, and scope of PCA services authorized to be provided to the beneficiary.

5003.5 Payment shall not exceed the maximum authorized units specified in the PCA Service Authorization and must be consistent with the plan of care in accordance with Section 5015.

5003.6 If authorized, PCA services may be provided up to eight (8) hours per day seven (7) days per week.

5003.7 A Registered Nurse (R.N.) employed by DHCF or its designated agent shall conduct the initial face-to-face assessment following the receipt of a request for service authorization and shall conduct a face-to-face reassessment at least every twelve (12) months, or upon significant change in the beneficiary's condition. A request for service authorization may be made by a Medicaid beneficiary, family member, the beneficiary's representative or a health care professional.

5003.8 DHCF may authorize the face-to-face reassessment for a period not to exceed eighteen (18) months, if necessary, to align the assessment date with the Medicaid renewal date.

5003.9 If, based upon the assessment conducted pursuant to this section, a beneficiary is found to be ineligible for PCA services, or the amount, duration or scope of PCA services is reduced, DHCF or its agent shall issue a Beneficiary Denial, Termination or Reduction of Services Letter informing the beneficiary of his or her right to appeal the denial, termination, or reduction of services in accordance with federal and District law and regulations.

5004 REFERRALS

5004.1 Upon completion of the PCA Service Authorization, DHCF or its designated agent shall make a referral to the beneficiary's choice of a qualified Provider.

5004.2 A referral to a qualified Provider shall not be considered complete unless it includes all of the following:

(a) A copy of the physician or APRN's order for PCA services issued in accordance with Section 5006;

(b) A copy of the completed written face-to-face assessment of the beneficiary undertaken in accordance with Subsection 5003.3; and

(c) A copy of the completed PCA Service Authorization issued in accordance with Subsection 5003.4.

5005 PLAN OF CARE

5005.1 An R.N. employed by the Provider shall conduct an initial face-to-face visit with the beneficiary to develop a plan of care for delivering PCA services no later than seventy-two (72) hours after receiving the referral for services from DHCF or its designated agent.

5005.2 The plan of care shall:

(a) Be developed by an R.N. in consultation with the beneficiary or the beneficiary's representative based upon the initial face-to-face visit with the beneficiary;

(b) Specify how the beneficiary's need, as identified in the assessment conducted in accordance with Subsection 5003.3, will be met within the amount, duration, scope, and hours of services authorized by the PCA Service Authorization as set forth in Subsection 5003.4;

(c) Consider the beneficiary's preferences regarding the scheduling of PCA services;

(d) Specify the detailed services to be provided, their frequency, and duration, and expected outcome(s) of the services rendered consistent with the PCA Service Authorization;

(e) Be approved and signed by the beneficiary's physician or an APRN within thirty (30) days of the start of care, provided that the physician or APRN has had a prior professional relationship with the beneficiary that included an examination(s) provided in a hospital, primary care physician's office, nursing facility, or at the beneficiary's home prior to the prescription of the PCA services; and

(f) Incorporate person-centered planning principles that include:

(1) Ensuring that the planning process includes individuals chosen by the beneficiary;

(2) Ensuring that the planning process incorporates the beneficiary's needs, strengths, preferences, and goals for receiving PCA services;

(3) Providing sufficient information to the beneficiary to ensure that he/she can direct the process to the maximum extent possible;

(4) Reflecting the beneficiary's cultural considerations and is reflected by providing all information in plain language or consistent with any LEP considerations in accordance with Subsection 5001.3;

(5) Strategies for solving conflicts or disagreements; and

(6) A method for the beneficiary to request updates to the plan.

5005.3 After an initial plan of care is developed, all subsequent annual updates and modifications to plans of care shall be submitted to DHCF or its agent for approval in accordance with Subsection 5005.2, with the exception of the signature requirements prescribed under Subsection 5005.2(e).

5005.4 An R.N. who is employed by the Provider shall review the beneficiary's plan of care at least once every sixty (60) days, and shall update or modify the plan of care as needed. The R.N. shall notify the beneficiary's physician of any significant change in the beneficiary's condition.

5005.5 If an update or modification to a beneficiary's plan of care requires an increase or decrease in the number of hours of PCA services provided to the beneficiary, the Provider must obtain an updated PCA Service Authorization from DHCF or its designated agent after the reassessment for services.

5005.6 Each Provider shall coordinate a beneficiary's care by sharing information with all other health care and service providers, as applicable, to ensure that the beneficiary's care is organized and to achieve safer and more effective health outcomes.

5005.7 If a beneficiary is receiving Adult Day Health Program (ADHP) services under the § 1915(i) State Plan Option and PCA services, a provider shall coordinate the delivery of PCA services to promote continuity and avoid the duplication of care.

5006 PROGRAM REQUIREMENTS

5006.1 PCA services shall be ordered, in writing, by a physician or APRN who is enrolled in the D.C. Medicaid program and has had a prior professional relationship with the beneficiary that included an examination(s) provided in a hospital, primary care physician's office, nursing facility, or at the beneficiary's home prior to the order for the PCA services. A written order for PCA services constitutes a certification that the beneficiary is unable to perform one (1) or more activities of daily living for which PCA services are needed.

5006.2 A written order for PCA services issued in accordance with § 5006.1 shall be renewed every twelve (12) months.

5006.3 Each written order for PCA services under this section shall include the prescriber's NPI number obtained from NPPES.

5006.4 A Provider has an on-going responsibility to verify that each beneficiary that receives PCA services from the Provider has current eligibility for the District of Columbia Medicaid program and is eligible for and authorized to receive PCA services.

5006.5 An individual or family member other than a spouse, parent of a minor child, any other legally responsible relative, or court-appointed guardian may provide PCA services. Legally responsible relatives shall not include parents of adult children. Each family member providing PCA services shall comply with the requirements set forth in these rules.

5006.6 The Provider shall initiate services no later than twenty-four (24) hours after completing the plan of care unless the beneficiary's health or safety warrants the need for more immediate service initiation or the beneficiary or beneficiary's representatives agree to begin the services at a later date.

5006.7 PCA services shall include, but not be limited to, the following:

(a) Cueing or hands-on assistance with performance of routine activities of daily living (such as, bathing, transferring, toileting, dressing, feeding, and maintaining bowel and bladder control);

(b) Assisting with incontinence, including bed pan use, changing urinary drainage bags, changing protective underwear, and monitoring urine input and output;

(c) Assisting beneficiaries with transfer, ambulation and range of motion exercises;

(d) Assisting beneficiaries with self-administered medications;

(e) Reading and recording temperature, pulse, blood pressure and respiration;

(f) Measuring and recording height and weight;

(g) Observing, documenting and reporting the beneficiary's physical condition, behavior, and appearance and reporting all services provided on a daily basis;

(h) Preparing meals in accordance with dietary guidelines and assistance with eating;

(i) Performing tasks related to keeping areas occupied by the beneficiary in a condition that promotes the beneficiary's safety;

(j) Implementing universal precautions to ensure infection control;

(k) Accompanying the beneficiary to medical or dental appointments or place of employment and recreational activities if approved in the beneficiary’s plan of care;

(l) Recording and reporting to the supervisory health professional, changes in the beneficiary's physical condition, behavior or appearance;

(m) Shopping for items that are related to promoting a beneficiary’s nutritional status in accordance with dietary guidelines and other health needs; and

(n) Assistance with telephone use.

5006.8 PCA services shall not include:

(a) Services that require the skills of a licensed professional as defined by the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*);

(b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the beneficiary, shopping for items not related to promoting the beneficiary's nutritional status and other health needs, and shopping for items not used by the beneficiary; and

(c) Money management.

5006.9 PCA services shall not be provided in a hospital, nursing facility, intermediate care facility, or other living arrangement which includes personal care as part of the reimbursed service. However, persons residing in assisted living may receive PCA services upon prior authorization by DHCF or its agent.

5006.10 PCA services may be provided at the beneficiary's place of employment.

5006.11 A PCA is not authorized to make decisions on behalf of a beneficiary.

5006.12 A PCA shall immediately report to the R.N. any significant change in the beneficiary's health status in the case of emergency, or within four (4) hours for other situations, unless indicated otherwise in the beneficiary's plan of care.

5006.13 If the beneficiary seeks to change his or her Provider, the Provider shall assist the beneficiary in transferring to the new Provider. Until the beneficiary is transferred to a new PCA services Provider, the Provider shall continue providing PCA services to the beneficiary until the transfer has been completed successfully and the beneficiary is receiving PCA services from the new Provider.

5006.14 Each Provider shall immediately terminate the services of a PCA and instruct the PCA to discontinue all services to the beneficiary, in any case where the Provider believes that the beneficiary's physical or mental well-being is endangered by the care or lack of care provided by the PCA, or that the beneficiary's property is at risk. The Provider is responsible for assigning a new PCA and ensuring that the beneficiary's needs continue to be met.

5006.15 Each Provider shall conduct annual performance assessments of all PCAs who deliver services to beneficiaries served by the Provider, regardless of whether the PCA is an employee or is secured through another staffing agency. The initial performance assessment shall be conducted no later than three (3) months after the PCA first provides services to any beneficiary served by the Provider.

5006.16 Each Provider shall develop contingency staffing plans to provide coverage for each beneficiary in the event the assigned PCA cannot provide the services or is terminated.

5007 DENIAL, SUSPENSION, REDUCTION OR TERMINATION OF SERVICES

5007.1 When PCA services are no longer desired by the beneficiary or their authorized representative, each Provider shall discontinue PCA services only after:

(a) Giving the beneficiary written notice that meets the requirements set forth in Subsection 5007.2;

(b) The thirty (30) day notice period prescribed in Subsection 5007.2 elapses; and

(c) The time for an appeal has expired, and the beneficiary has not filed an appeal.

5007.2 Except as provided in Subsections 5007.4 and 5007.5, for Provider initiated suspensions, discharges or reductions of service, each Provider shall notify DHCF or its designated agent and the beneficiary or the beneficiary's authorized representative, in writing, no less than thirty (30) calendar days prior to any suspension, discharge or reduction in service, consistent with the requirements set forth in District and Federal law and rules. The beneficiary’s record shall contain a copy of the notice and documentation of the date the notice was either personally served upon or mailed to the beneficiary or the beneficiary’s designated agent.

5007.3 For denials, suspensions, terminations or reductions of service initiated by DHCF or its agent, DHCF or its designated agent shall notify the beneficiary or the beneficiary's authorized representative, in writing, no less than thirty (30) calendar days prior to any denial, suspension, termination or reduction of services, consistent with the requirements set forth in District and Federal law and rules.

5007. 4 If the behavior of a beneficiary poses an immediate threat to the safety and well-being of the PCA or PCA Provider staff, the Provider has the right to immediately suspend the beneficiary's services or discharge the beneficiary. Suspension of services shall not exceed thirty (30) calendar days.

5007.5 Within seventy-two (72) hours of suspension, the Provider shall notify the beneficiary or authorized representative in writing of the following:

(a) The grounds for suspension or discharge; and

(b) The beneficiary's right to appeal the suspension or discharge.

5007.6 At the end of the suspension period, the Provider may re-instate the beneficiary's services or discharge the beneficiary. The Provider shall assist the beneficiary in transferring to another provider.

5007.7 The beneficiary or the beneficiary's representative shall be provided with a written notice of discharge at least fifteen (15) days before the effective date of the discharge, if the decision is made to discharge the beneficiary following suspension. The written notice shall comply with District and federal law and rules.

5007.8 In the event of a suspension or discharge, the Provider shall be responsible for ensuring that the beneficiary's health, safety, and welfare are not threatened during the period of suspension or during the period after the beneficiary has been discharged and before transfer to another provider.

5008 STAFFING

5008.1 Each Provider shall utilize an R.N. to manage and provide supervision to PCAs who are qualified to perform all of the functions described in Subsection 5008.3.

5008.2 Each Provider shall verify that each PCA used to deliver services, regardless of whether the PCA is an employee of the Provider or is secured through another staffing agency, meets the qualifications set forth in Section 5009.

5008.3 Each Provider shall employ an R.N. who is responsible for the following:

(a) Accepting and reviewing the beneficiary's PCA Service Authorization and initial assessment or reassessment of need for PCA services;

(b) Developing a written plan of care in accordance with Section 5005 that meets the beneficiary's assessed needs and preferences within the service limitations authorized in the PCA Service Authorization;

(c) Updating each beneficiary's written plan of care based upon subsequent reassessments of need;

(d) Maintaining a clinical record in accordance with Section 5013;

(e) Reviewing the beneficiary's plan of care with each assigned PCA and ensuring that each assigned PCA has the requisite training, skills and ability to meet the beneficiary's identified needs and preferences;

(f) Monitoring the quality of PCA services on a regular basis and ensuring that PCA services are delivered in accordance with the beneficiary's Plan of Care;

(g) Supervising all PCAs, regardless of whether the PCA is an employee of the Provider or is secured through a staffing agency. Supervision shall include on-site supervision at least once every sixty (60) days;

(h) Coordinating the provision of PCA services with other home health services, as appropriate and communicating with each beneficiary's physician or APRN regarding changes in the beneficiary's condition and needs;

(i) Gathering information regarding the beneficiary's condition and the need for continued care;

(j) Communicating and coordinating with DHCF or its designated agent regarding changes in the beneficiary's condition and needs. At a minimum the Provider must communicate to DHCF or its designated agent:

(1) Any failure or inability of the provider to deliver authorized services within three (3) business days of the scheduled visit; and

(2) Any change in the beneficiary's status requiring a modification in the amount, duration, or scope of service authorized; and

(k) Counseling the beneficiary and the beneficiary's family regarding nursing and related needs.

5008.4 The R.N., at minimum, shall visit each beneficiary within forty-eight (48) hours of initiating PCA services, and no less than every sixty (60) days thereafter, to monitor the implementation of the plan of care and the quality of PCA services provided to the beneficiary.

5008.5 The R.N. shall provide additional supervisory visits to each beneficiary if the situation warrants additional visits, such as in the case of an assignment of a new personal care aide or change in the beneficiary's health status.

5009 PERSONAL CARE AIDE REQUIREMENTS

5009.1 Each PCA, whether an employee of the Provider or secured through a staffing agency, shall meet the following requirements:

(a) Obtain or have an existing Home Health Aide certification in accordance with Chapter 93 of Title 17 of the District of Columbia Municipal Regulations;

(b) Confirm, on an annual basis, that he or she is free from communicable diseases including tuberculosis and hepatitis, by undergoing an annual purified protein derivative (PPD) test and receiving a hepatitis vaccine during physical examination by a physician, and obtaining written and signed documentation from the examining physician confirming freedom from communicable disease;

(c) Provide evidence of current cardio pulmonary resuscitation and first aid certification;

(d) Pass a criminal background check pursuant to the Licensed Health Professional Criminal Background Check Amendment Act of 2006, effective March 6, 2007 (D.C. Law 16-222; D.C. Official Code § 3-1205.22) and 17 DCMR § 9303;

(e) Pass a reference check and a verification of prior employment;

(f) Have an individual NPI number obtained from NPPES;

(g) Obtain at least twelve (12) hours of continuing education or in-service training annually in accordance with the Department of Health’s Home Care Agency training requirements under 22-B DCMR § 3915; and

(h) Meet all of the qualifications for Home Health Aide trainees in accordance with Chapter 93 of Title 17 DCMR, which includes the following:

(1) Be able to understand, speak, read, and write English at a fifth (5^{th}) grade level or higher;

(2) Be knowledgeable about infection prevention, including taking standard precautions; and

(3) Possess basic safety skills including being able to recognize an emergency and be knowledgeable about emergency procedures.

5010 STAFFING AGENCIES

5010.1 A Provider may contract with a licensed staffing agency to secure staff to deliver PCA services. Agreements between the Provider and the staffing agency providing personal care staffing services shall be in writing and include at a minimum, the following:

(a) A provision requiring the staffing agency to provide the Provider with the staffing agency's NPI number obtained from the NPPES and the NPI numbers of all individuals providing PCA services to the home care agency throughout the duration of the contract;

(b) A business address and e-mail address for each staffing agency;

(c) Provisions making explicit and delineating the Provider's responsibility to:

(1) Manage, supervise and evaluate the PCA services secured through a staffing agency; and

(2) Be accountable for all services delivered by non-employee PCAs to the same extent as if the PCAs were employees of the Provider;

(d) The duration of the agreement, including provisions for renewal, if applicable; and

(e) Assurances that the staffing agency shall comply with all applicable federal and District laws and rules, including all relevant licensing requirements imposed by the District of Columbia.

5010.2 Each Provider contracting with a staffing agency to provide staffing for PCA services shall:

(a) Ensure that the staffing agency obtains an NPI number for itself and all personnel performing PCA services through the agency;

(b) Provide DHCF with a copy of any and all contract(s) entered into with a staffing agency; and

(c) Ensure that each beneficiary's records shall be the property of the beneficiary's Provider and are maintained at the Provider's place of business in accordance with Section 5013.

5010.3 A staffing agency supplying staff to the provider for the delivery of PCA services shall be considered an agent of the Provider.

5010.4 A Provider is prohibited from having a financial relationship with any staffing agency providing staffing unless the relationship meets one of the exceptions applicable to ownership interests and compensation arrangements established in 42 U.S.C. § 1320a-7b(b)(3) and 42 C.F.R. § 1001.952. A financial relationship includes but is not limited to:

(a) A direct or indirect ownership or investment interest (including an option or non-vested interest) by the Provider in a staffing agency. This interest may be in the form of partnership shares, limited liability company memberships, loans, bonds, equity, debt, or other means; and

(b) A direct or indirect compensation arrangement other than the contract referenced in § 5010.1 between the Provider and the staffing agency for the provision of staff to perform PCA services provided the contract meets the requirements of 42 C.F.R. § 1001.952(d).

5010.5 A Provider is prohibited from contracting with a staffing agency that is or has engaged in any of the following:

(a) Advertising or marketing directly to Medicaid beneficiaries;

(b) Misrepresenting the staffing agency as the provider of PCA services; or

(c) Offering financial or other types of inducements to individuals for the referral of Medicaid beneficiaries, their names, or other identifying information to any health care provider.

5011 INSURANCE

5011.1 Each applicant or Provider shall maintain the following minimum amounts of insurance coverage:

(a) Blanket malpractice insurance for all employees in the amount of at least one million dollars ($1,000,000) per incident;

(b) General liability insurance covering personal property damages, bodily injury, libel and slander of at least one million dollars ($1,000,000) per occurrence; and

(c) Product liability insurance, when applicable.

5011.2 Each applicant or Provider shall post a continuous surety bond in the amount of fifty thousand dollars ($50,000) against all PCA services claims, suits, judgments, or damages including court costs and attorney's fees arising out of the negligence or omissions of the Provider in the course of providing services to a Medicaid beneficiary or a person believed to be a Medicaid beneficiary. The number of bonds required shall be predicated upon the number of Provider offices enrolled by the applicant or Provider in the Medicaid program.

5012 ADMINISTRATION

5012.1 NPI numbers for Providers and staffing agencies, and all personnel delivering PCA services shall be included in all Medicaid billings.

5012.2 Each Provider shall have a current organizational chart that clearly describes the organizational structure, management responsibilities, staff responsibilities, lines of authority, and use of any contractors.

5012.3 Each Provider shall maintain current copies of all fully executed contracts including all staffing agency contracts pertaining to the delivery of PCA services, in the Provider's office and make them available to DHCF, CMS, and other authorized government officials or their agents when requested.

5012.4 Each Provider shall maintain a copy of each license held by their employees and employees of any staffing agency utilized by the Provider for the delivery of PCA services.

5012.5 A Provider shall be prohibited from waiving liability or assigning contract authority to any other entity for covered services provided to Medicaid beneficiaries.

5012.6 Each Provider shall provide to all employees and contractors (such as staffing agencies providing staffing) a current policy manual which sets forth all of its policies and procedures.

5012.7 Each policy manual shall include, but not be limited to, the following information:

(a) A description of the services to be provided;

(b) Procedures for beneficiary care;

(c) The reimbursement methodology or fee schedules;

(d) Operational schedules;

(e) Quality assurance standards;

(f) A statement of beneficiary rights and responsibilities;

(g) Financial and record-keeping requirements;

(h) Procedures for emergency care, infection control and reporting of incidents;

(i) A description of staff positions and personnel policies, which shall be reviewed annually, revised as necessary, and dated at time of review;

(j) Policies and procedures for hiring, performance assessments, grievances, and in-service training of all PCAs who deliver services, regardless of whether the PCA is an employee of the Provider or is secured through a staffing agency;

(k) An up to date listing of professional staff licensure and registration information;

(l) An up to date listing of PCA certifications;

(m) Policies and procedures for providing advance notice to beneficiaries in accordance with Section 5007; and

(n) Policies, procedures, and presentation materials for owners, managers, employees and contractual staff for in-service training on the following subjects:

(1) Compliance with these regulations;

(2) Compliance with federal and District False Claims Acts;

(3) Preventing, detecting, and reporting fraud, waste, and abuse; and

(4) Rights of employees to be protected as whistleblowers.

5013 RECORDS

5013.1 Each Provider shall maintain complete and accurate records reflecting the specific PCA services provided to each beneficiary for each unit of service billed. Such records must be maintained for a period of ten (10) years or when all audits have been completed, whichever is longer.

5013.2 Each Provider shall be responsible for maintaining the confidentiality of each beneficiary's care, treatment, and records. The disclosure of personal health information by the Provider is subject to all of the provisions set forth in applicable District and Federal laws and rules.

5013.3 Each beneficiary's record shall be readily retrievable and shall be kept in a locked room or file maintained and safeguarded against loss or unauthorized use at the location of the Provider's place of business that is identified on the Provider's Medicaid Provider application.

5013.4 Each Provider shall permit reviews and on-site inspections to be conducted by CMS and its agents, and DHCF, and its agents to determine Provider compliance with all applicable laws.

5013.5 Each Provider shall comply with the terms of its Medicaid Provider Agreement with respect to the maintenance of all beneficiary and financial records.

5013.6 Each beneficiary's record shall include, but is not limited to, the following information:

(a) General information including the beneficiary's name, Medicaid identification number, address, telephone number, age, sex, name and telephone of emergency contact person, authorized representative (if applicable), and primary care physician's or advanced practice registered nurse's name, address, and telephone number;

(b) Health care information, including all referrals, assessments, service authorizations, plans of care, and progress notes;

(c) Dates and description of PCA services rendered, including the name and NPI of the personal care aide performing the services;

(d) Documentation of each supervisory visit of the R.N., including signed and dated clinical progress notes;

(e) Discharge summary, if applicable;

(f) Copies of any written notices given to the beneficiary; and

(g) Any other appropriate identifying information that is pertinent to beneficiary care.

5014 BENEFICIARY RIGHTS AND RESPONSIBILITIES

5014.1 Each Provider shall develop a written statement of a beneficiary's rights and responsibilities consistent with the requirements of this section, which shall be given to each beneficiary in advance of receiving services or during the initial care planning visit before the initiation of services.

5014.2 The written statement of the beneficiary's rights and responsibilities shall be prominently displayed at the Provider's business location and available at no cost upon request by a member of the general public.

5014.3 Each Provider shall develop and implement policies and procedures outlining the following beneficiary's rights:

(a) To be treated with courtesy, dignity and respect;

(b) To control his or her own household and lifestyle;

(c) To participate in the planning of his or her care and treatment;

(d) To receive treatment, care, and services consistent with the plan of care and to have the plan of care modified for achievement of outcomes;

(e) To receive services by competent personnel who can communicate with the beneficiary in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq.*);

(f) To refuse all or part of any treatment, care, or service and be informed of the consequences;

(g) To be free from mental and physical abuse, neglect and exploitation from persons providing services;

(h) To be assured that for purposes of record confidentiality, the disclosure of the contents of the beneficiary's records is subject to all the provisions of applicable District and federal laws;

(i) To voice a complaint or grievance about treatment, care, or lack of respect for personal property by persons providing services without fear of reprisal;

(j) To have access to his or her records; and

(k) To be informed orally and in writing of the following:

(1) Services to be provided, including any limits;

(2) Amount charged for each service, the amount of payment required from the beneficiary and the billing procedures, if applicable;

(3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third party sources;

(4) Acceptance, denial, reduction or termination of services;

(5) Complaint and appeal procedures;

(6) Name, address and telephone number of the Provider;

(7) Telephone number of the District of Columbia Medicaid fraud hotline;

(8) Beneficiary’s freedom from being forced to sign for services that were not provided or were unnecessary; and

(9) A statement, provided by DHCF, defining health care fraud and ways to report suspected fraud.

5014.4 Each beneficiary shall be responsible for the following:

(a) Treating all Provider personnel with respect and dignity;

(b) Providing accurate information when requested;

(c) Informing Provider personnel when instructions are not understood or cannot be followed;

(d) Cooperating in making a safe environment for care within the home; and

(e) Reporting suspected fraud, waste and abuse to DHCF via the fraud and abuse complaint form available at www.dc-medicaid.com.

5014.5 Each Provider shall take appropriate steps to ensure that each beneficiary, including beneficiaries who cannot read or those who have a language or communication barrier, has received the information required pursuant to this section. Each Provider shall document in the records the steps taken to ensure that each beneficiary has received the information.

5015 REIMBURSEMENT

5015.1 Each Provider shall be reimbursed five dollars ($5.00) per unit of service for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty-five cents ($3.45) shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq*. (2012 Repl.)). A unit of service is fifteen (15) minutes. A provider must provide at least eight (8) minutes of care to bill one unit of service.

5015.2 Each Provider shall maintain adequate documentation substantiating the delivery of allowable services provided in accordance with the PCA service authorization and the beneficiary's plan of care for each unit of service submitted on every claim.

5015.3 Reimbursement for PCA services, when provided through the D.C. Medicaid program's State Plan PCA benefit, shall not exceed eight (8) hours per day, seven (7) days a week, and shall be limited to the amount, duration, and scope of services set forth in the PCA Service Authorization and the plan of care, as described in Section 5003.

5015.4 Claims for PCA services submitted by a Provider in any period during which the beneficiary is an in-patient at another health care facility including a hospital, nursing home, psychiatric facility or rehabilitation program shall be denied except on the day when a beneficiary is admitted or discharged.

5015.5 When a beneficiary is discharged from a health care facility to the beneficiary's home and requires PCA services on the date of discharge, the number of PCA hours on that day shall be authorized in accordance with the beneficiary's discharge plan.

5015.6 Claims for PCA service submitted by a Provider for any hour in which the beneficiary was receiving ADHP services under the § 1915(i) State Plan Option, or other similar service in which PCA services are provided concurrently to the beneficiary. shall be denied.

5015.7 If a beneficiary is also receiving ADHP services on the same day that PCA services are delivered, the combination of both PCA and ADHP services shall not exceed a total of twelve (12) hours per day.

5015.8 Each Provider shall agree to accept as payment in full the amount determined by DHCF as Medicaid reimbursement for the authorized services provided to beneficiaries. Providers shall not bill the beneficiary or any member of the beneficiary's family for PCA services.

5015.9 Each Provider shall agree to bill any and all known third-party payers prior to billing Medicaid.

5015.10 All reimbursable claims for PCA services shall include the NPI numbers for the:

(a) Provider;

(b) Physician or APRN who ordered the PCA services;

(c) The staffing agency, if applicable; and

(d) PCA who provided the PCA services, regardless of whether the PCA is an employee of the Provider or is from another staffing agency.

5015.11 Pursuant to 42 C.F.R. § 424.22(d), the Department shall deny PCA service claims or recoup paid claims when Provider records or other evidence indicate that the primary care physician or APRN ordering a beneficiary's treatment has a direct or indirect financial relationship, compensation, ownership or investment interest as defined in 42 C.F.R. § 411.354 in the Provider billing for the services, unless the financial relationship, compensation, ownership or investment interest meets an exception as defined in 42 C.F.R. § 411.355.

5015.12 Claims resulting from marketing by a staffing agency (including face-to-face solicitation at doctors' offices, home visits, requests for beneficiary Medicaid numbers, or otherwise directing beneficiaries to any Medicaid Provider) shall not be reimbursed.

5016 AUDITS AND REVIEWS

5016.1 DHCF shall perform audits to ensure that Medicaid payments are consistent with efficiency, economy and quality of care and made in accordance with federal and District rules governing Medicaid.

5016.2 The audit process shall routinely be conducted by DHCF to determine, by statistically valid scientific sampling, the appropriateness of services rendered and billed to Medicaid. These audits shall be conducted on-site or through an off-site, desk review.

5016.3 Each Provider shall allow access to relevant records and program documentation upon request and during an on-site audit or review by DHCF, other District of Columbia government officials and representatives of the United States Department of Health and Human Services.

5016.4 If DHCF denies a claim, DHCF shall recoup, by the most expeditious means available, those monies erroneously paid to the Provider for denied claims, following the period of Administrative Review as set forth in § 5017 of these rules.

5016.5 The recoupment amounts for denied claims shall be determined by the following formula:

(a) A fraction shall be calculated with the numerator consisting of the number of denied paid claims resulting from the audited sample. The denominator shall be the total number of paid claims from the audit sample; and

(b) This fraction shall be multiplied by the total dollars paid by DHCF to the Provider during the audit period, to determine the amount recouped. For example, if a Provider received Medicaid reimbursement of ten thousand dollars ($10,000) during the audit period, and during a review of the claims from the audited sample, it was determined that ten (10) claims out of one hundred (100) claims are denied, then ten percent (10%) of the amount reimbursed by Medicaid during the audit period, or one thousand dollars ($1000), would be recouped.

5016.6 DHCF shall issue a Notice of Proposed Medicaid Overpayment Recovery (NR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review.

5017 APPEALS FOR PROVIDERS AGAINST WHOM A RECOUPMENT IS MADE

5017.1 The Provider shall have sixty (60) days from the date of the NR to request an administrative review of the NR. The request for administrative review of the NR shall be submitted to "Manager, Division of Program Integrity, DHCF".

5017.2 The written request for administrative review shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested.

5017.3 DHCF shall mail a written determination relative to the administrative review to the provider no later than one hundred twenty (120) days from the date of the written request for administrative review pursuant to § 5017.1.

5017.4 Within fifteen (15) days of receipt of the Medicaid Program's written determination, the Provider may appeal the written determination by filing a written notice of appeal with the Office of Administrative Hearings (OAH), 441 4th Street, NW, Suite 450 North, Washington, D.C. 20001.

5017.5 Filing an appeal with the OAH shall not stay any action to recover any overpayment.

5099 DEFINITIONS

When used in this chapter, the following terms and conditions shall have the following meanings:

Activities of Daily Living - The ability to bathe, transfer, dress, eat and feed self, engage in toileting, and maintain bowel and bladder control (continence).

Advanced Practice Registered Nurse - A person who is licensed or authorized to practice as an advanced practice registered nurse pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl. & 2012 Supp.)).

Authorized representative – Any person other than a provider:

(a) Who is knowledgeable about a beneficiary's circumstances and has been designated by that person to represent him or her; or

(b) Who is legally authorized either to administer a beneficiary's financial or personal affairs or to protect and advocate for his/her rights.

Cueing- Using verbal prompts in the form of instructions or reminders to assist persons with activities of daily living and instrumental activities of daily living.

Department of Health Care Finance – The executive agency of the government responsible for administering the Medicaid program within the District of Columbia, effective October 1, 2008.

Family - Any person related to the client or beneficiary by blood, marriage, or adoption.

Limited English Proficient- Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English.

Order – A formal, written instruction signed by a physician or APRN. regarding a specific patient's medical care, treatment or management. An order for PCA services may only be written by a physician or APRN in accordance with § 5006.1.

PCA Service Authorization Form – A form that has been developed or approved by DHCF that identifies the amount, duration and scope of PCA services and the number of hours authorized based upon a face-to-face assessment in accordance with § 5003.

Primary care physician - A person who is licensed or authorized to practice medicine pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*. (2007 Repl. & 2012 Supp.)).

Registered Nurse - A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*. (2007 Repl. & 2012 Supp.)).

Staffing Agency – Shall have the same meaning as set forth in the Nurse Staffing Agency Act of 2003, effective March 10, 2004 (D.C. Law 15-74; D.C. Official Code §§ 44-1051.01 *et seq.*).

Start of Care – The first date upon which a beneficiary receives or is scheduled to receive PCA services.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, Suite 900 South, Washington D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to Sections 4(a) and 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.03(a) and 7-1671.13 (2012 Repl.)) respectively, and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of the adoption of, on an emergency basis, the following amendments to Chapter 3 (Use of Medical Marijuana) of Subtitle C (Medical Marijuana), Title 22 (Health), of the District of Columbia Municipal Regulations (DCMR).

This emergency action is necessary to the public health, welfare, and safety in order to address the needs of patients suffering from medical conditions which, based on their physician's recommendation, need to receive medical marijuana, in non-dried forms, in excess of the equivalent of two (2) ounces of dried medical marijuana within a thirty (30) day period.

This emergency rule was adopted on October 15, 2015, and became effective on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption (February 11, 2016), or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director of the Department of Health also gives notice of her intent to adopt this rule, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register,* and upon completion of the thirty (30)-day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

Chapter 3, USE OF MEDICAL MARIJUANA, of Title 22-C, MEDICAL MARIJUANA, is amended as follows:

Section 300, USE BY QUALIFYING PATIENT, TRANSPORTATION BY CAREGIVER, AND LIMITATIONS ON MEDICAL MARIJUANA, is amended as follows:

Subsection 300.9 is amended to read as follows:

300.9 Except as provided in § 300.10, the maximum amount of medical marijuana any qualifying patient or caregiver may possess at any time is:

(a) Two (2) ounces of dried medical marijuana; or

(b) The equivalent of two (2) ounces of dried medical marijuana when sold in any other form.

The current Subsections 300.10-300.13 are renumbered as 300.11-300.14.

A new Subsection 300.10 is added to read as follows:

300.10 A qualifying patient may petition the Director for approval to possess more than the equivalent of two (2) ounces of dried medical marijuana in a form other than dried by submitting the following to the Department:

(a) A written request from the qualifying patient's recommending physician containing:

(1) The qualifying patient's name and age;

(2) The qualifying patient's clinical diagnosis;

(3) The qualifying patient's clinical history;

(4) The physician's treatment plan for the qualifying patient including the duration of treatment;

(5) The reason that the waiver is being requested;

(6) The recommended form of medical marijuana;

(7) The recommended amount, concentration, or dosage of medical marijuana that the qualifying patient needs within a thirty (30) day period; and

(b) Any other information requested by the Department.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Administrative Assistant, at Angli.Black@dc.gov, (202) 442-5977.

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. **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.

3. **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.

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

MURIEL BOWSER
MAYOR

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

ACHIEVEMENT PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Accreditation Services

Achievement Prep PCS (APrep) is seeking a competitive bid for accreditation services for a public charter school network. 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 Accreditation Services for its public charter school network, including but not limited to: guidance on the establishment of necessary accreditation teams; assessment and evaluation of curriculum and instruction with necessary accreditation tools; analysis of all relevant data from accreditation protocols, surveys, and curriculum and instruction evaluations; and organization of the site-visit process including: building readiness, organizing travel plans, and preparing school staff. Scope of work includes selecting an accrediting body approved by the DC Public Charter School Board. Bids must include evidence of experience in field, qualifications and estimated fees. Please send proposals to bids@achievmentprep.org and include "RFP Accreditation Services" in the heading. Proposals must be received no later than 5pm on Friday, November 20, 2015.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, NOVEMBER 18, 2015
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members:
Nick Alberti, Mike Silverstein, Ruthanne Miller, James Short

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00100; Millie's Spring Valley, LLC, t/a Millie's, 4866 Massachusetts Ave NW, License #100214, Retailer CR, ANC 3D
Application for a New License

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00098; Naylor Stables, LLC, t/a To Be Determined, 1322 9th Street NW, License #100016, Retailer CT, ANC 2F
Application for a New License

Protest Hearing (Status) **9:30 AM**
Case # 15-PRO-00099; Dos Ventures, LLC, t/a Saint Yves, 1220 Connecticut Ave NW, License #99876, Retailer CT , ANC 2B
Application for a New License

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CMP-00025; Desperados Pizza, LLC, t/a Desperados Pizza, 1342 U Street NW, License #84731, Retailer CT, ANC 1B
No ABC Manager on Duty (two counts)

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CMP-00143; Shaw Howard Deli, LLC, t/a Shaw Howard Deli, 1911 Seventh Street NW, License #95169, Retailer B, ANC 1B
Sold Go-Cups

Board's Calendar
November 18, 2015

Show Cause Hearing (Status) **9:30 AM**
Case # 15-251-00081; Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge
1242 H Street NE, License #87780, Retailer CR, ANC 6A
Interfered with an Investigation, Failed to Preserve a Crime Scene, Failed to Notify Board of Change in Corporate Structure

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CMP-00606; Jose Andres Catering, LLC, t/a Jose Andres Catering
717 D Street NW, License #88399, Retailer Caterer, ANC 2C
Failed to File a Caterers Report

Show Cause Hearing (Status) **9:30 AM**
Case # 15-AUD-00055; Café Europa, Inc., t/a Panache, 1725 DeSales Street NW, License #60754, Retailer CR, ANC 2B
Failed to File Quarterly Statements (4th Quarter 2014)

Show Cause Hearing (Status) **9:30 AM**
Case # 15-CMP-00410; Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600 7th Street NW, License #92773, Retailer DT, ANC 6E
Substantial Change in Operation Without Board's Approval
This hearing has been cancelled. See Board Order No. 2015-511.

Show Cause Hearing (Status) **9:30 AM**
Case # 15-AUD-00053; 1606 K, LLC, t/a Fuel Pizza & Wings, 1606 K Street NW, License #88452, Retailer CR, ANC 2B
Failed to File Quarterly Statements (4th Quarter 2014)

Show Cause Hearing* **10:00 AM**
Case # 15-CC-00053; RiRa Georgetown, LLC, t/a RiRa Irish Pub, 3123 M Street NW, License #92168, Retailer CR, ANC 2E
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Board's Calendar
November 18, 2015

Show Cause Hearing* **11:00 AM**
Case # 15-251-00053; Makamboo, Corp, t/a Awash, 2218 18th Street NW, License #20102, Retailer CR, ANC 1C
Operating after Hours, No ABC Manager on Duty

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

Show Cause Hearing* **1:30 PM**
Case # 15-CMP-00353; Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600 7th Street NW, License #92773, Retailer DT, ANC 6E
Substantial Change in Operation Without Board's Approval, Violation of Settlement Agreement
This hearing has been cancelled. See Board Order No. 2015-511.

Show Cause Hearing* **1:30 PM**
Case # 15-CMP-00284; Ultimo, LLC, t/a Divino Grill (Formerly-Ultimo Lounge), 1633 17th Street NW, License #93308, Retailer CR, ANC 2B
No ABC Manager on Duty, Failed to Post Pregnancy Sign, Failed to Post Legal Drinking Age Sign

Show Cause Hearing* **2:30 PM**
Case # 15-CMP-00339; Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600 7th Street NW, License #92773, Retailer DT, ANC 6E
Substantial Change in Operation Without Board's Approval, Violation of Settlement Agreement, Substantial Change in Operation (No Summer Garden Endorsement)
This hearing has been cancelled. See Board Order No. 2015-511.

Show Cause Hearing* **2:30 PM**
Case # 15-CMP-00414; Yetenbi, Inc., t/a Noble Lounge (Formerly-Yetenbi Restaurant), 1915 9th Street NW, License #85258, Retailer CT, ANC 1B
No ABC Manager on Duty, Substantial Change without Boards Approval (Increase in Occupancy)

Show Cause Hearing* **3:30 PM**
Case # 15-CMP-00338; Daci Enterprises, LLC, t/a Dacha Beer Garden, 1600 7th Street NW, License #92773, Retailer DT, ANC 6E
Substantial Change in Operation Without Board's Approval, Violation of Settlement Agreement, Substantial Change in Operation (No Summer Garden Endorsement)
This hearing has been cancelled. See Board Order No. 2015-511.

Board's Calendar
November 18, 2015

Protest Hearing* **3:30 PM**
Case # 15-PRO-00078; Renaissance Centro M Street, LLC, t/a Hyatt Place Washington DC Georgetown, 2121 M Street NW, License #99352, Retailer CH ANC 2A
Application for a New License

Protest Hearing* **4:30 PM**
Case # 15-PRO-00081; MST Enterprises, Inc., t/a Churreria Madrid Restaurant 2505 Chaplain Street NW, License #60806, Retailer CR, ANC 1C
Substantial Change (Entertainment Endorsement to allow DJ, Karaoke and Live Band)
This hearing is cancelled due to the dismissal of the Application. See Board Order No. 2015-463.

Protest Hearing* **4:30 PM**
Case # 15-PRO-00025; Po Boy Jim, LLC, t/a Po Boy Jim, 709 H Street NE License #87903, Retailer CR, ANC 6C
Substantial Change (Entertainment Endorsement to allow Karaoke and a D.J)

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, NOVEMBER 18, 2015
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On November 18, 2015 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#15-CC-00034 Young's Globe Liquors, 4520 BENNING RD SE Retailer A Retail - Liquor Store, License#: ABRA-077016

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2. Case#15-251-00175 Midtown, 1219 CONNECTICUT AVE NW Retailer C Nightclub, License#: ABRA-072087

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3. Case#15-251-00180 Velvet Lounge, 915 U ST NW Retailer C Tavern, License#: ABRA-078443

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4. Case#15-CC-00116 Cities DC (formerly LOOK), 1909 K ST NW Retailer C Restaurant, License#: ABRA-077812

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5. Case#15-CMP-00666 Rosebar, 1215 CONNECTICUT AVE NW Retailer C Tavern, License#: ABRA-077883

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6. Case#15-CC-00121 Kogod Liquors, 441 NEW JERSEY AVE NW Retailer A Retail - Liquor Store, License#: ABRA-024868

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7. Case#15-CMP-00530 Pacifico, 514 8TH ST SE Retailer C Restaurant, License#: ABRA-086033

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8. Case#15-CMP-00537 Bachelor's Mill/Back Door Pub, 1104 8TH ST SE Retailer C Tavern, License#: ABRA-011277

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9. Case#15-CMP-00579 Zoo Bar Cafe, 3000 CONNECTICUT AVE NW Retailer C Restaurant, License#: ABRA-060391

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10. Case#15-251-00165 W Washington DC, 515 15TH ST NW Retailer C Hotel, License#: ABRA-075952

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11. Case#15-CMP-00722 Imm On H, 1360 H ST NE Retailer C Restaurant, License#: ABRA-099569

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12. Case#15-CC-00095 The Oceanaire Seafood Room, 1201 F ST NW Retailer C Restaurant, License#: ABRA-084736

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13. Case#15-CMP-00663 Burka's Fine Wines & Liquors, 3500 Wisconsin AVE NW Retailer A Retail - Liquor Store, License#: ABRA-086394

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14. Case#15-CMP-00661 Orange Spoon, 1255 23RD ST NW Retailer A Retail - Liquor Store, License#: ABRA-090054

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15. Case#15-CMP-00631 Kitty O'Shea's DC, 4624 WISCONSIN AVE NW Retailer C Restaurant, License#: ABRA-090464

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16. Case#15-CMP-00693 DACHA BEER GARDEN, 1600 7TH ST NW Retailer D Tavern, License#: ABRA-092773

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17. Case#15-CMP-00583 The Big Stick, 20 M ST SE Retailer C Restaurant, License#: ABRA-094844

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18. Case#15-CMP-00538 Duplex Diner, 2004 18th ST NW Retailer C Restaurant, License#: ABRA-097032

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19. Case#15-251-00162 Layla Lounge, 501 MORSE ST NE Retailer C Tavern, License#: ABRA-097367

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20. Case#15-CMP-00531 Toscana Cafe, 601 2ND ST NE Retailer D Restaurant, License#: ABRA-097558

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21. Case#15-CC-00117 Chinese Disco, 3251 PROSPECT ST NW CS-1 Retailer C Restaurant, License#: ABRA-078058

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22. Case#15-CC-00117(a) Chinese Disco, 3251 PROSPECT ST NW CS-1 Retailer C Restaurant, License#: ABRA-078058

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23. Case#15-CMP-00539 RiRa Irish Pub, 3123 - 3125 M ST NW Retailer C Restaurant, License#: ABRA-092168

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, NOVEMBER 18, 2015 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Settlement Agreement, submitted by Red, White and Basil. ***Mova***, 2204 14th Street, N.W., Retailer CT, License No.: 088179.

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2. Review of Settlement Agreement between Dacha and ANC 6A, dated October 29, 2015. ***Dacha***, 2204 14th Street, N.W., Retailer CT, License No.: 088179.

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, NOVEMBER 18, 2015 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 4C. SMD 4C07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Fasika***, 4422 Georgia Avenue NW, Retailer DR, License No. 083216.

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2. Review Application for New CX Multipurpose Facility. ANC 2F. SMD 2F05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Drafthouse Comedy***, 1100 13th Street NW #103, Retailer CX, License No. 100884.

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3. Review Application for Class Change from Retailer B to Retailer A. ANC 6E. SMD 6E01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***1618 Variety Market***, 1618 8th Street NW, Retailer B, License No. 084582.

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4. Review Request for Change of Hours. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday-Saturday 9am to 8pm. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday 9am to 8pm, Monday-Saturday 9am to 10am. ANC 5D. SMD 5D07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Mudrick's Supermarke***t, 1064 Bladensburg Road NE, Retailer B Grocery, License No. 097489.

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5. Review Request for Change of Hours. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday-Saturday 9am to 9:30pm. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday-Saturday 7am to 12am. ANC 4D. SMD 4D02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***4Corner***, 440 Kennedy Street NW, Retailer B Grocery, License No. 094175.

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6. Review Request for Change of Hours. ***Approved Hours of Operation for Premises:*** Sunday-Thursday 11am to 2am, Friday-Saturday 11am to 3am. ***Approved Hours of Alcoholic Beverage Sales and Consumption for Premises:*** Sunday-Thursday 11am to 1:30am, Friday-Saturday 11am to 2:30am. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption for Sidewalk Café:*** Sunday-Thursday 11am to 1:30am, Friday-Saturday 11am to 2:30am. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Premises:*** Sunday-Thursday 10am to 2am, Friday-Saturday 10am to 3am. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Sidewalk Cafe:*** Sunday-Thursday 10am to 1:30am, Friday-Saturday 10am to 2:30am. ANC 6E. SMD 6E01. Pending Enforcement Matter: Case #15-CMP-00629, 10/1/2015, Substantial Change in Operation must be approved (Sidewalk Café after-hours), case has yet to go before Board. No outstanding fines/citations. No Settlement Agreement. ***Chaplin***, 1501 9th Street NW, Retailer CR, License No. 095700.

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7. Review Request for Change of Hours. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption for Premises and Summer Garden:*** Sunday 12pm to 2am, Monday-Thursday 5pm to 2am, Friday 5pm to 3am, Saturday 12pm to 3am. ***Approved Hours of Live Entertainment for Premises:*** Sunday-Thursday 6pm to 2am, Friday-Saturday 6pm to 3am. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Premises and Summer Garden:*** Sunday 11am to 2am, Monday-Thursday 5pm to 2am, Friday 5pm to 3am, Saturday 11am to 3am. ANC 1B. SMD 1B11. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Satellite Room,*** 2047 9th Street NW, Retailer CT, License No. 087296.

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8. Review Request for Change of Hours. ***Approved Hours of Operation:*** Sunday-Saturday 12am to 12am (24-hour operations). ***Approved Hours of Alcoholic Beverage Sales and Consumption:*** Sunday 11am to 12am, Monday-Saturday 12pm to 12am. ***Approved Hours of Live Entertainment:*** Sunday-Saturday 6pm to 12am. ***Proposed Hours of Alcoholic Beverage Sales and Consumption:*** Sunday -Thursday 8am to 2am, Friday-Saturday 8am to 3am. ***Proposed Hours of Live Entertainment:*** Sunday -Thursday 6pm to 2am, Friday-Saturday 6pm to 3am. ANC 2B. SMD 2B03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Carlyle Suites Hotel***, 1731 New Hampshire Avenue NW, Retailer CH, License No. 090805.

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9. Review Request for Change of Hours. ***Approved Hours of Operation and Alcoholic Beverage Sales:*** Monday-Saturday 9am to 10pm. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday 9am to 10pm, Monday-Saturday 7am to 12am. ANC 5D. SMD 5D06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Roses Queen Liquors***, 830 Bladensburg Road NE, Retailer A Liquor Store, License No. 060822.

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10. Review Letter from Attorney Andrew J. Kline requesting to expand the premises to include 60 seats on the 2nd floor and conceding this request constitutes a Substantial Change to the nature of

operations which requires placards. ANC 6A. SMD 6A06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Sally's Middle Name***, 1320 H Street NE, Retailer DR, License No. 097355.

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11. Review Application for Entertainment Endorsement. Entertainment to Include three-unit jazz band. No Cover Charge. ANC 1B. SMD 1B12. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***BIN-1301,*** 1301 U Street NW, Retailer CT, License No. 091682.

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12. Review Application for Entertainment Endorsement with Cover Charge. Entertainment to Include live music, DJ, poetry readings, karaoke, and comedy shows. ANC 3B. SMD 3B02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Arcuri,*** 2400 Wisconsin Avenue NW, Retailer CR, License No. 091137.

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13. Review Request to add a Brew Pub Endorsement to existing CR License. ANC 3E. SMD 3E04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Range/Aggio***, 5335 Wisconsin Avenue NW, Retailer CR, License No. 090239.

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14. Review Application for Tasting Permit. ANC 8A. SMD 8A07. Pending Enforcement Matter: Case #15-CMP-00056, 12/16/2014, Control of Litter; 3/18/2015, Board referred for Staff Settlement, scheduled a Status Hearing for 6/17/2015 and a Show Cause Hearing for 7/15/2015; 7/15/2015: Hearing continued to 9/9/2015; Continued to 10/28/2015. No outstanding fines/citations. No Settlement Agreement. ***Corner Market***, 1447 Howard Road SE, Retailer A Liquor Store, License No. 086200.

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15. Review Application for Tasting Permit. ANC 4D. SMD 4D05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Avenue Supermarket,*** 5010 New Hampshire Avenue NW, Retailer B Grocery, License No. 090417.

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

BRIDGES PUBLIC CHARTER SCHOOL
BRIYA PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Materials Testing Services and Third Party Inspection Services

Bridges Public Charter School and Briya Public Charter School, through the Mamie D. Lee, LLC partnership, are seeking competitive proposals for Materials Testing Services and Third Party Inspection Services for a public charter school facility project. For a copy of the RFP, please contact Mr. Brenden Kollar of Brailsford & Dunlavey at bkollar@programmanagers.com. All proposals must be submitted by 9:00am on Monday, November 23, 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: 2A07

Petition Circulation Period: **Monday, November 16, 2015 thru Monday, December 7, 2015**
Petition Challenge Period: **Wednesday, December 10, 2015 thru Thursday, December 16, 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:

Michael H. Halpern
Single-Member District 4C04

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Certification of Filling Vacancies
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancies have been filled in the following single-member districts by the individuals listed below:

Leniqua'Dominque Jenkins
Single-Member District 7C04

Wendell Felder
Single-Member District 7C06

DEPARTMENT OF HEALTH

HEALTH REGULATION AND LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Chiropractic
November 10, 2015

On November 10, 2015 at 1:30 pm, the Board of Chiropractic will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 2:00 pm until 4:00 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 open to the public from 1:30 pm to 2:00 pm to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations until 4:00 pm.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Chiropractic website www.doh.dc.gov/boc and select BOC Calendars and Agendas to view the agenda and any changes that may have occurred.

Interim Executive Director for the Board – Robin Jenkins, (202) 442-8336.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Dentistry hereby gives notice, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.), of the change of its regularly scheduled monthly meeting dates for the months of November and December 2015 as follows:

The District of Columbia Board of Dentistry will meet on Tuesday, November 24, 2015 at 10:00 a.m. The open (public) session will begin at 10:30 a.m.

The District of Columbia Board of Dentistry will meet on Wednesday, December 9, 2015 at 10:00 a.m. The open (public) session will begin at 10:30 a.m.

The District of Columbia Board of Dentistry regularly meets on the third Wednesday of each month at 899 North Capitol Street, NE, 2nd Floor, Washington, D.C. 20002.

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.

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Teacher Mentoring & Leadership Training Services

KIPP DC is soliciting proposals from qualified vendors for Teacher Mentoring & Leadership Training Services. The RFP can be found on KIPP DC's website at http://www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on November 20, 2015. Questions can be addressed to rebecca.maltzman@kippdc.org.

CLASS Observation Tool Professional Development

KIPP DC is soliciting proposals from qualified vendors for CLASS Observation Tool Professional Development. The RFP can be found on KIPP DC's website at http://www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 P.M., EST, on November 20, 2015. Questions can be addressed to stacie.kossoy@kippdc.org.

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Program Evaluation Services

KIPP DC intends to enter into a sole source contract with Westat for Evaluation Services for its KIPP Through College program. The decision to sole source is due to the fact that Westat has led evaluation services since 2011, and the upcoming evaluation scope builds on years of prior work. The cost of the contract will be approximately $89,367.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-84

August 3, 2015

Mr. Lance Harvey

RE: FOIA Appeal 2015-84

Dear Mr. Harvey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated July 7, 2015.

Background

On July 7, 2015, you submitted a request to the MPD for records pertaining to an assault committed upon you on June 8, 2015, which was captured on video cameras outside of the Lincoln Theatre. Specifically, you requested:

> 1. Copies of all images- whether video or photographic, containing images of the assault and/or any of the suspects.
> 2. Copies of the video and audio and any notes taken of any and all interrogations of defendant "Juvenile RD", who was arrested on June 8, 2015 and later released.
> 3. Copies of any and all notes taken on the scene of the attack and arrest, including all notes related to the identities of the 4 suspects who were detained and placed into a lineup near the crime scene.
> 4. Copies of all communications and correspondence of any kind related to my case, including correspondence between the Police and the Attorney General's Office

In response, by email dated July 7, 2015, MPD denied your request based on an assertion that the records in question are investigatory files that are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A) and (C)[1].

[1] In the same letter, MPD also disclaimed the ability to "admit or deny the request," a so-called *Glomar* response, citing D.C. Official Code § 2-535(a)(2) and (a)(3)(C). This decision will not address the *Glomar* response or the corresponding privacy exemption analysis, however, because MPD appears to acknowledge the existence of the requested footage (i.e. "After due consideration, we must deny your request.").

On appeal, you challenge the denial of your FOIA request on the following grounds: (1) the Office of the Attorney General ("OAG") has refused to prosecute the only identified participant in the assault; (2) a string of similar assaults have occurred in the vicinity of the original assault perpetrated by men with similar description and release of the video would promote public safety; and (3) without the video footage you are unable to offer an award for the identification of the assailants or initiate a civil lawsuit against them.

The MPD responded to your appeal in a letter to this office reasserting its position that the release of any records in its possession responsive to your request would constitute a clearly unwarranted invasion of personal privacy and interfere with an ongoing MPD enforcement proceeding.

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, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). The right to examine 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), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

D.C. Official Code § 2-534(a)(3)(A)(i) exempts from disclosure investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. The purpose of the exemption is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 124, 232 (1978). "[S]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, [the investigatory record exemption] applies." *See Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, when an agency fails to establish that the documents sought relate to any ongoing investigation or would jeopardize a future law enforcement proceeding, the investigatory records exemption does not protect the agency's decision. *Id.*

In response to your appeal, MPD restated to this office that the criminal investigation pertaining to your assault is ongoing. We are obligated to accept this representation. That the OAG decided not to prosecute one of the assailants captured on the video does not preclude the OAG from prosecuting the other assailants captured on the film at any point before the statute of limitations on the crime expires. Releasing the footage now, in the midst of an ongoing investigation, risks the possibility of the wrongdoers fashioning defenses to prosecution or to witnesses being intimidated.

Similarly, the other documents you requested (notes by the investigatory officer and communications between MPD and OAG relating to the matter), are also exempt from disclosure under D.C. Official Code § 2-534(a)(3)(A)(i). MPD has represented that these records were compiled as part of an investigation into an ongoing proceeding and their release would interfere with that proceeding. We are obligated to accept these representations as well. Accordingly, the records are exempt from disclosure under D.C. Official Code § 2-534(a)(3)(A)(i).

Conclusion

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

Sincerely,

/s 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: 2015-85

August 3, 2015

Mr. Billy P. Greer, Jr.

RE: FOIA Appeal 2015-85

Dear Mr. Greer:

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(a) ("DC FOIA"). In your appeal, you assert that the University of the District of Columbia ("UDC") improperly withheld records you requested under the DC FOIA.

Background

On June 1, 2015, you submitted a request to UDC for a copy of all resumes of applicants who applied for the chief of police position under the same job announcement as Marieo Foster and Ron Culmer. On July 16, 2015, UDC's FOIA officer denied your request on the grounds that resumes of applicants are exempt from disclosure pursuant to D.C. Official Code § 2-534(a)(2). This statute exempts from disclosure "Information of a personal nature where the public disclosure would constitute a clearly unwarranted invasion of personal privacy."

On appeal, you contend that the DC FOIA protects private information such as addresses, phone numbers, and social security numbers, and you have asked that such information be redacted from the responsive resumes. You further indicate that UDC provided you with a redacted resume of one applicant in response to a previous FOIA request, and you believe the remaining resumes should be similarly provided.

In response to your appeal, UDC sent this office a letter dated July 28, 2015, in which it stated that "providing the resumes of unsuccessful applicants who are non-government employees is outside of the spirit of FOIA and . . . the public interest in disclosure of resumes of non-government employees does not outweigh the privacy interest of the individuals."

Discussion

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

The DC FOIA was modeled on the corresponding federal Freedom of Information Act,[1] and decisions construing the federal statute may be examined to construe the local law.[2] 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." Conducting a privacy analysis under FOIA requires determining whether a sufficient privacy interest exists and then balancing the privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

With regard to the first step in the privacy analysis, federal courts have continuously held that there is a cognizable and sufficient privacy interest in information about an individual contained in employment applications. *See*, *e.g.*, *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984). As for the public interest analysis, it is limited to the "core purpose" of FOIA, which is to "shed . . . light on an agency's performance of its statutory duties." *Reporters Comm. for Freedom of Press*, 489 U.S.749 at 773. In *Core*, the court held that "the public interest in learning the qualifications of people who were not selected to conduct the public's business is slight. Disclosure of the qualifications of people who were not appointed is unnecessary for the public to evaluate the competence of people who were appointed." *Id*. at 949. As a result, courts have held that resumes of individuals whose applications for public employment were withdrawn or declined may be withheld because the individuals' privacy interests outweigh the public interest in obtaining their resumes. *See Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 38 (D.D.C. 2000).

Under the FOIA, even when an agency establishes that it has properly withheld a document under an exemption, it must disclose all reasonably segregable, nonexempt portions of the requested documents. *See*, *e.g.*, *Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). Here, information in resumes cannot be reasonably segregated because "[e]ven if [the names of the unsuccessful applicants] were deleted, the applications generally would provide sufficient information for interested persons to identify them with little further investigation." *Core*, 730 F.2d at 948-49.

[1] *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987).
[2] *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Conclusion

Based on the foregoing, we uphold UDC'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: Stacie Y.L. Mills, Assistant General Counsel, UDC (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-86

September 3, 2015

Mr. William M. Scott

RE: FOIA Appeal 2015-86

Dear Mr. Scott:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a) ("DC FOIA"), in which you assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to your request for information under DC FOIA.

Background

On June 25, 2015, you submitted a request to the OCFO for "[a]ll communications sent to and received from the U.S. Internal Revenue Service ("IRS") from November 2014 to present, and all agreements entered into with the IRS, regarding an IRS examination of the tax-exempt status of the $11,000,000 District of Columbia James F. Oyster Elementary School Pilot Revenue Bonds, Series 1999." The OCFO denied your request on July 16, 2015, on the grounds that the records in question are investigatory files exempt from disclosure under D.C. Official Code § 2-534(a)(3)(A) and (E) ("Exemption 3").

Subsequently, you appealed the OCFO's denial to this office, contending that the OCFO improperly asserted Exemption 3. In specific, you argue that it is unclear that an investigation exists, and even if it did, the OCFO's denial is insufficient because it constitutes a blanket exemption that does not adequately articulate the potential risk of harm posed by the release of the withheld documents. You also argue that the District, which is the target of the investigation at issue, lacks standing to assert an argument of interference on behalf of a federal agency.

The OCFO responded to your appeal in a letter to this office reasserting that the release of any records responsive to your request would interfere with an ongoing IRS enforcement proceeding and would disclose investigatory techniques.[1] The OCFO further states that an investigation is in fact ongoing. Along with its response to your appeal, the OCFO provided this office with a copy of the withheld documents for our *in camera* review. We have reviewed the documents and accept the OCFO's representation that an ongoing investigation exists.

[1] A copy of the OCFO's response is attached.

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, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). That right is subject to various exemptions, however, which may form the basis for the 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 are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The DC FOIA contains an exemption for investigatory records that were compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings, but only to the extent that production of the records would have certain enumerated consequences (e.g., interfering with an enforcement proceeding). D.C. Official Code § 2-534(a)(3). Exemption 3 is modeled after Exemption 7 of the federal Freedom of Information Act, which exempts from disclosure the same type of documents. *See* 5 § U.S.C. 552(b)(7). The purpose of the investigatory exemption, as determined by the Supreme Court, is to prevent "the release of information in investigatory files prior to the completion of an actual, contemplated enforcement proceeding." *National Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232 (1978). With respect to the duration of the exemption's validity, the District of Columbia Court of Appeals has held that "[s]o long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of the evidence, the investigatory record exemption applies." *E.g. Fraternal Order of Police, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 815 (D.C. 2014) (internal quotation and citation omitted). Conversely, "where an agency fails to demonstrate that the documents sought relate to any ongoing investigation or would jeopardize any future law enforcement proceedings, the investigatory records exemption would not provide protection to the agency's decision." *Id.*

To invoke Exemption 3, an agency must articulate a concrete harm that would occur if a record were released. Here, the OCFO asserts that release of the requested communications between the District and the IRS would reveal the "scope, path and extent of the investigation, thus potentially compromise[ing], interfere[ing] with or harm[ing] the investigation." The OCFO does not explain how releasing correspondence[2] between the IRS and the District would actually harm the investigation.[3]

[2] Because the OCFO appears to acknowledge in its response to the appeal that no settlement agreements exist, we limit our analysis to the requested correspondence. ("…Mr. Scott requested 'all agreements entered into with the IRS,' implying his erroneous belief that the investigation was completed and the District entered into a settlement agreement with the IRS. . .").

[3] The OCFO cites FOIA Appeal 2011-17 in support of its position; however, we disagree with the decision in this appeal because it failed to address how release of the documents at issue there would interfere with an enforcement proceeding. Instead, the decision concludes

We find the citations the OCFO references to be unpersuasive in establishing that releasing the records at issue would interfere with an enforcement proceeding. The OCFO cites to *Willard v. IRS*, 776 F.2d 100, 102 (4th Cir. 1968) and *White v. IRS*, 707 F.2d 897, 901 (6th Cir. 1983), both of which involve targets of a federal investigation who requested documents about themselves under the federal FOIA while ongoing federal enforcement proceedings were being conducted against them. In both cases, the courts held that disclosing the requested records would interfere with enforcement proceedings by allowing the targets of the investigation an opportunity to fabricate alibis or defenses through access to open investigatory files. *Willard*, 776 F.2d at 103; *White*, 707 F.2d at 901. These cases are distinguishable from the instant matter.

Here, the target of the investigation (the District) is not requesting the investigatory information; rather, it possesses it. As such, there is no potential that releasing the records would provide an unfair litigation advantage to the target of the enforcement proceeding. Further, the documents concern a public bond issued and administered by a public body. It is unclear how releasing correspondence between the IRS and the OCFO could affect the likelihood of the IRS continuing its investigation into the District. Therefore, we conclude that release of the requested correspondence would not interfere with an enforcement proceeding.

The OCFO advances an additional argument that the requested correspondence is protected from disclosure under D.C. Official Code § 2- 534(a)(3)(E) because releasing it would reveal techniques that are "unique and particular to the IRS and are not readily known to the public." D.C. Official Code § 2-534 (a)(3)(E) provides that investigatory records compiled for law enforcement purposes are exempt from disclosure if producing them would disclose investigative techniques and procedures not generally known outside the government. The following are examples of specific IRS investigative techniques that courts have found to be protected by an investigatory technique exemption:

- IRS settlement guidelines. *Mayer Brown LLP v. I.R.S.*, 562 F.3d 1190 (D.C.Cir. 2009).
- IRS techniques with respect to tax protesters. *Becker v. I.R.S.*, 34 F.3d 398 (5th Cir. 1994).
- IRS policy for enforcing summonses in international cases. *Vento v. I.R.S.*, 714 F.Supp.2d 137 (D.D.C. 2010).
- IRS's electronic database detailing vast majority of all evidence obtained by government in criminal tax administration. *Shannahan v. I.R.S.*, 680 F.Supp.2d 1270 (W.D. Wash. 2010) *aff'd*, 672 F.3d 1142 (9th Cir. 2012).
- Documents that reveal how IRS agent detected diesel fuel excises tax dodger. *McQueen v. United States*, 264 F.Supp.2d 502 (S.D. Tex. 2003).
- An IRS statistical technique used to flag tax returns for auditing. *Church of Scientology of Texas v. I.R.S.*, 939 F.Supp. 429 (E.D. Va. 1996).

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summarily that because an investigation existed, releasing documents related to the investigation would potentially harm the investigation.

Courts have rejected attempts by the IRS to invoke the investigative techniques exemption when the IRS provided little insight as to the particular technique used, did not articulate to what degree the technique was known to the public, or failed to establish how the disclosure could be reasonably expected to be used to circumvent the law. *Shannahan v. I.R.S.*, 637 F. Supp. 2d 902 (W.D. Wash. 2009); *Church of Scientology of Texas v. I.R.S.*, 816 F. Supp. 1138 (W.D. Tex. 1993).

In this matter, the OCFO appears to be asserting the investigative technique exemption on behalf of the IRS; yet, the OCFO fails to articulate what specific IRS technique would be revealed or the degree to which the technique is not already known to the public. The OCFO has also failed to explain how disclosing the requested correspondence could be used to circumvent the law. Unlike the cases described above, we do not envision how the requested correspondence could be used by an individual or entity to interfere with an IRS proceeding.

Lastly, the OCFO brings to our attention your previous employment with the IRS and speculates about why you seek the documents at issue. We shall not substantively address these points because a requestor's identity and motives in obtaining records have no bearing on whether the records should be released. *U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 771 (1989) ("Except for cases in which the objection to disclosure is based on a claim of privilege and the person requesting disclosure is the party protected by the privilege, the identity of the requesting party has no bearing on the merits of his or her FOIA request.").

Conclusion

Based on the foregoing, the decision of OCFO is reversed and remanded to the OCFO to provide the withheld documents within 10 business days from the date of this decision.

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: Stephen B. Lyons, Deputy General Counsel, OCFO (via email)
Ching Hua, Assistant General Counsel, OCFO (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-87

August 26, 2015

Mr. Kirby Vining

RE: FOIA Appeal 2015-87

Dear Mr. Vining:

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 Deputy Mayor for Planning and Economic Development ("DMPED") improperly withheld records you requested under DC FOIA.

Background

On May 24, 2015, you sent a request to DMPED for 5 records regarding the development of the McMillan Sand Filtration site. At issue in this appeal is the fifth record, an email message that you identified in your request by date and names of sender and recipient. You also requested an attachment to the email message.

On July 24, 2015, DMPED granted in part and denied in part your request for the fifth record. In its response to you, DMPED confirmed the existence of the email and indicated that the email contained two attachments: "1559_001.pdf" ("Attachment 1") and "McMillan-WSCP – Conservation Summary (Public) June 2013.pdf" ("Attachment 2"). DMPED provided you with Attachment 2 but withheld Attachment 1 as commercial and financial information protected under D.C. Official Code § 2-534(a)(1) ("Exemption 1").[1] In addition, DMPED withheld the entire email message, asserting that it is a predecisional and deliberative inter-agency communication exempt from disclosure under D.C. Official Code § 2-534(a)(4) ("Exemption 4").[2]

On appeal, you challenge DMPD's withholding of the email and Attachment 1. Regarding the email, you that contend that Exemption 4 is not applicable because the sender was not a government employee at the time that the email was sent;[3] therefore, the email does not

[1] Exemption 1 exempts from disclosure "trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would results in substantial harm to the competitive position of the person from whom the information was obtained."
[2] Exemption 4 often known as the "deliberative process privilege" or "litigation privilege," exempts from disclosure "inter-agency or intra-agency memorandums or letters ... which would not be available by law to a party other than a public body in litigation with the public body."
[3] In your appeal, you assert that the sender was a DMPED employee from July 2012 through

constitute an inter- or intra-agency document under DC FOIA. Citing case law, you assert that DMPED improperly invoked Exemption 4 because it failed to sufficiently describe how the email is predecisional and deliberative. Additionally, you claim that the use of Exemption 4 is improper because DMPED failed to identify the decision or product that the email predated. Regarding Attachment 1, you assert that DMPED improperly invoked Exemption 1 because it did not describe the financial information or provide the source of the information. Additionally, you claim that DMPED did not adequately show that the party who provided the information faced actual competition and that the disclosure of the information would cause substantial competitive injury to prevent disclosure under Exemption 1. With regard to both the email and Attachment 1, you further argue that even if the exemptions to disclosure apply, DMPED is required to release redacted versions of the documents that disclose any segregable information pursuant to D.C. Official Code § 2-534(b).

DMPED provided this office with a memorandum in response to your appeal on August 22, 2015,[4] reaffirming its decision to withhold the email and Attachment 1 and clarifying the reasons it invoked exemptions under DC FOIA. DMPED confirms that the sender of the email was an employee of DMPED until October 2014 and, consequently, a government employee at the time he sent the email in April 2014. DMPED states that the recipient was also a DMPED employee at the time the email was sent; therefore, the requested email is an intra-agency record protected from disclosure under Exemption 4. DMPED further argues that the use of Exemption 4 is proper because the substance of the email is both predecisional and deliberative. In its memorandum, DMPED describes the email, stating:

> . . . [The sender of the email] asks Deputy Mayor Hoskins for input regarding a potential response he would like to give to employees of Wall Street Capital Partners. [The sender] includes his analysis and thoughts regarding what Wall Street Capital Partners had proposed… this Email was sent to aid [the Deputy Mayor] in evaluating and deciding what he wanted to do as they moved forward. A final decision had not yet been made and this issue was just another one of many decisions and choices that would be made during the process of the development of the McMillan Sand Filtration Site.

DMPED claims that the email consists of the thoughts and analysis of its sender, not facts or settled agency policy, and is therefore protected from disclosure under Exemption 4 and associated case law.

DMPED describes Attachment 1 as a 2-page document entitled "McMillan – Washington DC Estimated Net Economic Benefit Analysis" that was provided to the District by Wall Street Capital Partners containing a financial chart and a brief description of assumptions used for the chart. DMPED identifies Wall Street Capital Partners as a company that uses land conservation strategies to offset taxable income and raise capital for development projects. DMPED reasserts

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October 2014. The email is dated on April 25, 2014; therefore, based on the dates you provided, the sender was a DMPED employee at the time the email was sent.

[4] A copy of DMPED's memorandum is attached.

its position that the document contains commercial and financial information protected from disclosure under Exemption 1. Additionally, DMPED expands its claim under Exemption 1 to include protection of trade secrets. DMPED cites the definition of trade secrets in D.C. Official Code § 36-401(4)[5] and argues that the information qualifies because it could be used to determine the economic analysis, modelling, and financial projections of Wall Street Capital Partners. DMPED states that "Wall Street Capital Partners is an investment company, it follows that the company faces actual competition from … other investment companies vying for funds, opportunities, management fees, and returns." According to DMPED, disclosure of the information in Attachment 1 would create a substantial likelihood of competitive injury:

> Competitors would be able to use this information to tease out the underlying assumptions and modeling Wall Street Capital Partners' uses and, in turn, use it to their benefit. They could copy the model and offer similar products/services, stealing future clients away from the company. They could use the information as a baseline to then create an improved model they can offer to prospective clients and steal new future business.

DMPED addresses the argument of segregability by asserting that exempt and nonexempt information in the withheld documents are inextricably intertwined. DMPED claims that the email is largely protected by Exemption 4, and necessary redactions would result in minimal information remaining. Regarding Attachment 1, DMPED claims that all of the information in the document is exempt under Exemption 1.

Discussion

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

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

Exemption 4 has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S.

[5] D.C. Official Code § 36-401(4) defines "Trade Secret" as "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (A) Derives actual or potential independent economic value, from not being generally known to, and not being readily ascertainable by, proper means by another who can obtain economic value from its disclosure or use; and (B) is the subject of reasonable efforts to maintain its secrecy."

132, 149 (1975). Privileges in the civil discovery context include the deliberative process privilege. *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it "reflects the give-and-take of the consultative process." *Id*.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

While the ability to pinpoint a final decision or policy may bolster the claim that an earlier document is predecisional, courts have found that an agency does not necessarily have to point specifically to an agency's final decision to demonstrate that a document is predecisional. *See e.g.*, *Gold Anti-Trust Action Comm. Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 762 F. Supp. 2d 123, 136 (D.D.C. 2011) (rejecting plaintiff's contention that "the Board must identify a specific decision corresponding to each [withheld] communication"); *Techserve Alliance v. Napolitano*, 803 F. Supp. 2d 16, 26-27 (D.D.C. 2011).

Along with its formal response to your appeal, DMPED provided this office with a copy of the email message and attachments at issue. It is clear from the email that the sender and recipients[6] were District employees at the time, as their email addresses are District government accounts. Therefore, the email message constitutes an intra-agency record. To qualify for Exemption 4, a communication must be both predecisional and deliberative. Based on DMPED's representations, as well as language in the email, we conclude that the email is predecisional in that it was sent in an effort to formulate a response from DMPED to Wall Street Capital Partners regarding Wall Street Capital Partners' proposal for the McMillan site. Significant portions of the email are also clearly deliberative, reflecting the sender's personal opinions in weighing the pros and cons of the proposal and potential responses. A few sentences in the email, however, are not deliberative in nature.

Under DC 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

[6] Aside from the recipient you identified in your request, three other District employees were carbon copied on the email.

document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). "To demonstrate that it has disclosed all reasonably segregable material, 'the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F .Supp. 2d 106, 120 (D.D.C. 2010)). In *Judicial Watch*, the court held that "[a]lthough purely factual information is generally not protected under the deliberative process privilege, such information can be withheld when 'the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government's deliberations.'" *Id*. at 28. (quoting *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997)). In these instances, factual information is protected when disclosing the information would reveal an agency's decision-making process in a way that would have a chilling effect on discussion within the agency and inhibit the agency's ability to perform its functions. *Id*.

Here, the email's two introductory sentences and its concluding sentence establish the deliberative nature of the email but are not deliberative themselves. Consequently, the majority of the email is protected from disclosure under Exemption 4, but the first two sentences and the final sentence of the email are not exempt and should be disclosed under DC FOIA.

To withhold Attachment 1 under Exemption 1, DMPED must show that the information: (1) is a trade secret or commercial or financial information; (2) was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Official Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, "as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms "commercial" and "financial" used in the federal FOIA should be accorded their ordinary meanings. *Id* at 1290.

Exemption 1 has been "interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury." *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); s*ee also, Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989) In construing the second part of this test, "actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply." *Essex Electro Eng'rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). *See also McDonnell Douglas Corp. v. United States Dep't of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption "does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would "likely" do so. [citations omitted]"). The passage of time can reduce the likelihood of competitive harm. *See Teich v. FDA*, 751 F. Supp. 243, 253 (D.D.C. 1990) (rejecting competitive harm claim based partly upon fact that documents were as many as twenty years old). *But see Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000) (declaring that "[i]nformation does not become stale merely because it is old").

Based on DMPED's representations and our *in camera* review of Attachment 1, it is evident that the document contains commercial and financial information provided by a party outside the government. It is also arguable that the information constitutes trade secrets, as DMPED maintains; however, it is not clear that the information falls within the definition of trade secrets for the purposes of DC FOIA. Nonetheless, we find that the attachment contains commercial and financial data sufficient to meet the threshold for protection under Exemption 1. We also agree with DMPED's claim that actual competition exists from other investment companies and that disclosure of the information would allow competitors to copy or underbid Wall Street Capital Partners and take potential clients and business. Therefore, we find that the commercial and financial information in Attachment 1 was properly withheld under Exemption 1.

Regarding the segregibility of Attachment 1, we find that the entire document is protected from disclosure under Exemption 1. The numerical values in Attachment 1 are clearly protected information showing Wall Street Capital Partners' commercial and financial valuations. Additionally, the categories and descriptions in the document reveal Wall Street Capital Partners' commercial and financial strategy. This information, if disclosed, could cause substantial competitive harm to Wall Street Capital Partners.

Conclusion

Based on the foregoing, we uphold DMPED's decision in part and remand it in part. Within seven (7) business days from the date of this decision, DMPED shall disclose a redacted version of the email dated in accordance with the guidance provided in this determination.

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: Tsega Bekele, DMPED (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: 2015-88

August 17, 2015

Mr. Kenneth M. Schnaubelt

RE: FOIA Appeal 2015-88

Dear Mr. Schnaubelt:

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 object to the response of the Department of Health ("DOH") to a request you submitted under the DC FOIA.

On June 17, 2015, DOH received a FOIA request from you for "any and all records pertaining to the investigation of [a named individual] directly resulting from the complaint ... [that you] filed on February 11, 2015." DOH responded to your request on June 25, 2015, by providing you with responsive documents; however, DOH redacted certain information pursuant to D.C. Official Code § 2-534(a)(2), which protects information that, if disclosed, would constitute an unwarranted invasion of personal privacy.

On August 10, 2015, this office received your correspondence to the Mayor dated August 4, 2015. Although you indicate that you are appealing the DOH's response to your FOIA request, your letter to the Mayor does not contain objections to DOH's FOIA response; rather, you challenge the Board of Social Work's dismissal of a complaint you filed against a District-licensed social worker.

Pursuant to D.C. Official Code § 2-537(a), the Mayor is authorized to review whether a District agency improperly denied public records under the DC FOIA. Accordingly, our review here is limited to whether DOH complied with the DC FOIA in responding to your request.

In response to your appeal to the Mayor, DOH informed this office in a letter dated August 10, 2015,[1] that it "forward[ed] to [you] all documents within the Department of Health's files in connection with this matter." DOH stated that that the only information that was redacted from the documents you received was the home address of the social worker against whom you filed a complaint. DOH further advises that this redaction was justified by D.C. Official Code § 2-534(a)(2).

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

[1] A copy of this letter is attached for your review.

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.

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). As such, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989). D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides an exemption from disclosure for "[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 record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is to determine whether a sufficient privacy interest exists. *Id*.

Here, DOH stated that it redacted a personal address in the documents it disclosed to you, and this representation is consistent with our review of the redactions. A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information.

> Information protected under Exemption 6 [the equivalent of Exemption (2) under the federal FOIA] includes such items as a person's name, address, place of birth, employment history, and telephone number. *See Nat'l Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989); *see also Gov't Accountability Project v. U.S. Dep't of State*, 699 F.Supp.2d 97, 106 (D.D.C. 2010) (personal email addresses); *Schmidt v. Shah*, No. 08–2185, 2010 WL 1137501, at *9 (D.D.C. Mar. 18, 2010) (employees' home telephone numbers); *Schwaner v. Dep't of the Army*, 696 F.Supp.2d 77, 82 (D.D.C. 2010) (names, ranks, companies and addresses of Army personnel); *United Am. Fin., Inc. v. Potter*, 667 F.Supp.2d 49, 65–66 (D.D.C.2009) (name and cell phone number of an "unknown individual").

Skinner v. U.S. Dep't. of Justice, 806 F. Supp. 2d 105, 113 (D.D.C. 2011).

D.C. Official Code § 2-534(a)(2) exempts the disclosure of personal information where the disclosure would constitute a clearly unwarranted invasion of privacy. Home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See*, e.g., *Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994) ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form."). As a result, we find that there is a sufficient privacy interest in the personal address of the private citizen mentioned in the records you requested.

The second part of a privacy analysis examines whether the public interest in disclosure outweighs the individual privacy interest. The Supreme Court has stated that the analysis must be conducted with respect to the purpose of FOIA, which is "to open agency action to the light of public scrutiny." *Department of Air Force v. Rose*, 425 U.S. 352, 372 (1976).

> This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

Department of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 773 (1989).

It is not entirely clear from your appeal whether you are challenging DOH's redaction of a home address from the records you receive. Further, with respect to the redactions, you do not assert a public interest that would overcome the individual privacy interests. Nevertheless, we find that revealing the personal address at issue here would not advance significantly the public understanding of the operations or activities of the government or DOH's performance.

Based on the foregoing, we affirm the DOH's decision with respect to your FOIA request and 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: Edward Rich, Senior Assistant General Counsel, DOH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-89

August 24, 2015

Ms. Fynalle Fre

RE: FOIA Appeal 2015-89

Dear Ms. Fre:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") failed to conduct an adequate search with respect to records you requested under the DC FOIA.

Background

On July 23, 2015, you submitted a request under the DC FOIA to the MPD seeking a copy of an investigative report that you contend has been compiled on you by the MPD's Intelligence Unit. The MPD responded to your request on July 27, 2015, stating that it conducted a comprehensive search for records responsive to your request but was unable to locate any.

Subsequently, you appealed the MPD's decision to this office on the grounds that you believe the investigative report you are seeking exists, and MPD has failed to conduct an adequate search.

The MPD responded to your appeal in a letter to this office dated August 19, 2015.[1] MPD asserted that upon receipt of your FOIA request, staff of the MPD's Intelligence Branch "conducted a search of all paper files, all storage areas within the office, all electronic mailboxes and archives assigned to the office, and all unit electronic files of the office that are contained on the department network. Staff did not locate any responsive documents or emails relating to Ms. Fre." MPD maintains that the search it conducted is adequate under the standards established by judicial precedent and previous FOIA Appeals decisions issued by the Mayor.

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.

[1] A copy of this letter is attached.

Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were "retained by a public body." D.C. Official Code § 2-502(18).

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

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

In order to establish the adequacy of a search,

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

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

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.* An agency can demonstrate that these determinations have been made by a "reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched . . . ." *Id*.

Here, the deputy general counsel of MPD has asserted to this office that the staff of the MPD's Intelligence Branch determined where the records you requested would be located if they existed and conducted a paper and electronic search of these locations, including storage areas. The staff of the Intelligence Unit did not locate any responsive documents.

Because the MPD has attested that it does not possess the record you seek, we are obligated to accept that representation. Therefore, our analysis is limited to whether the MPD's search was reasonable under the DC FOIA, and we conclude that it was.

Conclusion

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

Sincerely,

/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: 2015-90

August 28, 2015

Mr. Kel McClanahan

RE: FOIA Appeal 2015-90

Dear Mr. McClanahan:

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 which you assert that the Metropolitan Police Department ("MPD") improperly withheld records you requested under the DC FOIA.

Background

On November 9, 2014, you submitted a request to the MPD seeking "all records created or maintained by the Metropolitan Police Department about the investigation into the 16 May 1996 death of U.S. Navy Admiral Jeremy Michael Boorda." MPD responded on July 13, 2015, by granting your request in part and denying it in part. Although MPD identified 239 pages of documents that are responsive to your request, it denied portions of these documents under D.C. Official Code § 2-534 (a)(2), which pertains to information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy. MPD denied other portions of the documents under D.C. Official Code § 2-534(a)(3)(C), which exempts from disclosure investigatory records compiled for law enforcement purposes, the release of which would constitute an unwarranted invasion of personal privacy. In addition, MPD advised that it searched for photographs related to the matter but did not locate any.

Subsequently, you appealed to this office, contesting the adequacy of MPD's search. In specific, you challenge MPD's "failure to identify any pieces of evidence or photos/copies of evidence examined by the Questioned Documents office, which were specifically referenced in the released records" and you reference particular photos and items that you are seeking. You later supplemented your appeal to challenge redactions from the middle of pages 14-16 of Batch 3 of the documents MPD produced as well as similar "cut out" withholdings on other pages that you claim you cannot identify due to a lack of proper identification of these redactions.

The MPD provided this office with two responses to your appeal.[1] In its first response, MPD contends that contrary to your position, it conducted an adequate search, including for the photographs identified in the documents you received. In its second response, MPD explains that

[1] A copy of both responses are attached. MPD provided a supplemental response at the request of this office after we found your additional appellate issues in a note on the FOIAxpress system.

the "cut-outs" referenced in your supplemental appeal were preexisting in the nearly 20-year-old documents and were not the result of redactions made by MPD. MPD also clarified the search that it performed, stating that the only locations where responsive records would be likely to be located were the Homicide, Crime Scene Investigations, and Evidence Control divisions, all of which MPD searched.

Discussion

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

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

The first aspect of MPD's decision that you appeal is whether MPD conducted an adequate search to find the records you requested, particularly with regard to certain photographs. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to establish the adequacy of a search,

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

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

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). An agency can demonstrate that these determinations have been made by a "reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist)

were searched . . . ." *Id.* Conducting a search in the record system most likely to be responsive is not by itself sufficient; "at the very least, the agency is required to explain in its affidavit that no other record system was likely to produce responsive documents." *Id.* (internal quotations omitted).

Here, the MPD's deputy general counsel attested to this office that MPD located responsive records through a search of the administrative office of MPD's Homicide Division, which included paper files, electronic mailboxes, archives, and storage areas. MPD conducted similar searches in two other divisions where it determined that responsive records might have been located: Crime Scene Investigations and Evidence Control.[2] MPD asserts that these are the "only locations in MPD where responsive records are likely to be located." We accept MPD's representation and find that the searches it conducted were reasonable pursuant to MPD's obligations under DC FOIA.

With respect to your second appellate issue, MPD represents that portions of the documents that are faded or "cut out" appear in the original documents in MPD's possession. We accept this representation based on our *in camera* review of the documents that were produced. Each redaction made by MPD is clearly marked, whereas the "cut out" portions appear to be faded ink or type.

Conclusion

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

Sincerely,

/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)

[2] MPD also notes that the Department of Forensic Science ("DFS") currently maintains custody of old forensic files. MPD asked DFS to search its files for the photographs and was informed that DFS did not locate any.

THE NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF PUBLIC MEETING

The Annual Community Town Hall meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will be held at 1:00pm on Saturday, November 21, 2015. The meeting will be held at the Department of Employment Services Building, 4058 Minnesota Ave., N.E, Washington, DC 20019, on the first floor. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

DRAFT AGENDA

12:30pm-1:00pm	Arrival
1:00pm	Welcome and Introductions Chris Gardiner, Vice Chair, Board of Directors
1:10pm-1:30pm	Speakers
1:31pm-1:50pm	State of the Hospital Andrew L. Davis, Interim CEO
1:51pm-2:00pm	Video – What's New at UMC?
2:00pm-2:45pm	Presentations and Q & A Moderator- Chris Gardiner
	Topics: Healthcare at UMC Patient Care/ Patient Safety and Quality Strategic Direction of UMC
2:45pm	Dismissal

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

GT97-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND ITS RATE SCHEDULE NO. 6,

GT06-1, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND GENERAL SERVICE PROVISION NO. 23,

and

FORMAL CASE NO. 1027, IN THE MATTER OF THE EMERGENCY PETITION OF THE OFFICE OF THE PEOPLE'S COUNSEL FOR AN EXPEDITED INVESTIGATION OF THE DISTRIBUTION SYSTEM OF WASHINGTON GAS LIGHT COMPANY

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice that, on October 19, 2015, Washington Gas Light Company ("WGL") filed its annual reconciliation ("Annual Reconciliation Filing")[1] of the Plant Recovery Adjustment ("PRA") surcharge for 2015.[2] This surcharge recovers the costs of WGL's vintage coupling replacement and encapsulation program ("Program") approved in Order No. 15627.[3]

2. The 2015 Annual Reconciliation Filing shows the over- or under-collection of the PRA surcharge for the previous year. In the 2015 Annual Reconciliation Filing, WGL includes two tables. The first table shows the adjustment of the current factor to take into account the under-collection of the PRA surcharge for the period ending September 30, 2015.[4] The second table shows how the reconciliation factor was calculated.[5]

3. All persons interested in commenting on the 2015 Annual Reconciliation Filing may submit written comments and reply comments no later than 10 and 20 days, respectively,

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[1] *Formal Case No. 1027, In the Matter of the Emergency Petition of the Office of the People's Counsel for an Expedited Investigation of the Distribution System of Washington Gas Light Company, GT97-3, In the Matter of the Application of Washington Gas Light Company for Authority to Amend its Rate Schedule No. 6, GT06-1, In the Matter of the Application of Washington Gas Light Company for Authority to Amend General Service Provision No. 23,* ("*Formal Case No. 1027, GT97-3, GT06-1*"), Washington Gas Light Company's Annual Reconciliation Filing, filed October 19, 2015.

[2] *See Formal Case No. 1027, GT97-3, GT06-1,* Washington Gas Light Company's Annual Surcharge Filing ("WGL 2015 Annual Surcharge Filing"), filed September 16, 2015.

[3] *Formal Case No. 1027, GT97-3, GT06-1,* Order No. 15627, rel. December 16, 2009.

[4] WGL 2015 Annual Reconciliation Filing at 1.

[5] WGL 2015 Annual Reconciliation Filing at 2.

after the publication of this Notice in the *DC Register*. Comments are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005. Copies of the 2015 Annual Reconciliation Filing may be obtained by visiting the Commission's website at www.dcpsc.org. Once at the website, open the "eDocket" tab, click on "Search database" and input "FC 1027" as the case number and "443" as the item number. Copies may also be obtained by contacting the Commission Secretary at (202) 626-5150 or PSC-CommissionSecretary@dc.gov.

DISTRICT OF COLUMBIA RETIREMENT BOARD

INVESTMENT COMMITTEE

NOTICE OF CLOSED MEETING

November 19, 2015
10:00 a.m.

DCRB Board Room
900 7th Street, N.W.
Washington, D.C 20001

On Thursday, November 19, 2015, at 10:00 a.m., the District of Columbia Retirement Board (DCRB) will hold a closed investment committee meeting regarding investment matters. In accordance with D.C. Code §2-575(b)(1), (2), and (11) and §1-909.05(e), the investment committee meeting will be closed to deliberate and make decisions on investments matters, the disclosure of which would jeopardize the ability of the DCRB to implement investment decisions or to achieve investment objectives.

The meeting will be held in the Board Room at 900 7th Street, N.W., Washington, D.C 20001.

For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.Reaves@dc.gov.

DISTRICT OF COLUMBIA RETIREMENT BOARD

NOTICE OF OPEN PUBLIC MEETING

November 19, 2015
1:00 p.m.

900 7th Street, N.W.
2nd Floor, DCRB Boardroom
Washington, D.C. 20001

The District of Columbia Retirement Board (DCRB) will hold an Open meeting on Thursday, November 19, 2015, at 1:00 p.m. The meeting will be held at 900 7th Street, N.W., 2nd floor, DCRB Boardroom, Washington, D.C. 20001. A general agenda for the Open Board meeting is outlined below.

Please call one (1) business day prior to the meeting to ensure the meeting has not been cancelled or rescheduled. For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.reaves@dc.gov.

AGENDA

I.	Call to Order and Roll Call	Chairman Bress
II.	Approval of Board Meeting Minutes	Chairman Bress
III.	Chairman's Comments	Chairman Bress
IV.	Executive Director's Report	Mr. Stanchfield
V.	Investment Committee Report	Ms. Blum
VI.	Operations Committee Report	Mr. Ross
VII.	Benefits Committee Report	Mr. Smith
VIII.	Legislative Committee Report	Mr. Blanchard
IX.	Audit Committee Report	Mr. Hankins
X.	Other Business	Chairman Bress
XI.	Adjournment	

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMENDATIONS FOR APPOINTMENTS 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 15, 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 13, 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 15, 2015**
Recommendations for appointment as DC Notaries Public **Page 2**

Abadian	James B.	Abadian PLLC 2141 Wisconsin Avenue, NW, Suite E2	20007
Alcalde	Victor	Public Defender Services for the District of Columbia 633 Indiana Avenue, NW	20004
Alfonzo	Margarita	US Soccer Federation Foundation, Inc. 1211 Connecticut Avenue, NW, Suite 500	20036
Alston	Kenithia K.	Public Defender Services for the District of Columbia 633 Indiana Avenue, NW, 2nd Floor	20004
Archer	Shirlene	Self 2700 30th Street, NE	20018
Axt	Eric Benjamin	Diversified Reporting Services, Inc 1106 16th Street NW, 2nd Floor	20036
Bartee	Laura C.	Cleary Gottlieb Steen and Hamilton LLP 2000 Pennsylvania Avenue, NW	20002
Bascus	Daryl	King & Spalding 1700 Pennsylvania Avenue, NW	20006
Bazemore	Shakita	(Self) 3202 Buena Vista Terrace, SE	20020
Blossom	Elizabeth	Crossroads Strategies 1156 15th Street, NW, Suite 329	20005
Brown	Karen M.	US Department of Treasury 1500 Pennsylvania Avenue, NW	20220
Chae	Andrew	Wells Fargo Bank 5201 MacArthur Boulevard, NW	20016
Chavez Bonilla	Veronica Elizabeth	Wilson Epes Printing Company, Inc. 775 H Street, NE	20002
Cooper	Linda Ruth	Reserve Officers Association of the United States 1 Constitution Avenue, NE	20002

D.C. Office of the Secretary **Effective: December 15, 2015**
Recommendations for appointment as DC Notaries Public **Page 3**

Cutler	Travis Leon	Federal Labor Relations Authority 1400 K Street, NW, Second Floor	20005
Dalton	Christina Y.	Department of Disability Services (DC) 1125 15th Street, NW	20005
Drag	Nicole	CNN 820 1st Street, NE	20002
Faux	Maria L.	Krooth Altman LLP 1850 M Street, NW	20036
Ferguson	Destinee	Wells Fargo Bank 215 Pennsylvania Avenue, SE	20003
Fields	Niya	Navy Federal Credit Union 9th & M Street, SE, Building 218 Ground Floor	20374
Flynn	Gregory Edward	Flynn Title 4501 Salem Lane, NW	20007
Fuentes	Brenda	The Colvin Law Firm 7600 Georgia Avenue, NW, Suite 100 N	20012
Greene	Shawndra	Schiff Hardin LLP 901 K Street, NW, Suite 700	20001
Hardy	Nadine D.	Murphy & McGonigle, PC 555 13th Street, NW, Suite 410	20004
Hazell	Stephanie Algreta	Wells Fargo Bank 1700 Pennsylvania Avenue, NW	20006
Henry	Stefhon A.	Office of the Attorney General for the District of Columbia 441 4th Street, NW, Suite 1010 South	20001
Hitchcock	Mary K.	National Grain and Feed Association 1250 I Street, NW, Suite 1003	20005
Holley	Samantha	Atlantic Closing & Escrow 5335 Wisconsin Avenue, NW	20015

D.C. Office of the Secretary **Effective: December 15, 2015**
Recommendations for appointment as DC Notaries Public **Page 4**

Jackson	Stephanie	Diversified Reporting Services, Inc 1106 16th Street NW, 2nd Floor	20036
Jean-Pierre	Paule	Public Defender Services for the District of Columbia 633 Indiana Avenue, NW	20004
Jones	Brenda M.	Foley & Lardner LLP 3000 K Street, NW, Suite 600	20007
Jones	DeQuan L.	Self 2710 31st Street, SE, Apartment 646	20020
Kenny	Nancy L.	MedStar Washington Hospital Center-Emergency Medicine Department 110 Irving Street, NW, Room EB3124	20010
Khan	Areeb Been	Neal R. Gross & Company, Inc 1323 Rhode Island Avenue, NW	20005
Kirch	Maia Milena	Kids in Need of Defense 1300 L Street, NW, Suite 110	20005
Koval	Anna	PYXERA 1030 15th Street, NW, Suite 730E	20005
Kretschmer	Valery	MedStar Washington Hospital Center 3800 Reservoir Road, NW	20007
Krise	Bradley	Office of Creative Endeavors 1317 Constitution Avenue, NW	20002
Lane	Krystle L.	Citibank NA 5700 Connecticut Avenue, NW	20015
Leonard	Jessica	Brick Lane LLC 1900 M Street, NW, Suite 200	20036
Lewis	Courtney Nicole	Earth Day Network 1616 P Street, NW, Suite 340	20036
Logan	Maya S.	Navy Federal Credit Union 9th & M Street, SE, Building 218 Ground Floor	20374

D.C. Office of the Secretary **Effective: December 15, 2015**
Recommendations for appointment as DC Notaries Public **Page 5**

Luque	Danielle S.	Cozen O'Conner LLP 1200 19th Street, NW, 3rd Floor	20036
Malky	Rula	Small Enterprise Assistance Fund (SEAF) 1500 K Street, NW	20005
Mallard	Carolynn D.	Self (Dual) 6149 First Place, NE	20011
Malloy	Lourdes T.	Dentons US LLP 1301 K Street, NW, Suite 600	20005
Martinez	Leopoldo J.	LMN Consulting LLC 1050 Connecticut Avenue, NW, 10th Floor	20036
Newman	John E.	Foley & Lardner LLP 3000 K Street, NW, Suite 600	20007
Okur	Alana Morris	TD Bank 4849 Wisconsin Avenue, NW	20016
Onweazuekwu	Bry'an E.	Self 2614 39th Street, NW, Apartment 302	20007
Otto	Coni Lyn	Hotel Harrington 436 11th Street, NW	20004
Pinango	Andrea E.	Arnold & Porter LLP 601 Massachusetts Avenue, NW	20001
Prettyman-Guay	Elizabeth B.	Deposition Services Inc. 2200 Pennsylvania Avenue, NW, 4th Floor East Tower	20037
Quinn	Ellen	Cooperative Development Foundation 1401 New York Avenue, NW, Suite 1100	20005
Richaud	Ariane	Diversified Reporting Services, Inc 1101 16th Street, NW, 2nd Floor	20036
Ruppolt	Charmaine	Hogan Lovells US LLP 555 13th Street, NW	20004

D.C. Office of the Secretary **Effective: December 15, 2015**
Recommendations for appointment as DC Notaries Public **Page 6**

Ryan	Joyce Ann	Saul Ewing LLP 1919 Pennsylvania Avenue, NW, Suite 550	20006
Shaw	Lisa	Legacy Enterprises, LLC. 2612 29th Street, SE, Room 4	20020
Simons	Ashley Kalannie	Birchstone Moore LLC 5335 Wisconsin Avenue, NW	20015
Stewart	Kiamesha	Arnold & Porter LLP 601 Massachusetts Avenue, NW	20001
Stone	Benjamin A.	Bank of America 1001 Pennsylvania Avenue, NW	20004
Tyaba	Simon Tamle	Department of Housing and Urban Development 451 7th Street, SW	20410
Vest	David M.	Self 108 Michigan Avenue, NE, Room E12	20017
Walsh	Edward Holmes	National Immigration Forum 50 F Street, NW, Suite 300	20001
Washington	Kristen L.	Corpassist LLC 1090 Vermont Avenue, NW #910	20005
Watson	Vivian	Delon Hampton & Associates, Chartered 900 7th Street, NW, Suite 800	20001
Whitney, Jr.	McKendree James	American University Office of the Registrar 4400 Massachusetts Avenue, NW	20016
Williams	Ivan	MedStar Washington Hospital Center 110 Irving Street, NW	20010
Wilson	Stephen F.	Judicial Watch, Inc 425 Third Street, NW, Suite 800	20024
Yorker	Pariss	WeWork 641 S Street, NW	20001

D.C. Office of the Secretary **Effective: December 15, 2015**
Recommendations for appointment as DC Notaries Public **Page 7**

Zapata	Wanda L.	Olender Reporting, Inc. 1100 Connecticut Avenue, NW, Suite 810	20036

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

REVISED NOTICE OF FUNDING AVAILABILITY

DSLBD Healthy Food Retail Program Grant

The Department of Small and Local Business Development (DSLBD) is soliciting applications for the **Healthy Food Retail Program Grant.** DSLBD will award up to four grants from the $100,000 in total available funding. The application deadline is Friday, December 4, 2015 at 2:00 p.m. **This Revised Notice of Funding Availability announces a second Pre-Application Information Session to be held on Tuesday, November 17th at 2:00 p.m.**

The purpose of the Healthy Food Retail Program Grant is to expand access to healthy foods in food deserts within the District of Columbia by providing assistance to corner stores, farmers markets and other small food retailers (less than 5,000 square feet).

Eligible applicants are nonprofit organizations or businesses. For additional eligibility requirements and exclusions, please review the Request for Applications (RFA) which is currently posted at http://dslbd.dc.gov/service/current-solicitations-opportunities.

Eligible Use of Funds: Applicants may propose any type of project which supports corner stores or other small food retailers located in food deserts with high rates of low-income households. Funds can be used for expenses incurred during the Period of Performance, which is October 1, 2015 through September 30, 2016. For additional examples of eligible uses of funds, exclusions, and a map of the DC food deserts, please review the RFA.

If awarded a grant, grantees must be able to complete funded projects by September 30, 2016.

Application Process: Interested applicants must complete an online application by Friday, December 4, 2015 at 2:00 p.m. DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions applications will not be forwarded to the review panel.** Instructions and guidance regarding application preparation can be found in the RFA, which is available at http://dslbd.dc.gov/service/current-solicitations-opportunities.

Selection Process: DSLBD will select grant recipients through a competitive application process. All applications will be forwarded to a review panel to be evaluated, scored, and ranked based on the selection criteria listed below.

1. Capacity and Experience of the Applicant (25 points)
2. Strength of the Project Implementation Plan (25 points)
3. Financial Viability of Applicant Organization (25 points)
4. Creativity and Innovation (25 points)

The DSLBD program team will review the panel reviewers' recommendations and the DSLBD Director will make the final determination of grant awards. DSLBD will select a grantee by January 8, 2016.

Award of Grants: Up to four grants totaling $100,000 will be awarded.

For More Information: Attend a Pre-Application Information Session on Thursday, November 4, 2015 at 4:00 p.m. or Tuesday, November 17, 2015 at 2:00 p.m. Both sessions will be held at 441 4th Street, NW, Suite 805. This is a secure building and entrance requires government-issued identification.

Questions may be sent to Lauren Adkins at the Department of Small and Local Business Development at lauren.adkins@dc.gov or 202-727-3900.

Reservations: 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION

NOTICE OF GENERAL COMMISSION MEETING

The District of Columbia Taxicab Commission will hold its regularly scheduled General Commission Meeting on Wednesday, November 18, 2015 at 10:00 am. The meeting will be held at our new office location: 2235 Shannon Place, SE, Washington, DC 20020, inside the Hearing Room, Suite 2032. Visitors to the building must show identification and pass through the metal detector. Allow ample time to find street parking or to use the pay-to-park lot adjacent to the building.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Commission on any issue of concern; the Commission generally does not answer questions. Statements are limited to five (5) minutes for registered speakers. Time and agenda permitting, nonregistered speakers may be allowed 2 minutes to address the Commission. To register, please call 202-645-6002 no later than 3:30 p.m. on November 17, 2015. Registered speakers will be called first, in the order of registration. **Registered speakers must provide ten (10) printed copies of their typewritten statements to the Secretary to the Commission no later than the time they are called to the podium.**

DRAFT AGENDA

I. Call to Order

II. Commission Communication

III. Commission Action Items

IV. Government Communications and Presentations

V. General Counsel's Report

VI. Staff Reports

VII. Public Comment Period

VIII. Adjournment

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18095-B of Servants of the Lord and the Virgin of Matara, pursuant to 11 DCMR § 3104.1, for a special exception from the residence requirements under § 215, to allow the continued operation of a clerical and religious group residence in the R-1-B District at premises 1326 Quincy Street, N.E. (Square 3968, Lot 17).

HEARING DATE: October 27, 2015
DECISION DATE: October 27, 2015

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief. (Exhibit 1.)

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") 5B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. ANC 5B did not file a report or participate in this application.[1]

The Office of Planning ("OP") submitted a report in support of the application with the condition that approval be limited to 96 persons housed at the site at any one time. (Exhibit 20.) The D.C. Department of Transportation submitted a report expressing no objection to the application. (Exhibit 19.) Eleven letters of support from neighbors were filed in the record, including one letter from the Single Member District ("SMD") Commissioner for ANC-SMD 5B-02. (Exhibits 5C and 16.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 215. The only parties to the application were the Applicant and the ANC, and the ANC did not formally present a position to the Board. 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, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 215, that the requested relief can be granted, being in harmony with the general purpose and intent

[1] The Office of Planning report indicates that ANC 5B reviewed and voted to recommend approval of the proposal at its September 30, 2015 meeting. (See OP Report, Exhibit 20, p. 4.)

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 the application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITION:**

1. No more than 96 persons shall be housed on the site at any one time.

VOTE: **4-0-1** (Marnique Y. Heath, Anthony J. Hood, 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 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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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 CONDITION 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. 19090 of Basque Bar LLC, as amended,[1] pursuant to 11 DCMR § 3104.1, for a special exception from the Green Area Ratio requirements under § 3405.1 and from the rooftop structure enclosure requirements under § 411.11, to establish a restaurant in the C-2-A District at premises 300 Florida Avenue N.W. (Square 519, Lot 73).

HEARING DATE: 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 5.) The zoning relief requested was subsequently amended, based on the Applicant's discussions with the Department of Consumer and Regulatory Affairs ("DCRA"), to include additional special exception relief. (Exhibit 47.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5E, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. The ANC submitted a report indicating that at its regularly scheduled and properly noticed public meeting of September 15, 2015, at which a quorum was in attendance, ANC 6A voted 9-0-0 to support the application. (Exhibit 43.)

The Office of Planning ("OP") submitted a report on October 21, 2015, recommending approval of the application, (Exhibit 45), and testified in support of the application at the hearing. The District Department of Transportation ("DDOT") submitted a report on October 21, 2015 indicating that it had no objection to the Applicant's request for special exception relief, with two conditions. (Exhibit 44.) The conditions proposed by DDOT dealt with the revision of site plans to prevent structures from projecting into public space. The Applicant testified that he would work to address the issue, but because the conditions were not related to the special exception relief requested in this application, the Board did not adopt either condition.

[1] The Applicant's original application included a request for special exception relief from the Green Area Ratio requirements under 11 DCMR § 3405.1. During the public hearing of October 27, 2015, the Applicant requested additional special exception relief from the roof structure requirements of § 411.11 to provide a roof structure without screening or enclosures. The Applicant submitted revised plans (Exhibit 48) and a revised self-certification form (Exhibit 47) to amend its application. The caption has been revised accordingly.

Letters in support were submitted to the record by three neighbors. (Exhibits 39, 40, and 41.) Bates Area Civic Association also filed a letter of support. (Exhibit 38.) At the public hearing, a neighbor, Daniel Turner, testified in support of the application. Another neighbor provided testimony in which she raised questions about the operations of the restaurant and requested more information about the Applicant's efforts to mitigate potential issues such as noise. The Applicant responded to these concerns, noting that he worked closely with neighbors, community members, and the ANC in developing this project.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions from §§ 3405.1 and 411.11, to establish a restaurant in the C-2-A District. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 3405.1 and 411.11, 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 48.**

VOTE: 4-0-1 (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Anthony J. Hood to APPROVE; one Board seat vacant.)

FINAL DATE OF ORDER: November 2, 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

BZA APPLICATION NO. 19090
PAGE NO. 3

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. 19095 of Carr Properties, pursuant to 11 DCMR §§ 3104.1 and 411.11, for a special exception from the requirements under §§ 770.6(a) and 411.5, to allow roof structures enclosing walls of unequal height to allow the construction of an addition to an existing building in the C-4 District at premises 1100 15th Street, N.W. [1] (Square 197, Lots 81, 812, 858, and 859).[2]

HEARING DATE: 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" 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") 2B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. The ANC submitted a report, dated September 11, 2015, indicating that at a duly noticed and scheduled public meeting on September 9, 2015, at which a quorum was in attendance, the ANC voted 6-0 in support of the project as proposed. (Exhibits 27 and 30E.)
The Office of Planning ("OP") submitted a timely report on October 20, 2015, recommending approval of the application (Exhibit 31) and testified in support of the application at the hearing.

The D.C. Department of Transportation ("DDOT") submitted a report expressing no objection to the application provided that the Applicant continue to work with DDOT on the issues discussed

[1] The application was originally advertised as follows:

> Application No. 19095 of Carr Properties, pursuant to 11 DCMR §§ 3104.1 and 411.11, for a special exception from the multiple roof structures with walls of uneven height requirements pursuant to § 770.6, to construct an addition to an existing mixed use building in the C-4 District at premises 1100 15th Street N.W. (Square 197, Lots 81, 812, 858, and 859).

At the public hearing, the Applicant clarified the relief requested as *walls of uneven height requirements*, not *multiple roof structures*.

[2] The subject property for this application also included an approximately 840 square-foot portion of a public alley which the Applicant was seeking to have closed at the time of the public hearing.

in the DDOT Report regarding design of the public realm; bicycle parking spaces; curbside management plans; and final design for the alley, loading, and parking areas. (Exhibit 32.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under §§ 411.11, 411.5, and 770.6(a). The only parties to the application were the Applicant and the ANC which expressed support for the application. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

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, 411.11, 411.5, and 770.6(a), that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED ARCHITECTURAL PLANS AT EXHIBIT 30D.**

VOTE: 4-0-1 (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Anthony J. Hood 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 30, 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

BZA APPLICATION NO. 19095
PAGE NO. 3

APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-18A
Z.C. Case No. 12-18A
H Street NE Owner, LLC
(Minor Modifications to the Approved PUD @ Square 858)
September 21, 2015

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on September 21, 2015. At the meeting, the Commission approved an application of H Street NE Owner, LLC ("Applicant") for minor modifications to an approved planned unit development ("PUD") for property consisting of Lot 64 in Square 858 ("Property"). Because the modifications were deemed minor, a public hearing was not conducted. The Commission determined that this modification request was properly before it under the provisions of §§ 2409.9 and 3030 of the Zoning Regulations.

FINDINGS OF FACT

1. By Z.C. Order No. 12-18, dated June 10, 2013, and effective on July 5, 2013, the Commission approved a consolidated PUD and related amendment to the Zoning Map for the development of a residential building with ground-floor retail on the Property. Z.C. Order No. 12-18 approved two development scenarios for the Property: the "Original Submission" and the "Grocery Alternate". The Original Submission is a mixed-use development with residential and retail uses. The Grocery Alternate is a mixed-use development including residential and retail uses as well as a grocery store on the ground floor. The Applicant is proceeding with the construction of the Grocery Alternate. Building Permit No. B1502785 was issued on June 11, 2015 ("Building Permit"), for the construction of the Grocery Alternate ("Project"), and construction is currently underway.

2. Under the Grocery Alternate, Condition No. 2 of Z.C. Order No. 12-18 permits the Project to include a total of 490,134 square feet of gross floor area, with the following breakdown: approximately 388,069 square feet of gross floor area devoted to residential uses, approximately 42,108 square feet devoted to grocery use, approximately 54,440 square feet of gross floor area devoted to retail uses, and approximately 5,517 square feet within the loading area. The retail uses are identified as being located on the ground floor of the eastern portion of the building as well as on the second floor of the eastern portion of the building.

3. Condition No. 7(d) of Z.C. Order No. 12-18 provides that the Applicant has flexibility to reduce the total amount of retail gross floor area provided on the second floor of the Project in the event that the Applicant is unable to lease such space and to convert the space into residential units. The second-floor retail area includes 25,854 square feet of gross floor area ("Second-Floor Space").

4. Condition No. 7(e) of Z.C. Order No. 12-18 also provides the Applicant flexibility to permit retail, service, professional office, or residential use within the portion of the building fronting on 7th Street. The portion of the building fronting on 7th Street was

originally anticipated to include approximately 14,000 square feet of gross floor area ("7th Street Space"). The 7th Street Space is approved as a second phase of development per Condition No. 20(b) and was not included in the Building Permit. The 7th Street Space has been designed to approximately 12,216 square feet of gross floor area.

5. The Applicant has not been able to lease the Second-Floor Space to a retail tenant and seeks to lease the Second-Floor Space and the 7th Street Space to a unique office tenant that provides co-working space. This potential tenant may lease up to approximately 31,908 square feet of gross floor area within the Project.

6. By letter dated August 12, 2015, the Applicant requested minor modifications to revise two conditions of Z.C. Order No. 12-18. First, the Applicant requests that Condition No. 7(d) be revised to allow the Second-Floor Space to be used for residential and/or office use if the Applicant is unable to lease it for retail use. Second, the Applicant requests that Condition No. 2 be revised to correct the minor error in the allocation of the square footage for residential and grocery use.

7. With respect to the first request, the revision would provide the option to convert the Second-Floor Space in part to residential amenity space and in part to retail or office use. The option to convert the Second-Floor Space to office use continues to comply in all respects with the Zoning Regulations, and no additional zoning flexibility is needed. Office use is permitted within the C-2-B Zone District, and the use will be located only within the portion of the Property that is zoned C-2-B. In addition, the Applicant does not request any change to the façade as approved by the Building Permit. Furthermore, the parking and loading required and provided for the Project is consistent with the parameters of the approved PUD.

8. With respect to the second request, the height and bulk of the Project is as approved in the Final Grocery Alternate PUD Plans, and no changes are proposed. The very minor change in total gross floor area results from the mezzanine level of the grocery store which was incorrectly shown in the Final Grocery Alternate PUD Plans as being on the second level and comprising approximately 1,800 square feet. When the final plans were drawn, the mezzanine level was correctly shown between the first and second levels, and residential use occupies the second level, as shown on the plans. (Exhibit ["Ex."] 1D.)

9. The Applicant served the minor modification request on Advisory Neighborhood Commission ("ANC") 6C. ANC 6C submitted a letter in support of the proposed modification to allow office use in the Second-Floor Space, noting that it voted unanimously to support it at its June 10, 2015, duly noticed, regularly scheduled monthly meeting, with a quorum present (Ex. 1E).

10. The Office of Planning ("OP") reviewed the request for the minor modifications. By report dated September 11, 2015, OP recommended approval of the modifications. (Ex. 5.)

11. On September 21, 2015, at its regular monthly meeting, the Commission reviewed the application as a Consent Calendar matter and granted approval of the application for modifications to the approved PUD.

12. The Commission finds that the requested modifications are minor, and further finds that approval of the modifications is appropriate and not inconsistent with its approval of the original PUD.

CONCLUSIONS OF LAW

Upon consideration of the record in this application, the Commission finds that the proposed modifications are consistent with the intent of the previously approved Z.C. Order No. 12-18, and is not inconsistent with the Comprehensive Plan.

The Commission concludes that approving the modifications is appropriate and not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

The Commission further concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The modifications do not impact the essential impact of the approved PUD, including use, height, bulk, parking, or lot occupancy. The modifications are minor such that consideration as a Consent Calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for minor modifications of an approved PUD. Condition 7(d) is hereby revised to read as follows:

> d. To reduce the total amount of retail gross floor area provided on the second floor of the project in the event that the Applicant is unable to lease such space and to use the space for residential and/or office use or to convert the space into residential units in addition to the flexibility requested in Item 3;

Condition No. 2 is hereby revised in relevant part to read as follows:

> If the Grocery Alternate is selected, then the project shall include approximately 394,250 square feet of gross floor area devoted to residential uses, approximately 60,086 square feet of gross floor area devoted to retail and grocery use, approximately 31,908 square feet devoted to office uses, and approximately 5,517 square feet within the loading area.

All other provisions and conditions of Z.C. Order No. 12-18 shall remain in effect.

On September 21, 2015, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the application was **APPROVED** and this Order was **ADOPTED** by the Zoning Commission 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 and adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on November 13, 2015.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-14(3)
Z.C. CASE NO. 13-14
Vision McMillan Partners, LLC and the Office of the Deputy Mayor for Planning and Economic Development
(1st-Stage and Consolidated PUD and Related Map Amendment for Square 3128, Lot 800)
July 30, 2015

At the public meeting held on July 30, 2015, the Zoning Commission for the District of Columbia ("Commission") considered whether to waive its procedural rules and accept a request from the Advisory Neighborhood Commission ("ANC") 5E, a party to the proceeding, for reconsideration of the Commission's final order in Z.C. Case No. 13-14. For the reasons discussed below, the Commission declined to waive its rules and did not accept its reconsideration request.

By Z.C. Order No. 13-14 in Case No. 13-14, the Commission granted the application of Vision McMillan Partners, LLC and the Office of the Deputy Mayor for Planning and Economic Development ("Applicant") for first-stage and consolidated review and approval of a planned unit development ("PUD") and related zoning map amendment to the C-3-C and CR Zone Districts for the property at Lot 800 in Square 3128, known as the McMillan Sand Filtration Site.

Z.C. Order No. 13-14 was published in the *D.C. Register* on April 17, 2015, and was followed by a corrected order ("Order") published in the *D.C. Register* on April 24, 2015. The Order became final and effective upon publication. Pursuant to § 3029.5 of the Commission's Rules of Practice and Procedure, a "motion for reconsideration, rehearing, or re-argument of a final order in a contested case under § 3022 may be filed by a party within *ten (10) days* of the order having become final." (Emphasis added). Therefore, any party who wished to file a motion for reconsideration was required to do so by May 4, 2015.

On July 23, 2015, ANC 5E filed a waiver to accept a motion for reconsideration of the Order out of time. Pursuant to § 3008.8 of the Commission's rules, the "Commission may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Commission, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." ANC 5E requested a waiver to accept its motion 78 days late. The Applicant opposed the request.
The ANC claimed that its extreme tardiness was excusable because the next ANC meeting after publication of the Order was not until May 19, 2015. Yet the ANC still failed to take action at that meeting and apparently continued the matter to its June 16th and July 24th public meetings.

The Commission concludes that ANC 5E has failed to demonstrate good cause to waive the time limits by more than seven times. Nor did the ANC show that such an extreme request would not prejudice the other parties. The reconsideration deadlines provide important protections to the

administrative process. The timeframes allow the Commission to conduct its business in an orderly fashion, and provide certainty and finality to agency actions. It is fundamentally unfair to applicants and the Commission alike to allow a party to delay the process for more than two months because the party was unable to make timely decisions. The fact that the party in question is an ANC does not alter this analysis. The District of Columbia Court of Appeals has made it clear that when an ANC participates in a contested case it must follow established timeframes. (*See e.g. Neighbors on Upton Street v. District of Columbia Bd. of Zoning Adjustment* 697 A.2d 3, 10 - 11 (D.C. 1997) (ANC statute "cannot reasonably be read as imposing a requirement on the BZA to allow an ANC (or anyone else) thirty days to respond to a supplemental submission in a zoning appeal.")) For all the reasons stated above, ANC 5E's Motion to Waive Rules and Accept Reconsideration is hereby **DISMISSED**.

This Order is not subject to further review by the Commission and any request to undertake such a review will not be accepted.

On July 30, 2015, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **DENIED** the Motion for Reconsideration and Waiver of § 3029.5 at its Special Public Meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to deny; Marcie I. Cohen not having participated, not voting).

In accordance with 11 DCMR § 3028.8, this Order is final and effective upon its publication in the *D.C. Register* on November 13, 2015.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 15-27
(KF Morse, LLC – Consolidated PUD, 1st-State PUD, and Related Map Amendment @ Square 3587, Lots 805, 814, and 817)
November 5, 2015

THIS CASE IS OF INTEREST TO ANC 5D and 5C

On October 30, 2015, the Office of Zoning received an application KF Morse, LLC (the "Applicant") for approval of a consolidated planned unit development ("PUD"), first-stage PUD, and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 805, 814, and 817 in Square 3587 in northeast Washington, D.C. (Ward 5), also known as 300, 325, and 350 Morse Street, N.E. The property is zoned C-M-1. The Applicant is seeking a PUD-related map amendment to rezone the property, for the purposes of this project, to C-3-C.

The Applicant proposes to construct a new mixed-use development including residential, retail, and office uses. The maximum building height will be 130 feet and the density will be approximately 6.3 floor area ratio ("FAR"). There will be 755 off-street parking spaces. The project will achieve LEED-Silver and 20% of its IZ units will be targeted to households at the 50% area median income ("AMI") level.

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. 15-28
(Foulger-Pratt Development, LLC – Consolidated PUD & Related Map Amendment @ Square 772, Lots 20-23 & 800)
November 2, 2015

THIS CASE IS OF INTEREST TO ANCs 6C & 5D

On October 30, 2015, the Office of Zoning received an application from Foulger-Pratt Development, 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 20-23 and 800 in Square 772 in northeast Washington, D.C. (Ward 5), also known as 301-331 N Street, N.E. The property contains approximately 69,240 square feet of land area and is partially improved with a one-story industrial supply retail store and accompanying surface parking lot as well as a three-story self-storage building. The property is zoned C-M-1. The Applicant is requesting a PUD-related map amendment to rezone the property, for the purposes of this project, to C-3-C.

The Applicant proposes to construct a mixed-use residential and commercial project with underground parking and ground floor retail. The project will contain two residential components, a hotel, office/retail space, and ground floor retail. The project will have heights of approximately 110 and 120 feet and a density of 6.68 floor area ratio ("FAR"). The property will have approximately 250 parking spaces and 230 secure bike 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.

District of Columbia REGISTER – November 13, 2015 – Vol. 62 - No. 47 014690 – 015018