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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 21-231, Early Learning Quality Improvement Network Amendment Act of 2015
- D.C. Council schedules a public roundtable on the Review of the District's Workforce Development Programs
- Office of the Auditor publishes the Advisory Neighborhood Commission (ANC) Security Fund Annual Financial Report for Fiscal Year 2015
- Office of the Chief Financial Officer publishes increases in the 2016 Standard Deduction, Personal Exemption, Homestead Deduction, and Senior Home Threshold
- Office of the State Superintendent of Education announces funding availability for the Mathematics Science Partnerships Grant
- Department of Energy and Environment establishes standards for controlling expanded polystyrene food service products
- Executive Office of the Mayor issues a guidance document on written materials that appellants can submit to the Concealed Pistol Licensing Review Board
- Office of Planning announces funding availability for the Playable Art DC Project

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
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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ADMINISTRATOR

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-220

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To approve, on an emergency basis, Modification Nos. M0008, M0009, M0010, and M0011 to Human Care Agreement No. CW22955 with Tricom Training Institute to provide family reunification homes to District youth on behalf of the Department of Youth and Rehabilitation Services and to authorize payment in the amount of $1,636,118.14 for services received and to be received under the contract modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Human Care Agreement No. CW22955 Modification Approval and Payment Authorization Emergency Act of 2015".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. M0008, M0009, M0010, and M0011 to Human Care Agreement No. CW22955 with Tricom Training Institute to continue to provide family reunification homes to District youth, and authorizes payment in the total amount of $1,636,118.14 for services received and to be received under the contract modifications.

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 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

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
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-221

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To approve, on an emergency basis, the extension of Contract No. DCKV-2007-C-0001 with Industrial Bank, N.A. to provide secondary collections services for photo enforcement, parking, and moving tickets, and to authorize payment for the services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. DCKV-2007-C-0001 Extension Approval and Payment Authorization Emergency Act of 2015".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 2020 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §2-352.02), the Council approves the extension of Contract No. DCKV-2007-C-0001 with Industrial Bank, N.A. to provide secondary collections services for photo enforcement, parking, and moving tickets and authorizes payment in the not-to-exceed amount of $4.2 million for services received and to be received from October 1, 2015, through September 30, 2016.

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 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

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
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-222

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To amend, on an emergency basis, due to congressional review, the Sexual Assault Victims' Rights Act of 2014 to extend the date by which the Sexual Assault Victim Rights Task Force shall submit its report to the Council and the Sexual Assault Response Team.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Sexual Assault Victim Rights Task Force Report Extension Congressional Review Emergency Amendment Act of 2015".

Sec. 2. Section 215(c)(1) of the Sexual Assault Victims' Rights Act of 2014, effective November 20, 2014 (D.C. Law 20-139; D.C. Official Code § 4-561.15(c)(1)), is amended by striking the phrase "September 30, 2015" and inserting the phrase "January 31, 2016" in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-223

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To approve, on an emergency basis, Modification Nos. 2, 3, and 4 to Contract No. DCAM-14-NC-0099A with RWD Consulting, LLC, for consolidated maintenance services for the John A. Wilson Building, and to authorize payment in the aggregate amount of $1,332,677.33 for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification Nos. 2, 3, and 4 to Contract No. DCAM-14-NC-0099A Approval and Payment Authorization Emergency Act of 2015".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 2, 3, and 4 to Contract No. DCAM-14-NC-0099A with RWD Consulting, LLC, for consolidated maintenance services for the John A. Wilson Building, and authorizes payment in the aggregate amount of $1,332,677.33 for the goods and services received and to be received under the modifications.

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 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

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
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-224

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To approve, on an emergency basis, Modification Nos. 4, 5, and 6 to Contract No. DCAM-14-NC-0099B with Spectrum Management, LLC for consolidated maintenance services for One Judiciary Square, and to authorize payment in the aggregate amount of $2,969,289.60 for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification Nos. 4, 5, and 6 to Contract No. DCAM-14-NC-0099B Approval and Payment Authorization Emergency Act of 2015".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 4, 5, and 6 to Contract No. DCAM-14-NC-0099B with Spectrum Management, LLC, for consolidated maintenance services for One Judiciary Square, and authorizes payment in the aggregate amount of $2,969,289.60 for the goods and services received and to be received under the modifications.

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 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-225

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To amend, on an emergency basis, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to provide that costs associated with the payment of compensation, benefits, and other expenses to injured District government employees may be paid from the Employees' Compensation Fund.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Employees' Compensation Fund Clarification Emergency Amendment Act of 2015".

Sec. 2. Section 2342 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-623.42), is amended as follows:

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

(1) Paragraph (1) is repealed.

(2) Paragraph (2) is amended by striking the phrase "expenses, except administrative expenses, authorized by this title or any extension or application thereof, except as otherwise provided by this subtitle or other statute." and inserting the phrase "expenses that are necessary to implement the provisions of this title." in its place.

(3) Paragraph (3) is repealed.

(b) Subsection (b) is repealed.

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

"(c) This section shall apply to payments made from the Fund on or after October 1, 2008.".

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 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-226

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To amend, on an emergency basis, the Animal Control Act of 1979 to clarify that an educational institution may have animals for educational and instructional purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Classroom Animal for Educational Purposes Emergency Amendment Act of 2015".

Sec. 2. Section 9(h) of the Animal Control Act of 1979, effective October 18, 1979 (D.C. Law 3-30; D.C. Official Code § 8-1808(h)), is amended by adding a new paragraph (6) to read as follows:

"(6) Paragraph (1) of this subsection shall not apply to educational institutions that possess animals for educational and instructional purposes and that otherwise comply with humane, sanitary, and safe treatment requirements, as set forth in section 502 of the Animal Protection Amendment Act of 2008, effective December 5, 2008 (D. C. Law 17-281; D.C. Official Code § 8-1851.02).".

Sec. 3. Applicability.

This act shall apply as of December 11, 2015.

Sec. 4 Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-227

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To amend, on an emergency basis, the Business Improvement Districts Act of 1996 to clarify that the business improvement district shall submit a plan to the Mayor to request to extend its operations for a period of 5 years.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Business Improvement Districts Charter Renewal Emergency Amendment Act of 2015".

Sec. 2. Section 19(a)(1)(B) of the Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; D.C. Official Code § 2-1215.18(a)(1)(B)), is amended by striking the phrase "The Board and membership approve a BID plan for the next 5 years of BID operations and submit that plan to the Mayor; and" and inserting the phrase "The BID submits a plan for the next 5 years of BID operations to the Mayor; and" in its place.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-228

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

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

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

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

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

(1) Paragraphs (1) and (2) are redesignated as paragraphs (2A) and (2B), respectively.

(2) New paragraphs (1) and (2) are added to read as follows:

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

"(2) "Bona fide offer of sale" means an offer of sale for a housing accommodation or the interest in the housing accommodation that is either:

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

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

(3) Paragraphs (9) and (10) are redesignated as paragraphs (10) and (9), respectively.

(4) A new paragraph (10A) is added to read as follows:

"(10A) "Highest and best use" means the reasonably probable legal use of a

property that is physically possible, appropriately supported, and financially feasible and that results in the highest value of the property.".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(B)(i) The owner shall withdraw the offer of sale by delivering by hand or by certified mail a letter of withdrawal to the Mayor and a member of the board of directors of the tenant organization.

"(ii) Upon the election to withdraw the offer of sale, the owner shall reimburse the tenant organization for its entire share of the cost of the appraisal within 14 days of delivery pursuant to sub-subparagraph (i) of this subparagraph.

"(iii) An owner who withdraws an offer of sale in accordance with this subparagraph shall be precluded from making a subsequent offer of sale to the tenant organization without an arm's-length third party contract for 3 months from the date of the election to withdraw the offer of sale.

"(8) Within 30 days of the receipt of the appraisal conducted by an appraiser selected by the Mayor pursuant to paragraph (5)(C) of this subsection, either the tenant organization or the owner of the housing accommodation may challenge the appraisal as being in violation of the requirements of this subsection in the Superior Court of the District of Columbia for the court to take any appropriate action the court may deem necessary.

"(a-2) Notwithstanding subsection (a-1) of this section, for a tenant organization that before the effective date of the TOPA Bona Fide Offer of Sale Clarification Amendment Act of 2015, passed on 2nd reading on December 1, 2015 (Enrolled version of Bill 21-147), has registered the tenant organization with the Mayor pursuant to section 411(1) and pursuant to

either section 503 or section 503a has filed a complaint concerning this section, the following shall apply, beginning January 1, 2014:

"(1) For the purposes of this subsection:

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

"(B) "Bona fide offer of sale" means an offer of sale for a housing accommodation or the interest in the housing accommodation that is either:

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

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

"(C) "Highest and best use" means the reasonably probable legal use of a property that is physically possible, appropriately supported, and financially feasible and that results in the highest value of the property.

"(D) "Matter-of-right" means a land use, development density, or structural dimension to which a property owner is entitled by current zoning regulations or law.

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

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

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

"(C) Within the restrictions of subparagraph (B) of this paragraph, an appraised value may take into consideration the highest and best use of the property.

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

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

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

"(iii)(I) The tenant organization and owner of the housing accommodation shall jointly select an appraiser. If within 14 days after a tenant organization has requested an appraisal, the tenant organization and owner of the housing accommodation have

not agreed upon an appraiser, either party may request that the Mayor select an appraiser.

"(II) A request that the Mayor select an appraiser shall be in writing and delivered by hand or by certified mail to the Mayor and to the owner or to a member of the board of the tenant organization.

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

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

"(v)(I) The appraiser shall hold an active license as a Certified General Real Property Real Estate Appraiser that has been issued by the District of Columbia Board of Real Estate Appraisers.

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

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

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

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

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

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

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

"(II) The owner elects to withdraw the offer of sale within 14 days of the receipt of the appraisal by the owner.

"(ii)(I) The owner shall withdraw the offer of sale by delivering by hand or by certified mail a letter of withdrawal to the Mayor and a member of the board of directors of the tenant organization.

"(II) Upon the election to withdraw the offer of sale, the owner shall reimburse the tenant organization for its entire share of the cost of the appraisal within 14 days of delivery pursuant to sub-sub-subparagraph (I) of this sub-subparagraph.

"(III) An owner who withdraws an offer of sale in accordance with this subparagraph shall be precluded from making a subsequent offer of sale to the tenant organization without an arm's-length third party contract for 3 months from the date of the election to withdraw the offer of sale.

"(H) Within 30 days of the receipt of the appraisal conducted by an appraiser selected by the Mayor pursuant to subparagraph (E)(iii) of this paragraph, either the tenant organization or the owner of the housing accommodation may challenge the appraisal as

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being in violation of the requirements of this subsection, to the Superior Court of the District of Columbia for the court to take any appropriate action the court may deem necessary.".

(c) Section 411(4) (D.C. Official Code § 42-3404.11(4)) is amended by striking the phrase "the owner has not sold or contracted for the sale of the accommodation, an owner shall comply anew with the terms of this title." and inserting the phrase "the owner has not sold or contracted for the sale of the accommodation, or in the case of an offer of sale given for the purposes of demolition or discontinuance of housing use, has not issued a notice to vacate for demolition or discontinuance of housing use, pursuant to section 501(g) or (i) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.01(g) or (i)), the owner shall comply anew with the terms of this title; provided, that if the negotiation period has been extended pursuant to section 402(a-1)(6) or (a-2)(2)(F), the 360-day limit described in this paragraph may be extended by one day for each day of the extension." in its place.

Sec. 3. 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 §l-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), a 30-day period of congressional review as provided in section 602(c)(l) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code§ l-206.02(c)(l)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-229

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To order the closing of a portion of the public alley system in Square 70, bounded by 22nd Street, N.W., N Street, N.W., 21st Street, N.W., New Hampshire Avenue, N.W., and M Street, N.W., in Ward 2.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 70, S.O. 15-23283, Act of 2015".

Sec. 2. (a) Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds the portion of the public alley system in Square 70, as shown on the Surveyor's plat filed in S.O. 15-23283, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

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

(1) The recordation of a covenant establishing new portions of the alley system by easement over the surface of the closed alley, to a height of 16 feet and width of 30 feet, as shown on the Surveyor's plat in S.O. 15-23283 that includes an agreement by the owner of the property encumbered by the easement to maintain the new portions of the alley system; and

(2) The satisfaction of all conditions in the official file for S.O. 15-23283 before the recordation of the alley closing.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report 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)).

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Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-230

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To order the closing of a portion of Washington Avenue, S.W., and portions of Ramps 5A and 5B to Interstate 395, and to approve the transfer of jurisdiction of the closed portions of Washington Avenue, S.W., and Ramps 5A and 5B to Interstate 395, and of portions of U.S. Reservation 729.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Portion of Washington Avenue, S.W., and Portions of Ramps 5A and 5B to Interstate 395, and Transfer of Jurisdiction of the Closed Portions of Washington Avenue, S.W., and Ramps 5A and 5B to Interstate 395, and of Portions of U.S. Reservation 729, S.O. 14-16582A and 14-16582B, Act of 2015".

Sec. 2. Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-202.01 *et seq.*), the Council finds the portion of Washington Avenue, S.W., and the portions of Ramps 5A and 5B to Interstate 395, as shown on the Surveyor's plat filed in S.O. 14-16582B, are unnecessary for street purposes and orders them closed, with title to the land to vest as shown on the Surveyor's plat.

Sec. 3. Pursuant to section 1 of An Act To authorize the transfer of jurisdiction over public land in the District of Columbia, approved May 20, 1932 (47 Stat. 161; D.C. Official Code § 10-111), the Council approves the following transfers of jurisdiction, as shown on the Surveyor's plat filed in S.O. 14-16582A:

(a) From the District of Columbia to the National Park Service of the United States Department of the Interior, jurisdiction over the closed portions of Washington Avenue, S.W., and Ramps 5A and 5B to Interstate 395 for park purposes; provided, that the District of Columbia shall retain administrative jurisdiction over the subsurface area of these portions for the tunnel, walls, footings, and related facilities; and

(b) From the National Park Service of the United States Department of the Interior to the District of Columbia, jurisdiction over portions of U.S. Reservation 729 for highway purposes.

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Sec. 4. Transmittal.

The Council shall transmit a copy of this act, upon its effective date, to the Office of the Surveyor, the Office of the Recorder of Deeds, the Executive Director of the National Capital Planning Commission, the Speaker of the United States House of Representatives, and the President Pro Tempore of the United States Senate.

Sec. 5. 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. 6. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-231

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

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

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

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

"Sec. 15a. Comprehensive child development programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. 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. 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), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-232

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To order the closing of portions of Franklin Street, N.W., Evarts Street, N.W., and Douglas Street, N.W., in Square 3128 in Ward 5.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of Franklin Street, N.W., Evarts Street, N.W., and Douglas Street, N.W. in Square 3128, S.O. 13-09432, Act of 2015".

Sec. 2. Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813, D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council of the District of Columbia finds that public streets in Square 3128, as shown by the hatch-marks on the Surveyor's plat in S.O. 13-09432, are unnecessary for street purposes and orders them closed with title to the land to vest as shown on the Surveyor's plat.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-233

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To amend the Street and Alley Closing and Acquisition Procedures Act of 1982 to allow for the temporary naming of an adopted or sponsored Department of Parks and Recreation athletic field in honor of a current or former professional sports player; and to amend the Recreation Act of 1994 to clarify that certain entities, including a nonprofit organization, may adopt or sponsor a Department of Parks and Recreation program, site, facility, field, or operation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Athletic Field Naming and Sponsorship Amendment Act of 2015".

Sec. 2. The Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), is amended as follows:

(a) Section 405 (D.C. Official Code § 9-204.05) is amended by striking the phrase "No public space" and inserting the phrase "Except as provided in section 410, no public space" in its place.

(b) A new section 410 is added to read as follows:

"Sec. 410. Naming of sponsored recreation facilities.

"(a) Notwithstanding section 401, the Mayor may name in honor of a person a Department of Parks and Recreation athletic field that is adopted or sponsored pursuant to section 5 of the Recreation Act of 1994, effective March 23, 1995 (D.C. Law 10-246; D.C. Official Code § 10-304); provided, that:

"(1) The naming is detailed in an agreement between the Mayor and the entity adopting or sponsoring the field;

"(2) The agreement requires the financial adoption or sponsorship of the field;

"(3) The name is that of a current or former professional sports player who may be living or deceased less than 2 years; and

"(4) The naming is not permanent.

"(b) The District may display the logo of an entity sponsoring or adopting a field on signage at the field; provided, that the display of the logo be less prominent than the name of the person for whom the field is named, and that the display be consistent with the terms of the agreement required by subsection (a)(1) of this section.

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Sec. 3. Section 5(a) of the Recreation Act of 1994, effective March 23, 1995 (D.C. Law 10-246; D.C. Official Code § 10-304(a)) is amended by striking the phrase "neighborhood and civic groups or other governmental entities may adopt or sponsor Departmental programs, sites, or operations" and inserting the phrase "neighborhood and civic groups, nonprofit organizations, or other governmental entities may adopt or sponsor Departmental programs, sites, facilities, fields, or operations" in its place.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2017

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-234

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To approve, on a temporary basis, the amended proposal for the property designated as Lot 25 in Square 526, which was previously conveyed to Golden Rule Plaza, Inc.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Plaza West Disposition Restatement Temporary Act of 2015".

Sec. 2. (a) Notwithstanding An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801 *et seq.*), and subject to the conditions set forth in subsection (c) of this section, the Council approves the amended development proposal ("Amended Proposal") offered by Golden Rule Plaza, Inc. and its successors or assigns, as approved by the Mayor ("Developer") for the following property conveyed via special warranty deed to Golden Rule Plaza, Inc. from the District in 2005 pursuant to section 2 of the Approval of the Negotiated Disposition of the "Golden Rule Property" to Golden Rule Plaza, Inc., and Reorganization Plan No. 8 of 1996 for the Business of Public Management Disapproval Resolution of 1996, effective November 7, 1996 (Res. 11-569; 43 DCR 6219): Lot 25 in Square 526, which is bounded by 4th Street, N.W., the Center Leg Freeway, and K Street, N.W., as shown on a plat of subdivision recorded by Golden Rule Plaza, Inc. in the Office of the Surveyor for the District of Columbia in Subdivision Book 208 at Page 168.

(b) The Amended Proposal includes approximately 223 units of affordable housing, with supportive services, outdoor space, parking, and any ancillary uses allowed under applicable law.

(c) The Amended Proposal is subject to the following conditions:

(1) Developer shall construct residential units that shall be affordable for a minimum of 40 years at the following affordability levels:

(A) Approximately 35 units shall be reserved for households earning at or below 30% of Area Median Income;

(B) Approximately 26 units shall be reserved for households earning at or below 40% of Area Median Income;

(C) Approximately 82 units shall be reserved for households earning at or below 50% of Area Median Income; and

(D) Approximately 80 units shall be reserved for households earning at or below 60% of Area Median Income;

ENROLLED ORIGINAL

(2) Developer shall enter into an agreement governing its obligations under the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) ("CBE Act"), including the equity and development participation requirements set forth in section 2349a of the CBE Act (D.C. Official Code § 2-218.49a); and

(3) Developer shall enter into an agreement with the District governing its obligations pursuant to section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03), and Mayor's Order 83-265 (November 9, 1983) regarding job creation and employment generated as a result of the Amended Proposal.

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.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

AN ACT

D.C. ACT 21-235

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 17, 2015

To amend, on a temporary basis, the Day Care Policy Act of 1979 to extend eligibility for subsidized child care to foster parents who may no longer be working but have some form of verifiable income, teen parents under 21 years of age who themselves are in foster care or wards of the District, and foster parents who are not working but who are enrolled in a verified job training or education program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Foster Care Extended Eligibility Temporary Amendment Act of 2015".

Sec. 2. Section 5a(a) of the Day Care Policy Act of 1979, effective April 13, 1999 (D.C. Law 12-216; D.C. Official Code § 4-404.01(a)), is amended as follows:

(a) Paragraph (4) is amended by striking the phrase "services; and" and inserting the phrase "services;" in its place.

(b) Paragraph (5) is amended by striking the phrase "child." and inserting the phrase "child;" in its place.

(c) New paragraphs (6), (7), and (8) are added to read as follows:

"(6) Children of a teen parent under 21 years of age who is either in foster care or a ward of the District and is either working or enrolled in a verified job training or education program;

"(7) Children in foster care placement when the foster care provider is not working but receives some form of verifiable income, such as social security or disability, and the child care services are in the best interest of the child; and

"(8) Children in foster care placement when the foster care provider is not working but enrolled in a verified job training or education program, and the child care services are in the best interest of the child.".

Sec. 3. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 4. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
December 17, 2015

ENROLLED ORIGINAL

A RESOLUTION

21-335

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 15, 2015

To declare the existence of an emergency, due to congressional review, with respect to the need to adjust certain allocations requested in the Fiscal Year 2015 Budget Request Act of 2014 pursuant to the Omnibus Appropriations Act, 2009; to authorize that available Fiscal Year 2015 funds be retained as fund balance and carried over into Fiscal Year 2016; and to adjust certain allocations requested in the Fiscal Year 2016 Budget Request Act of 2015 pursuant to the Omnibus Appropriations Act, 2009.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Congressional Review Emergency Declaration Resolution of 2015".

Sec. 2. (a) On September 22, 2015, the Council passed Act 21-153, the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Emergency Act of 2015. The act was signed by the Mayor on October 6, 2015 and will expire on January 4, 2016.

(b) On October 6, 2015, the Council passed Act 21-171, the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Temporary Act of 2015, a temporary version of Act 21-153. The Mayor signed that temporary legislation on October 22, 2015. Due to the congressional review period, the temporary legislation is not projected to become law until January 21, 2016.

(c) Acts 21-153 and 21-171 consist of substantial adjustments to budget authority for both Fiscal Year 2015 and Fiscal Year 2016.

(d) The congressional review period for Act 21-171 will create a funding and authority gap upon the expiration of Act 21-153. This gap must be addressed to ensure the proper implementation and balancing of both the Fiscal Year 2015 Budget and Fiscal Year 2016 Budget and Financial Plan.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Congressional Review Emergency Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-338

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 15, 2015

To declare the existence of an emergency with respect to the need to amend the Vending Regulation Act of 2009 to clarify that the Mayor may establish exemptions from licensure requirements, and to maintain criminal penalties for a violation of the act or a vending regulation.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Vending Regulations Emergency Declaration Resolution of 2015".

Sec. 2. (a) In 2009, the Council passed the Vending Regulation Act of 2009, effective October 22, 2009 (D.C. Law 18-71; D.C. Official Code § 37-131.01 *et seq*.) ("Act"), which authorized the Mayor to regulate vending in the District and required any proposed rules to be submitted to the Council for review and approval.

(b) On March 8, 2013, the Vending Business License Regulation Resolution of 2013 was introduced in the Office to the Secretary by Chairman Mendelson at the request of the Mayor ("PR 20-125"). PR 20-125 was deemed disapproved. The regulations were adopted in part by the Council with the passage of the Vending Regulation Emergency Amendment Act of 2013, effective June 19, 2013 (D.C. Act 20-84; 60 DCR 9534), and the subsequent passage of the Vending Regulation Emergency Approval Act of 2013, effective June 20, 2013 (D.C. Act 20-90; 60 DCR 9551).

(c) On September 20, 2013, the Office of the City Administrator published final rules in the District of Columbia Register (60 DCR 13055).

(d) PR20-125 inadvertently removed provisions establishing criminal penalties for violations of the vending regulations.

(e) In an effort to reinstate those criminal penalties, 2 versions of emergency and temporary legislation were introduced. The first addressed the criminal penalties in the District of Columbia Official Code and is set to expire on January 11, 2016, and the second addressed the prohibition on ticket scalping in the District's Municipal Regulations and is set to expire on December 11, 2015.

(f) Permanent legislation, the Vending Regulations Amendment Act of 2015, passed on 1st reading on December 1, 2015 (Engrossed version of Bill 21-113), must complete the legislative process. While the permanent version goes through final reading and the

congressional review process, another emergency is necessary.

(g) To permit complete enforcement of vending violations occurring in the District of Columbia and avoid disruption of proper vending operations, it is necessary to adopt emergency legislation to maintain the criminal penalty provisions for violations of the Act or vending regulations.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Vending Regulations Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-339

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 15, 2015

To declare the existence of an emergency with respect to the need to amend Title II of the District of Columbia Administrative Procedure Act to allow public access to certain body-worn camera recordings recorded by the Metropolitan Police Department; to amend the Fiscal Year 2016 Budget Support Act of 2015 to require the Mayor to collect additional data; to establish the Metropolitan Police Department Body-Worn Camera Fund; and to adopt regulations governing the Metropolitan Police Department's Body-Worn Camera Program.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Body-Worn Camera Program Emergency Declaration Resolution of 2015".

Sec. 2. (a) After 8 months of public comment and consideration, on November 19, 2015, the Committee on the Judiciary voted unanimously to approve Bill 21-351, the Body-Worn Camera Program Amendment Act of 2015, thereby creating guidelines for the implementation of the Metropolitan Police Department's Body-Worn Camera Program ("BWC Program").

(b) This emergency legislation would amend Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), to allow public access to certain body-worn camera recordings recorded by the Metropolitan Police Department; amend the Fiscal Year 2016 Budget Support Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905), to require the Mayor to collect additional data; establish the Metropolitan Police Department Body-Worn Camera Fund; and adopt regulations governing the Metropolitan Police Department's Body-Worn Camera Program.

(c) The Council voted unanimously in favor of Bill 21-351 on first reading on December 1, 2015.

(d) It is necessary to now pass the Body-Worn Camera Program Emergency Amendment Act of 2015 on an emergency basis due to the need to begin implementation of the BWC Program.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Body-Worn Camera Program Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-340

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 15, 2015

To declare the existence of an emergency with respect to the need to grant the Attorney General for the District of Columbia personnel and procurement rulemaking authority consistent with authority previously approved by the Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Office of the Attorney General Personnel and Procurement Clarification Emergency Declaration Resolution of 2015".

Sec. 2. (a) There exists a need to give the Attorney General independent personnel and procurement rulemaking authority.

(b) In 2010, the Council of the District of Columbia approved the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective May 27, 2010 (D.C. Law 18-160; codified in scattered cites throughout the D.C. Official Code). Section 201(b) of this act authorized the election by the District electorate of an independent Attorney General. The committee report for this act stated that the "legislation codifies the institutional independence" of the Attorney General.

(c) Section 1032(b) of the Fiscal Year 2016 Budget Support Act of 2015, effective October 22, 2015 (D.C. Law 21-36; 62 DCR 10905) ("BSA"), provides that the Attorney General shall be the personnel authority for employees of that office, and that the Attorney General shall carry out procurement independently of the Office of Contracting and Procurement.

(d) Independent rulemaking authority is necessary to fully implement these provisions consistent with the authority approved by the Council and Mayor in this year's BSA.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Office of the Attorney General Personnel and Procurement Clarification Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-341

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 15, 2015

To declare the existence of an emergency with respect to the need to enable the District to enter into an agreement with the State of Maryland and the Commonwealth of Virginia to create a new independent interstate entity to oversee the safety of Washington Metropolitan Area Transit Authority rail operations.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Washington Metropolitan Area Transit Authority Safety Regulation Emergency Declaration Resolution of 2015".

Sec. 2. (a) There is an immediate need to replace the current state safety oversight agency to address safety concerns with the rail operations of the Washington Metropolitan Area Transit Authority ("WMATA"). The emergency legislation authorizes the Mayor, in cooperation with Maryland and Virginia, to prepare needed legislation to replace the Tristate Oversight Committee ("TOC"), with a new independent interstate entity approved by the Federal Transit Administration ("FTA").

(b) In 1997, the TOC was tasked with providing safety oversight for WMATA rail operations.

(c) In 2013, based on new federal standards, the FTA determined that the TOC was non-compliant and thus ineligible for grant funding. Among the TOC's deficiencies is its lack of enforcement authority. The TOC cannot compel WMATA to take action to address critical safety issues.

(d) The federal government has provided funding, subject to District matching funds, to pay for the expenses of the formation of the replacement interstate safety oversight entity. The State of Maryland and the Commonwealth of Virginia also receive such funds.

(e) The 3 jurisdictions seek to enter into an agreement with the Metropolitan Washington Council of Governments ("COG") to transfer these combined federal and matching funds to COG for the purpose of retaining experts and consultants to assist in the preparation of legislation to create the replacement interstate safety oversight entity.

(f) The District, the FTA, and WMATA passengers have a vested interest in seeing a strong safety oversight entity established as soon as possible. The authorization granted in the emergency legislation is essential to establish that new, compliant interstate safety oversight entity.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Washington Metropolitan Area Transit Authority Safety Regulation Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-342

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 15, 2015

To declare the existence of an emergency with respect to the need to amend the Firearms Control Regulations Act of 1975 to extend to January 1, 2018, the date for implementation of the microstamping requirement for semiautomatic pistols.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Microstamping Implementation Emergency Declaration Resolution of 2015".

Sec. 2. (a) D.C. Law 17-372, the Firearms Registration Amendment Act of 2008, added to the firearms law a requirement that newly-manufactured semiautomatic pistols be "microstamp-ready."

(b) Microstamping creates microscopic markings on a cartridge after a firearm is fired that identify the make, model, and serial number of the firearm, allowing law enforcement to identify a firearm the first time it is used in a crime.

(c) In 2007, California became the first state to require microstamping on all new models sold in the state.

(d) The District's microstamping requirement was initially to be implemented in 2011, in order to incorporate best practices learned from California's experience. However, D.C. Law 18-377, the Criminal Code Amendment Act of 2010, delayed the applicability date from January 1, 2011, until January 1, 2013. At that time, California had only recently issued regulations on microstamping. Because California was only beginning to put microstamping into practice, the Council voted to delay the District's implementation in order to allow the model being developed in California to be further refined.

(e) D.C. Law 19-170, the Firearms Amendment Act of 2012, again delayed – to January 1, 2014 – implementation of microstamping in the District after the process faced further delay in California due to patents on the technology. Implementation was postponed because of the very small nature of the District's market. The view was that once California, a much larger market, implemented microstamping, implementation would become more feasible in the District.

(f) As California continues to work toward implementation of microstamping, it is again necessary to delay the implementation of the District's microstamping requirement to allow for more time for implementation to take hold in California.

ENROLLED ORIGINAL

(g) The law must be amended now to delay the implementation requirement from January 1, 2016 to January 1, 2018, given that the current implementation date is approaching.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Microstamping Implementation Emergency Amendment Act of 2015 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately

ENROLLED ORIGINAL

A RESOLUTION

21-343

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 15, 2015

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCHT-2013-C-0144 with Medical Transportation Management, Inc. to manage and administer District Non-Emergency Transportation services for the District's Medicaid Eligible Fee-for-Service recipients and for individuals with intellectual or developmental disabilities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCHT-2013-C-0144 Multiyear Approval Emergency Declaration Resolution of 2015".

Sec. 2. (a) The Office of Contracting and Procurement, on behalf of the Department of Health Care Finance, proposes to enter into a multiyear agreement with Medical Transportation Management, Inc. to manage and administer District Non-Emergency Transportation services for the District's Medicaid Eligible Fee-for-Service recipients and for individuals with intellectual or developmental disabilities.

(b) The estimated price under this multiyear contract is in the amount of $85,225,477.68.

(c) Approval on an emergency basis is necessary to allow the District to receive the benefit of these vital services in a timely manner.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute circumstances making it necessary that the Contract No. DCHT-2013-C-0144 Multiyear Emergency Approval Resolution of 2015 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-344

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 15, 2015

To approve, on an emergency basis, multiyear Contract No. DCHT-2013-C-0144 with Medical Transportation Management, Inc. to manage and administer District Non-Emergency Transportation services for the District's Medicaid Eligible Fee-for-Service recipients and individuals with intellectual or developmental disabilities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCHT-2013-C-0144 Multiyear Emergency Approval Resolution of 2015".

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code §1-204.51(c)(3)), 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. DCHT-2013-C-0144 between the Department of Health Care Finance and the Medical Transportation Management, Inc. to manage and administer District Non-Emergency Transportation NET services for the District's Medicaid Eligible Fee-for-Service recipients and individuals with intellectual or developmental disabilities in the not-to-exceed amount of $85,225,477.68, for the 3-year base term beginning December 15, 2015.

Sec. 3. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 5. Effective date.

This resolution shall take effect immediately.

Council of the District of Columbia
COMMITTEE ON THE JUDICIARY AND COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS
NOTICE OF JOINT PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON
COMMITTEE ON THE JUDICIARY

AND

COUNCILMEMBER VINCENT B. ORANGE, SR., CHAIRPERSON
COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS

ANNOUNCE A PUBLIC HEARING ON

BILL 21-0211, THE "EMPLOYMENT PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE AMENDMENT ACT OF 2015"

AND

BILL 21-0244, THE "FAIR CREDIT HISTORY SCREENING ACT OF 2015"

Tuesday, January 26, 2016, 1:00 p.m.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

On Tuesday, January 26, 2016, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on the Judiciary, and Councilmember Vincent B. Orange, Sr., Chairperson of the Committee on Business, Consumer, & Regulatory Affairs, will hold a joint public hearing on Bill 21-0211, the "Employment Protections for Victims of Domestic Violence Amendment Act of 2015", and Bill 21-0244, the "Fair Credit History Screening Act of 2015". The hearing will be held in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 1:00 p.m.

The stated purpose of Bill 21-0211 is to amend the Accrued Sick and Safe Leave Act of 2008 to protect victims of domestic violence, sexual assault, and stalking from discrimination in the workplace; to require an employer to provide reasonable accommodations to an employee who is a victim of domestic violence, sexual assault, or stalking; and to prevent an employer from

discharging, demoting, or suspending such an employee in retaliation for having received an accommodation or for taking time off from work due to a violent incident.

The stated purpose of Bill 21-0244 is to remove barriers to gainful employment by prohibiting the consideration of a job applicant's credit history until after a conditional offer of employment is made; to establish penalties; and to give authority for enforcement to the Office of Human Rights.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact Kate Mitchell, 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, January 21, 2016**. 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 **twenty 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 hearing, written statements will be made part of the official record. Copies of written statements should be submitted either to the Committee 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 February 9, 2016.

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

COMMITTEE ON EDUCATION and
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on the

B21-0508, "School Attendance Clarification Amendment Act of 2015"

on

Thursday, January 21, 2016
9:30 a.m., Hearing Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Councilmember David Grosso, chairperson of the Committee on Education, and Chairman Phil Mendelson, chairperson of the Committee of the Whole announces the scheduling of a joint public hearing on B21-0508, "School Attendance Clarification Amendment Act of 2015." The hearing will be held at 9:30 a.m. on Thursday, January 21, 2016 in Hearing Room 500 of the John A. Wilson Building.

The stated purpose of B21-0508 is to amend the District of Columbia's compulsory school attendance laws to clarify agency responsibilities and attendance reporting requirements, require schools to obtain a written explanation verifying the reason for an absence within five days after a student's return to school and prohibit the suspension, expulsion, or unenrollment of a minor covered by the District's compulsory attendance requirement due to an unexcused absence or late arrival to school. This legislation also amends the protocol for law enforcement officers who come in contact with a minor they believe to be truant and amending educational institution's referral requirement for CFSA, Court Social Services, and the Office of the Attorney General after a minor accrues a certain number of unexcused absences.

Those who wish to testify are asked to telephone the Committee on Education, at (202) 724-8061, or email Jessica Giles, Committee Assistant, at jgiles@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, January 19, 2016. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on February 4, 2016.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

PR 21-0439, the Food Policy Director Laine Cidlowski Confirmation Resolution of 2015,
PR 21-0440, the Food Policy Council Spike Mendelsohn Confirmation Resolution of 2015,
PR 21-0441, the Food Policy Council Claire Benjamin Confirmation Resolution of 2015,
PR 21-0442, the Food Policy Council Jeremiah Lowery Confirmation Resolution of 2015,
and
PR 21-0443, the Food Policy Council Jonas Singer Confirmation Resolution of 2015

Tuesday, January 19, 2016
at 2:00 p.m.
in Room 412 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Tuesday, January 19, 2016, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on PR 21-0439, the Food Policy Director Laine Cidlowski Confirmation Resolution of 2015, PR 21-0440, the Food Policy Council Spike Mendelsohn Confirmation Resolution of 2015, PR 21-0441, the Food Policy Council Claire Benjamin Confirmation Resolution of 2015, PR 21-0442, the Food Policy Council Jeremiah Lowery Confirmation Resolution of 2015, and PR 21-0443, the Food Policy Council Jonas Singer Confirmation Resolution of 2015. This legislation would confirm Laine Cidlowski as the Food Policy Director, Spike Mendelsohn as a voting member and chairman of the Food Policy Council, and Claire Benjamin, Jeremiah Lowery, and Jonas Singer as voting members of the Food Policy Council. The roundtable will begin at 2:00 p.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

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

written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on February 2, 2016.

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

Review of the District's Workforce Development Programs and the Implementation of the Workforce Innovation and Opportunity Act

Wednesday, January 13, 2016, 3:00 p.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 roundtable by the Committee on Business, Consumer, and Regulatory Affairs to review the District's workforce development programs and the Implementation of the Workforce Innovation and Opportunity Act ("WIOA"). The public roundtable is scheduled for Wednesday, January 13, 2016 at 3:00 p.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004.

The purpose of this public roundtable is to review the District's workforce development programs. In addition, the roundtable will examine the District government's implementation of WIOA which became effective on July 1, 2015.

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 names, addresses, telephone numbers, and organizational affiliation, if any, by the close of business Monday, January 11, 2016. 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 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, January 27, 2016. 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
Notice of Reprogramming Requests

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

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

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

Reprog. 21-156: Request to reprogram $2,047,704 of Fiscal Year 2016 Local funds budget authority within the Department of Human Services (DHS) was filed in the Office of the Secretary on December 21, 2015. This reprogramming ensures that funds will be available to support 27 additional Full-Time Equivalent (FTE) positions for the Permanent Supportive Housing Program and Homelessness Services Continuum.

RECEIVED: 14 day review begins December 22, 2015

Reprog. 21-157: Request to reprogram $854,972 of Capital funds budget authority and allotment from various agencies to the Department of Public Works (DPW) was filed in the Office of the Secretary on December 21, 2015. This reprogramming is needed to support the cost of acquiring heavy equipment for DPW's fleet.

RECEIVED: 14 day review begins December 22, 2015

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	December 25, 2015
Petition Date:	February 8, 2016
Hearing Date:	February 22, 2016
Protest Date:	April 20, 2016

License No.:	ABRA-101261
Licensee:	GoBrands, Inc.
Trade Name:	GoPuff – Rive
License Class:	Retailer's Class "A"
Address:	3401 Water Street, N.W.
Contact:	Paul Pascal: 202-544-2200

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on April 20, 2016.

NATURE OF OPERATION
Online Retailer

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES
Sunday through Saturday 7am - 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	December 25, 2015
Petition Date:	February 8, 2016
Roll Call Hearing Date:	February 22, 2016
Protest Hearing Date:	April 20, 2016
License No.:	ABRA-101302
Licensee:	Harvest Eats DC LLC
Trade Name:	Jinya Ramen Bar
License Class:	Retailer's Class "C" Restaurant
Address:	1336 14th Street, N.W.
Contact:	Stephen J. O'Brien: 202-625-7700

WARD 2 ANC 2F SMD 2F03

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 April 20, 2016 at 4:30pm.

NATURE OF OPERATION

A high-quality Japanese restaurant that serves authentic "Tonkotsu Ramen". No entertainment. Seating for 99 patrons. Total Occupancy Load of 120.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

Sunday through Thursday 11am-11pm, Friday and Saturday 11am-2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	December 25, 2015
Petition Date:	February 8, 2016
Hearing Date:	February 22, 2016
License No.:	ABRA-023516
Licensee:	Axis Bar & Grill, LLC
Trade Name:	Sudhouse
License Class:	Retailer's Class "C" Tavern
Address:	1340 U Street, N.W.
Contact:	Allison Farouidi: (202) 459-1267

WARD 1 ANC 1B SMD 1B12

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 C Tavern transferring to a new location. A community-oriented beer hall used for social space and gatherings including Entertainment Endorsement and a Sidewalk Café. Total number of seats: 90. Total Occupancy Load: 105. Total number of Sidewalk Café seats: 10.

HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES, SIDEWALK CAFÉ AND ENTERTAINMENT

Sunday 12pm- 2am, Monday 4pm- 12am, Tuesday through Thursday 4pm-2am, Friday 4pm–3am, Saturday 2pm-3am

DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

NOTICE OF PUBLIC HEARING

Surplus Review and Determination for
Group Hospital and Medical Services, Inc., a Subsidiary of CareFirst, Inc.

February 8, 2016
10:00 a.m.
Old Council Chambers
441 – 4th Street, NW
Washington, DC 20005

Pursuant to section 7 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31- 3506), as amended by the Medical Insurance Empowerment Amendment Act of 2008, effective March 25, 2009 (D.C. Law 17-369; D.C. Official Code §§ 31-3501 *et seq.*) (collectively the "Act"), the Commissioner of the Department of Insurance, Securities and Banking ("Department") hereby gives notice of his intent to conduct a public hearing to review the 2014 surplus Group Hospitalization and Medical Services, Inc. ("GHMSI"), a subsidiary of CareFirst, Inc. (See attached Preliminary Determination). As set forth in the Act, the public hearing is being conducted to determine: (1) whether the portion of the company's surplus attributable to the District is unreasonably large; and (2) whether the company has engaged in community health reinvestment to the maximum extent feasible consistent with financial soundness and efficiency.

The public hearing will be conducted in accordance with the Procedures for the Determination of Excess Surplus, 26A DCMR § 4600 *et seq*., and the Department's Rules of Practice and Procedure for Hearings, 26A DCMR § 3800 *et seq*. Information concerning the review of GHMSI's surplus, briefing schedule, applicable rules, and further instructions to the public will be posted on the Department's website at www.disb.dc.gov.

All inquiries, correspondence, and informational filings should be sent to the attention of the Adam Levi, Assistant Attorney General: District of Columbia Department of Insurance, Securities and Banking, 810 First Street, NE, Suite 701, Washington, DC 20002. Persons who wish to testify at the public hearing should contact Adam Levi, Assistant Attorney General, at the address above or by email at adam.levi@dc.gov. The record for the public hearing will remain open for seven (7) business days following the hearing for the submission of rebuttal or other written statements.

If a party or witness is deaf, has a hearing impediment, or otherwise cannot readily understand or communicate in English, the party or witness may apply to the Department for the appointment of a qualified interpreter. In addition, if any party or witness requires any other special accommodations, please contact the Hearing Officer at least ten (10) business days prior to the hearing.

PRELIMINARY DETERMINATION:
Group Hospitalization and Medical Services Inc.'s
Surplus as of December 31, 2014

Group Hospitalization and Medical Services, Inc. ("GHMSI") is a District of Columbia hospital and medical services corporation that is licensed and regulated pursuant to the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31- 3501 *et seq.*), as amended by the Medical Insurance Empowerment Amendment Act of 2008, effective March 25, 2009 (D.C. Law 17-369; 56 DCR 1346) (collectively, the "Act").

D.C. Official Code § 31-3506(e) authorizes the Commissioner of the Department of Insurance, Securities and Banking ("Department") to annually, but no less frequently than every three (3) years, review the portion of a hospital and medical services corporation's surplus attributable to the District of Columbia and issue a determination whether such surplus is excessive. As an initial step in the review process, the Department, pursuant to § 31-3506(e)(1), is required to preliminarily review GHMSI's surplus to determine whether it is "greater than the appropriate risk-based capital requirements as determined by the Commissioner for the preceding calendar year." If GHMSI's surplus exceeds this standard, then the Commissioner is required to hold a hearing to determine whether GHMSI's surplus is excessive pursuant to § 31-3506(e)(2).

For the reasons provided, the Department conducted its review and finds that GHMSI's surplus, as of December 31, 2014 ("2014 Surplus") is greater than the National Association of Insurance Commissioners' ("NAIC") Risk Based Capital Company Action Level Event threshold of 200% RBC-ACL and the BlueCross/BlueShield Association ("BCBSA") Early Warning threshold of 375% RBC-ACL, and determines that a hearing, at a date and time to be published in the *D.C. Register* in accordance with 26A DCMR § 4601.

Appropriate Risk-Based Capital Requirements

The Act's implementing regulations state that in making a preliminary determination, the Commissioner shall consider the "National Association of Insurance Commissioners' Risk Based Capital Requirements for health insurers . . . and the Blue Cross/Blue Shield Association capital requirements." *See* 26A DCMR § 4601. The NAIC's Risk Based Capital requirements for health insurers was adopted in the District with the enactment of the District Health Organizations RBC Amendment Act of 2002, effective June 18, 2003 (D.C. Law; D.C. Official Code § 31-3851.01 *et seq.*). The District's Health RBC law requires health insurers, including GHMSI, to maintain a RBC-ACL ratio of at least 200%, which is defined as the Company Action Level RBC. *See* D.C. Official Code § 31- 3851.01(6).

The BCBSA, for which GHMSI is a member and maintains a licensing agreement to use the BlueCross/BlueShield trademark, establishes an "Early Warning" capital threshold of 375% RBC-ACL in order for its member plans to comply with the terms of the licensing agreement. If a member plan falls below 200% RBC-ACL, BCBSA retains the right to unilaterally terminate the licensing agreement.

As such, to determine whether GHMSI's surplus is "greater than the appropriate risk-based capital requirements," the Commissioner will use the Company Action Level RBC threshold of 200% RBC-ACL and the BCBSA "Early Warning" threshold of 375% RBC-ACL.

Current and Historical Surplus of GHMSI

Table 1 illustrates GHMSI's historical surplus, including the company's RBC ratio.

Table 1

	2014	2013	2012	2011	2010
Surplus ($000's)	934,409	934,751	941,071	963,581	969,499
RBC	877.6%	932.3%	921.3%	998.3%	1,097.8%

Table 2 illustrates the NAIC minimum required RBC, as compared to GHMSI's actual RBC in 2014.

Table 2

2014	NAIC
Minimum Required RBC	**200.0%**
Actual RBC	877.6%
TAC ($000's)	934,409
CAL ($000's)	212,948
ACL ($000's)	106,474

Table 3 illustrates the BCBSA minimum RBC-Based thresholds. The two key thresholds involving surplus are: Early Warning Monitoring – 375.0%, and Loss of Trademark – 200.0%.

Table 3

2014	BCBSA	BCBSA
Minimum Required RBC	**375.0%**	**200.0%**
Actual RBC	845.2%	877.6%
TAC ($000's)	934,409	934,409
EWML ($000's)	399,277	212,948
ACL ($000's)	106,474	106,474

Preliminary Determination of GHMSI's 2014 Surplus

Accordingly, based upon the review of GHMSI's 2014 Surplus, the Commissioner has determined that the 2014 Surplus is "greater than the appropriate risk-based capital requirements as determined by the Commissioner" and cited above. *See* D.C. Official Code § 31-3506(e)(1). Further, pursuant to D.C. Official Code § 31-3506(e) and 26A DCMR § 4601.5, a public hearing will be held to review GHMSI's 2014 Surplus to determine if the surplus is excessive as defined by the Act. At a date and time to be determined, a Public Notice for the hearing will be published in the *D.C. Register* and posted on the Department's website.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, FEBRUARY 9, 2016
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

Revision: Added 19216

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

TIME: 9:30 A.M.

WARD SIX

19167 ANC-6E **Application of SK Asset Group, LLC**, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, and the off-street parking requirements under § 2101.1, to construct a three-story flat in the R-4 District at premises 445 M Street N.W. (Square 513, Lot 161).

WARD FIVE

19173 ANC-5D **Application of Equity Trust Company, Custodian FBO**, 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 1264 Holbrook Terrace N.E. (Square 4055, Lot 840).

WARD ONE

19174 ANC-1C **Appeal of Unit Owners' Association of The Erie Condominium**, pursuant to 11 DCMR §§ 3100 and 3101, from a June 17, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1410680, to construct a new 40-unit residential building with underground garage parking in the RC/R-5-B District at premises 2337 Champlain Street N.W. (Square 2563, Lot 887).

WARD SIX

19175 ANC-6D **Application of Crescent Communities LLC and RCP Development Company**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the side yard requirements under § 775.1, and the loading requirements under § 2201.1, and special exceptions from the rear yard requirements under § 774.1, and the roof structure requirements under §§ 411.3 and 411.5, to construct a new mixed-use building in the C-3-C District (South Capitol TDR receiving zone) at premises 2 I Street S.E. (Square 695W, Lot 21).

WARD ONE

19176 ANC-1B **Application of Jeffrey Sank and Dana Miller**, pursuant to 11 DCMR § 3103.2, for variances from the open court requirements under § 406.1, and the non-conforming structure requirements under § 2001.3, to construct a two-story rear addition to an existing one-family dwelling in the R-4 District at premises 1816 Vermont Avenue N.W. (Square 334N, Lots 802 and 803).

WARD FOUR

19177 ANC-4C **Application of Bailey Real Estate Holdings, LLC**, 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 two-story, three-unit apartment house in the R-4 District at premises 615 Upshur Street N.W. (Square 3226, Lot 73).

WARD FIVE

19185 ANC-5C **Application of Samson Gugsa and Luleadey K. Jembere**, pursuant to 11 DCMR § 3103.2, for variances from the use requirements under § 200, and the off-street parking requirements under § 2116.4, to permit a flat in the R-1-B District at premises 3101 35th Street N.E. (Square 4325, Lot 15).

WARD FIVE

19216 ANC-5D **Application of KIPP DC**, pursuant to 11 DCMR § 3104.1, for a special exception from the rooftop structure requirements pursuant to §§ 411.11 and 411.3, to permit the renovation of an existing public school in the R-4 District at premises 1375 Mount Olivet Road N.E. (Square 69, Lot 800).

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.

BOARD OF ZONING ADJUSTMENT
REVISED PUBLIC HEARING NOTICE
TUESDAY, MARCH 1, 2016
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

Revision: Corrected address to 19182

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

TIME: 9:30 A.M.

WARD SIX

19182 ANC-6E **Application of Rob Carter**, pursuant to 11 DCMR § 3103.2, for variances from the side yard requirements under § 405.8, and the nonconforming structure requirements under § 2001.3, to renovate an existing four-unit apartment house in the R-4 District at premises 1512 6th Street N.W. (Square 445, Lot 43).

WARD ONE

19183 ANC-1A **Application of Gajinder Singh, et al.**, pursuant to 11 DCMR § 3103.2, for two variances from the minimum lot area requirements under § 401.3, to permit the construction of two flats, each on a new non-conforming lot, in the R-4 District at premises 1440 Newton Street N.W. (Square 1440, Lot 844).

WARD THREE

19186 ANC-3E **Application of Ann Marie and Peter Mehlert**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, to extend the porch of an existing one-family dwelling in the R-1-B District at premises 4925 41st Street N.W. (Square 1757, Lot 17).

WARD FIVE

19191 ANC-5E **Application of Colleen Eubanks**, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403, the rear yard requirements under § 404, and the open court requirements under § 406, to permit a third-story addition to an existing flat in the R-4 District at premises 133 U Street N.E. (Square 3533, Lot 186).

WARD SIX

19193 ANC-6B **Application of C&S Development LLC**, pursuant to 11 DCMR § 3103.2, for variances from the lot area and width requirements under § 401.2, and the lot width requirements under § 401.3, to permit the construction of three three-story flats on three new nonconforming lots in the R-4 District at premises 1620-1622 E Street S.E. (Square 1090, Lots 813, 814).

WARD FIVE

19200 ANC-5D **Application of Jemal's Pappas Tomato's L.L.C.**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the off-street parking requirements under § 2101.1, and a special exception from the roof structure requirements under §§ 411.3 and 845.1, to allow the adaptive reuse of an existing warehouse building for retail uses in the C-M-1 District at premises 1401 Okie Street N.E. (Square 4093, Lot 832).

WARD ONE

19202 ANC-1B **Application of Alon Eckhaus**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the side yard requirements under § 405, the court width requirements under § 406, and the nonconforming structure requirements under § 2001.3, to construct a third-story addition to an existing flat in the R-4 District at premises 2803 Sherman Avenue N.W. (Square 2886, Lot 335).

WARD FIVE

19203 ANC-5D **Application of Sheela Tschand**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the side yard requirements under § 405, and a special exception from the conversion to apartment house requirements under § 336, to allow the conversion of a one-family dwelling into a three-story, three-unit apartment house in the R-4 District at premises 1844 Kendall Street N.E. (Square 4048, Lot 808).

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 PUBLIC HEARING

TIME AND PLACE: **Thursday, February 18, 2016, @ 6:30 p.m.**
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-04B (Forest City SEFC, LLC - Southeast Federal Center Overlay District Review @ 355 and 385 Water Street, SE, Square 771, Lot 807 (Parcel P2B) and Lot 808 (Parcel P2A)

THIS CASE IS OF INTEREST TO ANC 6D

On November 24, 2015, the Office of Zoning received an application from Forest City SEFC, LLC (the "Applicant") on behalf of the United States of America, through the General Services Administration, owner of the Property.

Two Retail Pavilions were approved per a previous design review application ("Z.C. Order 08-04A") but have not yet been built. The Retail Pavilions are located on Lot 807 at 385 Water Street, S.E. ("Parcel P2B"), and Lot 808 at 355 Water Street, S.E. ("Parcel P2A") in Square 771 (the "Property") in the Southeast Federal Center Overlay District ("SEFC"). The Applicant requests that the Zoning Commission review and approve an updated design and additional zoning relief for the Retail Pavilions.

Specifically, the Applicant is requesting the Zoning Commission to modify the previously approved design review application for the two Retail Pavilions and approve, pursuant to the Commission's review standards and variance requirements of 11 DCMR §§1805.11 and 3103, additional zoning relief for area variance relief from the floor area ratio ("FAR") (§ 931), lot occupancy (§ 932.2), side yards (§ 934), and floor-to-ceiling height (§ 1805.10).

The Property is zoned SEFC/W-0 and is located within The Yards development. The Property is generally bounded by Water Street to the north, 3rd Street to the west, 4th Street to the east (4th Street, south of Water Street, is a private street) and the Anacostia River to the south.

The approved Retail Pavilion located on Parcel P2B will be used by DC Winery, LLC, trading as District Winery, as a boutique urban winery/restaurant/event space, the first of its kind in Washington, DC. The Applicant is working on securing a retail tenant(s) for the approved Retail Pavilion on Parcel P2A, which will most likely be a restaurant.

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

How to participate as a witness.

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

How to participate as a party.

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

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

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

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

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

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

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

4. Individuals 3 minutes each

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

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, February 25, 2016, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, NW, Suite 220
Washington, DC 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-30B (West Half Residential II, LLC and West Half Residential III, LLC - Capitol Gateway Overlay District Review @ Square 700, Lots 33, 802, 840, 841, 850, 864, 865, 868, 871, 872, 873, 874, & 875)

THIS CASE IS OF INTEREST TO ANC 6D

On December 11, 2015, the Office of Zoning received an application from West Half Residential II, LLC and West Half Residential III, LLC (collectively, the "Applicant") requesting modification to portions of previously approved plans in Z.C. Order No. 08-30, as previously amended by Z.C. Order No. 08-30A, for construction of a mixed use building, pursuant to the requirements of the Capitol Gateway (CG) Overlay District set forth in 11 DCMR § 1610. As part of the requested modification, pursuant to 11 DCMR § 1610.7, the Applicant is seeking area variances from the following requirements: (i) percentage of lot occupancy (11 DCMR § 634.1); (ii) closed court (11 DCMR § 638.2); (iii) setback along Half Street, S.E. (11 DCMR § 1607.2); (iv) percentage of compact parking spaces (11 DCMR § 2115.2); (v) grouping of compact parking spaces (11 DCMR § 2115.4); and (vi) loading (11 DCMR § 2201.1).

The subject property consists of Lots 33, 802, 840, 841, 850, 864, 865, 868, 871, 872, 873, 874, and 875 in Square 700, having a land area of approximately 87,991 square feet. Square 700 is bounded by M Street, S.E., on the north, South Capitol Street on the west, Half Street, S.E., on the east, and N Street, S.E., on the south. Van Street bisects the square, running in a north-south orientation. The Property is located in the eastern portion of the square, with frontage on M Street, N Street, Half Street, and Van Street. The subject property is included within the CR District and is located in the CG Overlay District.

Through Z.C. Orders Nos. 08-30 and 08-30A, the Zoning Commission approved redevelopment of the subject property with a mixed-use building measuring 110 feet in height and containing approximately 288,242 square feet of residential use, approximately 369,292 square feet of office use and approximately 51,624 square feet of retail use. The footprint of the approved building occupies the entirety of the subject property and consists of two primary sections: a northern section consisting of office and ground floor retail uses fronting on M Street and a southern section consisting of the residential use as well as office and ground and second floor retail uses. A dedicated 30-foot wide pedestrian right of way running in an east-west orientation separates the two sections of the approved building.

The Applicant acquired all of the lots comprising the subject property with the exception of the northernmost lot, Lot 873. The Applicant's portion of the subject property comprises the land on which the southern portion of the approved building and the pedestrian right of way would be located. The Applicant proposes to modify only that portion of the approved building located on the Applicant's portion of the subject property. No changes are proposed to the design and uses for that portion of the approved building located north of the pedestrian right of way other than the location of the building connection.

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

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 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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, February 11, 2016 @ 6:30 P.M.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 15-20 (Sursum Corda Cooperative Association, Inc. – First-Stage PUD & Related Map Amendment @ Square 620, Lots 248-250 and 893-895, and Including Portions of First Terrace, L Place, and First Place to be Closed)

THIS CASE IS OF INTEREST TO ANC 6E

On August 17, 2015, the Office of Zoning received an application from Sursum Corda Cooperative Association, Inc. ("Applicant") requesting approval of a first-stage planned unit development ("PUD") and related zoning map amendment from the R-4 Zone District to the C-3-C Zone District for Square 620, Lots 248, 249, 250, 893, 894, and 895, and portions of First Terrace, L Place, and First Place to be closed ("Property"). The Office of Planning submitted a report to the Zoning Commission, dated October 30, 2015. At its public meeting on November 9, 2015, the Zoning Commission voted to set down the application for a public hearing. The Applicant provided its prehearing statement on November 24, 2015.

The Property bounded by M Street to the north, L Street to the south, First Street to the west, and First Place to the east. The Property consists of approximately 7.18 acres. It is located in Ward 6 and is within the boundaries of Advisory Neighborhood Commission ("ANC") 6E.

The proposed development includes five buildings on five theoretical lots, which is proposed to be constructed in phases. Overall, the Property will be redeveloped with approximately 1,279,845 square feet of residential use, generating approximately 1,142 dwelling units, and approximately 49,420 square feet of non-residential uses. The building heights will range from 65.8 feet to 110 feet. The overall density for the PUD will be 4.63 floor area ratio ("FAR") where a density of 8.0 FAR is permitted. The PUD proposes off-street parking at a ratio of .6 parking spaces per residential unit; the off-street parking for the non-residential uses complies with the Zoning Regulations. The Applicant seeks flexibility from the Zoning Regulations for loading, side yard, multiple buildings on a single record lot, and parking for Building 1C.

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

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written

testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

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

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

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

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

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

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

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

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

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Monday, February 22, 2016 @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 15-22 (301 FL Manager, LLC – Consolidated PUD & Related Map Amendment @ Square 722N, Lot 803)

THIS CASE IS OF INTEREST TO ANC 6C AND 5D

On September 4, 2015, the Office of Zoning received an application from 301 FL Manager, LLC (the "Applicant") requesting approval of a consolidated planned unit development ("PUD") and related zoning map amendment from the C-M-1 Zone District to the C-3-C Zone District for property located at 301 Florida Avenue, N.E. (Square 722N, Lot 803) (the "Property"). The Office of Planning submitted a report to the Zoning Commission, dated November 13, 2015. At its November 23, 2015 public meeting, the Zoning Commission voted to set down the application for a public hearing. The Applicant provided its prehearing statement on December 2, 2015.

The Property that is the subject of this application is bounded by Florida Avenue, N.E. to the northeast, N Street, N.E. to the south, and 3rd Street, N.E. to the west. The Property has a land area of approximately 8,720 square feet and is the only lot in Square 722N. The Property is located in Ward 6, is within the boundaries of Advisory Neighborhood Commission ("ANC") 6C, and is across Florida Avenue from the boundaries of ANC 5D.

The Property is currently improved with a one-story building and associated surface parking, which the Applicant proposes to raze in connection with redevelopment of the Property to construct a mixed-use building composed of residential and retail uses. The PUD will have a density of approximately 7.57 floor area ratio ("FAR") and will include a total of approximately 66,010 square feet of gross floor area. Approximately 61,173 square feet of gross floor area will be devoted to residential use (approximately 56 units) and approximately 4,837 square feet of gross floor area will be devoted to retail use.

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

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written

testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

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

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

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

If an affected Advisory Neighborhood Commission (ANC) intends to participate at the hearing, the ANC shall submit the written report described in § 3012.5 no later than seven (7) days before the date of the hearing. The report shall contain the information indicated in § 3012.5 (a) through (i).

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
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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.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Expanded Polystyrene Prohibition

The Director of the Department of Energy and Environment (DOEE or Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2013 Repl.)), the Sustainable DC Omnibus Amendment Act of 2014 ("Act"), effective December 17, 2014 (D.C. Law 20-142; D.C. Official Code §§ 8-1531 *et seq*. (2015 Supp.)), and Mayor's Order 2015-069, dated February 4, 2015, hereby gives notice of amendments to Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR), by adopting a new Chapter 23 (Expanded Polystyrene Prohibition).

The rulemaking adopts a new Chapter 23 to establish the standards for prohibiting expanded polystyrene food service products in the District of Columbia and implements the District's prohibition on expanded polystyrene food service products under the Act. The rulemaking establishes procedures for enforcement, administrative appeals, and judicial review, and defines the term "business or institutional cafeteria**.**"

The Department published a Notice of Proposed Rulemaking on August 28, 2015, at 62 DCR 11939. The Department considered comments received during the comment period, including one that recommended changes to the Department's enforcement of multiple violations. The Department determined that no revisions were necessary and is adopting this rulemaking without changes. These rules were adopted as final on November 18, 2015, and will become effective upon publication of this notice in the *D.C. Register*.

Title 21 DCMR, WATER AND SANITATION, is amended by adding a new Chapter 23 as follows:

CHAPTER 23 EXPANDED POLYSTYRENE PROHIBITION

2300 PURPOSE

2300.1 The purpose of this chapter is to implement Title IV, Subtitle A, of the Sustainable DC Omnibus Amendment Act of 2014, effective December 11, 2014 (D.C. Law 20-385; D.C. Official Code §§ 8-1531 *et seq*.) to reduce the amount of expanded polystyrene entering the District's rivers and streams and the nation's landfills.

2301 EXPANDED POLYSTYRENE PROHIBITION

2301.1 By January 1, 2016, no food service business shall sell or provide food or beverages in expanded polystyrene food service products, regardless of where the food or beverage will be consumed.

2301.2 This section shall not apply to food or beverages that were filled and sealed in expanded polystyrene containers before a food service business received them or to materials used to package raw, uncooked, or butchered meat, fish, poultry, or seafood for off-premises consumption.

2302 [RESERVED]

2303 ENFORCEMENT

2303.1 Violation of any of the requirements of this chapter or Title IV, Subtitle A, of the Sustainable DC Omnibus Amendment Act of 2014, shall subject a food service business to the penalties set forth in this section.

2303.2 The Department may enforce a violation of this chapter by issuing one or more of the following:

(a) Notice of violation; or

(b) Notice of infraction.

2303.3 The Department may issue a notice of infraction without first issuing a notice of violation or threatened violation.

2303.4 Sanctions, including civil fines and penalties, may be imposed pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq*.).

2303.5 The Department may also initiate a civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, preliminary injunction, or other relief necessary for enforcement of this chapter.

2303.6 Each instance or day of a violation of each provision of this chapter shall be a separate violation.

2303.7 The Department may enter any food service business during normal business hours for the purpose of determining whether a food service business is selling or providing food or beverages in expanded polystyrene food service products.

2304 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

2304.1 A person adversely affected by an enforcement action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.*), or OAH's successor.

2304.2 The appeal to OAH shall be filed in writing within fifteen (15) calendar days of service, or twenty (20) calendar days if service is made by United States mail.

2304.3 The Department may toll a period for filing an administrative appeal with OAH if it does so explicitly in writing before the period expires.

2304.4 OAH shall:

(a) Resolve a notice of infraction by:

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

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

(3) Providing such other relief as the governing statutes, regulations, and rules support;

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

(c) Render a final decision that shall constitute a final agency action subject to judicial review.

2304.5 The filing of an administrative appeal shall not in itself stay enforcement of an action, except that a person may request a stay according to the rules of OAH.

2304.6 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:

(a) To the party who asserts an affirmative defense; and

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

2304.7 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

2304.8 Nothing in this chapter shall be interpreted to:

(a) Provide that a filing of a petition for judicial review stays enforcement of an action; or

(b) Prohibit a person from requesting a stay of the OAH proceedings according to the rules of the court.

2399 DEFINITIONS

2399.1 When used in this chapter, the following terms shall have the meanings ascribed:

Business or institutional cafeteria - A facility operated by a for-profit, non-profit, or government entity that has a dedicated space for food preparation and serves food on a recurring basis.

Department - The Department of Energy and Environment.

Expanded polystyrene - blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by a number of techniques, including fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

Expanded polystyrene food service products - food containers, plates, hot and cold beverage cups, meat and vegetable trays, egg cartons, and other products made of expanded polystyrene and used for selling or providing food.

Food service business - full service restaurants, limited-service restaurants, fast foods restaurants, cafes, delicatessens, coffee shops, supermarkets, grocery stores, vending trucks or carts, food trucks, business or institutional cafeterias, including those operated by or on behalf of District departments and agencies, and other businesses selling or providing food within the District for consumption on or off the premises.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)(2012 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to adopt the following amendments to Chapter 56 (Nursing Schools and Programs) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

In Sections 5600, 5601, 5602, 5603, 5605, 5606, 5607, and 5608, the proposed amendments clarify and update the requirements for the approval and maintenance of nursing education programs, and the procedures for withdrawal of approval of programs. Section 5610 addresses the new consensus model for advanced practice nursing education. Section 5611 is amended to address the issue of nursing program that provide distance education.

These amendments were published as Proposed Rulemaking in the *D.C. Register* on October 9, 2015 at 62 DCR 013285. No comments were received and no changes have been made.

The rules were adopted as final on November 24, 2015, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 56, NURSING SCHOOLS AND PROGRAMS, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended to read as follows:

Amend the title for Section 5600, ACCREDITATION OF NURSING PROGRAMS, to read as follows:

5600 APPROVAL OF NURSING PROGRAMS

Subsections 5600.1 through 5600.3 are amended to read as follows:

5600.1 Pre-licensure or advanced practice nursing programs shall not operate in the District of Columbia without approval by the Board of Nursing (Board). This chapter sets forth the requirements and standards that a nursing education program in the District must meet to obtain approval by the Board, and the standards and procedures by which the Board shall approve, deny, or withdraw approval from a program.

5600.2 The approval status of a nursing education program in the District may be initial, full, or conditional. The nursing education program shall publicize the approval status of the program to its students and shall display its approval certificate conspicuously.

5600.3 Chapter 40 (Health Occupations: General Rules), Chapter 41 (Health Occupations: Administrative Procedures), Chapter 54 (Registered Nursing), Chapter 55 (Practical Nursing), Chapter 57 (Certified Registered Nurse-Anesthetists), Chapter 58 (Nurse-Midwives), Chapter 59 (Nurse-Practitioners), and Chapter 60 (Clinical Nurse Specialist) of this title supplement this chapter.

Amend the title for Section 5601, INITIAL ACCREDITATION, to read as follows:

5601 INITIAL APPROVAL

Subsections 5601.1 through 5601.4 are amended to read as follows:

5601.1 A person or entity seeking initial approval of a nursing education program shall submit to the Board the following information:

(a) A statement of intent to establish a pre-licensure nursing education program or advanced practice nursing education program, including name of owners and organization;

(b) A proposal which includes the following information:

(1) Documentation of the present and future need for the program and the need for entry-level nurses in the District, including identification of potential students and employment opportunities for graduates;

(2) The rationale for establishment of the program;

(3) The potential impact on other nursing education programs in the area (*e.g.* clinical placements, faculty, and students);

(4) The organizational structure of the educational institution documenting the relationship of the program within the institution;

(5) The licensure status of the controlling educational institution including accreditation status by regional or national accrediting organizations recognized by the U.S. Department of Education;

(6) The purpose, mission, and level of the program;

(7) The availability of qualified administrators and faculty pursuant to the qualifications established under this chapter;

(8) Hiring procedures for ensuring administrators and faculty will meet the requirements of this chapter;

(9) Budgeted faculty positions;

(10) The source and description of adequate clinical resources for the anticipated student population and program level along with an attached Board of Nursing clinical verification form;

(11) Documentation of the campus lab space and equipment, and an indication of the maximum number of students permitted in the lab in one session;

(12) Documentation of adequate academic facility and staff to support the program;

(13) Evidence of financial resources adequate for the planning, implementation, and continuation of the program;

(14) The anticipated student population;

(15) The tentative time schedule for planning and initiating the program;

(16) Admission criteria and procedures;

(17) Graduation criteria and procedures;

(18) A curriculum plan including framework, program objectives, and list of all courses; and

(19) A systematic plan for evaluation of the program.

(c) Submit a non-refundable application fee of ten thousand dollars ($10,000).

5601.2 If the Board approves the proposal, the Board shall request the following information from the applicant:

(a) A curriculum vita for the appointed nurse administrator and program coordinator for programs as applicable;

(b) A curriculum vita for each faculty member who meets the regulatory requirements and the intent of the program;

(c) A curriculum plan including conceptual framework, program objectives, list of courses, syllabus for each nursing course which includes a course description, course or clinical objectives, prerequisites, course outline, and grading criteria; and

(d) A Student Handbook that includes nursing student policies for admission, progression, retention and graduation.

5601.3 The Board shall conduct a site visit or if applicable, a joint site visit conducted by the Board and the District of Columbia Higher Education Licensure Commission.

5601.4 The Board shall grant initial approval to a newly established program upon receipt of evidence that the standards and requirements of this chapter are being met.

Subsections 5601.5 through 5601.8 are repealed.

Amend the title for Section 5602, DENIAL OF INITIAL ACCREDITATION, to read as follows:

5602 DENIAL OF INITIAL APPROVAL

Subsection 5602.1 is amended to read as follows:

5602.1 The Board may deny initial approval for any of the following reasons:

(a) Failure to hire a nurse administrator who meets the qualifications of this chapter;

(b) Failure to hire faculty who meet the qualifications of this chapter;

(c) Facility's learning environment does not meet the educational needs of students or accommodate the specified number of students;

(d) Identified clinical facilities or simulation laboratory are inadequate to meet the requirements of this chapter or program's clinical objectives;

(e) Incongruence among program's framework, objectives, courses, and course objectives;

(f) Noncompliance with Nursing Education Standards of Practice; and

(g) Noncompliance with any of the regulations in this chapter.

Subsections 5602.2 and 5602.3 are repealed.

Amend the title for Section 5603, FULL ACCREDITATION OF BASIC PRELICENSURE PROGRAMS, to read as follows:

5603 FULL APPROVAL

Subsections 5603.1 through 5603.8 are amended to read as follows:

5603.1 The Board may grant full approval to a program after initial approval provided that the program has done the following:

(a) Submitted proof that the percentage of the program's National Council Licensure Examination (NCLEX) pass rate is at least eighty percent (80%) for first time test takers. The percentage pass rate shall be based on the cumulative results of the first two (2) quarters following graduation of the first class;

(b) Submitted a self-evaluation report by the Nursing Administrator, following the graduation of the first classing, indicating compliance with the provisions of this chapter;

(c) Submitted proof that the program has received accreditation from a U.S. Department of Education recognized national nursing accrediting organization;

(d) Submitted proof that the controlling educational institution has regional or national U.S. Department of Education accreditation;

(e) Submitted proof that the program has demonstrated continued ability to meet the standards and requirements of this chapter; and

(f) Demonstrated compliance with the requirements of this chapter during the site visit.

5603.2 In order to maintain full approval a program shall demonstrate the following:

(a) The annual pass rate for first time test takers on the licensure or certification examination is not less than eighty percent (80%);

(b) The annual program reports that meet requirements of this chapter; and

(c) The accreditation status that verifies the program meets requirements of this chapter.

5603.4 An announced or unannounced on-site visit shall be conducted to verify that the program meets requirements of this chapter.

5603.5 The first year that the licensure pass rate for first time test takers in a program is less than eighty percent (80%), but at least seventy five percent (75%), the Board shall send written notice to the program that the program has failed to meet the requirements and standards of this chapter.

5603.6 The Board or its designee may perform an announced or unannounced on-site visit to the facility and provide a report to the Board.

5603.7 The program's nurse administrator shall submit a corrective plan of action to the Board within sixty (60) calendar days from receipt of the Board's written notice.

5603.8 The Board shall maintain a list of approved programs. The list shall be maintained up to date on the Department's Internet website. The list shall also be compiled and published annually and available to the public upon request.

Subsections 5603.9 through 5603.12 are repealed.

Section 5604, FULL ACCREDITATION OF ADVANCED PRACTICE NURSING EDUCATION PROGRAMS, is repealed.

Amend the title for Section 5605, CONDITIONAL ACCREDITATION, to read as follows:

5605 CONDITIONAL APPROVAL

Subsections 5605.1 through 5605.8 are amended to read as follows:

5605.1 The Board may place a program with initial approval on conditional approval status for any of the following:

(a) The percentage of the program's first time NCLEX test takers passing the examination is less than eighty percent (80%) as determined by the cumulative results of the first two (2) quarters following graduation of the first class.

(b) The program has not received accreditation from a U.S. Department of Education recognized national nursing accrediting organization;

(c) The controlling educational institution does not have regional or national U.S. Department of Education accreditation;

(d) The program failed to demonstrate continued ability to meet the standards and requirements of this chapter; or

(e) The program failed to demonstrate compliance with the requirements of this chapter during the site visit.

5605.2 The Board may place a nursing program on conditional approval status if it has failed to maintain the requirements and standards of this chapter.

5605.3 Conditional approval status denotes that certain conditions must be met within a designated time period for the program to be granted full approval.

5605.4 A Bachelor of Science in Nursing (BSN) or Advanced Practice that has been granted conditional approval shall be allotted a maximum of four (4) years to correct deficiencies for the purpose of being granted full approval.

5605.5 An Associate Degree (AD) program that has been granted conditional approval shall be allotted a maximum of three (3) years to correct deficiencies for the purpose of being granted full approval.

5605.6 A Practical Nurse (PN) program that has been granted conditional approval shall be allotted a maximum of two (2) years to correct deficiencies for the purpose of being granted full approval.

5605.7 Under conditional approval status, the program may continue to operate while correcting the identified deficiencies and working toward meeting the conditions for full approval.

5605.8 The first year that the annual licensure or certification pass rate for first time test takers is less than seventy five percent (75%):

(a) The Board will send written notice to the program of the following:

(1) The program has failed to meet the requirements and standards of this chapter;

(2) The program will be placed on conditional approval status for an allotted time pursuant to § 5605.3; and

(3) The Board or its designee may perform an announced or unannounced on-site visit to the facility and provide a report to the Board.

(b) The program's nurse administrator shall submit to the Board, within sixty (60) calendar days from receipt of the Board's written notice, the following:

(1) A report analyzing aspects of the education program, identifying areas believed to be contributing to the unacceptable performance; and

(2) An action plan to correct the deficiencies, to be approved by the Board.

Subsections 5605.9 through 5605.13 are added to read as follows:

5605.9 The second successive year that the pass rate for a program's first time licensure or certification test takers is less than eighty percent (80%) the Board shall send written notice to the program of the following:

(a) The program has failed to meet the requirements and standards of this chapter;

(1) The program will continue on conditional approval status for an allotted time pursuant to § 5605.3;

(2) The Board or its designee will perform an announced or unannounced on-site visit to the facility and provide a report to the Board; and

(b) Limitations may be placed on admittance of students.

5605.10 The program's nurse administrator shall submit to the Board, within ninety (90) calendar days or the time period specified by the board from receipt of the Board's written notice, the following:

(a) Proof that the program has obtained the services of an external consultant, to be approved by the Board;

(b) A report that is based on the findings of the consultant, which analyzes all aspects of the education program and identifies areas that contributed to the unacceptable performance; and

(c) An action plan to correct the deficiencies, to be approved by the Board.

5605.11 After the Board determines that a program is out of compliance with the requirements and standards of this chapter, the Board may, in its discretion, prohibit a program that has conditional approval status from admitting new students until the program has been restored to full approval status. The program shall be given ninety (90) days' notice.

5605.12 Students who graduate from conditionally accredited programs shall be eligible to take the NCLEX in the District of Columbia and upon passing the examination licensed in the District of Columbia.

5605.13 If the program fails to meet the specified conditions within the designated time period, the Board may withdraw approval and the program shall be removed from the Board's list of approved programs.

Amend the title for Section 5606, WITHDRAWAL OF ACCREDITATION OR REDUCTION TO CONDITIONAL STATUS, to read as follows:

5606 WITHDRAWAL OF APPROVAL FOLLOWING CONDITIONAL APPROVAL STATUS

Subsections 5606.1 through 5606.15 are amended to read as follows:

5606.1 The Board may withdraw approval of the program at its discretion, for any of the following reasons:

(a) The Board has determined that a program has been unable to meet or maintain the requirements and standards of this chapter;

(b) The nursing education program has failed to correct the deficiencies identified by the Board within the allotted time period;

(c) Failure to hire a nurse administrator who meets the qualifications of this chapter;

(d) Failure to hire faculty who meet the qualifications of this chapter;

(e) Noncompliance with the program's stated philosophy, program design, objectives, outcomes, or policies;

(f) Failure to implement the approved curriculum;

(g) Failure to maintain the required licensure or certification pass rate for first-time test takers;

(h) Failure to obtain and maintain accreditation by a Board recognized nursing accrediting organization;

(i) Failure to submit records and reports to the Board in a timely manner;

(j) Noncompliance with any of the regulations in this chapter; or

(k) Other activities or situations, as determined by the Board, that indicate a program is not meeting the legal requirements and standards of this chapter.

5606.2 Before the Board withdraws approval of a program, the Board shall Issue a Notice of Intended Action to the program notifying the program that the Board intends to withdraw approval of the program and the reasons for the action.

5606.3 Before the Board withdraws approval of a program, the program has a right to a hearing.

5606.4 The Board shall send notice to the Higher Education Licensing Commission of the Board's intention to withdraw approval.

5606.5 The program shall provide its current student population and applicants with immediate notice of the Board's intended action, which shall include mailings and public postings on the premises and on their website.

5606.6 If requested by the Board or by students, the program shall provide its current student population with information and assistance for transferring to another nursing education program.

5606.7 After the Board has withdrawn approval of a program, the Board shall provide notice of the withdrawal to the District of Columbia Higher Education Licensure Commission.

5606.8 The effective date of the withdrawal of approval shall be the date the Board publishes on its website the final decision which shall notify the public of the withdrawal of approval. The Board may, at its discretion, postpone the effective date of the withdrawal of approval until the end of a current semester, when it determines such to be in the best interests of the program's graduating class or students.

5606.9 If the program appeals the Board's decision to the District of Columbia Court of Appeals, the effective date of the withdrawal of approval shall not be stayed pending appeal, but may be changed pursuant to an order of the Court of Appeals.

5606.10 The Board may designate persons to conduct an unannounced visit to the facility to ensure that the educational institution has not continued to operate the nursing education program or admit students after the effective date of the approved withdrawal.

5606.11 Within thirty (30) days after receipt of notice that approval has been withdrawn, the nurse administrator or school administrator shall submit to the Board a written plan for termination of the program. The plan shall include:

(a) A plan for the current students that include completion of the program and transfer of students to other approved programs within a time frame established by the Board; and

(b) A plan outlining the arrangements made for storage and retrieval of the permanent records of the students, graduates, and faculty.

5606.12 Students enrolled in a program and graduating from the program prior to, or up to, the effective date of the withdrawal of approval shall be permitted to take the licensure examination in the District of Columbia; and upon passing and

completion of other licensure requirements shall be licensed in the District of Columbia.

5606.13 The educational institution of a nursing program whose approval was withdrawn may apply to the Board for initial approval of a new program pursuant to § 5601 and shall disclose the name of the program under which it previously operated.

5606.14 A program aggrieved by a final decision of the Board may appeal the decision to the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-501 *et seq*.

Subsections 5606.16 through 5606.19 are repealed.

Amend the title for Section 5607, PRACTICAL NURSING EDUCATION PROGRAMS, to read as follows:

5607 EDUCATION ADMINISTRATION

Subsections 5607.1 through 5607.10 are amended to read as follows:

5607.1 Program approval status shall be reviewed annually.

(a) Each program shall apply for renewal of approval not less than sixty (60) days prior to the date of expiration by submitting the following to the Board:

(1) A written annual report on forms provided by the Board; and

(2) The required renewal fee.

(b) The Board shall determine the approval status annually for each nursing program.

(c) The notice of Board approval status shall be posted and visible to students.

5607.2 A program shall notify the Board within sixty (60) days of making any of the following:

(a) A change in the approved nurse administrator or program coordinator. The program shall submit proof that the new nurse administrator or coordinator meets the requirements of this chapter;

(b) A change in the length of the program;

(c) A change in the program's national accreditation status; or

(d) A change in the accreditation status of the controlling institution.

5607.3 Programs shall notify the Board of scheduled accreditation site visits and arrange for joint site visit with nursing accrediting organization upon the Board's request.

5607.4 Programs shall submit copies to the Board within thirty (30) days of receipt or submission of the following:

(a) Evidence of current accreditation status;

(b) Accreditation reports; and

(c) Notifications and reports sent to and from the accreditation organization.

5607.5 Programs shall provide students access to policies and services.

5607.6 Programs shall make the following available to students:

(a) A written statement of students' rights and responsibilities including admission, progression, graduation, and licensing requirements;

(b) A written policy on grievance procedures and a mechanism for resolution;

(c) Guidance and advisement counseling services; and

(d) Academic counseling for students who are failing.

5607.7 An educational institution shall determine whether a student possesses spoken and written competency in English, prior to a student beginning the nursing program. If a student is unable to successfully demonstrate spoken and written competency in English, or is later identified by an instructor as deficient in English, the program shall:

(a) Offer, or assist the student in entering, an English as a Second Language program; and

(b) Require the student to complete the English as a Second Language program either simultaneously, with the nursing program, or prior to entering the nursing program, as appropriate, based on the level of the student's competency in English.

5607.8 Programs shall have admission standards to ensure that students possess the educational skills and competency to successfully complete the nursing education program at that level, prior to a student beginning the nursing program.

5607.9 Pre-licensure programs that require passing an exit examination as a requirement for completion of final course in program or for graduation shall:

(a) Select exit examinations that have established reliability and validity, or have been normed;

(b) Inform students in writing upon admission to the program of the requirement and the required passing score;

(c) Have administered standardized examination throughout the program;

(d) Provide remediation for students who are unable to pass standardized examinations that prevent progression;

(e) Perform analysis and correlations of students' performance on course standardized examination with students' performance in courses; and

(f) Develop a remediation program for the student who has satisfactorily progressed in the program but is unable to pass the standardized exit examination and unable to complete the final course or graduate from the program. The plan shall be in writing and placed in student's file.

5607.10 If a program decides to close, ninety (90) days before closing the nurse administrator or coordinator shall:

(a) Notify the Board of its intent;

(b) Provide the date and reason for closing;

(c) Submit to the Board its plan for the disposition of the records of the students and graduates;

(d) Provide to the Board the name and position title of the individual to be responsible for the records, and the name and address of the agency in which the records will be located; and

(e) Provide evidence to the Board that the program's current students have been given timely notice of the program's intent, and provided assistance for transferring to another nursing program.

Subsections 5607.11 through 5607.25 are repealed.

Amend the title for Section 5608, ASSOCIATE DEGREE NURSING EDUCATION PROGRAMS, to read as follows:

5608 PRELICENSURE NURSING EDUCATION STANDARDS

Subsections 5608.1 through 5608.24 are amended to read as follows:

5608.1 Administration and organization of the nursing education program shall be consistent with the laws governing the practice of nursing.

5608.2 The nursing education program shall be a part of an educational institution that has accreditation by a regional accrediting agency recognized by the U.S. Department of Education by 2020.

5608.3 Upon eligibility for accreditation, the nursing education program shall pursue accreditation and shall provide evidence of current accreditation from a national nursing accrediting agency recognized by the U.S. Department of Education within twenty four (24) months of eligibility.

5608.4 The nursing educational program shall be within a credit bearing educational institution.

5608.5 All nursing education programs shall meet the following standards:

(a) The purpose and outcomes of the nursing program shall be consistent with accepted standards of nursing practice appropriate for graduates of the type of nursing program offered;

(b) The input of stakeholders shall be considered in developing, revising, and evaluating the purpose and outcomes of the program;

(c) The nursing program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement;

(d) The curriculum shall provide diverse didactic and clinical learning experiences consistent with program outcomes;

(e) Faculty and students shall participate in program planning, implementation, evaluation and continuous improvement;

(f) The nursing program administrator shall be a professionally and academically qualified registered nurse with institutional authority and administrative responsibility for the program;

(g) Professionally, academically, and clinically qualified nurse faculty shall be sufficient in number and expertise to accomplish program outcomes and quality improvement;

(h) The fiscal, human, physical, clinical, and technical learning resources shall be adequate to support program processes, security and outcomes;

(i) Program information communicated by the nursing program shall be accurate, complete, consistent and readily available; and

(j) There shall be sufficient number of qualified faculty to meet the outcomes and purposes of the nursing education program.

5608.6 Administrator qualifications for programs leading to the Licensed Practical Nurse (LPN) shall include:

(a) A current, active District of Columbia Registered Nurse (RN) license that is not encumbered;

(b) Minimum of a graduate degree in nursing;

(c) Minimum of five (5) years of progressive experience in teaching and knowledge of learning principles for adult education, including nursing curriculum development, program administration and evaluation; and

(d) A current knowledge of nursing practice at the practical nurse or associate degree registered nurse level.

5608.7 Administrator qualifications for programs leading to the RN include:

(a) An active, unencumbered District of Columbia RN license;

(b) A doctoral degree in nursing, or a graduate degree in nursing and a doctoral degree;

(c) Minimum of five (5) years of progressive experience in nursing education, teaching and knowledge of learning principles for adult education, including nursing curriculum development, administration, and evaluation; and

(d) A current knowledge of nursing practice at the registered nursing level.

5608.8 Faculty qualifications for programs leading to the Licensed Practical Nurse shall include:

(a) An active, unencumbered District of Columbia RN license;

(b) Being academically and experientially qualified with a minimum of a graduate degree in nursing, or a bachelor's degree in nursing with a graduate degree.

(c) Knowledge of teaching and learning principles for adult education, including nursing curriculum development and course evaluation; and

(d) A minimum of two (2) years of patient care experience.

5608.9 Pursuant to § 5608.8, fifty percent (50%) of full-time and part-time faculty shall have a graduate degree in nursing.

5608.10 Faculty qualifications for programs leading to the RN degree shall include:

(a) An active, unencumbered District of Columbia RN license; and

(b) Academic qualifications which include a minimum of a graduate degree in nursing;

(c) Knowledge of teaching and learning principles for adult education, including nursing curriculum development and course evaluation; and

(d) A minimum of two (2) years of patient care experience.

5608.11 Clinical competency shall be verified by the educational institution's faculty prior to the use of clinical preceptors.

5608.12 The criteria for selecting a preceptor shall be in writing and shall include the following:

(a) The method of selecting clinical preceptors;

(b) The orientation of clinical preceptors;

(c) The objectives or outcomes of the preceptorship; and

(d) A system for monitoring and evaluating the student's learning experiences.

5608.13 Clinical preceptors shall have education at or above the level of the program.

5608.14 Clinical preceptors in District of Columbia health facilities shall have an unencumbered, active District of Columbia nursing licenses.

5608.15 Curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and abilities necessary for the level, scope and standards of competent nursing practice expected at the level of licensure.

5608.16 Curriculum shall be revised as necessary to maintain a program that reflects advances in health care and its delivery.

5608.17 The curriculum, as defined by the nursing education unit, professional and practice standards, shall include:

(a) Experiences that promote the development and subsequent demonstration of evidence-based clinical judgment, skill in clinical management, and the professional commitment to collaborate in continuously improving the quality and safety of the healthcare system for patients;

(b) Evidence-based learning experiences and methods of instruction, including distance education methods, consistent with the written curriculum plan;

(c) Coursework including, but not limited to:

(1) Content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice;

(2) Content regarding professional responsibilities, legal and ethical issues, history and trends in nursing and health care; and

(3) Content in the prevention of illness and the promotion, restoration and maintenance of health, and end of life care in patients across the lifespan and from diverse cultural, ethnic, social and economic backgrounds.

5608.18 Patient care experiences occur in a variety of clinical settings and shall include:

(a) Integrating patient safety principles throughout the didactic and clinical experiences;

(b) Implementing evidence-based practice and patient values, including skills to identify and apply best practices to nursing care;

(c) Collaborating with inter-professional teams through open communication, mutual respect, and shared decision-making;

(d) Participation in quality improvement processes and monitoring patient care outcomes; and

(e) Using information technology to communicate, mitigate error, and support decision making.

5608.19 Faculty supervised clinical practice shall include:

(a) Development of skills in direct patient care;

(b) Making clinical judgments;

(c) Care and management of individuals and groups across the lifespan;

(d) Measurement of students' competencies that focus on demonstration of care management and decision making skills when providing care;

(e) When appropriate to the level of education, the delegation and supervision of other health care providers;

(f) All student clinical experiences including those with preceptors;

(g) A minimum of six hundred fifty (650) clinical hours for programs leading to the registered nurse degree; and

(h) A minimum of six hundred (600) clinical hours for programs leading to the practical nurse degree.

5608.20 Programs leading to the practical nurse degree shall include clinical experiences in the following areas:

(a) Medical nursing;

(b) Psychiatric and mental health nursing;

(c) Pediatric nursing;

(d) Community or home care; and

(e) Long-term care.

5608.21 Programs leading to the registered nurse degree shall include clinical experiences in the following areas:

(a) Foundations;

(b) Medical nursing;

(c) Surgical nursing;

(d) Maternal and newborn health;

(e) Pediatric nursing;

(f) Psychiatric and mental health nursing;

(g) Community health;

(h) Acute care; and

(i) Long-term services.

5608.22 Campus laboratory experiences shall provide attainment of psychomotor skills and clinical decision making in the care of patients.

5608.23 The ratio of credit hours to laboratory hours shall not exceed one to three (1:3).

5608.24 Clinical simulations may replace a maximum of thirty percent (30%) of actual clinical experiences with the following requirements:

(a) The use of high fidelity computerized mannequins;

(b) Debriefing, using education theory;

(c) Conducted by faculty with training in clinical simulations; and

(d) The use of clinical simulations in the areas of maternal-newborn, medical-surgical, critical care, and pediatrics, and psychiatric mental health.

Subsection 5608.25 is repealed.

Section 5609, BACCALAUREATE DEGREE NURSING EDUCATION PROGRAMS, is repealed.

Amend the title for Section 5610, ADVANCED PRACTICE NURSING EDUCATION PROGRAMS, to read as follows:

5610 ADVANCED PRACTICE REGISTERED NURSING EDUCATION STANDARDS

Subsections 5610.1 through 5610.10 are amended to read as follows:

5610.1 This section shall apply to advanced practice nursing education programs that prepare students for practice as nurse-anesthetists, nurse-midwives, nurse-practitioners, or clinical nurse specialists.

5610.2 An advanced practice registered nursing education program shall operate within, or be affiliated with an accredited college or university that is authorized to award graduate degrees or post-graduate certificates.

5610.3 To be eligible for approval, the advanced practice program shall be at the graduate or post-graduate level and have pre-accreditation or accreditation status.

5610.4 A college or university desiring initial approval of an advanced practice nursing education program shall submit a proposal to the Board as set forth in § 5601.1(b) to establish an advanced practice nursing education program that prepares students for practice as nurse-anesthetists, nurse-midwives, nurse-practitioners, or clinical nurse specialists.

5610.5 The nursing education program coordinator shall:

(a) Be academically and experientially qualified in the role of the program offered;

(b) Have a minimum of two (2) years of clinical experience as an advanced practice nurse;

(c) Have a District of Columbia advanced practice registered nurse license in good standing;

(d) Have a minimum of a doctoral degree in nursing and a current certification in the role and a population of the program; and

(e) Have educational preparation and experience, in teaching and curriculum development or program administration at the graduate level.

5610.6 The faculty shall:

(a) Be registered nurses licensed and in good standing in the District of Columbia;

(b) Have a minimum of a master's degree in nursing: and

(c) Meet the following additional qualification when teaching courses with associated clinical:

(1) Be academically and experientially qualified in the role and population of the program offered;

(2) Have a minimum of two (2) years of clinical experience as an advanced practice nurse; and

(3) Have a District of Columbia advanced practice registered nurse (APRN) license in good standing.

5610.7 Preceptors, when used for clinical in the District of Columbia, shall:

(a) Hold an active license to practice as an APRN or physician that is not encumbered and practices in a comparable practice focus; and

(b) Function as a supervisor and teacher and evaluates the individual's performance in the clinical setting.

5610.8 The program of study shall:

(a) Be comprehensive and prepare the graduate with the core competencies for one (1) of the four (4) APRN roles and at least one of the six (6) foci;

(b) Prepare the graduate to assume responsibility and accountability for health promotion and maintenance, as well as the assessment, diagnosis, and management of patient problems, including the use and prescription of pharmacologic and non-pharmacologic interventions;

(c) Include a minimum of three (3) separate core graduate-level courses in the following:

(1) Advanced physiology/pathophysiology, including general principles that apply across the lifespan;

(2) Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches; and

(3) Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics, and pharmacotherapeutics of all broad categories of agents.

(d) Include a minimum of five hundred (500) hours of supervised direct care clinical, with a minimum of fifty (50) minutes constituting one (1) hour.

5610.9 A certification program preparing an APRN specialty practice shall:

(a) Build upon and in addition to, the education and practice of the APRN role and population focus;

(b) Not prepare beyond the scope of practice of the role or population;

(c) Address a subset of the population-focus; and

(d) Be accredited by the nursing education accreditation organization.

5610.10 APRN students shall be currently licensed to practice as a registered nurse in the District of Columbia prior to participation in clinical practice as a student.

Subsections 5610.11 through 5610.26 are repealed.

Amend the title for Section 5611, PROGRAM CHANGES REQUIRING BOARD NOTIFICATION, to read as follows:

5611 DISTANCE NURSING EDUCATION

Subsection 5611.1 is amended to read as follows:

5611.1 Distance learning pre-licensure or advanced practice programs offered by approved District of Columbia nursing programs must be approved by the Board of Nursing.

Add new Subsections 5611.2 through 5611.8 to read as follows:

5611.2 The distance learning program shall meet the same standards as the campus program.

5611.3 The campus nursing programs shall have full approval by the Board.

5611.4 Faculty supervising clinical experiences in other locations shall obtain licenses in those states, if required.

5611.5 Faculty teaching didactic classes online in the distance learning program shall obtain licensure in the District of Columbia.

5611.6 Programs desiring to seek approval for student nurse clinical placement in the District of Columbia shall meet the following standards:

(a) Provide evidence of full approval by the Board of Nursing in the state in which the institution is located; and

(b) Provide evidence of current accreditation by a national nursing accrediting agency recognized by the U.S. Department of Education.

5611.7 Faculty supervising preceptor guided clinical experiences in pre-licensure nursing programs shall meet the qualifications stated in §§ 5608.8 and 5608.10 of this chapter.

5611.8 On-site supervision of preceptors used in clinical experiences with pre-licensure students shall occur a minimum of two (2) times within a semester.

5611.9 Registered nurse students completing clinical experiences in the District of Columbia for advanced practice registered nursing programs must possess an active unencumbered license in the District of Columbia.

Section 5612, STUDENTS, is repealed.

Section 5613, VOLUNTARY CLOSURE OF A PROGRAM, is repealed.

Section 5699, DEFINITIONS, is amended as follows:

Subsection 5699.1 is amended to read as follows:

5699.1 As used in this chapter, the following terms have the meanings ascribed:

Accreditation: recognition by national organizations or by a federal education agency that the nursing program has attained a standard of performance.

Act: Health Occupation Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.).

Advanced practice program: a post-baccalaureate nursing education program at the master's degree or doctoral degree level, whose purpose is to prepare students for practice as nurse-anesthetists, nurse-midwives, nurse-practitioners, or clinical nurse specialists.

Advanced practice registered nurse: a registered nurse who has completed an advanced practice nursing education program and has been licensed by the Board to practice as a nurse-anesthetist, nurse-midwife, nurse-practitioner, or clinical nurse specialist.

Annual Pass Rate: NCLEX pass rates for first-time test takers are calculated using the NCSBN, Pearson VUE reports from October 1 to September 30 for a one year period.

Approval: Board approval to operate a basic nursing program or advanced practice nursing education program in the District of Columbia that is granted only after specified requirements, standards, and conditions have been met.

Board: the Board of Nursing, established by § 204 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)).

Clinical: faculty planned and guided learning activities designed to assist students in meeting course objectives and to apply nursing knowledge and skills in

the direct care of patients, including clinical conferences and planned learning activities in acute care facilities, and other community resources.

Clinical agency: an agency which provides the facilities for clinical learning experiences in nursing, with the faculty or the clinical instructor of the program responsible for the planning, implementing, and evaluating of the experiences.

Clinical preceptor: an individual meeting the requirements of this chapter that is an employee of a clinical agency who works with a nursing student in a clinical setting to facilitate student learning in a manner specified in a signed written agreement between the agency and the educational institution.

Clinical preceptorship: an organized system of clinical experiences which allows a nursing student to be paired with a clinical preceptor for the purpose of attaining specific learning objectives.

Clinical simulations: advanced laboratory experiences for students that mimic actual clinical experiences. They include the use of medium or high fidelity mannequins, and scenarios or case studies and reflection to enhance learning.

Conditional approval: the approval status that is granted, for a time period specified by the Board, to a nursing program to correct deficiencies when the nursing program has failed to meet or maintain the requirements and standards of this chapter.

Controlling institution: a college, university, public agency, or institution is responsible for the administration and operation of a nursing program in the District.

District of Columbia Education Licensure Commission: the District of Columbia Government agency that licenses postsecondary educational institutions and their agents for the purpose of ensuring authenticity and legitimacy of educational institutions, serving as the state approving agency for veterans educational benefits, providing standards and criteria, and administering rules and regulation, including rules of procedure for the Education Licensure Commission, for the purpose of ensuring adequate public notice of each meeting of the Education Licensure Commission.

Exit Examination: a standardized test taken by a student to determine proficiency in nursing knowledge prior to graduation.

Full approval: the approval status that is granted to a program after the graduation of its first class and after the Board has determined that the requirements and standards of this chapter have been met.

Initial approval: the approval status that is granted to a newly established nursing program that has not graduated its first class.

NCLEX: National Council of State Boards of Nursing Licensure Examination.

Nurse Administrator: the person with the responsibility and authority for the administration and instructional activities of nursing education program (*e.g*. Dean, Chairperson, Director)

Nursing process: the problem solving techniques of assessment, planning, implementing, and evaluating a plan of care that requires technical and scientific knowledge, judgment, and decision-making skills.

Nursing Program: any education program leading to a certificate, associate degree, or baccalaureate degree in nursing.

Practical nurse: a person licensed to practice practical nursing pursuant to Chapter 55 of this title.

Prelicensure program: a nursing education program at the certificate, associate degree, or baccalaureate degree level, whose purpose is to prepare students for practice as practical or registered nurses.

Program Coordinator: Faculty member responsible for planning, implementing and evaluating advanced practice nursing program.

Registered nurse: a person licensed to practice registered nursing pursuant to Chapter 54 of this title.

Withdrawal of Approval: Board revocation of the approval to operate a nursing education program or advanced practice nursing education program within the District.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health ("Department"), 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 §§ 3-1201.01 *et seq.* (2012 Repl.)), as amended by the Trauma Technologists Licensure Amendment Act of 2013, effective January 25, 2014 (D.C. Law 20-64; 60 DCR 16533 (December 6, 2013)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption, on an emergency basis, of new Chapter 106, entitled "Trauma Technologists," and an amendment to Section 3500 (Fees) of Chapter 35 (Licensing Fees), to Title 17 (Business, Occupations, and Professionals), of the District of Columbia Municipal Regulations (DCMR).

Emergency rulemaking to adopt Chapter 106 is necessary to establish rules specific to trauma technologists practicing in the District, including licensure, scope of practice, supervision, and continuing education, as well as to provide the duties of the advisory board of trauma technologists to the District of Columbia Board of Medicine before October 19, 2015, by when all persons employed as trauma technologists must begin to be licensed pursuant to the Trauma Technologists License Amendment Act of 2013 (the "Act"). The emergency adoption of the amendment to Section 3500 is necessary to establish the fees associated with licensure pursuant to Chapter 106.

When Council first enacted the Act, the Council intended to provide a period of time to grandfather those persons who were already working full-time as trauma technologists while the regulations and formal licensing process were being drafted. The statutory grandfathering period ended on October 18, 2015, at which time all individuals practicing as trauma technologists had to cease practice, unless the necessary regulations and licensing process were promulgated by that time. As a result of the expiration of the grandfathering period, there is an immediate need to protect the health, safety, security, and welfare of District residents by having a licensing scheme for trauma technologists immediately implemented. The immediate adoption of these new regulations would prevent any interruption of medical care and services provided by trauma technologists to the residents of the District. Additionally, the adoption of the amendment to Section 3500 is necessary to establish the fees associated with licensure pursuant to Chapter 106.

Initially, the Department submitted the emergency and proposed rulemaking as a new Chapter 94. Because Chapter 94 has already been reserved for the adoption of rules for a different health occupation, these emergency and proposed rulemaking will be adopted as new Chapter 106. Accordingly, the rules have been re-numbered to reflect the new chapter, and no substantive changes have been made.

This emergency rulemaking was adopted on October 13, 2015, becoming effective immediately, and will remain in effect for up to one hundred twenty (120) days from the date of its adoption, until February 13, 2016, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*. In addition, the Director gives notice of the intent to take final rulemaking action to adopt the new Chapter 106 and the amendment to Section 3500 in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended by adding a new Chapter 106, entitled TRAUMA TECHNOLOGISTS, to read as follows:

CHAPTER 106 TRAUMA TECHNOLOGISTS

10600 GENERAL PROVISIONS

10600.1 This chapter shall apply to applicants for a license to practice as a trauma technologist.

10600.2 Chapters 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) shall supplement this chapter.

10601 TERM OF LICENSE

10601.1 Subject to § 10601.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of December 31st of each even-numbered year.

10601.2 If the Director changes the renewal system pursuant to § 4006.3 of Chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight of the last day of the month of the birthdate of the holder of the license or other date established by the Director.

10602 RENEWAL OF LICENSE

10602.1 The holder of a license to practice as a trauma technologist shall renew his or her

license by submitting a completed application on the forms prescribed by the Board and paying the required fees prior to the expiration of the license.

10602.2 A licensed holder applying for renewal of a license to practice as a trauma technologist shall submit documentary evidence that, in addition to meeting the requirements of § 3-1205.04(r), he or she has successfully completed fifty (50) hours of Board-approved continuing medical education within two (2) years before the date the license expires. Continuing medical education may consist of critiques, didactic session, practical drills, workshops, seminars, or other Board-approved means.

10603 LICENSURE REQUIREMENTS

10603.1 An applicant shall furnish proof satisfactory to the Board in accordance with D.C. Official Code § 3-1205.04 (2012 Repl.) that the applicant has met the following requirements:

(a) Successfully completed courses and training in anatomy and physiology, respiratory and cardiac care, wound treatment and closure, treatment of musculoskeletal injuries and burns, and other clinical aspects of emergency medical care from a trauma technology training program approved by the Board;

(b) Successfully completed the written and practical examinations for trauma technologists within twelve (12) months after completing the trauma technology training program; and

(c)

(1) Successfully completed and provided evidence of course completion of a life support training course, which includes all adult, child, and infant cardiopulmonary resuscitation and airway obstruction skills, from an agency approved by the Board, which teaches these skills in accordance with the current American Heart Association Guidelines for Basic Life Support at the health care provider level;

(2) Successfully completed and provided evidence of completion of a dedicated training program for trauma technologists in the armed forces and has been performing the functions of trauma technologists for at least five (5) years before the date of application for licensure; or

(3) Demonstrated to the satisfaction of the Board the completion of full-time work experience performed in the United States or Canada under the direct supervision of an emergency room physician licensed in the United States or Canada and consisting of

at least one thousand, three hundred (1,300) hours of performance as a trauma technologist in a Level 1 trauma facility as designated by the Director of the Department of Health, pursuant to Chapters 27 and 28 of Title 22, Subtitle B, of the District of Columbia Municipal Regulations (22-B DCMR §§ 2700 *et seq.* and §§ 2800 *et seq.*), within the three (3) years preceding the date of application for licensure.

10604 TRANSITION TO LICENSURE

10604.1 All references to trauma technologists shall be deemed to refer to persons meeting the requirements for licensure in the District, regardless of whether they are licensed in fact, until January 25, 2016.

10605 [RESERVED]

10606 [RESERVED]

10607 [RESERVED]

10608 CONTINUING EDUCATION REQUIREMENTS

10608.1 This section shall apply to applicants for the renewal, reactivation, or reinstatement of a license for a term expiring December 31, 2016, and for subsequent terms.

10608.2 An applicant for renewal of a license to practice as a trauma technologist shall submit proof pursuant to § 10608.5 of having completed during the two-year (2) period preceding the date the license expires approved continuing education units (CEUs) constituting fifty (50) hours of CEU credit, as specified in § 10609.2.

10608.3 A continuing education credit may be granted only for a program or activity approved by the Board in accordance with § 10609.

10608.4 An applicant for reactivation of an inactive license or reinstatement of a license to practice as a trauma technologist shall submit proof pursuant to § 10608.5 of having completed during the two-year (2) period immediately preceding the date of application approved CEUs.

10608.5 An applicant under this section shall furnish proof of having completed required continuing education units by submitting with the application the following information:

(a) The name of the program and its approval number;

(b) The dates on which the applicant attended the program or performed the

activity;

(c) The hours of credit claimed; and

(d) Verification that the applicant has completed the required continuing education program.

10609 APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES

10609.1 The Board, in its discretion, may approve continuing education programs and activities that contribute to the knowledge, skills, and professional performance and relationships that a trauma technologist uses to provide services to patients, the public or the profession and that meet the other requirements of this section.

10609.2 The Board may approve continuing education programs and activities for credit that are:

(a) Designated for AMA Category 1 credit approved by the American Medical Association;

(b) Sponsored, co-sponsored, or accredited by a state medical board; or

(c) Specifically approved by the Board.

10609.3 An applicant shall have the burden of verifying whether a program or activity is approved by the Board pursuant to this section prior to attending the program or engaging in the activity.

10610 [RESERVED]

10611 [RESERVED]

10612 [RESERVED]

10613 SCOPE OF PRACTICE

10613.1 An individual shall be licensed by the Board of Medicine before practicing as a trauma technologist in the District of Columbia.

10613.2 An individual licensed to practice as a trauma technologist shall have the authority to:

(a) Identify respiratory emergencies and perform critical interventions with oxygen therapy equipment, including bag valve masks;

(b) Identify circulatory emergencies and perform critical interventions, including cardiopulmonary resuscitation;

(c) Identify, assess, and treat, as required, various eye injuries, soft tissue injuries, ligament and tendon injuries, musculoskeletal injuries, environmental emergencies, and exposure and reactions to poisons;

(d) Provide topical application of a local anesthetic,

(e) Apply tourniquets, casts, immobilizers, and surgical dressings;

(f) Perform phlebotomy and insert intravenous catheters; and

(g) Suture lacerations and provide wound care.

10613.3 A trauma technologist shall not:

(a) Perform any surgical procedure independently;

(b) Have prescriptive authority; or

(c) Write any progress notes or orders on hospitalized patients.

10613.4 Telecommunication by a physician licensed to practice in the District of Columbia may suffice as a means for directing delegated acts for a trauma technologist who is under the indirect supervision of that physician.

10614 SUPERVISING PHYSICIAN

10614.1 To be authorized to supervise a trauma technologist, a physician must be currently licensed as a physician in the District. The license must be unrestricted and active.

10614.2 A supervising physician shall perform the critical portions of any procedure. Supervision shall be continuous, and shall require that the supervising physician be immediately available in the emergency room suite for delegated acts that the trauma technologist performs and to respond to any emergency until the patient is released from the emergency room suite and care has been transferred to another physician, or until the trauma technologist has completed his or her tasks and has been excused by the supervising physician.

10614.3 It is the responsibility of the supervising physician(s) and the trauma technologist(s) to ensure that:

(a) The trauma technologist's scope of practice is clearly defined;

(b) Delegation of medical tasks is appropriate to the trauma technologist's

level of competence;

(c) The relationship between the members of the team is defined;

(d) That the relationship of, and access to, the supervising physician is clearly defined and understood by both the supervising physician and the trauma technologist; and

(e) A process for evaluating the trauma technologist's performance is established.

10615 TITLE PROTECTION

10615.1 Unless authorized to practice as a trauma technologist, a person shall not use or imply the use of the words or terms "trauma technologist" or any similar title or description of services with the intent to represent that the person practices as a trauma technologist.

10616 DUTIES OF ADVISORY COMMITTEE ON TRAUMA TECHNOLOGISTS

10616.1 The Advisory Committee on Trauma Technologists shall consist of three (3) members appointed by the Mayor. Of the members of the Advisory Committee on Trauma Technologists, two (2) shall be emergency room physicians licensed in the District with experience working with trauma technologists, and one shall be a trauma technologist who shall be deemed to be and shall become licensed in the District in accordance with this chapter. The Committee shall advise the Board on all matters pertaining to this chapter and shall meet at least annually to review the guidelines for the licensing and regulation of trauma technologists and shall make necessary revisions for submission to the Board.

10616.2 Upon request of the Board, the Committee shall review applications for a license to practice as a trauma technologist and make recommendations to the Board.

10616.3 Upon request of the Board, the Committee shall review complaints regarding trauma technologists referred by the Board and make recommendations to the Board regarding what action should be taken.

10699 DEFINITIONS

10699.1 As used in this chapter the following terms have the meanings ascribed:

Board - the Board of Medicine, established by § 203(a) of the Act, D.C. Official Code § 3-1202.03(a)(1) (2012 Repl.).

Committee - the Advisory Committee on Trauma Technologists, established by § 203(a) of the Act. D.C. Official Code § 3-1202.03(a) (2012 Repl.).

Immediately available - physically present in the emergency room suite and capable of responding to the trauma technologist and the patient as medically appropriate.

Practice by trauma technologists - means the provision of emergency medical care to trauma patients in a Level 1 trauma facility as designated by the Director of the Department of Health pursuant to Chapters 27 and 28 of Title 22-B of the District of Columbia Municipal Regulations (22-B DCMR §§ 2700 *et seq.* and §§ 2800 *et seq.*), under either the direct or indirect supervision of a physician licensed to practice medicine in the District of Columbia.

Trauma technologist - a person licensed to practice as a trauma technologist under the Act, or meeting the requirements for licensure in the District, regardless of whether he or she are licensed in fact, until January 25, 2016.

Emergency room suite - includes the emergency room of any hospital or Level 1 trauma facility, as well as contiguous examination rooms, surgical suites and recovery rooms.

Supervising physician - a physician licensed by the Board who may delegate specified duties to a licensed trauma technologist, and oversees and accepts responsibility for the trauma technologist.

10699.2 The definitions in § 4099 of Chapter 40 of this title and the Act are incorporated by reference into and are applicable to this chapter.

SECTION 3500, FEES, of Chapter 35, LICENSING FEES, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Subsection 3500.1 is amended by adding a new paragraph to read as follows:

TRAUMA TECHNOLOGISTS:	
Application Fee	$85.00
License Fee	$145.00
Paid Inactive Status	$145.00
Renewal Fee	$145.00
Late Renewal Fee	$85.00
Document Duplication Fee	$34.00
Verification of Records	$34.00
Reinstatement Fee	$229.00
Criminal Background Check	$50.00

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 2015-250
December 8, 2015

SUBJECT: Delegation of Authority Pursuant to Title I, Subtitle B of D.C. Law 20-154, the "Sustainable Solid Waste Management Amendment Act of 2014"

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act of 1973, as amended, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2014 Repl.), and pursuant to Title I, Subtitle B of the Sustainable Solid Waste Management Amendment Act of 2014 (**"Act"**), effective February 26, 2015 (D.C. Law 20-154; D.C. Official Code § 8-1041.01 *et seq.* (2015 Supp.)), 61 DCR 9971 it is hereby **ORDERED** that:

1. The Director of the Department of Energy and Environment is delegated the Mayor's authority to implement and enforce Title I, Subtitle B of the Act, including:

   a. Authority to accept and approve or disapprove manufacturer, partnership, and representative organization applications for electronic equipment waste recycling program registration;

   b. Authority to collect registration and shortfall fees;

   c. Authority to grant a waiver from the minimum collection standards;

   d. Authority to identify District properties that could be used for collection opportunities or events;

   e. Authority to provide information on an appropriate pubic website about available electronic recycling opportunities, including collection sites and events;

   f. Authority to supervise manufacturer, partnership, and representative organization activities conducted in connection with the Act;

   g. Authority to develop and submit reports to Council; and

h. Authority to promulgate rules and establish civil penalties or fines.

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

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-251
December 9, 2015

SUBJECT: Reappointments and Appointments — District of Columbia Workforce Investment 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 2011-114, dated July 1, 2011, it is hereby **ORDERED** that:

1. **BRIAN KENNER** is appointed to the District of Columbia Workforce Investment Council (**"WIC"**), as Deputy Mayor for Planning and Economic Development, and shall serve in that capacity at the pleasure of the Mayor.

2. **DEBORAH CARROLL** is appointed to WIC, as Director, Department of Employment Services, and shall serve in that capacity at the pleasure of the Mayor.

3. **LAURA ZEILINGER** is appointed to WIC, as Director, Department of Human Services, and shall serve in that capacity at the pleasure of the Mayor.

4. **ANA HARVEY** is appointed to WIC, as Director, Department of Small and Local Business Development, and shall serve in that capacity at the pleasure of the Mayor.

5. **COURTNEY SNOWDEN** is appointed to WIC, as Deputy Mayor, Deputy Mayor for Greater Economic Opportunity, and shall serve in that capacity at the pleasure of the Mayor.

6. **HANSEUL KANG** is appointed to WIC, as a representative from a District Agency that partners with One-Stop Services, and shall serve in that capacity at the pleasure of the Mayor.

7. **CHARLES THORNTON** is appointed to WIC, as a representative from a District Agency that partners with One-Stop Services, and shall serve in that capacity at the pleasure of the Mayor.

8. **DIANNA PHILLIPS** is appointed to WIC, as Chief Executive Officer, Community College of the University of the District of Columbia, and shall serve in that capacity at the pleasure of the Mayor.

9. **LATARA HARRIS** is appointed to WIC, as a representative of business (Telecommunications Sector) and shall serve in that capacity for a term to end July 31, 2018.

10. **THOMAS PENNY** is reappointed to WIC, as a representative of business (Hospitality Sector), and shall serve in that capacity for a term to end October 11, 2018.

11. **DAYVIE PASCHALL** is appointed to WIC, as a representative of business (Construction Sector), and shall serve in that capacity for a term to end July 31, 2018.

12. **KIM K. HORN** is appointed to WIC, replacing Robert Brandon, as a representative of business (Healthcare Sector), and shall serve in that capacity for a term to end October 11, 2018.

13. **DARRYL A. WIGGINS** is appointed to WIC, as a representative of business (Information Technology Sector), and shall serve in that capacity for a term to end July 31, 2018.

14. **T. ALAN HURWITZ** is appointed to WIC, as a representative of business (Private Institution of Higher Learning Sector), and shall serve in that capacity for a term to end July 31, 2018.

15. **ANGELA FRANCO** is appointed to WIC, as a representative of business (Chamber of Commerce), and shall serve in that capacity for a term to end July 31, 2018.

16. **JAMES H. MOORE** is appointed to WIC, replacing Nicola Whiteman, as a representative of business (Labor and Human Services Sector), and shall serve in that capacity for a term to end October 11, 2018.

17. **LIZ DEBARROS** is appointed to WIC, as a representative of business (Building Industry Sector), and shall serve in that capacity for a term to end July 31, 2018.

18. **AAKASH THAKKAR** is appointed to WIC, replacing Charlene Drew Jarvis, as a representative of business (Real Estate Development Sector), and shall serve in that capacity for a term to end October 11, 2018.

19. **HARRY WINGO** is appointed to WIC, as a representative of business (Chamber of Commerce), and shall serve in that capacity for a term to end July 31, 2018.

20. **DAVID A. HALL** is appointed to WIC, as a representative of business (Technology Sector), and shall serve in that capacity for a term to end July 31, 2018.

21. **ANDY FLORANCE** is appointed to WIC, as a representative of business (Real Estate Sector), and shall serve in that capacity for a term to end July 31, 2018.

22. **JOSLYN N. WILLIAMS** is reappointed to WIC, as a representative of labor who has been nominated by District's labor federations, and shall serve in that capacity for a term to end October 11, 2018.

23. **STEVE W. COURTIEN** is appointed to WIC, as a representative of a joint labor-management apprenticeship program in the District, and shall serve in that capacity for a term to end July 31, 2018.

24. **NORBERT KLUSMANN** is appointed to WIC, as representative/training director from a labor/management apprenticeship program in the District, and shall serve in that capacity for a term to end July 31, 2018.

25. **BENTON MURPHY** is appointed to WIC, replacing Lori Kaplan, as a representative of community-based organizations that have demonstrated expertise in workforce development in the District, and shall serve in that capacity for a term to end October 11, 2018.

26. **LAURIE WINGATE** is appointed to WIC, replacing Tynesia Boyea-Robinson, as representative of community-based organizations that have demonstrated experience and expertise in the field of workforce development, and shall serve in that capacity for a term to end October 11, 2016.

27. **SHANAZ PORTER** is appointed to WIC, as representative from the federal government, and shall serve in that capacity for a term to end July 31, 2018.

28. **ANDY SHALLAL** is appointed Chairperson of the WIC, replacing Michael Harreld, and shall serve in that capacity for a term to end October 11, 2016.

29. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to October 11, 2015.

MURIEL BOWSER
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-252
December 10, 2015

SUBJECT: Appointments and Reappointments — District of Columbia Police Officers Standards and Training Board

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act of 1973, approved December 24, 1973 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and in accordance with section 204(b) of the Metropolitan Police Department Application, Appointment and Training Requirements Act of 2000, effective October 4, 2000, D.C. Law 13-160, D.C. Official Code § 5-107.03(b) (2012 Repl.), it is hereby **ORDERED** that:

1. **EMILE THOMPSON** is appointed as a Chair and member of the District of Columbia Police Officers Standards and Training Board (the **"Board"**), as the Mayor's designee, replacing Kevin Donahue, to serve at the pleasure of the Mayor.

2. **PATRICK BURKE** is reappointed as a member of the Board, as the designee of the Chief of Police, for a term to end September 17, 2018.

3. **THE HONORABLE NEAL KRAVITZ** is reappointed as a member of the Board, as a representative of the Superior Court of the District of Columbia, for a term to end September 17, 2018.

4. **RENEE DeVIGNE** is reappointed as a member of the Board, as a criminal justice educator, for a term to end September 17, 2018.

5. **GEORGE BANKS** is appointed as a member of the Board, as a community representative, replacing Terrence Straub, for a term to end September 17, 2018.

6. **MICHAEL TOBIN** is appointed as a member of the Board, as a community representative, replacing Nicole Martin, for a term to end September 17, 2018.

7. **ARTHUR PARKER** is reappointed as a member of the Board, as a designee of the Attorney General for the District of Columbia, for a term to end September 17, 2018.

8. **DENISE SIMMONDS** is reappointed as a member of the Board, as a designee of the United States Attorney for the District of Columbia, for a term to end September 17, 2018.

9. **PAUL ABBATE** is reappointed as a member of the Board, as a designee of the Assistant Director in Charge, Washington Field Office, Federal Bureau of Investigation, for a term to end September 17, 2018.

10. **MICHAEL ANZALLO** is appointed as a member of the Board, as a police representative, replacing Alfred Durham, for a term to end September 17, 2018.

11. **RICHARD SOUTHBY** is reappointed as an advisory member of the Board, representing the Metropolitan Police Department Reserve Corps, for a term to end September 17, 2018.

12. **DELROY BURTON** is reappointed, as a member of the Board, by the certified collective bargaining agent, as a police representative, for a term to end September 17, 2018.

13. **EFFECTIVE DATE:** This Order shall be effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-253
December 10, 2015

SUBJECT: Reappointments and Appointment — Board for the Condemnation of Insanitary Buildings

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and in accordance with Section 2(a-1) of An Act to create a board for the condemnation of insanitary buildings in the District of Columbia, and for other purposes, approved May 1, 1906, 34 Stat. 157, D.C. Official Code § 6-902(a-1) (2014 Supp.), it is hereby **ORDERED** that:

1. **GILBERT DAVIDSON** is reappointed as a designee representative of the Department of Consumer and Regulatory Affairs, to the District of Columbia Board for the Condemnation of Insanitary Buildings (the **"Board"**), and shall serve in that capacity at the pleasure of the Mayor.

2. **RODNEY GEORGE** is reappointed as a designee representative of the Office of the Deputy Mayor for Planning and Economic Development to the Board, and shall serve in that capacity at the pleasure of the Mayor.

3. **VONDA ORDERS** is appointed as a designee representative of the Department of Housing and Community Development, replacing Beatrix Fields, to the Board, and shall serve in that capacity at the pleasure of the Mayor.

4. **JATINDER KHOKHAR** is reappointed as Chairman and as a designee representative for the Department of Consumer and Regulatory Affairs, to the Board, and shall serve in that capacity at the pleasure of the Mayor.

5. **EFFECTIVE DATE:** This Order shall be effective immediately.

MURIEL BOWSER
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-254
December 10, 2015

SUBJECT: Reappointment and Appointments — District of Columbia Children and Youth Investment Trust Corporation Board of Directors

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 pursuant to section 2403 of the Children and Youth Initiative Establishment Act of 1999, effective October 20, 1999, D.C. Law 13-38, D.C. Official Code § 2-1553 (2012 Repl.), and in accordance with sections 4.03 and 4.04 of Article IV of the by-laws of the D.C. Children and Youth Investment Trust Corporation, it is hereby **ORDERED** that:

1. **MARIE JOHNS** is reappointed as a voting member Mayoral Appointee and shall serve for a term to end October 1, 2017.

2. **JEANETTE MOBLEY** is appointed as a voting member Mayoral Appointee, replacing Michael J. Kaspar, and shall serve in that capacity for a term to end October 1, 2016.

3. **LINDSEY PARKER** is appointed as an ex-officio non-voting Mayoral Appointee and shall serve in that capacity at the pleasure of the Mayor.

4. **EFFECTIVE DATE:** This Order shall be effective immediately.

MURIEL BOWSER
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-255
December 10, 2015

SUBJECT: Appointments — Mayor's Advisory Commission on Caribbean Community Affairs

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 2012-127, dated August 15, 2012, establishing the Mayor's Advisory Commission on Caribbean Community Affairs (**"Commission"**), it is hereby **ORDERED** that:

1. **MICHAEL YATES** is designated as the Chairperson of the Commission and shall serve in that capacity at the pleasure of the Mayor.

2. **LIANE ANGUS** is appointed as a member of the Commission, replacing Margaret M. J. Forde, and shall serve for a term to end August 15, 2018.

3. **LARISSA ETWAROO BAKO** is appointed as a member of the Commission replacing Roxanne Smith-White, and shall serve for a term to end August 15, 2018.

4. **MICHAEL CAMPBELL** is appointed as a member of the Commission, replacing Franklin Austin, and shall serve for a term to end August 15, 2017.

5. **ROGER CARUTH** is appointed as a member of the Commission, replacing Jamila A. Thompson, and shall serve for a term to end August 15, 2018.

6. **ABBEY R. CHARLES** is appointed as a member of the Commission, replacing Lilian Shepherd, and shall serve for a term to end August 15, 2018.

7. **URSULA LAURISTON** is appointed as a member of the Commission, replacing Kevin Gardiner, and shall serve for a term to end August 15, 2018.

8. **SHURLAND OLIVER** is appointed as a member of the Mayor's Advisory Commission on Caribbean Community Affairs, replacing Thomas Kwesi Danda Smith, and shall serve for a term to end August 15, 2018.

9. **CHRIS A. TOUSSAINT** is appointed as a member of the Mayor's Advisory Commission on Caribbean Community Affairs, replacing Lovell Saunders, and shall serve for a term to end August 15, 2017

10. **EFFECTIVE DATE:** This Order shall be effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-256
December 10, 2015

SUBJECT: Reappointments and Appointment— 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. The following persons are reappointed as members representing advocates of and for individuals with disabilities to the District of Columbia Statewide Independent Living Council (hereinafter referred to as **"Council"**), for terms to end November 3, 2017:

   ELVER ARIZA-SILVA **TIFFANY SANDERS**
   LUCIUS THOMAS MANGRUM

2. The following persons are appointed as members representing advocates of and for individuals with disabilities to the Council for terms to end November 3, 2017:

   HEDAYATI SIAVOSH, replacing Dennis O'Connor.
   RONALD THOMAS, replacing Effie Smith.
   DARNISE HENRY BUSH, replacing Samuel O. Awosika.
   CAREN KIRKLAND, replacing Robert E. Coward, Jr..

3. The following persons are reappointed as members representing private industry service providers to the Council for terms to end November 3, 2018:

   YOLANDRA PLUMMER **YVONNE SMITH**
   MARSHA THOMPSON

4. **SHELLITA GORHAM** is reappointed as a member representing individuals with disabilities to the Council for a term to end November 3, 2018.

5. **HEYAB BERHAN** is appointed, replacing Allison F. Cannington, as a member representing individuals with disabilities to the Council for a term to end November 3, 2018.

6. **RICHARD A. SIMMS** is reappointed as the Director for the Center for Independent Living member to the Council for a term to end November 3, 2018.

7. **BABU STEPHEN** is appointed to the Council as a member representing private industry service providers to the Council for a term to end November 3, 2018.

8. **EFFECTIVE DATE:** This Order shall be effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-257
December 10, 2015

SUBJECT: Reappointment — Sustainable Energy Utility Advisory Board

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and in accordance with section 203(b)(1) of the Clean and Affordable Energy Amendment Act of 2008, effective October 22, 2008, D.C. Law 17-250, D.C. Official Code § 8-1774.03(b)(1), (2012 Supp.), it is hereby **ORDERED** that:

1. **BERNICE MCINTYRE** is reappointed as a member of the Sustainable Energy Utility Advisory Board, representing the gas company, and shall serve for a term to end on May 12, 2018.

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

MURIEL BOWSER
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-258
December 22, 2015

SUBJECT: Appointment — Director, Office of Cable Television, Film, Music and Entertainment

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(2) and 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code §§ 1-204.22(2) and 1-204.22(11) (2014 Repl.), section 201 of the Cable Television Reform Act of 2002, effective October 9, 2002 (D.C. Law 14-193; D.C. Official Code § 34-1251.01 *et seq.*), as amended by section 2072 of the Entertainment and Media Production and Development Amendment Act of 2015, enacted August 11, 2015 and the Fiscal Year 2016 Budget Support Act, effective October 22, 2015 (D.C. Act 21-148, 62 DCR 10905), in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01 (2014 Repl.), and pursuant to the Director of the Office of Cable Television, Film, Music, and Entertainment Angie Gates Emergency Confirmation Resolution of 2015, effective November 3, 2015, Res. 21-0286, it is hereby **ORDERED** that:

1. **ANGIE GATES** is appointed Director, Office of Cable Television, Film, Music and Entertainment **("OCFME")**, and shall continue to serve in that capacity at the pleasure of the Mayor.

2. The OCFME was created by merging the Office of Cable Television and the Office of Motion Picture and Television Development pursuant to the Fiscal Year 2016 Budget Support Act.

3. This Order supersedes Mayor's Order 2015-021, dated January 8, 2015 and Mayor's Order 2015-176, dated June 30, 2015.

4. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to November 3, 2015.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2015-259
December 22, 2015

SUBJECT: Appointment — Director, Office of Lesbian, Gay, Bisexual, Transgender and Questioning Affairs

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.), pursuant to section 4 of the Office of Gay, Lesbian, Bisexual, and Transgender Affairs Act of 2006, effective April 4, 2006, D.C. Law 16-89, D.C. Official Code § 2-1383 (2012 Repl.), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01 (2014 Repl.), and pursuant to the Director of the Office of Gay, Lesbian, Bisexual, and Transgender Affairs Sheila Alexander Reid Confirmation Resolution of 2015, effective April 14, 2015, Res. 21-0080, and section 1021 of the Office of Lesbian, Gay, Bisexual, Transgender, and Questioning Affairs Name Change Emergency Amendment Act of 2015, effective July 27, 2015, D.C. Act 21-127, it is hereby **ORDERED** that:

1. **SHEILA ALEXANDER REID** is appointed Director, Office of Lesbian, Gay, Bisexual, Transgender and Questioning Affairs, and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2015-091, dated March 16, 2015.

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to April 14, 2015.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA

OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR

ADVISORY NEIGHBORHOOD COMMISSION SECURITY FUND ANNUAL FINANCIAL REPORT FOR FISCAL YEAR 2015

December 9, 2015

PURPOSE

As required by law[1], the Office of the District of Columbia Auditor presents the Advisory Neighborhood Commission (ANC) Security Fund Annual Financial Report for Fiscal Year (FY) 2015.

HISTORICAL BACKGROUND OF THE FUND

The Advisory Neighborhood Commission Security Fund (Fund) was established for the purpose of insuring Advisory Neighborhood Commissions against unauthorized expenditures or loss of funds.[2] The Fund does not cover any loss as the result of an expenditure authorized by a vote of a Commission. The Fund is held in the custody of a Board of Trustees (Trustees) composed of the Secretary of the District of Columbia, the General Counsel to the Council of the District of Columbia, and the District of Columbia Auditor (Auditor).

A Commission is eligible to participate in the Fund if the Treasurer and the Chairperson of the Commission agree, on a form provided by the Trustees, to be personally liable to the Fund for any sum paid out by the Fund as a result of the Treasurer or Chairperson's wrongful misappropriation or loss of Commission monies. An ANC becomes a participant of the Fund and is eligible to recover losses upon payment to the Fund of an annual contribution at the beginning of the fiscal year in an amount to be determined by the Trustees.

D.C. law requires the assets of the Fund to be held in an interest bearing account located in the District of Columbia.[3] In addition, the law requires that the Fund publish an annual report in the District of Columbia register no later than 90 days after the end of each fiscal year.[4]

ANC 5B lost approximately $30,000 due to unauthorized expenditures made by their elected Chairman between August 2010 and April 2011. To recover the losses associated with the unauthorized expenditures, ANC 5B, a participant of the ANC Security Fund at the time, requested a reimbursement totaling $15,467.67 from the ANC Security Fund Board of Trustees. On December 7, 2011, the Board approved the request and authorized the transfer of $15,467.67 from the Fund to ANC 5B.

In a related action, a settlement agreement between the District Government and the former Chairman of ANC 5B ordered the former Chairman to make payments to the Security Fund, to reimburse it for the $15,467.67 distributed to ANC 5B. These payments are ongoing and totaled $400.00 in FY 2015.

[1] D.C. Code § 1-309.14(f) (2015)
[2] D.C. Code § 1-309.14(a) (2015)
[3] D.C. Code § 1-309.14(e) (2015)
[4] D.C. Code § 1-309.14(f) (2015)

OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR
Advisory Neighborhood Commission Security Fund
Annual Financial Report for Fiscal Year 2015
December 9, 2015

RESULTS

Advisory Neighborhood Commission Security Fund
Commercial Savings Account Fund Activities & Balance Fiscal Year 2015

	FY 2015	FY 2014
Beginning Balance	$61,586.30	$58,509.59
Deposits	1,350.00	3,040.74
Interest	31.21	35.97
Withdrawal/Adjustment	0.00	0.00
Total Fund Balance	$62,967.51	$61,586.30

On October 1, 2014, the beginning balance of the Fund was $61,586.30. Deposits of $1,381.21[5] and no disbursements during FY 2014 resulted in a Fund balance of $62,967.51, as of September 30, 2015.

The Fund is insured by Federal Depository Insurance up to $250,000. To document the Fund's activity, at the end of each quarter and after receiving the quarterly bank statement, the Auditor reconciles and records all Fund activity and balances into the District of Columbia Financial System. Additionally, a quarterly and annual reconciliation/closing report of the Fund's activity and balance is submitted to the District of Columbia's Chief Financial Officer (see Attachment I).

To view the Attachment to this report, please visit:
http://www.dcauditor.org/sites/default/files/FY%202015%20ANC%20Security%20Fund%20Annual%20Report_0.pdf. Contact Anovia Daniels, Communications Analyst, with any questions about this report.

[5] The $1,381.21 includes: $950 ANC Annual Security Fund participation fee ($25 per ANC), $31.21 earned interest, and $400.00 court mandated settlement payments to the Fund.

DEPARTMENT OF BEHAVIORIAL HEALTH

NOTICE

The Director of the Department of Behavioral Health (DBH), pursuant to the authority set forth in sections 5113, 5115, 5117, 5118 and 5119 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; D.C. Official Code §§ 7-1141.02, 7-1141.04, 7-1141.06, 7-1141.07 and 7-1141.08)(2013 Supp.), hereby gives notice that effective December 28, 2015, DBH will accept new applications for Mental Health Community Residence Facilities to provide Intensive Residence level of care. DBH will accept applications until January 29, 2016. The Department is seeking applicants for up to ten (10) Intensive Residence beds. Applicants shall apply in accordance with Title 22-B, D.C. Municipal Regulation, Chapter 38. Award of license does not guarantee that the applicant will receive a Human Care Agreement. Successful applicants must meet all contract requirements as determined by the Department's Office of Contracting and Procurement prior to receiving a Human Care Agreement and per diem payments in accordance with Title 22-A, D.C. Municipal Regulation, Chapter 57. Award of a Human Care Agreement is subject to availability of funds.

In evaluating applicants, the Department will consider the following: (a) the ability of the applicant to meet the requirements of Title 22-B, D.C. Municipal Regulation, Chapter 38 and Section 3837; (b) the quality and handicap accessibility of an applicant's facility; (c) the quality of an applicant's programming; (d) an applicant's record of compliance with Chapter 38 in regards to other licensed facilities; and (e) the facility's proximity to metro transit and community-based activities that are conducive to a healthy and independent lifestyle.

If you have any questions or would like to request an application, you may contact Sheila Kelly, Director of Licensure, District of Columbia Department of Behavioral Health, 64 New York Ave., NE, 3rd Floor, Washington, D.C. 20002 – 4347, (202) 673-3516, Sheila.kelly@dc.gov.

OFFICE OF THE CHIEF FINANCIAL OFFICER
Office of Revenue Analysis

NOTICE of INCREASES in the 2016 STANDARD DEDUCTION, PERSONAL EXEMPTION, HOMESTEAD DEDUCTION, TRASH COLLECTION CREDIT AMOUNTS and SENIOR INCOME THRESHOLD

I. The Standard Deduction Amounts

Per the D.C. Code § 47-1801, et seq., and effective January 1, 2016 the Standard Deduction amounts (pertaining to the Individual Income Tax) will be the following[1]:

The Washington Area Average CPI value for Calendar Year 2014:	154.32
The Washington Area Average CPI value for Calendar Year 2015:	155.04
The percent change in the index during the above time period:	0.52%

Therefore, effective January 1, 2016:

- **for single individual and married individual filers** **$5,200.00**
- **for head of household filers** **$6,500.00**
- **for married joint filers will be** **$8,350.00**

II. The Personal Exemption Amount

Per the D.C. Code § 47-1806, et seq., the annual Personal Exemption amount (pertaining to the Individual Income Tax) for calendar year 2016 is adjusted in the following manner

The Washington Area Average CPI value for Calendar Year 2011:	145.22
The Washington Area Average CPI value for Calendar Year 2015:	155.04
The percent change in the index during the above time period:	6.76%

Therefore, effective January 1, 2016:

- **the Personal Exemption amount will be[1]** **$1,775.00**

III. The Homestead Deduction Amount

[1] Annual dollar amount changes are rounded down to the nearest $50.00 increment.

Per the D.C. Code § 47-850, et seq., the annual Homestead Deduction amount (pertaining to the Real Property Tax) for tax year 2016 is adjusted in the following manner

The Washington Area Average CPI value for Tax Year 2011:	146.04
The Washington Area Average CPI value for Tax Year 2015:	155.17
The percent change in the index during the above time period:	6.25%

Therefore, effective Tax Year 2016 (beginning October 1, 2015):

- **the Homestead Deduction amount will be[1] $71,700.00**

IV. The Condominium and Cooperative Trash Collection Credit Amount

Per the D.C. Code § 47-872, et seq., the annual Trash Collection Credit amount (pertaining to the Real Property Tax) for tax year 2016 is adjusted in the following manner

The Washington Area Average CPI value for Calendar Year 2014:	154.86
The Washington Area Average CPI value for Calendar Year 2015:	155.31
The percent change in the index during the above time period:	0.29%

Therefore, effective Tax Year 2016 (beginning October 1, 2015):

- **the Trash Collection Trash Credit amount will be[2] $107.00**

V. The Senior Citizen or Disabled Real Property Tax Relief Income Threshold

Per the D.C. Code § 47-863, the maximum household annual gross income for the real property tax senior citizen or disabled tax relief (pertaining to the Real Property Tax) for tax year 2016 is adjusted in the following manner

The Washington Area Average CPI value for Tax Year 2013:	151.96
The Washington Area Average CPI value for Tax Year 2014:	155.17
The percent change in the index during the above time period:	2.11%

Therefore, effective Tax Year 2016 (beginning October 1, 2015):

[2] Annual dollar amount changes are rounded to the nearest whole dollar.

- **the household federal adjusted gross income for the real property tax senior citizen or disabled tax relief shall be[1] $127,600.00**

A Summary of Deduction, Exemption, Credit and Income Threshold Amounts for 2016			
	Base Amounts	**CPI Adjustment Factor***	**2016 Amounts**
Standard Deduction for single individuals and married individual filers	$5,200.00	1.0052	$5,200.00
Standard Deduction for head of household filers	$6,500.00	1.0052	$6,500.00
Standard Deduction for married joint filers	$8,350.00	1.0052	$8,350.00
Personal Exemption	$1,675.00	1.0676	$1,775.00
Homestead Deduction	$67,500.00	1.0625	$71,700.00
Trash Collection Credit	$107.00	1.0029	$107.00
Senior Citizen Maximum Income Threshold	$125,000.00	1.0211	$127,600.00

* Source: U.S. Bureau of Labor Statistics, data accessed December 15, 2015

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

DC Board of Accountancy
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 8, 2016
9:00 AM

1. Call to Order – 9:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Accept Meeting Minutes,
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 5, 2016 at 9:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Architecture and Interior Design
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 22, 2016
9:30 AM

1. Call to Order – 9:30 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, December 11, 2015
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – March 4, 2016 at 9:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

DC Board of Barber and Cosmetology
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 4, 2016
10:00 AM

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Accept Meeting Minutes
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 1, 2016 at 10:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Funeral Directors
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 7, 2016
1:00 PM.

1. Call to Order – 1:00 p.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, December 3, 2015
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 4, 2016 at 1:00 p.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

District of Columbia Board of Industrial Trades
1100 4th Street, S.W., Room 300
Washington, D.C. 20024

AGENDA
January 19, 2016

1. Call to Order – 1:00 p.m.
2. Executive Session (Closed to the Public) – 1:00 p.m. -1:30 p.m.
    A. Review-Application (s) for licensure
3. Attendance (Start of Public Session) – 1:30 p.m.
4. Comments from the Public
5. Minutes
6. Recommendations
    A. Review-Application(s) for Licensure
7. Old Business
8. New Business
9. Adjourn

Next Scheduled Regular Meeting: February 16, 2016
1100 4th Street, SW, Room 300B, Washington, DC 20024

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

District of Columbia Board of Professional Engineers
1100 4th Street SW, Room 380
Washington, DC 20024

AGENDA

January 28, 2016 ~ Room 300
9:00 A.M. (Application Review by Board Members)

11:00 A.M.

1) Call to Order – 11:00 a.m.

2) Attendance

3) Executive Session - **Pursuant to § 2-575(4) (a), (9) and (13) the Board will enter executive session – Closed to the Public**
   - Deliberation over applications for licensure
   - Review complaints and investigations

4) Comments from the Public

5) Review of Minutes

6) Recommendations

7) Old Business

8) New Business

9) Adjourn

Next Scheduled Meeting – February 25, 2016
Location: 1100 4th Street SW, Conference Room E300

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Real Estate Appraisers
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 20, 2016
10:00 AM

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, December 16, 2015
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 17, 2015 at 10:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D.C. BOXING AND WRESTLING COMMISSION
1100 4th Street SW-Suite E500
Washington, DC. 20024
JANUARY 12, 2016
7:00 P.M.
Website: http://www.pearsonvue.com/dc/boxing_wrestling/

AGENDA

CALL TO ORDER & ROLL CALL

COMMENTS FROM THE PUBLIC & GUEST INTRODUCTIONS

1. World Wrestling Entertainment (WWE) Smack Down TV Event on **Tuesday, December 29, 2015** at the Verizon Center.

REVIEW OF MINUTES

- Approval of Minutes

UPCOMING EVENT

1. None

OLD BUSINESS

1. 6th Annual Dr. McKnight Preliminary Discussion
2. Officials Goals for 2016

NEW BUSINESS

1. Upcoming Amateur Events

ADJORNMENT

NEXT REGULAR SCHEDULED MEETING IS FEBRUARY 2, 2016

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF SPECIAL MEETING

The Construction Codes Coordinating Board has scheduled a Special Meeting:

Thursday, January 7, 2016
10 AM – 12 PM

Department of Consumer and Regulatory Affairs
1100 Fourth Street, SW
Fourth Floor Conference Room (E4302)
Washington, D.C. 20024.

The meeting location is on the Metro Green Line, at the Waterfront/SEU stop. Limited paid parking is available on site.

Board meeting agendas and minutes are available on the website of the Department of Consumer and Regulatory Affairs at http://dcra.dc.gov/, Construction Codes Coordinating Board (CCCB), http://dcra.dc.gov/service/construction-codes-coordinating-board and/or on the website of the Board of Ethics and Government Accountability at http://www.bega-dc.gov/board-commission/meetings.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Real Estate Commission
1100 4th Street SW, Room E300
Washington, DC 20024

MEETING AGENDA

January 12, 2016
10:30 AM

1. Call to Order – 10:30 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Draft Minutes, December 8, 2015
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 9, 2016 at 10:00 a.m.

D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

January 2016

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Cynthia Briggs	Board of Accountancy	8	8:30 am-12:00pm
Patrice Richardson	Board of Appraisers	20	8:30 am-4:00 pm
Patrice Richardson	Board Architects and Interior Designers	22	8:30 am-1:00 pm
Cynthia Briggs	Board of Barber and Cosmetology	4	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	12	7:00-pm-8:30 pm
Kevin Cyrus	Board of Funeral Directors	7	11:00am-1:00 pm
Avis Pearson	Board of Professional Engineering	21	9:00 am-1:30 pm
Leon Lewis	Real Estate Commission	12	8:30 am-1:00 pm
Pamela Hall	Board of Industrial Trades	19	1:00pm-3:30 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4th St., SW, Suite E-300 A-B Washington, DC 20024. For further information on this schedule, please contact the front desk at 202-442-4320.

D.C. CORRECTIONS INFORMATION COUNCIL

NOTICE OF PUBLIC MEETING

The DC Corrections Information Council (CIC), in accordance with the DC Official Code § 1-207.42 and § 2-575, hereby gives notice that it has scheduled the following meeting for **Tuesday, January 12, 2016,** from **6:00 pm** to **7:30 pm, in the Ground Floor Meeting Room of the Greater Washington Urban League Building, 2901 14th St NW, Washington, DC, 20009**. For additional information, please contact Sheila Walker, CIC Administrative Assistant, at (202) 478-9211 or sheila.walker@dc.gov.

The CIC is an independent monitoring body mandated by the US Congress and the DC Council to inspect, monitor, and report on the conditions of confinement at facilities where DC residents are incarcerated. This includes facilities operated by the Federal Bureau of Prisons, the DC Department of Corrections, and private contractors. Through its mandate, the CIC collects information from many different sources, including facility inspections, communication with incarcerated DC residents, and community outreach.

Below is the draft agenda for this meeting. A final agenda will be posted on the CIC website, available at http://cic.dc.gov/.

DRAFT AGENDA

I. Call to Order
II. Roll Call
III. Introduction of New Members of CIC Board and Staff
IV. CIC Strategic Planning
V. Reports: Publishing Schedule
VI. Recent Inspections
VII. USP Lewisburg Report
VIII. Community Outreach Report
IX. Other
X. Schedule Next CIC Open Meeting and Set Open Meeting Schedule
XI. Vote to Close Remainder of Meeting, pursuant to DC Code § 2-574(c)(1)
XII. Closed Session of Meeting (if approved by the Board)
XIII. Adjournment

CLOSED MEETING

I. Closed Session of Meeting (if approved by the Board)
II. Adjournment

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
EDUCATION LICENSURE COMMISSION

NOTICE OF 2016 MEETING SCHEDULE

Pursuant to the Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; 23 D.C. Reg. 8734; D.C. Official Code § 38-1301 *et seq.*), and the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-501 *et seq.)*, the Education Licensure Commission ("Commission") hereby gives notice of a gives notice of the annual schedule of meetings for the 2016 Calendar Year.

The Commission holds regular bi-monthly public meetings, which are open to the public. Prior to the public sessions, an executive session is typically held that is closed to the public. During months when the Commission is not holding a public meeting, the Commission holds bi-monthly work meetings that are closed to the public.

The dates, locations, and times for 2016 Commission meetings shall be as set forth below:

DATE	START TIME	END TIME	LOCATION	MEETING TYPE	REASON FOR CLOSURE (if applicable)
January 7, 2016	9:30 am	10:30 am	810 First Street, NE, 3rd Floor, Grand Hall B	Executive (closed)	D.C. Official Code §§ 2-575(b)(1), (4); 5 DCMR § A8204.1(b)
January 7, 2016	10:30 am	1:00 pm	810 First Street, NE, 3rd Floor, Grand Hall B	Public (open)	N/A
February 4, 2016	9:30 am	1:00 pm	810 First Street, NE, 3rd Floor, Grand Hall B	Work (closed)	D.C. Official Code §§ 2-575(b)(1), (4), (12); 5 DCMR § A8204.1(c)
March 17, 2016	9:30 am	10:30 am	810 First Street, NE, 3rd Floor, Grand Hall B	Executive (closed)	D.C. Official Code §§ 2-575(b)(1), (4); 5 DCMR § A8204.1(b)
March 17, 2016	10:30 am	1:00 pm	810 First Street, NE, 3rd Floor, Grand Hall B	Public (open)	N/A
April 7, 2016	9:30 am	10:30 am	810 First Street, NE, 3rd Floor, Grand Hall B	Work (closed)	D.C. Official Code §§ 2-575(b)(1), (4); 5 DCMR § A8204.1(b)
May 5, 2016	9:30 am	10:30 am	810 First Street, NE, 3rd Floor, Grand Hall B	Executive (closed)	D.C. Official Code §§ 2-575(b)(1), (4); 5 DCMR § A8204.1(b)
May 5, 2016	10:30 am	1:00 pm	810 First Street, NE, 3rd Floor, Grand Hall B	Public (open)	N/A
June 2, 2016	9:30 am	1:00 pm	810 First Street, NE, 3rd Floor, Grand Hall B	Work (closed)	D.C. Official Code §§ 2-575(b)(1), (4), (12); 5 DCMR § A8204.1(c)
July 7,	9:30 am	10:30 am	810 First Street, NE, 3rd	Executive	D.C. Official Code §§ 2-

2016			Floor, Grand Hall B	(closed)	575(b)(1), (4); 5 DCMR § A8204.1(b)
July 7, 2016	10:30 am	1:00 pm	810 First Street, NE, 3rd Floor, Grand Hall B	Public (open)	N/A
August 2016	RECESS				
September 1, 2016	9:30 am	10:30 am	810 First Street, NE, 3rd Floor, Grand Hall B	Executive (closed)	D.C. Official Code §§ 2-575(b)(1), (4); 5 DCMR § A8204.1(b)
September 1, 2016	10:30 am	1:00 Pm	810 First Street, NE, 3rd Floor, Grand Hall B	Public (open)	N/A
October 6, 2016	9:30 am	1:00 pm	810 First Street, NE, 3rd Floor, Grand Hall B	Work (closed)	D.C. Official Code §§ 2-575(b)(1), (4), (12); 5 DCMR § A8204.1(c)
November 3, 2016	9:30 am	10:30 am	810 First Street, NE, 3rd Floor, Grand Hall B	Executive (closed)	D.C. Official Code §§ 2-575(b)(1), (4); 5 DCMR § A8204.1(b)
November 3, 2016	10:30 am	1:00 pm	810 First Street, NE, 3rd Floor, Grand Hall B	Public (open)	N/A
December 1, 2016	9:30 am	1:00 pm	810 First Street, NE, 3rd Floor, Grand Hall B	Work (closed)	D.C. Official Code §§ 2-575(b)(1), (4), (12); 5 DCMR § A8204.1(c)

In addition to the public, executive, and work meetings, the Commission holds monthly New Applicant Workshops for representatives of institutions seeking new licensure. The following dates, locations, and times shall supersede all prior published schedules as set forth below:

DATE	START TIME	END TIME	LOCATION
January 21, 2016	10:00 am	12:00 pm	810 First Street, NE, 9th Floor, Conference Room 9014
March 24, 2016	10:00 am	12:00 pm	810 First Street, NE, 9th Floor, Conference Room 9014
May 19, 2016	10:00 am	12:00 pm	810 First Street, NE, 9th Floor, Conference Room 9014
July 21, 2016	10:00 am	12:00 pm	810 First Street, NE, 9th Floor, Conference Room 9014
September 15, 2016	10:00 am	12:00 pm	810 First Street, NE, 9th Floor, Conference Room 9014
November 17, 2016	10:00 am	12:00 pm	810 First Street, NE, 9th Floor, Conference Room 9014

If you have questions regarding this schedule of Commission meetings and/or New Applicant Workshops, please contact the Executive Director of the Education Licensure Commission, Angela Lee at (202) 724-2095 or at Angela.Lee@dc.gov.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY (NOFA)

FISCAL YEAR 2016

Mathematics Science Partnerships Grant Program

Announcement Date: December 30, 2015
Request for Applications (RFA) Release Date: January 15, 2016

The Office of the State Superintendent of Education (OSSE) is soliciting applications for the Mathematics and Science Partnerships grant program authorized through provisions of Title II, Part B of the No Child Left Behind Act of 2001 (codified at 20 U.S.C. § 6661 *et. seq.*). The purpose of this funding is to increase the academic achievement of students in mathematics and science by enhancing the content knowledge and teaching skills of classroom teachers. Partnerships between at least one high-need local educational agency (LEA) and the science, technology, engineering, and mathematics (STEM) faculty in at least one institution of higher education are at the core of these improvement efforts. Other partners may include additional LEAs, additional institutions of higher education, public and private elementary and secondary education schools (including public charter schools), business organizations, and non-profit or for-profit organizations involved in mathematics and science education.

Available Funding for Awards: The total amount available for this award period is $721,778.65.

Award Period: The grant period will be from the date of award through September 30, 2017.

Eligibility: The Mathematics Science Partnerships grant is a partnership grant program. An eligible partnership will include the following principal partners at a minimum:

(1) a District of Columbia high-need Local Educational Agency (LEA);
(2) a science, technology, engineering and mathematics (STEM) department within an institution of higher education (IHE). The institution of higher education must:
    a. be accredited by a regional accrediting body recognized by the United States Department of Education and;
    b. provide services in the District of Columbia at the applicant's university or college, DC public, charter, or private school or other suitable facility approved by OSSE.

State Application Priority: The District of Columbia Office of the State Superintendent of Education (OSSE) has aligned federal priorities of the Mathematics Science Partnerships grant program with the following areas of focus, identified as OSSE priorities for this grant funding opportunity. Grant applications that are awarded funding during the FY 2016 cycle will describe proposed programs which substantially address one or more of the following focus areas:

1. **Professional Development aimed at providing support to increase the proportion of effective and highly effective STEM teachers at High need LEAs.** Applicants will identify a cadre of STEM teachers within the high need LEA, or a consortium of high-need LEAs, with the intent of developing a corps of highly-effective master educators who are proficient in using challenging State academic content standards, student academic achievement standards, and State assessments to improve instructional practices. The applicant is strongly encouraged to develop the program with an emphasis on ensuring that participants have opportunities for meaningful interactions with scientists, mathematicians, engineers, and other industry leaders who represent STEM fields. Programs designed under this option will demonstrate how they intend to be used as a model to support effective instruction across the District of Columbia.
2. **Professional Development programs aimed at facilitating implementation of the Next Generation Science Standards (NGSS) in DC LEAs and schools.** Applicants will identify a cadre of STEM teachers within the high need LEA, or a consortium of high-need LEAs, to participate in NGSS-specific training, who will return to their schools and LEAs to lead NGSS-specific professional development to other STEM teachers. Applications should demonstrate a strong intention to provide opportunities for participants to have direct contact with individuals and organizations that represent STEM fields such as scientists, mathematicians, engineers, etc. Programs designed under this option will demonstrate how they intend to be used as a model to support effective instruction across the District of Columbia.
3. **In-service Collaboration with Industry Leaders.** Applicants will establish and operate mathematics and science summer institutes with the intent of providing STEM teachers with the opportunity to interface directly with practicing scientists, mathematicians, and engineers in an effort to increase proficiency in their subject matter. Applications seeking funding under this option will demonstrate how the proposed program intends to improve participants' instructional skills through the use of sophisticated tools and work space, computing facilities, libraries, and other resources that institutions of higher education are more readily able to provide.
4. **Professional development programs aimed at supporting LEA use of student learning objectives (SLOs).** Funding may be used to better prepare administrators and STEM teachers to deconstruct learning standards, identify priority content, create high-quality goals and objectives, and measure student progress in tested and non-tested grades, and in STEM subjects. Prospective applicants may also consider forming a consortium of LEAs, led by an LEA experienced in using student learning objectives that will help other LEAs to successfully implement SLOs through provision of targeted professional development and by modeling best practices.

The Request for Applications (RFA) will be released Friday, January 15, 2016 no later than 5:00 p.m. through OSSE's Enterprise Grants Management System (EGMS). The online system and training videos may be accessed by visiting http://osse.dc.gov/service/enterprise-grants-management-system-egms.

A Pre-Application Webinar will be held on Tuesday, February 2, 2016 from 2:00pm to 4:00pm. You may RSVP by emailing Valida Walker at valida.walker@dc.gov. **It is strongly recommended that applying organizations attend the pre-application webinar.**

For additional information regarding this grant competition, please contact:

Valida Walker
Division of Elementary, Secondary and Specialized Education
Office of the State Superintendent of Education
valida.walker@dc.gov.

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections hereby gives notice that there are vacancies in four (4) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 1B06, 2F01, 3D07 and 7F07

Petition Circulation Period: **Monday, December 28, 2015 thru Tuesday, January 19, 2016**
Petition Challenge Period: **Friday**, **January 22, 2016 thru Thursday, January 28, 2016**

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

D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001

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

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Certification of Filling a Vacancy
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(G) and the resolution transmitted to the District of Columbia Board of Elections "Board" from the affected Advisory Neighborhood Commission, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Scot Knickerbocker
Single-Member District 4B03

DISTRICT OF COLUMBIA HOUSING AUTHORITY
BOARD OF COMMISSIONERS

1133 North Capitol Street, Northeast
Washington, D.C. 20002-7599
202-535-1000

2016 PUBLIC MEETING SCHEDULE

The regular meetings of the Board of Commissioners of the District of Columbia Housing Authority are held in open session on the Second Wednesday of each month. All Meetings are held at 1133 North Capitol Street, NE unless otherwise indicated.

February 10, 2016	1133 North Capitol Street, NE	1:00 p.m.
March 9, 2016	**Woodland Terrace** **2311 Ainger Place, SE** **Washington, DC 20020**	1:00 p.m.
April 13, 2016	1133 North Capitol Street, NE	1:00 p.m.
May 11, 2016	**Greenleaf Garden** **SW Family Enhancement Center** **203 N Street, SW** **Washington, DC 20024**	1:00 p.m.
June 8, 2016	1133 North Capitol Street, NE	1:00 p.m.
July 13, 2016	**Garfield Terrace** **2301 11th Street, NW** **Washington, DC 20001**	1:00 p.m.
August 10, 2016	1133 North Capitol Street, NE	1:00 p.m.
September 14, 2016	1133 North Capitol Street, NE	1:00 p.m.
October 12, 2016	**Potomac Gardens** **1225 G Street, SE** **Washington, DC 20003**	1:00 p.m.
November 9, 2016	**Benning Terrace** **4450 G Street, SE** **Washington, DC 200019**	1:00 p.m.
December 14, 2016	Annual & Regular Meeting 1133 North Capitol Street, NE	1:00 p.m.

DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY
BOARD OF DIRECTORS

Notice of the 2016 Public Meeting Schedule

The District of Columbia Housing Finance Agency hereby announces that the District of Columbia Housing Finance Agency Board of Directors will hold regularly public meetings in the year 2016, on the second and fourth Tuesday of each month at 5:30 p.m. on the following dates:

January 12, 2016 Annual Meeting	January 26, 2016 Regular Meeting
February 9, 2016 Regular Meeting	February 23, 2016 Regular Meeting
March 8, 2016 Regular Meeting	March 22, 2016 Regular Meeting
April 12, 2016 Regular Meeting	April 26, 2016 Regular Meeting
May 10, 2016 Regular Meeting	May 24, 2016 Regular Meeting
June 14, 2016 Regular Meeting	June 28, 2016 Regular Meeting
July 12, 2016 Regular Meeting	July 26, 2016 Regular Meeting
August 9, 2016 Regular Meeting	August 23, 2016 Regular Meeting
September 13, 2016 Regular Meeting	September 27, 2016 Regular Meeting
October 11, 2016 Regular Meeting	October 25, 2016 Regular Meeting
November 8, 2016 Regular Meeting	November 22, 2016 Regular Meeting
December 13, 2016 Regular Meeting	December 27, 2016 Regular Meeting

The public meetings shall take place at 815 Florida Avenue, NW, Washington, DC 20001.

For additional information, please visit www.dchfa.org to view the more detailed agenda two business days, or 48 hours, whichever is greater, prior to the meeting dates listed above. If you should have any questions, please call 202-777-1600.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-100

October 6, 2015

VIA REGULAR MAIL

Rev. George L. Bailey

RE: FOIA Request 2015-100

Dear Rev. Bailey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act. In your appeal, you assert that the Metropolitan Police Department ("MPD") failed to respond to a request you submitted for the record of your mother's death report.

The MPD advised this office that it had no knowledge of your request until it received your appeal. On October 5, 2015, the MPD advised us that it processed your request and sent you a response. Based on the foregoing, we consider your appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the MPD's response.

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: 2015-101

October 9, 2015

VIA ELECTRONIC MAIL

Mr. Vincent Trivelli

RE: FOIA Appeal 2015-101

Dear Mr. Trivelli:

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 Public Service Commission of the District of Columbia ("PSC") improperly redacted records you requested on behalf of your client.

Background

On June 9, 2015, you sent a request to the PSC for 6 categories of records and information pertaining to Verizon Washington, DC Inc. ("Verizon"). Pursuant to Commission Rule 704.4, on July 9, 2015, the PSC notified Verizon of your request because it involves potentially proprietary information pertaining to Verizon. On July 17, 2015, Verizon responded by asserting that portions of the requested records are exempt from disclosure under D.C. Official Code § 2-534(a)(1) ("Exemption 1")[1] because: (1) the District's telecommunications market is highly competitive; (2) information on Verizon's timeliness in meeting customer orders and restoring service is not published or disclosed in any other manner and Verizon's competitors cannot obtain this performance data; (3) the information would allow competitors to understand the costs of entering the market, what kinds of advertising to pursue, and the level of service that they must meet or exceed in the marketplace; and (4) some of Verizon's principal competitors are not obligated to supply the PSC with comparable data, so Verizon would be at a competitive disadvantage if the information were publicly disclosed. On July 22, 2015, you responded to Verizon's position, challenging its assertion of Exemption 1.

On September 3, 2015, the PSC responded to your FOIA request by granting in part and denying in part each of the 6 categories of records you requested. The responsive records disclosed were identified as Attachments A through H.[2] For each responsive record, the PSC identified and

[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] The attachments also contained sample disclosures (e.g., Attachment D) and agreements to disclose voluminous responsive documents on a rolling basis (e.g., Attachment E).

explained the exemptions justifying the redactions it made. The redactions were based on Exemption 1, as well as D.C. Official Code § 2-534(a)(2)[3] and D.C. Official Code § 2-534(a)(4) ("Exemption 4").[4] Regarding its reliance on Exemption 1, the PSC summarized and considered both Verizon's request and your challenge of the exemption and determined that certain redactions were appropriate to protect Verizon from substantial competitive harm that would result from the release of Verizon's confidential and proprietary commercial information. With respect to Exemption 4, the PSC asserted that it prevents disclosure of "information from intra-agency memoranda generated by Commission Staff that reflects advice, recommendations, and or the give-and-take of the consultative process."

On appeal, you challenge redactions the PSC made pursuant to Exemptions 1 and 4. For Exemption 1, you reassert the arguments that you made in challenging Verizon's response and raise additional arguments challenging the PSC's partial disclosure. These arguments include: (1) there is insufficient proof for both the existence of competition and that substantial harm would result from disclosure; (2) the legal authorities the PSC cited are insufficient to prevent disclosure; (3) the selective redaction of the disclosed material undermines the basis for applying the exemption; (4) similar data is made publically available in New York; and (5) disclosure of the information would benefit public consumers in the District. You challenge Exemption 4 on the basis that the PSC "cites no law for the fact that it fails to demonstrate that the documents or information withheld would not be available to a party other than a public body in litigation with a public body."

In response to your appeal, on September 21, 2015, the PSC reaffirmed its original determination and declined the opportunity to supplement its response. Subsequently, we requested that the PSC provide our office with unredacted versions of some of the disclosed attachments for this Office's *in camera* review. We also requested further explanation of the redactions made in Attachment D. On September 28, 2015, the PSC provided the requested unredacted attachments and explained that the redactions in Attachment D:

> were determined to be confidential and proprietary information as they detail duration of the outage, exact causes of the outage, as well as repair methods utilized by Verizon to fix the outages. Publically releasing this information would allow Verizon's competitors to mimic Verizon's business practices; advertise their products, services, or response times as better than Verizon's; and or provide competitors with necessary information to compete against Verizon for service contracts. Therefore, this information, if released would result in substantial harm to Verizon's competitive position.[5]

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[3] D.C. Official Code § 2-534(a)(2) prevents disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

[4] Exemption 4, 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."

[5] A copy of this explanation 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, 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).

In response to your FOIA request, the PSC did not withhold any documents in their entirety; therefore, our determination shall address the redactions the PSC made pursuant to Exemptions 1 and 4.

Exemption 1

To defend withholding a document under Exemption 1, the PSC must show that the redacted 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. Generally, records are "commercial" so long at the submitter has a "commercial interest" in them. *See Baker & Hostetler LLP v. U.S. Dep't of Commerce*, 473 F.3d 312, 319 (D.C. Cir. 2006). *But see Chicago Tribune Co. v. FAA*, 1998 U.S. Dist. LEXIS 6832, *6 (N.D. Ill. May 5, 1998) (finding that chance events that happened to occur in connection with a commercial operation were not commercial information regarding documentation of medical emergencies during commercial fights).

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]). In the context of federal FOIA, the D.C. Circuit has held that a requester cannot bolster the case for disclosure by claiming an additional public benefit in release. *Public Citizen Health Research Group v. FDA*, 185 F.3d 898, 904 (D.C. Cir. 1999).

It is evident from our review of the documents at issue that they contain commercial information provided by a party outside the government. Further, many of the documents are labeled as confidential, and Verizon and the PSC assert that the information is not made available by other means. We find merit in Verizon and PSC's position that actual competition exists in the District's telecommunications market and that disclosure of certain commercial information would likely cause substantial harm to Verizon by allowing competitors to copy Verizon's practices and methods, make targeted advertisements against Verizon, or gain an advantage competing against Verizon for service contracts. Accordingly, the majority of the information the PSC redacted meets the threshold for protection under Exemption 1, in that the information would likely result in substantial harm to Verizon's competitive position if it were disclosed. By way of example, the numerical values and percentages in the attachments were properly redacted under Exemption 1.

Nevertheless, not all of the information the PSC redacted is protected under Exemption 1. In Attachment D, a sample outage report, the commercial value of some of the redacted information is not readily apparent. Based on our lack of expertise in the telecommunications field, we are hesitant to order disclosure of information that could potentially result in substantial competitive harm; however, the majority of the content on pages 8 and 9 of the outage report is a description of a basic repair process related to an outage caused by environmental conditions. We find little to no commercial value in this information and little to no risk of harm from its disclosure. *See Chicago Tribune Co.*, 1998 U.S. Dist. LEXIS 6832, *6 (finding that reports of chance events which happened to occur in connection with a commercial operation were not protected commercial information). Therefore, we find that the information on pages 8 and 9 of Attachment D under the heading "Explanation of Outage Duration" should be disclosed except for the specific duration (hours and minutes) of the outage, which may be redacted. In addition, information under the headings "Description of Incident," "Description of Cause," "Root Cause," "Name/Type of Equipment that Failed," and "Method(s) Used to Restore Service" should be disclosed in full.

Having addressed specific redactions the PSC made pursuant to Exemption 1, we now address your general arguments with respect to why the PSC's application of this exemption was erroneous. Although you point out that information similar to that withheld by the PSC is publically available in New York, we note that the District has a different regulatory structure and telecommunications market. In light of the D.C. Circuit's interpretation of the analogous provision of federal FOIA, we also reject your argument that the public interest here weighs in favor of disclosure, *See Public Citizen Health Research Group* 185 F.3d at 904 (stating that public interest arguments do not support disclosure of information protected by the federal FOIA equivalent of Exemption 1). Moreover, while the records you seek may be informative to telecommunications consumers, it is not clear that their disclosure would shed light on the

functions of PSC or the District government, which is the statutory purpose of FOIA. *See Gilmore v. DOE*, 4 F. Supp. 2d 912, 922-23 (N.D. Cal. 1998) (stating that for public interest to be a countervailing factor it should shed light on an agency's performance of its duties).

Finally, you argue that the selective redaction of records is improper under Exemption 1. Under DC FOIA, even when an agency establishes that application of an exemption is proper, it must disclose all reasonably segregable, nonexempt portions of the 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)). As a result, we find that the PSC's selective use of redactions is consistent with the principle of segregability. With the exception of the portions of Attachment D previously discussed, we believe that the PSC consistently disclosed segregable information as required under D.C. Official Code § 2-534(b).

Exemption 4

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. 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).

The only redactions the PSC made pursuant to Exemption 4 are found in Attachment G. Based on our *in camera* review of an unredacted copy of Attachment G, it is clear that the withheld information is protected under Exemption 4. The redacted provisions are found in pre-decisional memoranda sent from analysts at the Office of Technical and Regulatory Analysis to the Chairman of the PSC for the purpose of guiding the PSC's decision making. The redacted portions are also deliberative, as they reflecting the opinions and analysis of the staff member who sent the letter. Consequently, the redactions the PSC made to Attachment G under Exemption 4 were proper.

Conclusion

Based on the foregoing, we affirm the PSC's decision in part and remand it in part. Within seven (7) business days of the date of this decision, the PSC shall disclose a revised version of Attachment D 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

/s John A. Marsh*

John A. Marsh
Legal Fellow
Mayor's Office of Legal Counsel

cc: Naza N. Shelley, Attorney Advisor, PSC (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: 2015-102

October 13, 2015

Mr. Bobby Hazel

RE: FOIA Appeal 2015-102

Dear Mr. Hazel:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the District's Office of Risk Management ("ORM") improperly withheld records you requested under the DC FOIA.

This appeal relates to your earlier FOIA Appeal 2015-72, in which you requested records from the Metropolitan Police Department ("MPD") related to the investigation of the murder of Thomas Hazel. On June 8, 2015, this office issued a determination with respect to FOIA Appeal 2015-72, in which we affirmed the MPD's position that it does not retain the homicide files you are seeking.

In a letter to this Office dated June 16, 2015, you alleged that the MPD did in fact have responsive documents. The basis for your claim was a letter from the ORM dated April 7, 2015. In that letter the ORM responded to a civil claim you filed against the District regarding the death of Thomas Hazel. ORM's response denying the claim contained the statement "we have reviewed the file and facts contained therein." You asserted that ORM's response - that it reviewed the "file and facts" - demonstrated that MPD had documents related to the death of Thomas Hazel.

This office responded to your allegation in a letter dated June 23, 2015. In the response we informed you that the MPD and ORM are separate District agencies; therefore, the ORM's response to your civil claim does not demonstrate what records the MPD retains. Further, we instructed you to submit a FOIA request to ORM to obtain the "file and facts" ORM reviewed to process your claim.

In a letter dated, September 3, 2015, you requested assistance from the Office of the Attorney General ("OAG") because you received no acknowledgement or response to your FOIA request or FOIA appeal related to the "file and facts" the ORM reviewed for your claim.[1] On September 22, 2015, the OAG forwarded this letter to the Mayor's general counsel, who subsequently

[1] Your September 3rd letter had attached "Exhibits" including a FOIA request to ORM dated July 7, 2015, and a FOIA appeal dated August 12, 2015. Neither the ORM nor this office has any records or evidence or receiving the request or appeal previously.

forwarded the letter to this Office and the ORM. Prior to receiving your letter from the Mayor's General Counsel, this Office had not received the FOIA appeal you sent to us pertaining to ORM's failure to respond to your FOIA request.

After receiving your FOIA appeal and underlying request from the Mayor's general counsel, this Office asked the ORM for its response to your request for the "file and facts" the ORM reviewed to process your claim. The ORM responded to this Office on October 9, 2015, reaffirming that it never received your FOIA request. Further, ORM asserts that it did not receive any files from the MPD; rather, the "file and facts" the claim officer reviewed were those that the ORM created internally to process the claim.

Here, your request states "[t]he requester seeking for [sic] the file and facts pertaining to Thomas Hazel." While the context of your request indicates that you are seeking MPD records from the ORM, a reasonable interpretation of the language of your request is that you seek any records the ORM used or reviewed to process your claim related to the death of Thomas Hazel. Now that the ORM is aware of your request, it will process your request and disclose the records it maintains in response to your request pursuant to DC FOIA.

Conclusion

Based on the foregoing, we consider your appeal to be moot and it is dismissed. The ORM shall respond to your request for the file and facts reviewed to process the claim related to the death of Thomas Hazel within 10 business days of this decision. This constitutes the final decision of this office; provided that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the ORM's response.

Sincerely,

/s Melissa C. Tucker

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

cc: Jed Ross, Acting Chief Risk Officer, ORM (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-103

October 5, 2015

Mr. Ryan Greenlaw

RE: FOIA Appeal 2015-103

Dear Mr. Greenlaw:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Behavioral Health ("DBH") improperly withheld records you requested under the DC FOIA.

Background

On August 2, 2015, you submitted a request to the DBH for "copies of each Form FD-12[1] filed from 8:00 pm through midnight, Thursday, July 30, 2015, at the CPEP[2] facility in Building 14 of the former DC General Hospital." The DBH responded to your request on September 15, 2015, stating that it had identified 3 records responsive to your request but that the records were exempt from disclosure pursuant to two provisions of DC FOIA: D.C. Official Code §§ 2-534(a)(2), which exempts from disclosure information that would constitute a clearly unwarranted invasion of personal privacy, and 2-534(a)(6), which exempts from disclosure "[i]nformation specifically exempted from disclosure by statute (other than [DC FOIA]), provided that such statute: (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) Establishes particular criteria for withholding or refers to particularly types of matters to be withheld."

On appeal, you allege that you are entitled to reasonably segregable portions of the FD-12 forms, with personally identifying information redacted so as to comply with the District's Mental Health Information Act and the federal Health Insurance Portability and Accountability Act of 1996.

DBH provided this office with a response to your appeal on October 1, 2015, in which it reiterates its legal reasoning for denying you the FD-12 forms you requested.[3] DBH asserts that an FD-12 form is an admission record for emergency mental health observation and diagnosis

[1] An FD-12 form is formally known as an Application for Emergency Hospitalization by a Physician or Psychologist of the Person, Officer or Agent of D.C. Department of Human Services or an Officer to Make Arrests.
[2] CPEP is the DBH's Comprehensive Psychiatric Emergency Program.
[3] A copy of DBH's response is attached.

that becomes part of the person's medical record at CPEP. CPEP releases an FD-12 form only with a signed patient authorization, subpoena, or court order. According to a declaration provided to this office by Jimmy Ibikunle, medical director of the CPEP, the FD-12 forms, "by necessity, include private and confidential information such as acts, presentation, and symptoms of mental illness, the expression of which may lead to, or already constitutes, significant risk of injury or danger to self and others."[4]

DBH disputes your contention that the records at issue are reasonably segregable by redacting the name and address of the individuals admitted for psychiatric observation and treatment, stating:

> In the narrow four (4) hour time period that he identified, there were only three (3) FD-12s. Even with redacting the protected health information and identifying information, there is a substantial risk that Mr. Greenlaw would be able to identify individuals based upon the narrative description of the events, particularly if he or someone he knew had personal involvement in any of these incidents. Therefore, redacting the protected health information on the three (3) FD-12s cannot ensure continued anonymity for the individual subject to the FD-12.

DBH response at p. 2.

Further, DBH asserts that disclosing the forms would violate the District of Columbia Mental Health Information Act because the statute does not allow disclosures to the public of health information, even if the information is de-identified. Similarly, DBH claims that disclosure of the FD-12s would violate the Health Insurance Portability and Accountability Act because "HIPAA de-identification rules would not permit a local hospital to disclose redacted medical records for any individual brought in between the hours of 8 p.m. and 12 a.m., especially if there is public information such as a newspaper article about a criminal act that would allow the requester to re-identify the data."

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.

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

[4] A copy of Dr. Ibikunle's declaration is attached.

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 2 of DC FOIA

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*.

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).

An FD-12 form is the epitome of the type of document exempt from disclosure under Exemption 2. The form requires the physician, psychologist, Department of Human Services agent, or police officer submitting the form to state the circumstances under which the person was taken into custody, the facts that lead to the belief that the person is mentally ill, and the facts that lead to the belief that the person is likely to injure self or others as a result of the mental illness. CPEP maintains submitted FD-12 forms due to its mandate to review requests for involuntary admission for mental health assessments and treatment for up to 72 hours. The purpose of the form is to solicit detailed information about an individual's mental health. Thus, a sufficient privacy interest exists.

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.

Reporters Comm. for Freedom of Press, 489 U.S. at 773.

You have not asserted, nor can we envision, a public interest in disclosure of an FD-12 form. An FD-12 form consists solely of information about the mental health of a private citizen. Although DBH maintains FD-12s, the forms do not advance the public understanding of the operations or activities of the District government or DBH's performance. There is therefore no public interest to balance against the above establish privacy interest. Disclosure of these records would unquestionably constitute an unwarranted invasion of personal privacy. Accordingly, FD-12 forms submitted to DBH are exempt from disclosure under Exemption 2.

Under the 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 requested documents. D.C. Official Code § 2-534(b). *See also, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). Here, the DBH has considered whether the records can be segregated in accordance with applicable District and federal law and determined that they cannot. As discussed at length in our analysis of Exemption 6 below, we reviewed partially redacted copies of the FD-12s documents in question, and we concur with DBH's conclusion that there is no reasonable way for the documents to be redacted.

Exemption 6 of DC FOIA

The DBH asserts that the FD-12 forms are protected from disclosure under the District of Columbia Mental Health Information Act (D.C. Code § 7-1201.01 *et seq*.) ("MHIA") and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191; 110 Stat. 1936) ("HIPAA"). As a result, DBH denied your request under D.C. Official Code § 2-534(a)(6), which exempts from disclosure information specifically exempt from disclosure by a statute other than DC FOIA. The MHIA regulates the disclosure of mental health information in the District. Disclosure of mental health information without a client's consent is limited to enumerated circumstances under the law, none of which applies here. You contend that mental health information that does not identify a client can be disclosed under the MHIA; however, DBH correctly points out that the disclosure of de-identified mental health information is permitted only for scientific research or management audits, financial audits, or program evaluation of a mental health professional or mental health facility. *See* D.C. Official Code § 7-

1203.05. There is no evidence that you seek the forms for these purposes. Further, it is difficult to imagine how any of those purposes could be accomplished with the narrow 4-hour search window you have specified. Accordingly, the FD-12 forms are protected from disclosure under the MHIA.

The HIPAA also prohibits the disclosure of protected health information that is not de-identified. The standard for de-identification of protected health information under HIPAA is set forth in 45 CFR 164.514. This regulation provides that protected health information is considered de-identified if it is not individually identifiable and if there is no reasonable basis to believe it can be used to identify an individual. Here, you have requested FD-12 forms pertaining to a 4-hour period on a particular day at a specific facility in the District. DBH asserts that only 3 records are responsive to your request and that "[e]ven with redacting the protected health information and identifying information, there is a substantial risk that [you] would be able to identify individuals based upon the narrative description of the events, particularly if [you] or someone [you] knew had personal involvement in any of these incidents." At our request, DBH provided this office with the FD-12 forms in question (with client names redacted) for our *in camera* review. We conclude based on our review and the applicable HIPAA provisions that there is a reasonable basis to believe that the information could be used to identify an individual, even if the individual's name is redacted. Therefore, DBH's denial of your request to provide you with redacted FD-12 forms was proper under HIPAA.

Conclusion

Based on the foregoing, we affirm the DBH'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: Deon C. Merene, Deputy General Counsel and FOIA Officer, DBH (via email)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
CONCEALED PISTOL LICENSING REVIEW BOARD

NOTICE OF DECISION TO ISSUE GUIDANCE DOCUMENT

BOARD'S INTERPRETATION OF 1 DCMR § 1202.3 (I)
(All Written Materials That the Appellant Wishes the Board to Consider at Any Hearing)

On November 13, 2015 a quorum of the Concealed Pistol Licensing Review Board (Board) met at an open meeting to discuss, among other matters, the proper interpretation of 1 DCMR § 1202.3 (f) which reads:

(f) All written materials that the appellant wishes the board to consider at any hearing.

The Board discussed that it had been receiving written materials from appellants which were never submitted to the Chief of the Metropolitan Police Department (Chief) for consideration at the time these appellants submitted their applications for concealed pistol licenses.

The Board noted that it has determined that it has no authority to consider reasons or materials for a concealed pistol license that were not first submitted and considered by the Chief. The Board also noted that the current regulation is ambiguous and could be read to be inviting appellants to submit any written materials it wants the Board to consider, whether or not those materials were first submitted to the Chief for consideration.

By a unanimous vote of the board members present, the Board decided to interpret 1 DCMR § 1202.3 (I) to mean that the written materials the appellant may submit at the time of the appellant's request for an appeal shall be limited to all or part of those written materials the appellant has previously submitted to the Chief.

By a unanimous vote of the board members present, the Board authorized the Chairperson of the Board to post on the Board's website and publish in the *DC Register* a guidance document that gives notice of the Board's interpretation to appellants and the public.

The Board also instructed the Administrator of the Board to include in the Board's initial notice to the appellant a statement that the Board will not consider any materials or any grounds for a concealed pistol license that were not first submitted to the Chief by way of an application.

Lastly, the Board discussed and determined that during the course of an evidentiary hearing there may be a proper basis for the acceptance of written materials that were not first submitted to the Chief, but acceptance of the materials would be determined by the specific circumstances of each case and after the Chief had a chance to consent to or oppose acceptance of the written materials.

THEREFORE, pursuant to the authorization by Board, Alicia Washington, Chairperson, authorized the posting of this guidance document on the Board's website and the submission of this guidance document to the Office of Documents and Administrative Issues for publication in the *DC Register*.

DISTRICT OF COLUMBIA OFFICE OF PLANNING

NOTICE OF FUNDING AVAILABILITY

Playable Art DC

The District of Columbia Office of Planning (OP) invites qualified artists and designers to submit their qualifications to create and implement playable art projects for four (4) DC neighborhood sites: Kennedy Street NW, Mount Vernon Triangle, Anacostia, and NoMa. Playable Art DC is a national artist call to develop innovative art-based play space designs for DC neighborhoods that lack access to traditional playgrounds or suitable sites for building new ones. Playable Art DC promotes the use of art as a means of creating new types of play spaces that are more compatible with constrained sites, proximity to busy streets, and topography. Playable Art DC also seeks to engage the community in play and as a way to promote fitness and exercise and create community landmarks and neighborhood gathering spots. OP will commission sculptural or environmental art works on various themes of play, including creative play, physical play and fitness, social interaction, and games for neighborhood sites that include: wide areas of sidewalk, plazas, and large green areas around public buildings.

The awards will be made through a two phase process. Phase I is a request for qualifications and initial concept ideas from qualified applicants. OP will convene a selection panel to review the qualifications of applicants. The panel will select up to five semi-finalists for each site. Phase II semi-finalists will receive a $5,000 stipend to create a site-specific design proposal, produce a scale model for public exhibition, and reimburse any travel or shipping charges accrued. Semi-finalists will present their proposals to the selection panel, which will select one finalist for each the four project sites. The artists or teams whose designs are approved will then enter into agreements with the District for fabrication and installation of the artwork.

The maximum grant per award is $150,000. The funding is available for costs associated with: design, engineering, insurance, materials, fabrication, shipping, and installation of the artwork. Eligible applicants include, but are not limited to, professional artists, architects, artists, engineers, landscape architects, planners, urban designers, lighting designers, product and industrial designers, and manufacturers. Applicants should demonstrate creativity and uniqueness in previous projects, quality and craftsmanship exhibited by past work, and feasibility (the applicant's proven track record/ability to complete the work on time and within the budget). Additional applicant and eligibility requirements, project objectives, award information, and evaluation criteria are detailed in the Request for Qualifications (RFQ).

The RFQ will be released on Monday, January 11, 2016, and the deadline for submission is Friday, February 12, 2016 at 5:00 p.m.

The RFQ will be posted on the District's Grants Clearinghouse website at http://opgs.dc.gov/page/opgs-district-grants-clearinghouse and OP's website at http://planning.dc.gov/

For additional information, please contact OP's Edward Giefer at edward.giefer@dc.gov.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

ELECTRIC TARIFF 2015-01, IN THE MATTER OF THE APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY TO AMEND ITS RATE SCHEDULE FOR ELECTRIC SERVICE IN THE DISTRICT OF COLUMBIA TO REFLECT TERMINOLOGY CHANGES BEING MADE BY PJM INTERCONNECTION, LLC;

AND

FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to section 34-802 of the District of Columbia Official Code and in accordance with section 2-505 of the District of Columbia Official Code,[1] of its final tariff action to approve the Potomac Electric Power Company's ("Pepco" or "Company") tariff amendment that updates the Company's Rate Schedules for Electric Service in the District of Columbia.[2] The Commission issued a Notice of Proposed Tariff ("NOPT"), which was published in the *D.C. Register* on November 6, 2015, giving notice of the Commission's intent to act on Pepco's proposed tariff amendments.[3] No comments were received on the NOPT.

2. Pepco's proposed tariff amendment updates the Company's Rate Schedules to reflect terminology changes being made by PJM Interconnection LLC ("PJM"). On June 1, 2015, PJM implemented residual metered load pricing, a new aggregate pricing point that excludes any load that is priced at a specific nodal price rather than at a zonal price, or if applicable, a fully-metered electric distribution company area. Residential metered load pricing is defined as the use of residual metered Locational Marginal Price ("LMP") instead of the physical zone LMP for pricing real-time load.[4]

3. Pepco proposes to amend the following seven (7) tariff pages:

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
Seventy-Seventh Revised Page No. R-1
Seventy-Seventh Revised Page No. R-2
Seventieth Revised Page No. R-2.1

[1] D.C. Code §§ 2-505 and 34-802 (2001).

[2] *Formal Case No. 945, In the Matter of the Investigation Into Electric Services Market Competition and Regulatory Practices*, Letter from Peter E. Meier, Vice President, Legal Services, Potomac Electric Power Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, filed May 29, 2015 ("Pepco Letter").

[3] 62 DCR 14475-14476 (Nov. 6, 2015)

[4] Pepco Letter.

Forty-Sixth Revised Page No. R-2.2
Second Revised Page No. R-15.1
Twenty-First Revised Page No. R-41
Twenty-First Revised Page No. R-41.6

4. The Commission, at its regularly scheduled open meeting held on December 9, 2015, took action approving Pepco's proposed tariff amendment that updates the Company's Rate Schedules for Electric Service in the District of Columbia to reflect terminology changes being made by PJM. This amendment will become effective upon publication of this Notice of Final Rulemaking in the D.C. Register and shall be reflected in the billing cycle beginning January 1, 2016.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

FORMAL CASE NO. 1085, IN THE MATTER OF THE INVESTIGATION OF A PURCHASE OF RECEIVABLES PROGRAM IN THE DISTRICT OF COLUMBIA

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Sections 34-802 and 2-505 of the District of Columbia Official Code,[1] and pursuant to Order No. 17052 directing the Potomac Electric Power Company (Pepco or the Company) to implement a Purchase of Receivables (POR) program in the District of Columbia,[2] of its final tariff action approving Pepco's tariff filing implementing the POR Supplier Discount Rates.[3] The Commission issued a Notice of Proposed Tariff (NOPT) published in the *D.C. Register* on May 1, 2015[4] and, following an updated filing from Pepco,[5] issued a NOPT published in the *D.C. Register* on October 23, 2015,[6] inviting comments on Pepco's proposed tariff. No comments were filed in response to either NOPT.

2. In its initial Application, Pepco sought to modify and provide additional language to the Company's Electric Supplier Coordination Tariff. The tariff filing updated language of the Supplier Tariff Schedule 3, which described in detail the components and derivation of the POR Supplier Discount Rates, including the proposed Discount Factors (Attachment A).[7]

3. The sole change in Pepco's updated tariff filing was reflected in First Revised Page No. 42, paragraph 6, stating: "Pepco tracks negative discount rates and amounts by customer class for use in offsetting positive discount rates in the future for the applicable customer classes." Overall, Pepco revised the following tariff pages:

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1 D.C. Official Code §§ 34-802 (2001) and 2-505 (2001).

2 *Formal Case No. 1085, In the Matter of the Investigation of a Purchase of Receivables Program in the District of Columbia* (*Formal Case. No. 1085*), Order No. 17052, issued January 18, 2013.

3 *Formal Case No. 1085*, POR Supplier Discount Rate Tariff Application, filed March 11, 2015 (Application).

4 62 *D.C. Reg.* 005572-005574 (2015).

5 *Formal Case No. 1085*, Update to POR Supplier Discount Rate Tariff Application, filed September 11, 2015 (Application).

6 62 *D.C. Reg.* 013954-013955 (2015).

7 Application at 4.

Electricity Supplier Coordination Tariff, P.S.C. of D.C. No.1
Third Revised Page No. i
Third Revised Page No. ii
Third Revised Page No. iii
Third Revised Page No. iv
Original Page No. 41
and Original Page No. 42

4. Pepco stated in its Application that the Discount Rate calculations for Residential R, Residential R-TM, Small Commercial and Large Commercial customers for the period October 2013 through December 2014 result in negative discounts. Pepco explains that this is primarily due to the Write-offs being smaller than the Late Payment Revenues, including Market Priced customers. Pepco's tariff proposes to apply a discount rate on the receivables associated with Residential customers of 0.0000% on Schedule R, 0.8081% for Residential customers on Schedule AE, 5.2686% for Residential customers on Schedule RAD, 5.6553% for Residential customers on Schedule RAD-AE, and 0.0000% for Residential customers on Schedule R-TM. Pepco proposes to apply a discount rate of 0.0000% on receivables associated with Small Commercial customers, Schedules GS-LV ND, T, SL, TS and TN, and 0.0000% on the receivables associated with Large Commercial customers, Schedules GS-LV, GS-3A, GT-LV, GT-3A, GT-3B and RT, and finally, 0.0419% for Market Priced Customers, Schedules GSLVND, GS-LV, GS-3A, GT-LV, GT-3A, T, SL, and TS.

5. In addition to the above tariff modifications, Pepco provided information in Attachment B through Attachment G of its Application detailing how the Discount Rates are derived using the POR data for the period October 2013 through December 2014. Pepco states that Attachment B is a summary showing the results of the Write-Offs, including Reinstatements, and Late Payment Revenues expressed as a percentage of Third Party Supplier Revenues for Residential Customers served under Schedules R, AE, RAD, RAD-AE and RTM, and Non-Residential Customers. Small Commercial Non-Residential Customers are served under Schedules GS-LV-ND, T, SL, TS and TN; Large Commercial customers are served under Schedules GS-LY, GS-3A, GT-LY, GT-3A, GT-3B and RT; and Market Priced Service customers are served under Schedules GS-LY-ND, GS-LY, GS-3A, GT-LY, GT-3A, T, SL and TS. In Order No. 16916,[8] the Commission approved a Risk Component to be included in the Discount Rate. In the same Order, the Commission allowed for a Cash Working Capital adjustment. Pursuant to the Commission's directive that both components be set to zero and that they may not be changed without the Commission's written authorization, Pepco set the Risk Factor and the Cash Working Capital component to zero. Pepco stated that the Program Development and Operation Cost component and the Interest and Reconciliation Factors are added to arrive at the Discount Rates for each of the eight rate classes described above.

[8] *Formal Case. No. 1085*, Order No. 16916, issued September 20, 2012.

6. In Attachment C, Pepco listed by month from October 2013 through December 2014, and by customer type the Electric Revenues Billed, less POR Discounts, the Net Electric Revenues Billed, and the Write-Offs, net of Reinstatements. Pepco states that there is a timing difference of about six months between billing the customer and writing off the account as uncollectible. Pepco's policy for uncollectibles is to write off delinquent accounts after 120 days. Pepco states that interest is calculated based on the cumulative Over/ (Under) Collection at 8.03% per Formal Case No. 1087 from October 7, 2013 through April 15, 2014, and at 7.65% per Formal Case No. 1103 from April 16, 2014 through December 31, 2014.

7. In Attachment D, Pepco provided the detailed calculation by customer type for the Reconciliation and Interest Factor. It states that the Reconciliation factor is derived by adding the Amortization of Program Cost to the POR Discounts less Write-Offs and the net Over/ (Under) Collection is divided by the Electric Revenues billed for October 2013 through December 2014. Pepco stated that the Interest Factor is derived by dividing the Interest from Attachment C by the Electric Revenues billed for January 2014 through December 2014.

8. In Attachment E, Pepco displayed the derivation of the Program Development and Operation Cost Component. Pepco represents that the Program Development and Operation Cost is amortized over three years and earns interest at the Company's most recent authorized distribution system rate of return, currently at 7.65%. Pepco stated that the Annual Amortization Cost by Customer Type is divided by the number of Choice Accounts to derive an Annual Cost per Customer and the Average Annual Customer kWh Usage by Type is multiplied by the Supply Rate for that type to calculate the Annual Supply Revenue per Customer. Pepco stated that the Program Development and Operation Cost Component percent is derived by dividing the Annual Cost per Customer by the Annual Supply Revenue per Customer.

9. In Attachment F, Pepco provided the detailed calculation for the Program Development and Operation Cost by contractor labor hour and contractor rate per hour, and in Attachment G, Pepco provided the detail of the three year amortization for the Program Development and Operation Cost.

10. The Commission issued separate NOPTs published in the *D.C. Register* on May 1, 2015 and October 23, 2015, respectively, giving notice of the Commission's intent to act upon Pepco's proposed tariff application. No comments were filed in response to either NOPT. The Commission at its regularly scheduled open meeting held on December 9, 2015, took final action approving Pepco's POR tariff filing. Pepco's POR tariff filing shall become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

FORMAL CASE NO. 1127, IN THE MATTER OF THE COMMISSION'S ESTABLISHMENT OF A DISCOUNT PROGRAM FOR LOW-INCOME NATURAL GAS CUSTOMERS IN THE DISTRICT OF COLUMBIA

The Public Service Commission of the District of Columbia ("Commission") will hold a hearing regarding Washington Gas Light Company's ("Washington Gas" or "Company")' Proposed Residential Essential Service ("RES") Surcharge Tariff on January 20, 2016 at 11:30 a.m. in the Commission Hearing Room. On November 25, 2015, the Commission, in Order No. 18043, previously gave notice of its intent to hold a hearing regarding Washington Gas' Proposed RES Surcharge on January 20, 2016. In that order the Commission directed Washington Gas to file supporting testimony by December 18, 2015, any discovery would be served on Washington Gas by January 8, 2016, and responses provided by January 11, 2016.

The Commission hereby gives notice, pursuant to D.C. Code §§ 34-901 and 34-909, that on September 25, 2015, Washington Gas filed a request to change the rates and charges for gas service in the District of Columbia through the implementation of a Proposed RES Surcharge Tariff. The Proposed RES Surcharge is sufficient to fund the remainder of the RES Program costs not currently funded by the $511,032 imbedded in base rates, without reliance on the Distribution Charge Adjustment ("DCA"), pursuant to Commission Order No. 17965. The requested surcharge is designed to collect $402,617 to fund the RES Program without reliance on the DCA for that amount, and should be neutral to ratepayers as a whole.

On September 10, 2015, the Commission, in Order No. 17965, ¶ 7, directed that the RES surcharge be initially set to recover $402,617, and following the Company's next base rate case, the surcharge amount will be recalculated to collect all costs associate with the RES Program, and the $511,032 will be removed from base rates for RES funding. The implementation of the RES surcharge will end the recovery of any costs associated with the RES Program through the DCA as the Commission directed in *Formal Case No. 1093,* Order No. 1732, ¶ 308, rel. May 15, 2013.

The RES surcharge is designed to recover the projected annual expense of the RES Program, effective each December billing period, and is calculated for the twelve month ending August 31, of each year. At least 15 days prior to the application of the surcharge each December, the Company will provide Commission staff the annual computation of the RES surcharge factor and reconciliation factor. The Company has proposed a fixed rate surcharge that will be reflected on non-RES customer bills as a separate line item.

To implement the Proposed RES surcharge, Washington Gas is proposing a new General Service Provision No. 29 (Residential Essential Service (RES) Surcharge) and revisions Rate Schedule No. 1 (Residential Service), Rate Schedule No. 1A (Residential Firm Delivery Service Pilot Program), Rate Schedule No. 2 (Firm Service Other than Residential), Rate Schedule No.

2A (Firm Delivery Service Other than Residential), and General Service Provision No. 16 (Purchased Gas Charge).

Washington Gas's Proposed RES Surcharge is available for inspection at the Public Service Commission's Office of the Commission Secretary, 1325 G Street, NW, Suite 800, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the Proposed RES Surcharge can be purchased at the Commission at a cost of $0.10 per page, actual reproduction costs. Washington Gas's Proposed RES Surcharge can be viewed on the Commission's website, www.dcpsc.org.

Any person desiring to intervene in the proceeding shall file a petition to intervene with the Commission no later than January 5, 2016. This represents an extension of the period to intervene from the December 11, 2015 date indicated in Order No. 18043. All petitions shall conform to the requirements of the Commission's Rules of Practice and Procedure as set forth in Chapter 1, Section 106 of Title 15 of the District of Columbia Municipal Regulation (15 DCMR § 106). Members of the public, who are not parties, may submit written comments regarding the Proposed RES Surcharge to the Commission Secretary on or before January 27, 2016. All written comments and petitions for intervention should be sent to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, NW, Suite 800, Washington, D.C. 20005, or email at psc-commissionsecretary@dc.gov.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

FORMAL CASE NO. 1133, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S APPLICATION FOR APPROVAL OF SPECIAL CONTRACT

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice that, on November 2, 20015, Washington Gas Light Company ("WGL" or "Company") filed a public and confidential version of an Application for Approval of Special Contract. In the application, WGL seeks approval of special contract terms and conditions for the U.S. General Services Administration ("GSA") account for the Architect of the Capitol (the "AOC").[1]

2. WGL explains that GSA is the Company's largest consumer of natural gas in the District of Columbia, with AOC producing over five times the revenue of the next largest Firm Service customer. In addition, the Company explains that consistent usage and throughput provides value to the system by maximizing distribution facilities at all times rather than periodically, and provides analysis which it contends demonstrates that AOC is a uniquely situated firm customer in the District of Columbia. WGL notes that the AOC serves the United States as builder and steward of many of the nation's most iconic landmarks and is responsible for the maintenance, operation, development and preservation of 17.4 million square feet of buildings and more than 553 acres of land throughout Capitol Hill. WGL states that part of the AOC's duties include operating the Capitol Power Plant which provides steam and chilled water used to heat and cool buildings throughout the United States Capitol campus.[2]

3. According to WGL, currently, the AOC receives both Firm and Interruptible Service through a single meter at the Capitol Power Plant which is billed pursuant to the Company's Rate Schedule No. 3A, page 22A. Firm Service volumes under the current Agreement are billed at the tariff rate. WGL and the AOC have executed a new Interruptible and Firm Delivery Service Pricing Agreement ("Agreement") dated October 1, 2015, whereby WGL will provide Firm and Interruptible Delivery Service sufficient to fulfill the needs of the Capitol Power Plant's natural gas requirements through September 30, 2017. The new Agreement proposes new pricing terms which are subject to approval by the Commission. Those terms would reduce the rate that Firm Service volumes will be billed to the AOC during the effective period of the proposed Agreement. In addition, the Agreement, in part, requires that the Firm Delivery Service volumes will be subject to all other rates and charges detailed in the Company's

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[1] *Formal Case No. 1133 ("Formal Case No. 1133"), In the Matter of Washington Gas Light's Application for Approval of Special Contract*, filed November 2, 2015.

[2] *Formal Case No. 1133* at 1-2.

Rate Schedule 2A. The Application provides that any volumes consumed beyond those daily firm allowances are considered as Interruptible Service and are billed in accordance with the terms and conditions described in the Company's Rate Schedule No. 3A. During any interruption period, the AOC is required to reduce consumption to a level less than or equal to the calculated firm load above.[3]

4. WGL contends that "[t]he proposed rate will not jeopardize the continuation of reliable utility service to other customers. The point of delivery on the Company's system, as well as the pipeline distribution facilities necessary to serve the AOC, are already in place such that no additional construction and no further capital investments are required to provide the Firm Service volumes. WGL indicates that it has sufficient capacity to satisfy the AOC's natural gas requirements. Furthermore, the Company states that it has been providing Firm and Interruptible Service to the AOC since January 1, 2015, and has demonstrated the ability to serve this firm load without incident."[4]

5. All persons interested in commenting on WGL's Application may submit written comments and reply comments no later than 30 days and 45 days, respectively, 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 Application 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 ""FC1133" as the case number and "1" as the item number. Copies may also be obtained by contacting the Commission Secretary at (202) 626-5150 or PSC-CommissionSecretary@dc.gov.

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3 *Formal Case No. 1133* at 2-4

4 *Formal Case No. 1133* at 4.

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 February 1, 2016.

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 December 25, 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: February 1, 2016**
Recommendations for appointment as DC Notaries Public **Page 2**

Amons	Ryan	Connell & Schmidt Builders 820 C Street, SE	20003
Archer	Daffney	U.S. Department of Justice 555 4th Street, NW, Room 7917	20001
Barr	Brandon Lee	National Association of State Workforce Agencies 444 North Capital Street, NW, Suite 300	20001
Bayer	Mark A.	Bayer & Kaufman, LLP 2011 Pennsylvania Avenue, NW, 5th Floor	20006
Brooks	Erika	Self 3473 24th Street, SE	20020
Brown	Sherreda M.	USDA Forest Services 201 14th Street, SW	20250
Clark	Sharifa	Kozusko Harris Duncan 1666 K Street, NW, Suite 400	20006
Coffin	Jacquelyn Lilia	Schneider's Liquor 300 Massachusetts Avenue, NE	20002
Cortez	Mary	Carr Workplaces 1001 G Street, NW, Suite 800	20001
Dean	Christopher A.	Peckar & Abramson, PC 2055 L Street, NW, Suite 750	20036
Dorow	Melissa	M&T Bank 1899 L Street, NW	20036
Doyle	Barry M.	American Council of Engineering Companies 1015 15th Street, NW, 8th Floor	20005
Dugue	Chrysell	North American Title Company 5301 Wisconsin Avenue, NW, Suite 500	20015
Duncan	Barbara Melvin	Self 4370 Dubois Place, SE	20019

D.C. Office of the Secretary **Effective: February 1, 2016**
Recommendations for appointment as DC Notaries Public **Page 3**

Dutrow	Ashley	National Geographic Society 1145 17th Street, NW	20036
Falk	Joanna	Butsavage & Drukalski, PC 1920 L Street, NW, Suite 301	20036
Fish	Dennis L.	US Department of Labor 200 Constitution Avenue, NW	20210
Ganginis	Amanda	Teass/Warren Architects 515 M Street, SE, Suite 200	20003
Gaskins	Maria L.	USAC 2000 L Street, NW, Suite 200	20036
Gleason	Alison M.	The Glover Park Group 1025 F Street, NW, Floor 9	20004
Gooding	Jennifer	Gibson, Dunn & Crutcher, LLP 1050 Connecticut Avenue, NW	20036
Green	Alicia L.	Premium Title & Escrow, LLC 3407 14th Street, NW	20735
Harris	Dr. Janette Hoston	Washington DC City Historian 2000 14th Street, NW, Suite 330	20009
Holmwood	Adam	North American Title Company 5301 Wisconsin Avenue, NW, Suite 500	20015
Horton	Randolph B.	R.N. Horton Co. Morticians, Inc 600 Kennedy Street, NW	20011
Howell	Richard John	The Estate Planning & Elder Law Firm, PC 1020 19th Street, NW, Suite #510	20036
Howerton	Arnett L.	Wells Fargo 3314 Wisconsin Avenue, NW	20016
Imwalle	Winston Edward	Fidelity Investments 1900 K Street, NW	20006
James	Sheila	Alliance of Auto Manufacturers 803 7th Street, NW, Suite 300	20001

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Recommendations for appointment as DC Notaries Public **Page 4**

Johnson	Karen B.	Self (Dual) 1810 Valley Terrace, SE	20032
Johnson	Lillian W.	D.C. Housing Finance Agency 815 Florida Avenue, NW	20001
Livoy	Laura	Edison International 555 12th Street, NW, Suite 640	20004
Ma'at	Ihkeem	Brave Heart Entrepreneurial Youth Camp 1233 Valley Avenue, SE	20032
McCollum	Denise M.	Bank of America 3821 Minnesota Avenue, NE	20019
McCurry	Troy A.	Self 1025 First Street, SE, #602	20003
Mckenzie	Terence	Self 315 Varnum Street, NW	20011
McMillian	Renee Michelle	Quite Brook Lane Real Estate Investors, LLC 100 M Street, SE, Suite 600	20003
Notice	Ashley S.	Medtronic plc 950 F Street, NW, Suite 500	20004
Odukwe	Zizika E.	Bank of America 1339 Wisconsin Avenue, NW	20007
Paul	Shanee N.	Carr Workplaces 1001 G Street, NW, Suite 800	20001
Pilgrim II	Chance	Wells Fargo Bank 1804 Adams Mill Road, NW	20009
Plynton	Isha E.	DC Office of Human Rights 441 4th Street, NW, Suite 570 North	20001
Powell	Crystal S.	Self (Dual) 1424 41st Street, SE	20020
Reyes-Barrara	Tatiana E.	Wells Fargo Bank, Inc. 1804 Adams Mill Road, NW	20009

D.C. Office of the Secretary **Effective: February 1, 2016**
Recommendations for appointment as DC Notaries Public **Page 5**

Rice	April A.	White House Historical Association 740 Jackson Place, NW	20006
Rojas	Ericka L.	Brownstein Hyatt Farber Schreck LLP 1350 I Street, NW, Suite 510	20005
Royal	Angel M.	American Association of Community Colleges 1 Dupont Circle, NW, Suite 410	20036
Sigur	Mary Margaret	Banner & Witcoff, Ltd 1100 13th Street, NW	20005
Sizemore	Brandon C.	Bank of America 1339 Wisconsin Avenue, NW	20007
Smith	Sherry V.	Self 223 Orange Street, SE, #12	20032
Smits	Christophe	Banner & Witcoff, Ltd 1100 13th Street, NW	20005
Solloso	Jose M.	Self (Dual) 618 Geranium Street, NW	20012
Taylor	Beverly Ann	Caplin & Drysdale Chartered One Thomas Circle, NW, 11th Floor	20005
Tucker-Jackson	Lorna	Office of the General Counsel for the Metropolitan Police Department 300 Indiana Avenue, NW, Suite #4125	20001
Tyler	Joel J.	Community Bridge Inc. 1 Scott Circle, NW, Suite 820	20036
Vidal	Nina	Washington Fine Properties 1604 14th Street, NW	20009
Wade	Torree	Communications Workers of America 501 3rd Street, NW	20001
White	Nakia Laprice	Business Technology Career Center, BTCC 3939 Benning Road, NE	20019

D.C. Office of the Secretary **Effective: February 1, 2016**
Recommendations for appointment as DC Notaries Public **Page 6**

Williams	Jimena Alejandra	SunTrust Bank 1855 Wisconsin Avenue, NW	20007
Woodruff	Kenneth A.	Tyrnyon Realty, LLC 1112 11th Street, NW, Suite C02	20001
Worthy	Annie R.	Self 4119 Massachusetts Avenue, SE	20019
Zajack	Lisa M.	Nixon Peabody, LP 799 9th Street, NW, 5th Floor	20001

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

REVISED NOTICE OF FUNDING AVAILABILITY

Emerging Business District Demonstration Grants

The Office of the Deputy Mayor for Planning and Economic Development (DMPED) and the Department of Small and Local Business Development (DSLBD) are soliciting applications for the **Emerging Business District Demonstration Grants.** DMPED intends to award up to three (3) grants from the $300,000 in total available funding for Fiscal Year 2016. The application deadline is Monday, January 25, 2016 at 2:00 p.m. **This Revised Notice of Funding Availability announces that the application deadline has been extended from January 11 to January 25, 2016 and that the Request for Applications will be available on December 24, 2015. It also announces that the Pre-Application Information Session has been rescheduled and the new date will be announced in the Request for Applications.**

The purpose of Emerging Business District Demonstration Grants is to subsidize the organizing operations necessary to establish a Business Improvement District. The Agencies are interested in supporting Business Improvement Districts ("BIDs") in a diversity of geographic regions within the District.

Eligible applicants: BID Organizations with budgets of less than $1,000,000 or nonprofit organizations that has a federal 501(c)(3) or 501(c)(6) recognized tax exemption. Applicants must demonstrate affected property owner commitment to the program through matching grants of at least 25% of the proposed program's total budget. For additional eligibility requirements and exclusions, please review the Request for Applications (RFA) which will be posted at http://dslbd.dc.gov/service/current-solicitations-opportunities by Thursday, December 24, 2015.

Eligible Use of Funds: Funds may be used for economic research or community/business outreach to establish a BID. Funds can be used for expenses incurred during the Period of Performance, which is February 16, 2016 through September 30, 2016. For additional examples of eligible uses of funds and exclusions, please review the RFA.

Application Process: Interested applicants must complete an online application by **Monday, January 25, 2016** at 2:00 p.m. Applications submitted via hand delivery, mail or courier service will not be accepted. Applications received after the deadline will not be forwarded to the review panel. Instructions and guidance regarding application preparation can be found in the RFA, which will be available at http://dslbd.dc.gov/service/current-solicitations-opportunities on December 24, 2015.

Selection Process: Grant recipients will be selected through a competitive application process. All applications from eligible applicants that are received before the deadline 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)

A program team from both Agencies will review the panel reviewers' recommendations. DMPED will make the final determination of grant awards. A grantee will be selected by February 3, 2016.

Award of Grants: Up to three (3) grants totaling $300,000 will be awarded.

For More Information: Attend the Pre-Application Information Session. Please refer to the Request for Applications to see the date, time and location of this meeting.

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: DMPED and DSLBD reserve the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

THE INSPIRED TEACHING SCHOOL

REQUEST FOR PROPOSALS

Special Education Assessment and Evaluation Services

The Inspired Teaching School requests proposals from providers who can conduct comprehensive evaluation services for current special education students or students who may need special education services.

The vendor will provide assessment services to students from preschool (age 3) through 7th grade. Additional information regarding the Inspired Teaching School and specifics of services requested are outlined in the Request for Proposals (RFP) and may be obtained by contacting kate.keplinger@inspiredteachingschool.org

Proposals will be accepted until 5:00pm on January 6, 2016. Proposals should be submitted as a PDF or Microsoft Word document to Kate Keplinger, COO, at kate.keplinger@inspiredteachingschool.org with SPECIAL EDUCATION ASSESSMENT SERVICES RFP in the subject line.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19068 of The Old Pentecost Church Temple of Truth,[1] pursuant to 11 DCMR § 3103.2, for variances from the lot area requirements under § 401.3, and the off-street parking requirements under § 2101.1, to allow the construction of four new flats on four new record lots in the R-4 District at premises 727 Hobart Place N.W. (Square 2888, Lot 202).

HEARING DATES: September 22 and October 6, 2015[2]
DECISION DATES: November 17 and December 8, 2015[3]

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 37.)

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") 1B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. The ANC submitted a report in support of the application, dated October 3, 2014, indicating that at a duly noticed and scheduled public meeting on October 1, 2014, at which a quorum was in attendance, the ANC voted unanimously (10-0-0) in support of the application. (Exhibit 40.) Patrick Nelson, Chair of the Zoning Preservation and Development Group for ANC 1B, testified in support of the application at the public hearing on October 6, 2015.

The Office of Planning ("OP") submitted a timely report on December 2, 2014, indicating that it cannot support the requested variance relief. (Exhibit 35.) OP testified at the public hearing on October 6, 2016 that the Applicant had not provided sufficient information to demonstrate that the lot area of the property creates a practical difficulty. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application, subject to three conditions. (Exhibit 36.) The Applicant testified that it accepted those conditions, and accordingly, the Board adopted the three conditions as part of this order.

[1] The Applicant was originally listed as "The Old Penecost Church of Truth" based on an error in the Office of Tax and Revenue records, but its name has been corrected for this order.
[2] The public hearing was originally scheduled for September 22, 2015 and postponed to October 6, 2015 at the Applicant's request.
[3] The decision for this case was originally scheduled for November 17, 2015 and postponed to December 8, 2015 at the Applicant's request.

Four letters in opposition to the application was submitted to the record by nearby residents. (Exhibits 27, 29, 30, and 31). The letters raised concerns about the existing parking issues in the area, maintaining the character of the neighborhood, and opposing any proposed curb cuts.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for area variances from 11 DCMR §§ 401.3 and 2101.1. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking variances from 11 DCMR §§ 401.3 and 2101.1, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Although OP noted that it could not support the relief requested, the Applicant provided testimony at the public hearing and additional information and analysis (Exhibit 44) to support the finding that the alternative, matter-of-right lot configurations for this property would be unnecessarily burdensome. The Board also noted that the ANC and nearby residents would oppose a curb cut, creating a practical difficulty in the provision of on-site parking. Therefore, the Board was not persuaded by OP's recommendation and voted to grant the relief requested.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 33 AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide a one-year bikeshare membership to all lessees on a yearly basis for a total of 10 years or a three-year membership at the initial sale of units.

2. The Applicant shall provide a one-year carshare membership to all lessees on a yearly basis for a total of 10 years or a three-year membership at the initial sale of units.

3. The Applicant shall provide one bicycle helmet to each unit at the initial sale of units or to new lessees for 10 years.

BZA APPLICATION NO. 19068
PAGE NO. 3

VOTE: 3-0-2 (Marnique Y. Heath, Frederick L. Hill, and Marcie I. Cohen (by absentee vote) to APPROVE; Jeffrey L. Hinkle not participating, and one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 16, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

BZA APPLICATION NO. 19068
PAGE NO. 4

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS 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. 19123 of The Department of General Services of DC, pursuant to 11 DCMR § 3104.1, for a special exception from the 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 3950 37th Street, N.W. (Square 1905, Lot 8).

HEARING DATE: December 15, 2015
DECISION DATE: December 15, 2015

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

This application was accompanied by a memorandum, dated August 12, 2015, from the Zoning Administrator certifying the required relief. (Exhibit 22.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. ANC 3F submitted a report indicating that at a public meeting on October 20, 2015, at which a quorum was present, the ANC voted 6-0-1 in support of the application. (Exhibit 19.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 23), and testified in support of the application at the hearing. The District Department of Transportation submitted a timely report, indicating that it had no objection to the approval of the application. (Exhibit 18.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3104.1 for a special exception under § 411.11 (as per § 411.6). 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proof under 11 DCMR §§ 3104.1 and 411.11 (as per § 411.6), 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 3.**

VOTE: 4-0-1 (Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, and Peter G. May 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: December 17, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO- YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME

MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19131 of Delta Sigma Theta Sorority, Inc., pursuant to 11 DCMR § 3103.2 for a variance from the non-profit organization requirements under § 217.1(b), and pursuant to § 3104.1 for a special exception from the non-profit organization requirements under § 217.1 to use an existing residential building for a non-profit office use in the D/DC/R-5-B District at premises 1711 New Hampshire Avenue, N.W. (Square 154, Lot 26).

HEARING DATE: December 8, 2015
DECISION DATE: December 8, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 8.)

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. ANC 2B submitted a report indicating that at a public meeting on November 10, 2015, at which a quorum was present, the ANC voted 8-0-0 in support of the application. (Exhibit 27.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application (Exhibit 31), and testified in support of the application at the hearing. The District Department of Transportation submitted a timely report, indicating that it had no objection to the approval of the application. (Exhibit 32.)

Variance Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for a variance from the non-profit organizational requirements under § 217.1(b). No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof under

11 DCMR § 3103.2 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with Zoning Regulations, and that the requested relief can be created without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3104.1 and 217.1 for special exception approval for the proposed non-profit office use. 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proof under 11 DCMR §§ 3104.1 and 217.1, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, 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.**

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: December 14, 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.

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. 19135 of Greg Dotson and Janine Benner, as amended,[1] pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot area requirements under § 401, the lot occupancy requirements under § 403, the open court requirements under § 406, and the non-conforming structure requirements under § 2001.3, to construct a rear addition to an existing flat in the R-4 District at premises 1118 E Street, S.E. (Square 992, Lot 56).

HEARING DATE: December 8, 2015
DECISION DATE: December 8, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5 (original), Exhibit 24 (revised).)

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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report, dated November 24, 2015, indicating that at a properly noticed meeting on November 10, 2015, at which a quorum was present, the ANC voted 10-0-0 in support of the application. (Exhibit 26.)

The Office of Planning ("OP") submitted a timely report on November 30, 2015, recommending approval of the application. (Exhibit 27.) The D.C. Department of Transportation submitted a report expressing no objection to the application. (Exhibit 25.) One letter was filed in the record from neighbors in support of the application. (Exhibit 11.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception relief under §§ 223, 401, 403, 406, and 2001.3. The only parties to the application were the Applicant and the ANC - which expressed support for the application. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

[1] As captioned above, the application was amended by including relief from § 403 for lot occupancy along with the other areas of relief under § 223 originally requested. (See revised self-certification at Exhibit 24.)

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 401, 403, 406, and 2001.3, 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 PLANS AT EXHIBIT 7.**

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: December 10, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19139 of Sayles Place LLC, pursuant to 11 DCMR § 3104.1, for a special exception from the new residential developments requirements under § 353, to permit the construction of a new 58-unit apartment building in the R-5-A District at premises 2645-2651 Sayles Place, S.E. (Square 5872, Lots 964, 966, 968, 983, and 985).

HEARING DATE: December 8, 2015
DECISION DATE: December 8, 2015

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 8C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8C, which is automatically a party to this application. The ANC submitted a report, dated September 4, 2015, indicating that at a duly noticed public meeting on September 2, 2015, at which a quorum was present, the ANC voted 5 in favor of the application, 2 absent.. (Exhibit 9.)

The Office of Planning ("OP") submitted a timely report on November 25, 2015, recommending approval of the application. (Exhibit 26.) The D.C. Department of Transportation submitted a report expressing no objection to the application. (Exhibit 27.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception relief under § 353. 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 and 353, 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.

BZA APPLICATION NO. 19139
PAGE NO. 2

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 PLANS AT EXHIBIT 25A.**

VOTE: **4-0-1** (Anthony J. Hood, Marnique Y. Heath, Jeffrey L. Hinkle, and Frederick L. Hill 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: December 11, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION,

FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF CLOSED MEETINGS

TIME AND PLACE: **Each Monday @ 6:00 P.M. that a Public Meeting is Scheduled to be Held for Calendar Year 2016 & January 9, 2017**
Office of Zoning Conference Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

The Zoning Commission, in accordance with § 406 of the District of Columbia Administrative Procedure Act ("Act")(D.C. Official Code § 2-576), hereby provides notice it will hold closed meetings, either in person or by telephone conference call, at the time and place noted above, regarding cases noted on the agendas for meetings to be held for calendar year 2016 and January 9, 2017, in order to receive legal advice from its counsel, per § 405(b)(4), and to deliberate, but not voting, on the contested cases, per § 405(b)(13) of the Act (D.C. Official Code § 2-575(b)(4) and (13)).

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-10
Z.C. Case No. 15-10
Deanwood Hills, LLC
(Consolidated PUD and Related Map Amendment
@ Square 5197, Lot 809)
November 23, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on October 15, 2015, to consider an application for a consolidated planned unit development ("PUD") and related Zoning Map amendment filed by Deanwood Hills, LLC ("Applicant"). The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

A. The Applications, Parties, Hearings, and Post-Hearing Filings

1. On April 13, 2015, the Applicant filed an application with the Commission for consolidated review of a PUD and a related Zoning Map amendment from the C-M-1 Zone District to the R-5-B Zone District for an approximately 2.1-acre parcel located on the south side of Hayes Street, N.E., west of Division Avenue. The property address is 5201 Hayes Street, N.E. and is more particularly described as Square 5197, Lot 809 ("Property").

2. The Applicant proposes to redevelop the Property with a four-story, multi-family building with a partial basement. The building will include on-site amenities, including a multi-purpose room, exercise facility, community tot lot, courtyard lawn and patio, game room, and a cyber café.

3. The PUD will have approximately 152,500 square feet of residential gross floor area, resulting in approximately 150 affordable dwelling units comprised of studios, one-bedroom, two-bedroom, three-bedroom, and four-bedroom units, with a surface parking lot for 75 vehicles. The density will be 1.63 floor area ratio ("FAR"), and the building height will be 59'-8".

4. The Applicant requests flexibility from the following requirements of the Zoning Regulations: (i) to have 56% of the required parking spaces as compact where only 40% compact space are permitted under § 2115.2; (ii) to provide a 30-foot loading birth and a 100-square-foot loading platform in lieu of a 55-foot loading berth and 200-square-foot loading platform under § 2201.1; and (iii) to have a side yard of 9'-2" on the east side of the Property and 7'-3" for a portion of the

west side of the Property where a minimum side yard of 15'-7" is required under § 405.6.

5. By report dated June 19, 2015, the District of Columbia Office of Planning ("OP") recommended that the application be set down for a public hearing. (Exhibit ["Ex."] 14.) At its public meeting held on June 29, 2015, the Commission voted to schedule a public hearing on the application.

6. The Applicant submitted its prehearing statement for the application on August 4, 2015 and a hearing was timely scheduled for the matter for October 15, 2015. (Ex. 17-17I.) A description of the proposed development and the notice of the public hearing in this matter were published in the *D.C. Register* on August 28, 2015. (Ex. 20.) The notice of public hearing was mailed to all owners of property located within 200 feet of the Property and to Advisory Neighborhood Commission ("ANC") 7C on August 18, 2015. (Ex. 21.)

7. At its regularly scheduled public meeting on September 10, 2015, for which notice was properly given and a quorum was present, ANC 7C voted unanimously by a vote of 4-0 to support the application. (Ex. 39.)

8. On September 25, 2015, and September 28, 2015, the Applicant submitted supplemental prehearing statements that included updated affordable housing charts. (Ex. 26, 30A.)

9. On October 5, 2015, OP submitted a report to the Commission recommending approval of the application and the requested areas of zoning flexibility. (Ex. 31.)

10. On October 5, 2015, the District Department of Transportation ("DDOT") submitted a report finding no objection to the application, subject to certain conditions listed on page 2 of its report. (Ex. 32.)

11. The parties to the case were the Applicant and ANC 7C.

12. The Commission held a public hearing on the application on October 15, 2015. At the hearing, Ms. Ivy Dench Carter, Vice President of Development for Pennrose Properties, LLC, Mr. Lee Goldstein of the Office of the Deputy Mayor for Planning and Economic Development, and Ms. Stephanie Farrell of Torti Gallas Urban, Inc., the architect for the PUD, and Mr. Warren Williams, principal of The Warrenton Group, testified on behalf of the Applicant. Mr. Erwin Andres from Gorove/Slade Associates, Inc., testified on behalf of the Applicant as an expert witness in transportation planning and traffic engineering.

13. At the public hearing, the Applicant submitted the following: (i) a letter withdrawing the request for flexibility from the height requirements in § 2405.1 of the Zoning Regulations; and (ii) a comprehensive set of the updated architectural drawings. (Ex. 35; Ex. 41.A1-41.A3.)

14. OP and DDOT testified in support of the application at the public hearing.

15. No individuals testified in support of, or in opposition to, the application at the public hearing. However, the record includes a letter of support from the Deanwood Civic Association. (Ex. 33.)

16. The record was closed at the conclusion of the public hearing, except to respond to the Commission's recommendations about replacing the chain link fence on the adjacent property, from Hayes street to the PUD property, with an 8-foot high metal ornamental fence and replacing the architectural elements on the south side of the building with sunshades. At the hearing, the Commission took proposed action to approve the application. The proposed action was referred to the National Capital Planning Commission ("NCPC") on October 19, 2015, pursuant to § 492 of the Home Rule Act.

17. On October 21, 2015, the Applicant submitted a chart of proffers and conditions §§ 2403.16 through 2403.18 of the Zoning Regulations. (Ex. 46.)

18. On October 22, 2015, the Applicant submitted their post-hearing submission in response to the Commission's recommendations. (Ex 48.)

19. The Executive Director of NCPC, by delegated action dated October 30, 2015, found that the proposed PUD and related map amendment would not be inconsistent with the Comprehensive Plan for the National Capitol, nor would it adversely affect other federal interests. (Ex. 50.)

20. The Commission took final action to approve the PUD on November 23, 2015.

B. <u>The PUD Site and Surrounding Area</u>

21. The Property consists of approximately 93,540 square feet of land area (approximately 2.1 acres) and is located on the south side of Hayes Street, west of Division Avenue (Lot 809 in Square 5197). It is bounded by Hayes Street to the north, 51st Street and the Deanwood Rehabilitation and Wellness Center to the west, and a surface parking lot owned by Tabernacle Baptist Church to the east. To the south, the Property backs up to Holy Christian Missionary Baptist Church and George's Carry-Out restaurant, both of which front on Nannie Helen Burroughs Avenue.

22. The Property is vacant. Prior to the District purchasing the Property in 2008, for more than 15 years it was utilized as a sorting and storage facility for bulk trash and recyclable material. It also previously housed a bakery.

23. The Property is designated in the Mixed-Use Low-Density Commercial/Moderate Density Residential land use category on the District of Columbia Comprehensive Plan Future Land Use Map, for which R-5-B is a corresponding zone district. The Property is located in the Neighborhood Enhancement Area on the District of Columbia Comprehensive Plan Generalized Policy Map and the PUD is consistent with the *Lincoln Heights & Richardson Dwellings New Communities Initiative Revitalization Plan*.

C. The Applicant

24. Deanwood Hills, LLC is a partnership between Pennrose Properties, LLC ("Pennrose") and The Warrenton Group. Pennrose is a private full-service real estate development firm that has been active in real estate development for over 40 years. It has developed over 15,000 housing units in more than 200 separate developments throughout 13 states and the District of Columbia, most of which Pennrose continues to own, manage, and maintain. Pennrose is one of the leading developers in the nation of mixed-finance developments and has been a designated redeveloper in over 80 municipalities. The Warrenton Group is a Local Minority-Owned Business Enterprise and District of Columbia Certified Business Enterprise with over 20 years of experience working throughout the District of Columbia creating mixed-income residential communities, including two New Communities Initiative developments.

D. Existing and Proposed Zoning

25. The Property is presently in the C-M-1 Zone District. The C-M-1 Zone District includes the following development requirements:

- A maximum height of 40' and three stories; (11 DCMR § 840.1.)
- A maximum density of 3.0 FAR; (11 DCMR § 841.1.)
- A minimum rear yard depth of 2.5" per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12' feet; (11 DCMR § 842.2.)

- No side yard is required, except where a side lot line of the lot abuts a Residence District, in which case a side yard shall be provided along that side lot line with a minimum width of at least 3" per foot of height of building, but not less than 8'; (11 DCMR § 843.)

- If provided, an open court must have a minimum width of 2.5" per foot of height of court, but not less than 6'; and (11 DCMR § 844.2.)

- If provided, a closed court must have a minimum width of 2.5" per foot of height of court, but not less than 12' and a minimum area of twice the square of the required width of court based on height of court, but not less than 250 square feet. (11 DCMR §§ 844.3, 844.4.)

26. The Applicant requests a map amendment to rezone the Property to the R-5-B Zone District. The R-5-B Zone District includes the following development requirements:

- A maximum height of 50' with no limit on the number of stories, and 60' as a PUD; (11 DCMR §§ 400.1, 2405.1.)

- A maximum density of 1.8 FAR, and 3.0 FAR as a PUD; (11 DCMR §§ 402.4, 2405.2.)

- A maximum percentage of lot occupancy of 60%; (11 DCMR § 403.2.)

- A minimum rear yard depth of 4" per foot of height from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15'; (11 DCMR § 404.1.)

- If provided, a minimum side yard width of 3" per foot of height of building, but not less than 8'; (11 DCMR § 405.6.)

- If provided, an open court must have a minimum width of 4" per foot of height of court, but not less than 10'; and (11 DCMR § 406.1.)

- If provided, a closed court must have a minimum width of 4" per foot of height of court, but not less than 15' and a minimum area of twice the square of the required width of court based on height of court, but not less than 350 square feet. (11 DCMR §§ 844.3, 406.1.)

E. Description of the PUD Development

27. The Applicant seeks approval of a consolidated PUD and related Zoning Map amendment in order to develop the Property with an affordable mixed-income apartment building consisting of approximately 152,500 square feet of residential gross floor area, resulting in approximately 150 dwelling units comprised of studios, one-bedroom, two-bedroom, three-bedroom, and four-bedroom units. Fifty of the residential units will be set aside as replacement public housing units for Lincoln Heights and Richardson Dwellings in accordance with the *Lincoln Heights & Richardson Dwellings New Communities Initiative Revitalization Plan*. The PUD will provide affordable units in accordance with the following chart:

Residential Unit Type	GFA & Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	154,755 s.f.	150				
Market Rate		0				
IZ	N/A					Exempt, § 2602.3*
Affordable Non IZ	15,475 s.f. /10%	15	30% AMI – 80% AMI	For the life of the development	Rental	In satisfaction of § 2603.7
Affordable Non IZ	38,689 s.f. / 25%	38	30% AMI	40 years*	Rental	For as long as operating subsidy is in place; otherwise up to 60% AMI
Affordable Non IZ	100,591 s.f. / 65%	97	60% AMI	40 years*	Rental	

* The Applicant must seek the exemption from the Zoning Administrator pursuant to 11 DCMR § 2602.8, and satisfy the requirements stated in 11 DCMR § 2602.7.

* The 40-year time period will begin at the date of issuance of the first certificate of occupancy.

28. All vehicular, including truck, access to the development will be through a north-south public alley to the east of the site. The Applicant will construct or cause the construction of the unimproved 15-foot-wide public alley adjacent to the Property in order to connect Hayes Street with an existing public alley that runs north-south from Nannie Helen Burroughs Avenue. Additionally, the Applicant will improve plus a five-foot-wide access easement within the Property boundary, resulting in a 20-foot-wide alley extending from Hayes Street to the southern boundary of the Property.

29. The PUD will have 75 surface parking spaces, 56% of which will be compact spaces. For loading, the development will have one 30-foot loading berth, one 20-

foot service space, and one 100-square-foot platform. A minimum of 78 covered secure bicycle parking spaces will be provided in the basement of the building.

30. The PUD will have a density of 1.63 FAR; a building height of 59'-8"; and a lot occupancy of 40%.

31. The apartment building will include an array of on-site amenities, including a multi-purpose room, exercise facility, family garden and tot lot, community courtyard lawn and patio, game room, and a cyber café. The apartment building will also include on-site concierge services.

32. The massing and design of the PUD is intended to enhance the residential character of the immediate area. The development is designed with a series of three courtyards that open onto Hayes Street, with the center courtyard being aligned with the end of 52nd Street. The courtyards and the four "fingers" of the building that front on Hayes Street serve to modulate the scale of the building, vary the pedestrian experience along the street, and maximize green space for both the building and the neighborhood.

33. Due to the significant change in grade along Hayes Street from the high side at the east end (elevation 80.68') to the low side at the west end (elevation 59.65'), the PUD is designed as a stepped, four story building that is nestled sensitively into the existing grade. The architectural design includes projected masonry bays that are three stories in height and 20-30 feet in width, which relate directly in size and scale to the duplex townhouses on the north side of Hayes Street. Elements such as sunshades and Juliet balconies further break down the massing of the building and enhance its residential character.

34. A green roof will be provided on top of the building. Planted with sedums and other appropriate plant species, the green roof will be an asset to stormwater management and aid in regulating building temperature.

F. Development Incentives and Flexibility

35. The Applicant requested flexibility from the following areas of the Zoning Regulations:

a. *Compact Parking Space Requirements*. The Applicant seeks flexibility to have 56% of the required parking as compact spaces where only 40% compact spaces is permitted under § 2115.2 of the Zoning Regulations. The Applicant also requests flexibility to have two contiguous compact parking spaces located in their own grouping where § 2115.4 of the Zoning Regulations requires that compact parking spaces be placed in

groupings of at least five contiguous spaces with access from the same aisle. The Applicant designed the parking lot to maximize the number of parking spaces on the Property, given its irregular shape, and to increase the ease and efficiency of use of the lot for building residents. Vehicles accessing parking spaces will have sufficient maneuverability for both ingress and egress. The Applicant proposes to maximize the amount of off-street parking in order to minimize any spillover parking on adjacent residential streets;

b. *Loading Requirements*. The Applicant requests flexibility to provide a 30-foot loading berth and a 100-square-foot loading platform in lieu of a 55-foot loading berth and a 200-square-foot loading platform as required under § 2201.1 of the Zoning Regulations. The Applicant contends that the proposed loading facilities are sufficient to service the PUD; and

c. *Side Yard Width Requirements.* The Applicant seeks flexibility to have a side yard of 9'-2" on the east side of the Property and 7'-3" for a portion of the west side of the Property where a minimum side yard of 15'-7" is required under § 405.6 of the Zoning Regulations. The reduced side yards will not result in any adverse impacts to the open space on the Property or on the enjoyment of building residents. There is ample open space, light, and air surrounding the building in all directions. The side yard on the east side is bounded by a 15' public alley. There is a large 31,550-square-foot rear yard to the south of the building with an average depth of 79'-2" inches. Also, there is significant open space on the north side of the building comprised of three compliant open courts and a front yard that is 15'-11" wide;

36. The Applicant also requests flexibility in the following areas:

a. To be able to provide a range in the number of residential units of plus or minus 10% from the 150 units depicted on the plans;

b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;

c. To vary the number, location, and arrangement of parking spaces, provided that the total number of parking spaces is not reduced below the minimum number required by the Zoning Regulations and the number of compact spaces is no greater than 56% of the required parking;

d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit; and

e. To vary the final selection of all exterior signage on the building.

G. Project Benefits and Amenities

37. Urban Design, Architecture, and Landscaping *(11 DCMR § 2403.9(a))* – The PUD will significantly improve the fabric of Hayes Street, between 50th Street and Division Avenue, by redeveloping a large site that has been underutilized or vacant for years. The PUD will enhance safety by activating the corridor while relating to and respecting the existing residential community to the north. The north-facing courtyards, streetscape improvements and significant open space will significantly improve the aesthetics of the area. The PUD also includes a 950-square foot tot lot and large bioretention area along Hayes Street, which will provide open space for both the residents of the PUD and the immediate neighborhood. The tot lot will also further activate and enhance the pedestrian experience along Hayes Street.

38. Affordable Housing (*11 DCMR § 2403.9(f)*) – The PUD will be a mixed-income, affordable residential community and include replacement housing for the Lincoln Heights and Richardson Dwellings public housing communities. The PUD will provide affordable units in accordance with the following chart:

Residential Unit Type	GFA & Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	154,755 s.f.	150				
Market Rate		0				
IZ	N/A					Exempt, § 2602.3*
Affordable Non IZ	15,475 s.f. /10%	15	30% AMI – 80% AMI	For the life of the development	Rental	In satisfaction of § 2603.7
Affordable Non IZ	38,689 s.f. / 25%	38	30% AMI	40 years*	Rental	For as long as operating subsidy is in place; otherwise up to 60% AMI

Affordable Non IZ	100,591 s.f. / 65%	97	60% AMI	40 years*	Rental	

* The Applicant must seek the exemption from the Zoning Administrator pursuant to 11 DCMR § 2602.8, and satisfy the requirements stated in 11 DCMR § 2602.7.

* The 40-year time period shall begin at the date of issuance of the first certificate of occupancy.

39. Employment (*11 DCMR § 2403.9(e)*) – The Applicant will host a job fair to advertise employment opportunities targeted to residents within the boundaries of ANC 7C. The employment opportunities will include, but are not limited to, construction jobs and positions for the ongoing maintenance and operation of the building. During the construction of the PUD, the Applicant will maintain a job listing targeted to residents of ANC 7C, which will include the contact information for the person designated to coordinate employment efforts on behalf of the Applicant.

40. First Source Agreement (*11 DCMR § 2403.9(e)*) – The Applicant has entered into a First Source Employment Agreement with the Department of Employment Services.

41. Environmental Benefits (*11 DCMR § 2403.9(h)*) – The PUD will be developed in accordance with the Enterprise Green Communities standard for residential buildings.

42. Other Public Benefits and Development Amenities- Community Recreation Spaces (*11 DCMR § 2403.9(j)*) – The community space in the development will be available to ANC 7C to assist in the ANC's community outreach efforts.

H. Comprehensive Plan

43. The PUD advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map and Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. The PUD significantly advances these purposes by promoting the social, physical, and economic development of the District through the provision of a high-quality, affordable residential development that will generate 100 new housing units in the Deanwood neighborhood, in addition to 50 new replacement units for the Lincoln Heights and Richardson Dwelling public housing communities. The PUD will create much needed new housing in this area of the District and will provide a range of

unit sizes to accommodate a diverse population, including families, without generating any adverse impacts.

44. The Future Land Use Map of the Comprehensive Plan designates the PUD Site for Mixed-Use Moderate-Density Residential and Low-Density Commercial. The Moderate-Density Residential category is used to define the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two-to-four unit buildings, row houses, and low-rise apartment buildings. In some of the older inner city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, and R-5-A Zone Districts are generally consistent with the Moderate-Density Residential category; the R-5-B Zone District and other zones may also apply in some locations.

45. The Low-Density Commercial category is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings. The corresponding zone districts are generally C-1 and C-2-A, although other districts may apply.

46. The Applicant’s proposal to rezone the Property from the C-M-1 Zone District to the R-5-B Zone District is consistent with the Moderate-Density Residential and Low-Density Commercial Comprehensive Plan designation.

47. The District of Columbia Comprehensive Plan Generalized Policy Map designates the Property as a Neighborhood Enhancement Area. The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development fits in and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood; the unique and special qualities of each area should be maintained and conserved; and overall neighborhood character should be protected as development takes place. The proposed map amendment for the Property, from C-M-1 to R-5-B, will continue to protect and strengthen the existing residential uses in the area while creating a new, high-quality residential community that responds to the existing character, natural features, and infrastructure of the neighborhood.

48. The PUD is consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, connecting the city, and building green and healthy communities, as follows:

a. *Managing Growth and Change*. In order to manage growth and change in the District, the Comprehensive Plan encourages diversity and asserts that the District "cannot sustain itself by only attracting small, affluent households. To retain residents and attract a diverse population, the city should provide services that support families [and prioritize] sustaining and prompting safe neighborhoods… and housing for families." (10A DCMR § 217.2.) Diversity also means maintaining and enhancing the District's mix of housing types… [with] housing developed for households of different sizes, including growing families as well as singles and couples." (10A DCMR § 217.3.) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. (10A DCMR § 217.6.) The PUD is fully consistent with each of these goals. Redeveloping the Property into a vibrant, affordable development with approximately 150 residential units that range in size from studios to four bedrooms will attract a diverse population of residents, including families. The development also takes advantage of a large, vacant site, which will further help to restore the neighborhood fabric;

b. *Creating Successful Neighborhoods.* One of the guiding principles for creating successful neighborhoods is to protect, maintain, and improve residential neighborhoods. (10A DCMR § 218.1.) The preservation of existing affordable housing and the production of new affordable housing both are essential to avoid a deepening of racial and economic divides in the city. (10A DCMR § 218.3.) Public input in decisions about land use and development is an essential part of creating successful neighborhoods, from development of the Comprehensive Plan, to implementation of the Plan's elements. (10A DCMR § 218.8.) The PUD furthers these goals because it will simultaneously protect and improve the existing residential neighborhood while producing new affordable housing on a large, vacant site. The Applicant has engaged neighborhood stakeholders to ensure that redevelopment of the site creates a positive impact on the neighborhood;

c. *Connecting the City*. The development will help implement a number of the guiding principles of this citywide element. Consistent with 10A DCMR § 220.2, the PUD will include streetscape improvements to encourage better mobility and circulation in and around the Property. The access points for the required parking and loading facilities will appropriately balance the needs of pedestrians, bicyclists, transit users,

automobiles, and delivery trucks, as well as the needs of residents and others to move around and through the city. *Id.* Moreover, and consistent with 10A DCMR § 220.3, the PUD's streetscape improvements will help reinforce and improve this section of the city by creating a walkable, pedestrian-friendly and well-designed streetscape that improves public safety and encourages all modes of transportation; and

d. *Building Green and Healthy Communities.* One of the guiding principles for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (10A DCMR § 221.3.) The development will meet the requirements of the Enterprise Green Communities standard for residential buildings. The development will employ environmentally sustainable strategies as called for in the Green Communities standard such as compact development, surface water management, green roofs, water-permeable parking areas, native and soil appropriate plantings, sun shading devices, natural ventilation features, Energy Star rated appliances, low volatile organic compounds (VOC) finishes, water conserving plumbing fixtures, and Energy star rated residential unit light fixtures.

49. In addition to the Comprehensive Plan's guiding principles, the PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the Applicant's Statement in Support and in the OP reports. (Ex. 4, 14, 31.)

I. Office of Planning Reports

50. On June 19, 2015, OP submitted a report recommending set down of the application. (Ex. 14.) The OP report stated that the application is not inconsistent with the maps and written elements of the Comprehensive Plan and the collaborative effort of the New Community Initiative program in support of the Lincoln Heights/Richardson Dwelling Neighborhood. The report also recommended that the Applicant provide the following information on the Application: (i) improved drawings for the public hearing; (ii) a revised plan to include a rear security gate; (iii) more information about external lighting and security cameras; and (iv) revised plans including treatment of the retaining wall. The Applicant provided this requested information to OP and the Commission.

51. On October 5, 2015, OP submitted a report recommending approval of the application. (Ex. 31.) The report restated that the PUD is not inconsistent with the maps and written elements of the Comprehensive Plan and that the proposal is largely consistent with the requirements of the R-5-B Zone District. The

development would increase the range of housing options within the Lincoln Heights neighborhood and add to the available family-sized units sought by the District as replacement housing of the Lincoln Heights/Richardson Dwelling Neighborhood.

J. DDOT Report

52. On October 5, 2015, DDOT submitted a report finding no objection to the application, subject to the following conditions: (Ex. 32.)

a. The Applicant shall construct or cause the construction of the following improvements:

i. The 15-foot-wide "paper alley" along the eastern boundary of the Property plus a five-foot-wide access easement resulting in a 20-foot-wide alley extending from Hayes Street to the southern boundary of the Property;

ii. A new sidewalk along the south side of Hayes Street that will extend from the Property east to Division Street;

iii. A safe pedestrian connection to the north side of Hayes Street at either 51st Street or near 50th Place; and

iv. A new curb ramp and receiving ramp at the southwest and southeast corners of Hayes Street and Division Street; and

b. The Applicant shall implement a Transportation Demand Management ("TDM") plan with strategies to limit the need for and use of vehicles at the proposed residential building. The TDM plan shall include the following:

i. The Applicant shall provide 78 long-term bicycle parking spaces and a secure bicycle repair station within the long-term bicycle storage room in the building;

ii. The Applicant shall install a minimum of eight short-term bicycle storage parking spaces (four racks) near the building entrances; and

iii. The Applicant shall offer each new household a one-year Capital BikeShare or CarShare membership. The memberships shall be available on a first-come, first-served basis, and shall have an

aggregate value of up to $12,000. In order to ensure residents are aware of the BikeShare or CarShare benefit, the Applicant shall provide a proactive marketing strategy.

K. ANC Support

53. By letter dated September 10, 2015, ANC 7C indicated that at its regularly scheduled public meeting on September 10, 2015, for which notice was properly given and a quorum was present, ANC 7C voted unanimously by a vote of 4-0 to support the application. (Ex. 39.)

L. Post-Hearing Submission

54. On October 22, 2015, the Applicant submitted its post-hearing submission in response to the Commission's recommendations that the Applicant consider: (i) replacing the chain link fence on the adjacent property, from Hayes Street to the PUD property, with an eight-foot-high metal ornamental fence; and (ii) replacing the architectural elements on the south side of the building with sunshades. (Ex 48.)

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD development "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the Property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The residential use for this development is appropriate for the Property. The impact of the development on the surrounding area is not unacceptable. Accordingly, the PUD should be approved.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the development's benefits and amenities are reasonable tradeoffs for the requested development flexibility.

8. Approval of the PUD is appropriate because the proposed development is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the PUD site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP reports and, as explained in this decision, finds its recommendation to grant the applications persuasive.

10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission carefully considered ANC 7C's recommendation for approval and concurs in its recommendation.

11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq*. (2007 Repl.).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review and approval of a planned unit development and related map amendment from the C-M-1 Zone District to the R-5-B Zone District for the approximately 2.1-acre parcel located at 5201 Hayes Street, N.E. (Lot 809 in Square 5197). The approval of this PUD is subject to the guidelines, conditions, and standards set forth below.

A. Project Development

1. The PUD shall be developed in accordance with the plans titled "Deanwood Hills", prepared by Torti Gallas Urban, Inc., dated October 15, 2015, and marked as Exhibits 41.A1-41.A3 of the record (the "Plans").

2. In accordance with the Plans, the PUD shall be a four-story, multi-family residential building with a partial basement. It shall have approximately 152,500 square feet of residential gross floor area resulting in approximately 150 affordable dwelling units comprised of studios, one-bedroom, two-bedroom, three-bedroom, and four-bedroom units, with a surface parking lot for 75 vehicles. The PUD shall have a density of 1.63 FAR, a building height of 59'-8", and a lot occupancy of 40%.

3. The Applicant is granted flexibility from the compact parking space requirements (11 DCMR § 2115.2); the loading requirements (11 DCMR § 2201.1); and the side yard width requirements (11 DCMR § 405.6), consistent with the Plans and as discussed in the Development Incentives and Flexibility section of this Order.

4. The Applicant shall also have flexibility with the design of the PUD in the following areas:

    a. To be able to provide a range in the number of residential units of plus or minus 10% from the 150 units depicted on the Plans;

    b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;

    c. To vary the number, location, and arrangement of parking spaces, provided that the total number of parking spaces is not reduced below the minimum number required by the Zoning Regulations and the number of compact spaces is no greater than 56% of the required parking;

    d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and

regulations that are otherwise necessary to obtain a final building permit; and

e. To vary the final selection of all exterior signage on the building.

B. <u>Public Benefits</u>

1. The PUD shall provide affordable units in accordance with the following chart:

Residential Unit Type	GFA & Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	154,755 s.f.	150				
Market Rate		0				
IZ	N/A					Exempt, § 2602.3*
Affordable Non IZ	15,475 s.f. /10%	15	30% AMI – 80% AMI	For the life of the project	Rental	In satisfaction of § 2603.7
Affordable Non IZ	38,689 s.f. / 25%	38	30% AMI	40 years*	Rental	For as long as operating subsidy is in place; otherwise up to 60% AMI
Affordable Non IZ	100,591 s.f. / 65%	97	60% AMI	40 years*	Rental	

* The Applicant must seek the exemption from the Zoning Administrator pursuant to 11 DCMR § 2602.8, and satisfy the requirements stated in 11 DCMR § 2602.7.

* The 40-year time period shall begin at the date of issuance of the first certificate of occupancy.

2. <u>Employment (*11 DCMR § 2403.9(e)*)</u> – **<u>Prior to the issuance of a building permit for the PUD</u>**, the Applicant shall furnish a letter from ANC 7C confirming that the Applicant hosted a job fair to advertise employment opportunities targeted to residents within the boundaries of ANC 7C. The employment opportunities shall include, but are not limited to, construction jobs and positions for the ongoing maintenance and operation of the building. During the construction of the PUD, the Applicant shall maintain a job listing targeted to residents of ANC 7C and the job listing shall include the contact information for the person designated to coordinate employment efforts on behalf of the Applicant.

3. First Source Agreement (*11 DCMR § 2403.9(e)*) – **Prior to the issuance of a building permit for the PUD**, the Applicant shall furnish a copy of its executed First Source Employment Agreement with the Department of Employment Services.

4. Environmental Benefits (*11 DCMR § 2403.9(h)*) – The PUD shall be developed in accordance with the Enterprise Green Communities standard for residential buildings.

5. Other Public Benefits and Development Amenities – Community Recreation Space (*11 DCMR § 2403.9(j)*) – During the operation of the PUD, the community space in the development shown as the "amenity space" on Sheet A01 of Exhibit 41A1 shall be made available to ANC 7C to assist in the ANC's community outreach efforts.

C. Transportation Mitigations

1. The Applicant shall implement a TDM plan with strategies to limit the need for and use of vehicles at the proposed residential building. The TDM plan shall include the following:

   a. **For the life of the Project**, the Applicant shall provide 78 long-term bicycle parking spaces and a secure bicycle repair station within the long-term bicycle storage room in the building;

   b. **Prior to the issuance of a certificate of occupancy**, the Applicant shall install a minimum of eight short-term bicycle storage parking spaces (four racks) near the building entrances; and

   c. The Applicant shall offer each new household a one-year Capital BikeShare or CarShare membership. The memberships shall be available on a first come, first served basis, and shall have an aggregate value of up to $12,000. In order to ensure residents are aware of the BikeShare or CarShare benefit, the Applicant shall provide a proactive marketing strategy.

2. **Prior to the issuance of a certificate of occupancy for the PUD**, and subject to the review and approval of DDOT, the Applicant shall construct or cause the construction of the following improvements:

   a. The 15-foot-wide "paper alley" along the eastern boundary of the Property plus a five-foot-wide access easement within the Property boundary

resulting in a 20-foot-wide alley extending from Hayes Street to the southern boundary of the Property;

b. A new sidewalk along the south side of Hayes Street that extends from the Property east to Division Street;

c. A safe pedestrian connection to the north side of Hayes Street at either 51st Street or near 50th Place; and

d. A new curb ramp and receiving ramp at the southwest and southeast corners of Hayes Street and Division Street.

D. Miscellaneous

1. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

2. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

3. The PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 15-10. Within such time, an application must be filed for a building permit for the construction of the development as specified in 11 DCMR § 2409.1. Construction of the development must commence within three years of the effective date of this Order.

4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On October 15, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May to approve; Michael G. Turnbull, not present, not voting).

On November 23, 2015, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the application was **APPROVED** and the Order **ADOPTED** by the Zoning Commission at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May to approve and adopt; Michael G. Turnbull, not having participated, not voting).

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 December 25, 2015.

Government of the District of Columbia
Public Employee Relations Board

Metropolitan District 1199DC,	**)**	
National Union of Hospital and	**)**	
Healthcare Employees, AFSCME,	**)**	
AFL-CIO, Chapter 3758	**)**	**Certification No. 75**
(Previously known as AFSCME,	**)**	**PERB Case No. 92-R-08**
DC Council 20, AFL-CIO)	**)**	
Petitioner	**)**	
v.	**)**	**As amended September 22, 2015**
	)	**Op. No. 1545**
District of Columbia Department	**)**	**PERB Case No. 15-AC-02**
of Behavioral Health	**)**	
(Previously known as DC DHS	**)**	
Commission on Mental Health Services)	**)**	
Agency	**)**	

AMENDED CERTIFICATION OF REPRESENTATIVE

A representation proceeding having been conducted in the above-captioned matter by the Public Employee Relations Board (Board), in accordance with the District of Columbia Comprehensive Merit Personnel Act of 1978 (CMPA), the Rules of the Board and an Election Agreement executed by the parties, and it appearing that a majority of the valid ballots has been cast for a representative for the purposes of exclusive recognition;

Pursuant to the authority vested in the Board by D.C. Code, Section 1-618.10(a) and the Rules of the Board, Section 515.3;

IT IS HEREBY CERTIFIED THAT:

The Metropolitan District 1199DC, National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO, Chapter 3758, has been designated by the employees in the unit described below as their preference for exclusive representative for the purpose of collective bargaining over terms and conditions of employment, including compensation, with the District of Columbia Department of Behavioral Health.

UNIT:

"All clinical psychology interns and residents who are being paid by the District of Columbia Department of Behavioral Health, excluding management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in the administering of the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended, D.C. Law 2-139."

September 22, 2015

Clarene Phyllis Martin
Executive Director

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2015, that a copy of the foregoing Amended Petition to Amend Certification of Representation was transmitted by File and ServeXpress and first class mail, postage prepaid, to:

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/s/ Shervl V. Harrington
Administrative Assistant

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Alexandria Jones-Patterson and Michael Patterson,	
Complainants,	PERB Case No. 14-S-06
v.	Opinion No. 1546
SEIU, SEIU Local 5000/NAGE, and NAGE Local R3-07,	Motion for Reconsideration
Respondents.	

MOTION FOR RECONSIDERATION

DECISION AND ORDER

I. Statement of the Case

On a Motion for Reconsideration ("Motion"), Complainants appeal to the Board an Executive Director's Administrative Dismissal ("Administrative Dismissal") of an amended standards of conduct complaint ("Amended Complaint"), pursuant to Board Rule 500.4.[1] The Executive Director dismissed the Amended Complaint for untimeliness. Complainants filed the Motion on the grounds that the Executive Director erred in finding that the Amended Complaint was untimely. Respondents Service Employees International Union ("SEIU"), SEIU Local 5000/National Association of Government Employees ("NAGE"), and NAGE Local R3-07 oppose the Motion.

For the following reasons, the Board denies the Motion for Reconsideration and dismisses the Amended Complaint.

[1] On September 28, 2014, Complainants filed a Standards of Conduct Complaint ("Complaint"), which contained filing deficiencies. Pursuant to a letter from the Executive Director, Complainants corrected the deficiencies and filed an Amended Complaint.

III. Discussion

A. Motion for Reconsideration untimely filed

Board Rule 500.4 states, in relevant part, "A decision made by the Executive Director shall become final unless a party files a motion for reconsideration within thirty (30) days after issuance of the Executive Director's decision." The Administrative Dismissal was served August 13, 2015, on Complainants. Complainants filed their Motion for Reconsideration on September 15, 2015 – thirty-one (31) days later. Therefore, the Complainants' Motion for Reconsideration is untimely.

B. Executive Director did not err

Even if the Motion for Reconsideration were timely filed, the Executive Director did not err in finding that the Amended Complaint was untimely filed.

A complaint alleging a standards of conduct violation "shall be filed not later than one hundred twenty (120) days from the date the alleged violation occurred."[2] Complainants filed their Complaint was on September 28, 2014. One hundred twenty days before that date is May 31, 2014. Thus, any allegation of a violation occurring before May 31, 2014, is untimely. In their Amended Complaint, Complainants allege that internal union disciplinary proceedings were improperly conducted against them between May and September of 2012 – two years prior to the deadline for filing the Complaint, pursuant to Board Rule 544.4.[3] Complainants' do not contest the Executive Director's calculations that the Complaint exceeded 120 days. Instead, Complainants contend that discovery during related D.C. Superior Court proceedings render the Complaint timely, because alleged conclusive evidence of the Respondents' wrongdoing during the proceedings was discovered.[4]

Board rules governing the initiation of actions before the Board are jurisdictional and mandatory.[5] As such, the Board has no discretion nor do the Board rules provide an exception for extending the deadline for initiating an action.[6] The Amended Complaint does not assert any action with a "date, time, place, and person(s) involved in each occurrence," [7] except allegations arising from 2012 internal union proceedings.

[2] Board Rule 544.4.
[3] Complainants filed suit against the unions in D.C. Superior Court on November 19, 2012.
[4] Motion at 3.
[5] *See D.C. Public Employee Relations Bd. v. D.C. Metropolitan Police Dept.*, 593 A.2d 641 (D.C. 1991) ("The time limits for filing appeals with administrative adjudicative agencies, as with courts, are mandatory and jurisdictional matters."). *See also Michael Thomas Moore v. FOP/Dep't of Youth Rehabilitation Services/Labor Committee*, Slip Op. No. 1290, PERB Case No. 12-S-03 (2012)(dismissing a standards of conduct complaint for failing to meet Board Rule 544.4's 120-day time period for filing as jurisdictional and mandatory).
[6] *See Hoggard v. Public Employee Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995).
[7] Board Rule 544.3.

Complainants appear to assert that NAGE's local president did not render a final decision on their membership, which would make the Amended Complaint timely.[8] This allegation was asserted for the first time in Complainants' Motion. The Board has held that it will not permit evidence presented for the first time in a motion for reconsideration to serve as a basis for reconsidering the Executive Director's dismissal when the Complainant failed to provide any evidence at the appropriate time.[9] Further, this allegation is contrary to the allegation in the Amended Complaint that NAGE refused to reinstate their membership, which is an assertion that Complainants were removed from membership and the Complainants knew or should have known that a final decision had been made.[10]

The Complainants assert that this case is unprecedented and that the Executive Director's decision is not supported by precedent.[11] However, the Complainants do not provide any legal support for their assertion or any persuasive legal authority for overturning the Board's holding that the proscribed time period for initiating a standards of conduct complaint before the Board is jurisdictional and mandatory. Therefore, the Board finds that Complainants have not asserted legal grounds for overturning the Administrative Dismissal, and that the Executive Director did not err in her application of the Board's precedent to the record.

III. Conclusion

The Board finds that Complainants' Motion for Reconsideration is untimely. Even if the Board were to find the Motion timely, the Board concludes that the Complainants' Motion lacks merit. Therefore, the Board denies the Motion for Reconsideration and dismisses the Amended Complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainants' Motion for Reconsideration is denied.
2. The Amended Complaint is dismissed with prejudice.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, and Member Keith Washington.

Washington, D.C.

October 29, 2015

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[8] *Id.*
[9] *Thunder Lane v. UDC*, Slip Op. No. 862, PERB Case No. 03-U-45 (2007).
[10] Amended Complaint at 15.
[11] Motion at 3.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-S-06 was served to the following parties via File & ServeXpress on this the 30th day of October 2015:

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	)	PERB Case No. 11-U-01
Complainant,	)	Opinion No. 1547
v.	)	
	)	Decision and Order
District of Columbia Metropolitan Police Department,	)	
Respondent.	)	

DECISION AND ORDER

I. Statement of the Case

On February 10, 2015, the D.C. Superior Court reversed PERB's Decisions and Orders in *Fraternal Order of Police/Metropolitan Police Dept. Labor Comm. v. D.C. Metropolitan Police Dep't*, 60 D.C. Reg. 9186, Slip Op. No. 1388, PERB Case No. 11-U-01 (2013) (hereinafter "Op. No. 1388") and *Fraternal Order of Police/Metropolitan Police Dept. Labor Comm. v. D.C. Metropolitan Police Dep't*, 60 D.C. Reg. 12058, Slip Op. No. 1400, PERB Case No. 11-U-01 (2013) (hereinafter "Op. No. 1400"). Consistent with the Court's Order, the Board vacates Op. Nos. 1388 and 1400, and dismisses the complaint.

II. Background

A. Step One and Step Two Grievances

On April 9, 2010, Metropolitan Police Department ("MPD") advised Sergeant Horace Douglas ("Sgt. Douglas") that it would change the hours of his shift on April 17, 2010.[1] Sgt. Douglas filed a grievance with MPD alleging that the schedule change violated Article 24 of the collective bargaining agreement. MPD denied the grievance at step one, after which the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") filed a step two grievance to the Chief of Police, Cathy Lanier. FOP alleged that Sgt. Douglas' schedule change violated Articles 4, 9, and 24 of the collective bargaining agreement, and D.C. Official Code § 1-612.01(b)(3). FOP's step two grievance sought five remedies:

[1] *D.C. Metropolitan Police Dep't v. D.C. Pub. Emp. Relations Bd.*, 2013 CA 005896 P(MPA) at p. 2 (D.C. Super. Ct. Feb. 10, 2015).

a) That the Department ceases and desists from violating District of Columbia law;
b) That the Department cease and desist from violating the [CBA] and manage in accordance with applicable laws, rules, and regulations;
c) That the Department compensates [sic] Sgt. Douglas at the rate of time and one half for the day he worked outside his normal tour of duty;
d) That the Command staff of the Court Liaison Division be retrained on the Agreement's scheduling provisions; [and]
e) That a letter of apology be issued from the Director of Court Liaison Division to Sgt. Douglas concerning this matter.[2]

In her May 27, 2010 response, Chief Lanier found that the schedule change did not violate Articles 4 and 9, but did find that it violated Article 24's 14-day notice requirement.[3] Accordingly, Chief Lanier stated: "for this reason outlined above, this grievance is ***granted***."[4] As a remedy, Chief Lanier determined that Sgt. Douglas "will be compensated at the rate of time and one-half for the day you worked outside of your normal duty."[5]

On June 21, 2010, FOP sent Chief Lanier a letter asking when remedies (d) and (e) would be implemented. On June 22, 2010, Chief Lanier sent a response stating that her initial step two ruling only granted the requested relief of time and one-half compensation for the day Sgt. Douglas worked outside of his normal schedule, and did not grant any of the other requested relief because they were not provided for in the collective bargaining agreement. Chief Lanier further stated that, "[t]o avoid any confusion regarding this matter, I am changing this grievance classification from 'granted' to '*denied, in part*' to clarify that not all of the relief requested in the grievance was provided."[6]

B. FOP's Complaint and PERB's Decisions

Thereafter, FOP filed its instant unfair labor practice complaint alleging that changing the grievance classification from "granted" to "denied, in part" constituted a failure to bargain in good faith in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5). In its Answer to FOP's complaint, MPD argued that the Board lacked jurisdiction over the matter because the complaint was untimely, and because the dispute was purely contractual and did not implicate the CMPA.

On May 28, 2013, the Board issued Op. No. 1388, in which it found that the complaint was timely, and that it was not a purely contractual matter since the basis of the allegation was

[2] *Id.* at 2.
[3] *Id.* at 2-3.
[4] *Id.* at 3 (emphasis in original).
[5] *Id.*
[6] *Id.* (emphasis in original).

that MPD had acted in bad faith in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5). Accordingly, the Board found that its jurisdiction over the matter was proper.[7]

On the merits of FOP's allegations, the Board likened MPD's actions to cases in which an agency fails to implement an arbitration award. The Board found that MPD committed an unfair labor practice, reasoning that "MPD chose to grant the step two grievance without limitation." Therefore its "actions [of later changing the grievance decision to 'denied, in part'"] constitute[d] a failure to respect the bargaining relationship between itself and FOP, and a failure to adhere to its statutory duty to bargain in good faith."[8]

On June 11, 2013, MPD filed a Motion for Reconsideration ("Motion") alleging that the Board erred in asserting jurisdiction over the case and in finding that MPD had committed an unfair labor practice.[9] On July 29, 2013, the Board issued Op. No. 1400 denying MPD's Motion.[10]

C. Superior Court Order

MPD appealed the Board's Decisions in Op. Nos. 1388 and 1400 to the D.C. Superior Court. In its February 10, 2015 Order Reversing Agency Decision, the Court agreed with PERB's reasoning that its jurisdiction over the case was proper,[11] but reversed the Board's findings that MPD committed an unfair labor practice.[12]

To the question of PERB's jurisdiction over the case, the Court reasoned:

> Respondent's Decision and Order, issued May 28, 2013, [Op. No. 1388], addressed Petitioner's argument that it lacked jurisdiction, finding, "upon consideration of the record of this case, the Board determines that the matter is not purely contractual and may concern a violation of the CMPA." Indeed, Respondent set forth in its Decision and Order a three-part test…, [namely that] "the Board looks to whether the record supports a finding that the alleged violation is: (1) restricted to facts involving a dispute over whether a party complied with a contractual obligation; (2) resolution of the dispute requires an interpretation of those contractual obligations, and (3) no dispute can be resolved under the CMPA." Concluding that it did not lack jurisdiction, Respondent explained in its Decision and Order that the case did not involve a dispute over the terms of the parties' CBA; rather it

[7] Op. No. 1388 at 3-4.
[8] Op. No. 1388 at 6.
[9] Motion at 2.
[10] *See p.* 6-9.
[11] *MPD v PERB*, 2013 CA 005896 P(MPA) at p. 6-9.
[12] *Id*. at 9-12.

> involved whether MPD acted in bad faith by altering its classification of the grievance. Furthermore, Respondent indicated that it was not required to interpret the CBA to resolve the dispute. Instead, the dispute could have been resolved based on the PERB's interpretation of D.C. Code § 1-617.04(a)(1), (5), its case law, and the CMPA. Respondent cited several cases in its Decision and Order for the proposition that its authority "only extended to resolving statutorily based obligations under the CMPA" and not obligations that are contractually agreed upon by the parties.
>
> Respondent reiterated these principles in the Decision and Order it issued on July 29, 2013 [Op. No. 1400] in response to Petitioner's Motion for Reconsideration. …
>
> Here, Petitioner's claim that Respondent lacked jurisdiction is denied, as Petitioner merely reiterates asserted arguments that this matter is contractual in nature. Respondent's decision is not clearly erroneous as a matter of law. … The CMPA provides PERB jurisdiction to "decide whether unfair labor practices have been committed." D.C. Code § 1-605.02(3). D.C. courts should defer to PERB's "interpretation of the CMPA unless the interpretation is unreasonable in light of the prevailing law or inconsistent with the statute or is plainly erroneous." Petitioner has failed to demonstrate that Respondent's finding as to jurisdiction is unreasonable in light of the prevailing law or plainly erroneous.[13]

Accordingly, the Court sustained PERB's findings that it had jurisdiction over FOP's complaint.

However, concerning the merits of the case, the Court held that PERB's finding that MPD's changing of the grievance classification constituted a failure to bargain in good faith in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5) was not supported by substantial evidence. The Court reasoned:

> The May 27, 2010 letter from Chief Lanier forms the basis of Respondent's decision. The letter addresses, and specifically rejects, Sgt. Douglas' contentions that MPD violated Articles 4 and 9 of the CBA, and D.C. Code § 1-612.01(b)(3). After conceding that MPD violated Article 24 of the CBA by changing Sgt. Douglas' tour of duty without providing the requisite 14-day notice, Chief Lanier awarded Sgt. Douglas the only remedy contemplated under Article 24, namely, "compensate[ion] at the

[13] *Id*. at 7-9 (some citations omitted).

> rate of time and one=half for the day you worked outside of your normal tour of duty[.]" Although Respondent argues that "all one has to do is take seriously Chief Lanier's statement (and MPD's admission) that she granted the grievance," the record does not support that conclusion.
>
> * * *
>
> Here, …the maxim [*expressio unius est exclusio alterus*, which generally means, "the mention of one thing implies the exclusion of another,"] is particularly instructive. Indeed, Respondent's explicit finding that the grievance was "wholly granted," and "without limitation," is not supported by the evidence given the express language of the letter. A finding that Chief Lanier "wholly granted" the grievance is incongruous with the evidence in the record, namely, her express rejection of Sgt. Douglas' arguments arising under Articles 4 and 9 of the CBA, and D.C. Code § 1-612.01(b)(3), …her acceptance of [only] his claim under Article 24, and the ultimate award of compensation at a rate of time and one-half. Additionally, the Record supports Petitioner's contention that the change in status represents a clarification, as opposed to a failure to bargain in good faith. [Administrative Record at 76] ("To avoid any confusion regarding this matter, I am changing this grievance classification from 'granted' to '***denied in part***' to clarify that not all of the relief requested in the grievance was provided.").
>
> Accordingly, as Respondent's factual finding that the relief was "wholly granted" and "without limitation" is not supported by substantial evidence in the record considered as a whole, the Petition for Review of Agency Decision is granted.[14]

In accordance with its findings, the Court ordered that PERB's findings that MPD committed an unfair labor practice be reversed, and remanded the matter to PERB "for further proceedings consistent with [its] Order."

III. Analysis

[14] *Id*. at 10-12 (some citations omitted) (emphases in original).

Consistent with the D.C. Superior Court's Order, the Board vacates its Decisions and Orders in Op. Nos. 1388 and 1400 that found that MPD's actions constituted an unfair labor practice.[15]

Additionally, in accordance with the Court's finding that Chief Lanier's June 22, 2010 letter that changed the classification of Sgt. Douglas' grievance from "granted" to "denied, in part" was merely a clarification and not a failure to bargain in good faith, the Board finds that MPD did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5), and dismisses FOP's complaint with prejudice.[16]

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board's Decisions and Orders in Op. Nos. 1388 and 1400 that found MPD committed an unfair labor practice are vacated;

2. FOP's unfair labor practice complaint is dismissed with prejudice; and

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Ann Hoffman, and Yvonne Dixon.

October 29, 2015

Washington, D.C.

[15] *Id.*
[16] *Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-01, Opinion No. 1547, was served by File & ServeXpress on the following parties on this the 30th day of October, 2015.

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/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
American Federation of State, County and Municipal Employees, District Council 20, Local 2091,	)	PERB Case Nos. 15-U-20
Complainant,	)	
v.	)	Opinion No. 1548
District of Columbia Water and Sewer Authority,	)	
Respondent.	)	

DECISION AND ORDER

Complainant American Federation of State, County and Municipal Employees, District Council 20, Local 2091 ("AFSCME Local 2091"), which is part of Compensation Unit 31, filed an unfair labor practice complaint against the District of Columbia Water and Sewer Authority ("WASA") alleging that WASA violated D.C. Official Code §§ 1-617.01(b) and (c), § 1-617.11(a), and §§ 1-617.04(a)(1) and (5) by refusing AFSCME Local 2091's demand to bargain a separate compensation agreement independent of the compensation unit.

The dispositive material facts in this matter are not disputed, leaving only legal issues to be resolved. Therefore, the Board finds that it can properly decide this matter based upon the pleadings in the record.[1] For the reasons fully explained below, the Board finds that WASA did

[1] PERB Rule 520.8 states: "[t]he Board or its designated representative shall investigate each complaint." PERB Rule 520.10 states that "[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings…." Here, WASA generally denied AFSCME Local 2091's legal allegations, but did not dispute the complaint's material factual allegations, which were that: (1) AFSCME Local 2091 sent WASA a request to bargain a separate compensation agreement independent from the other locals in Compensation Unit 31; and (2) WASA refused that request. Therefore, because these material facts are undisputed by the parties, leaving only legal questions to be resolved, the Board can properly decide this matter based upon the pleadings in the record. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 5337, Slip Op. No. 1374 at p. 11, PERB Case No. 06-U-41 (2013); *see also American Federation of Government Employees, AFL-CIO Local 2978 v. District of Columbia Department of Health*, 60 D.C. Reg. 2551, Slip Op. No. 1356 at p. 7-8, PERB Case No. 09-U-23 (2013).

not commit an unfair labor practice or otherwise violate the CMPA, and dismisses AFSCME Local 2091's complaint.

I. History

AFSCME Local 2091 is the certified exclusive representative of a bargaining unit at WASA and, by its own admission, is also part of Compensation Unit 31.[2] Compensation Unit 31 is made up of employees represented by five local unions; namely, AFSCME Local 2091, American Federation of Government Employees, Local 631, 872 and 2553 ("AFGE Locals"), and National Association of Government Employees, Local R3-06 ("NAGE Local R3-06").[3] Compensation Unit 31's compensation agreement expired on September 30, 2015.[4]

On March 20, 2015, the Presidents of the three AFGE Locals sent a letter to WASA demanding to commence negotiations for a successor compensation agreement for Compensation Unit 31.[5] The letter stated that "[o]n February 26, 2015, by majority vote of the five local unions who represent employees at DC Water, Barbara Hutchinson, Esq. was elected to be the Chief Negotiator."[6] Thereafter, AFSCME Local 2091 sent a letter to WASA disputing that any election appointing Ms. Hutchinson as chief negotiator for Compensation 31 ever took place, and asserting that Ms. Hutchinson was not authorized to speak on behalf of the compensation unit.[7] AFSCME Local 2091's letter further stated that it "does not intend to participate in coalition bargaining with other unions at D.C. Water," that it was "putting D.C. Water on notice of its intent to negotiate compensation separately for its members," and that WASA should contact AFSCME Local 2091's president to schedule the negotiations.[8]

On April 9, 2015, WASA responded to AFSCME Local 2091's bargaining demand, asserting that WASA was "ready to begin negotiation of a successor agreement on compensation," but that "AFSCME Local 2091 is not certified to bargain wages exclusively."[9] WASA asked AFSCME Local 2091 to "[p]lease notify the Authority when the Public Employee Relations Board (PERB) certifies AFSCME as a compensation unit."[10]

On April 14, 2015, AFSCME Local 2091 replied that, as the certified representative of its bargaining unit for purposes of negotiating both compensation and non-compensation matters, it

[2] Complaint at 2-3 (citing *D.C. WASA and AFGE Local 872 & AFSCME Local 2091 and AFGE Locals 631, 1975, 2553 & NAGE*, 46 D.C. Reg. 122, Slip Op. No. 510, PERB Case Nos. 96-UM-07, 97-UM-01, 97-UM-03, and 97-CU-01 (1997) (hereinafter "Op. No. 510")).
[3] *Id.*
[4] Complaint at 3.
[5] *Id.*
[6] *Id.*
[7] *Id.* at 4.
[8] *Id.*
[9] *Id.*
[10] *Id.*

could not be forced to participate in coalition bargaining against its will.[11] AFSCME Local 2091 thus urged WASA to reconsider its refusal to bargain.[12]

On April 16, 2015, WASA sent a response stating that it did not dispute that AFSCME Local 2091 is the exclusive representative of its bargaining unit, but it did dispute that AFSCME Local 2091 could bargain compensation matters separately without the other four locals in Compensation Unit 31.[13] WASA asserted that "Compensation Unit 31 was specifically certified to bargain wages on behalf of its five member locals with DC Water," and that in order for any of those five locals to bargain separately on their own, PERB would have to authorize that individual local as a new compensation unit. WASA stated that it would bargain with AFSCME Local 2091 separately only if it could "provide proof that PERB has certified the Local to do so."[14]

On April 20, 2015, AFSCME Local 2091 sent a reply to WASA asserting that if WASA engaged in negotiations "with any other union or individual who claims authority to speak on AFSCME Local 2091's behalf or to have power to bind AFSCME Local 2091, it [would do so] at its own legal peril."[15] AFSCME Local 2091 further stated that neither it nor its members had "authorized any other person or union to negotiate on behalf of the AFSCME bargaining unit" and that it would "not consider itself bound by any agreement reached by such person or union."[16]

On April 21, 2015, WASA sent a letter to Ms. Hutchinson stating that because her status as the chief negotiator for Compensation Unit 31 was in dispute, WASA would not begin bargaining until "after this matter has been resolved amongst the locals."[17]

On April 27, 2015, AFSCME Local 2091 filed the instant unfair labor practice complaint.

In its April 30, 2015 Answer, WASA admitted that it refused to bargain, but asserted that it had "legitimate" reasons for doing so based on the internal dispute between the five locals in Compensation Unit 31 about Ms. Hutchinson's status as chief negotiator.[18] Further, WASA argued that under D.C. Official Code § 1-617.16(b), once PERB authorized Compensation Unit 31, the individual local unions could no longer negotiate a separate compensation agreement on their own at the exclusion of the other members in the unit.[19]

On May 5, 2015, AFSCME Local 2091 filed a Motion for Decision on the Pleadings.

[11] *Id.* at 5.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.* at 6.
[16] *Id.*
[17] *Id.*
[18] Answer at 3.
[19] *Id.*

III. Analysis

In *AFSCME, Dist. Council 20 v. D.C. Gov't, et al.*, 35 D.C. Reg. 5175, Slip Op. No. 185, PERB Case No. 88-U-23 (1988) (hereinafter "Op. No. 185"), aff'd, *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 (D.C. Super. Ct. Mar. 30, 1990), the Board held that agencies do not have an obligation to bargain separately with a single local union within an authorized compensation unit regarding compensation matters affecting the employees in the entire compensation unit.[20] Rather, the Board held that that obligation extends to all of the labor organizations representing the compensation unit's employees, to which each local is but one of multiple labor organizations authorized to represent employees in compensation negotiations.[21]

In its affirmance of Op. No. 185, the D.C. Superior Court unambiguously held that a single local union within a compensation unit is "not entitled to bargain separately with the District of Columbia."[22] The Court reasoned that:

> (1) Separate bargaining between [a single local union within a compensation unit] and the District of Columbia would have the effect of dissolving the bargaining unit composed of the [compensation unit, and] would violate the statutory policy which favors multi-unit negotiations and would be inconsistent with prior PERB rulings. [D.C. Official Code § 1-617.16(b); *AFGE v. OLRCB*, 32 D.C. Reg. 3354, Slip Op. No. 111, PERB Case No. 85-U-14 (1985)].
>
> (2) Separate bargaining would undermine a "basic tenet of union recognition in the collective bargaining context…. Once an appropriate bargaining unit has been established, the statutory interest in stability and constancy in bargaining obligations requires adherence to that unit." [*Boise Cascade Corp. v. NLRB*, 860 F.2d 471, 475 (1985) (quoting *Shell Oil Co.*, 194 NLRB 988 (1972), *enf'd sub nom., OCAW v. NLRB*, 486 F.2d 1266 (1973))].[23]

Additionally, the Court held that a single local union within a compensation unit is not a "party" for purposes of compensation bargaining, but rather each local union is just one part of the overall "party" comprised of all the locals in the compensation unit.[24]

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[20] P. 3-4.
[21] *Id.*
[22] *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at 6-7 (D.C. Super. Ct. Mar. 30, 1990).
[23] *Id.*
[24] *Id.* at 7 (holding that for purposes of compensation bargaining, "AFSCME was not a 'party'" by itself, but rather "[i]t was 1/6 of a 'party' composed of Compensation Units I and II").

In its Motion for Decision on the Pleadings, AFSCME Local 2091 urged the Board to reverse its precedent in Op. No. 185 on grounds that "it does not square with the concept of collective bargaining with an exclusive representative of the employees' choosing; it has led to constant conflict amongst labor and management and amongst labor organizations, and has caused an undemocratic process of compensation negotiations to be imposed upon thousands of District employees."[25]

Specifically, AFSCME Local 2091 argued that Op. No. 185 "did not attempt to reconcile how forced joint bargaining can coexist in the context of a collective bargaining system based on the certification of exclusive representatives."[26] AFSCME Local 2091 suggested that under "the current scheme blessed by [Op. No. 185], a dissenting union can have an agreement foist upon its members against their will—outside of interest arbitration—so long as the other unions agree."[27] Similarly, AFSCME Local 2091 asserted that "if one union is willing to reach a deal with management but lacks sufficient heft or political clout amongst the other unions within the compensation unit who wish to hold out for more, then that agreeable union is held hostage by other labor organizations the employees never voted to associate with."[28] AFSCME Local 2091 contended that in these circumstances, the "employees in the bargaining unit represented by such a dissenting union may as well have no union representation," since the resulting agreement would not be their agreement, but "an agreement reached between management and some other labor organization(s) charged with representing a different group of employees."[29] For these reasons, AFSCME Local 2091 asked the Board to "revisit and reverse" its decision in Op. No. 185, and "put an end to the practice of forcing employees into mutual representation arrangements against their will for the purpose of involuntary coalition bargaining over compensation."[30]

Notwithstanding its request that the Board reverse its holdings in Op. No. 185, AFSCME Local 2091 stated that it is "not seeking to be removed from Compensation Unit 31 or to establish a new unit," since its members are still part of the same "pay system" as the other unions in the unit.[31] AFSCME Local 2091 contended that having the same "pay system" within a compensation unit does not preclude each union within that compensation unit from negotiating its own compensation agreement.[32]

The Board rejects AFSCME Local 2091's arguments. The record shows that it was AFSCME Local 2091—along with the AFGE Locals, NAGE Local R3-06, and WASA—that asked the Board to create Compensation Unit 31. In Op. No 510, the Board granted the five unions' "Stipulation and Joint Request for Approval of Compensation Unit," which asked the Board to authorize the creation of "a separate compensation unit for bargaining unit employees

[25] Motion at 10.
[26] *Id*. at 11.
[27] *Id*.
[28] *Id*. at 12.
[29] *Id*.
[30] *Id*. at 13.
[31] *Id*. at 11.
[32] *Id*.

employed by WASA."[33] In PERB's actual Authorization of Compensation Unit 31, the Board expressly stated that "the unit … which the Board has determined appropriate in Op. No. 510 on March 14, 1997, shall constitute a unit for the purposes of compensation bargaining."[34]

For over 15 years, AFSCME Local 2091 and the other four unions in Compensation Unit 31 have willingly and successfully negotiated compensation matters as a single compensation unit, have entered into compensation agreements as a single unit, and have in all other respects concerning compensation functioned as a single unit.[35] Thus, while AFSCME Local 2091's members did not directly vote to join Compensation Unit 31, they did elect AFSCME Local 2091 as their exclusive representative;[36] and it was in that capacity that AFSCME Local 2091 willingly requested and agreed to join Compensation Unit 31 on their behalf.[37] Accordingly, AFSCME Local 2091 cannot now reasonably claim that it is being "forced" to bargain as a single compensation unit against its will or against the will of its members—nor can it argue that its certification as the exclusive representative of its bargaining unit is being threatened just because it recently unilaterally decided that it no longer wants to negotiate a new compensation agreement with the other unions in the compensation unit.

Additionally, the Board rejects AFSCME Local 2091's contention that § 1-617.16(b) does not prohibit individual locals within a compensation unit from negotiating separate compensation agreements as long as the agreements all rely on the same "pay system." As the Superior Court held in its affirmance of Op. No. 185, separate bargaining with a single local union within a compensation unit would have the effect of dissolving the authorized compensation unit and would violate the express statutory policy in D.C. Official Code § 1-617.16(b) that favors multi-unit negotiations.[38] Further, the Court held that separate bargaining "would undermine a 'basic tenet of union recognition in the collective bargaining context…'" because "[o]nce an appropriate bargaining unit has been established, the statutory interest in stability and constancy in bargaining obligations requires adherence to that unit."[39] AFSCME Local 2091's argument ignores D.C. Official Code § 1-617.16(b)'s express stated purpose of "minimiz[ing] the number of different pay systems *or schemes*."[40] If WASA had to negotiate different compensation agreements (or schemes) with each of the five locals within Compensation Unit 31, it would defeat the very purpose of the statute and the Board's authorization of the compensation unit, which again AFSCME Local 2091 proposed and stipulated to. Moreover, it would run afoul of the Superior Court's holding that each local union within a compensation unit is not a "party" in and of itself for purposes of compensation bargaining, but is rather just one part of the overall "party" comprised of all the locals in the

[33] *See* p. 3, 6, 8 (noting that "[o]n February 7, 1997, a Stipulation and Joint Request for Approval of Compensation Unit was filed…," in which "all parties joined in AFGE's and AFSCME's request for a separate compensation unit for WASA employees").
[34] Authorization, PERB Case Nos. 97-CU-01 and 97-UM-03 (March 14, 1997).
[35] Complaint at 3.
[36] *See id.* at 1-2.
[37] *See* Op. No. 510 at p 3, 6, 8.
[38] *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at 6-7.
[39] *Id*. (internal citations omitted).
[40] (Emphasis added).

compensation unit.[41] Accordingly, when the Board granted AFSCME Local 2091's and the other unions' request to authorize the creation of Compensation Unit 31, AFSCME Local 2091 gave up its independence for purposes of compensation bargaining, and became one-fifth of the overall "party" comprised of all the unions in the compensation unit.[42] Although AFSCME Local 2091 is correct that in certain scenarios that means a majority of the members in a compensation unit can ratify and enforce a compensation agreement without the consent or ratification of one of the locals in the unit, the Board has held that such is not improper.[43]

Accordingly, the Board sees no compelling reason to revisit or reverse its holdings in Op. No. 185, or to go against the Superior Court's affirmance of those holdings.

In regard to the merits of this case, since it is undisputed that AFSCME Local 2091 is only one of the five local unions that comprise Compensation Unit 31, WASA was under no obligation to engage in separate compensation negotiations with AFSCME Local 2091 alone, independent from the other locals in the compensation unit. Accordingly, the Board finds that WASA did not commit an unfair labor practice or otherwise violate the CMPA when it refused AFSCME Local 2091's bargaining request. AFSCME Local 2091's complaint is therefore dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFSCME Local 2091's complaint is dismissed with prejudice: and

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Ann Hoffman, and Yvonne Dixon.

October 29, 2015

Washington, D.C.

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[41] *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at 7.
[42] *Id.*
[43] *See AFGE v. OLRCB*, 32 D.C. Reg. 3354, Slip Op. No. 111, PERB Case No. 85-U-14 (holding that since a settlement compensation agreement had been approved and ratified by over 70% of the members within the compensation unit, the agreement was proper and enforceable on the entire compensation unit even though one of the three locals within the compensation unit had voted not to ratify the agreement); *see also* Op. No. 185 at 3-4 (holding that because 4 of the 5 local unions within a compensation unit had approved and ratified a settlement compensation agreement, the one local that did not ratify the agreement cannot unilaterally demand additional bargaining or declare an impasse and thus require bargaining to continue).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-U-20, Op. No. 1548 was sent by File and ServeXpress to the following parties on this the 30th day of October, 2015.

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/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Locals 631, 872, and 2553,	
Complainants,	PERB Case Nos. 15-U-23
v.	Opinion No. 1549
District of Columbia Water and Sewer Authority,	
Respondent,	
and	
American Federation of State, County and Municipal Employees, District Council 20, Local 2091,	
Intervenor,	
and	
National Association of Government Employees, Local R3-06,	
Intervenor.	

DECISION AND ORDER

Complainants, American Federation of Government Employees, Locals 631, 872, and 2553 ("AFGE Locals"), filed an unfair labor practice complaint against the District of Columbia Water and Sewer Authority ("WASA"), alleging that WASA violated D.C. Official Code §§ 1-617.04(a)(1) and (2), and §§ 1-617.17(b) and (f)(1) by refusing their demand to bargain a

successor compensation agreement for Compensation Unit 31.[1] American Federation of State, County and Municipal Employees, District Council 20, Local 2091 ("AFSCME Local 2091") and National Association of Government Employees, Local R3-06 ("NAGE Local R3-06") intervened.

The dispositive material facts in this matter are not disputed, leaving only legal issues to be resolved. Therefore, the Board finds that it can properly decide this matter based upon the pleadings in the record.[2] For the reasons fully explained below, the Board finds that WASA did not commit an unfair labor practice or otherwise violate the CMPA, and dismisses the AFGE Locals' complaint.

I. History

On March 20, 2015, the Presidents of the three AFGE Locals sent a letter to WASA demanding to begin negotiations for a successor compensation agreement for Compensation Unit 31.[3] The letter asserted that "[o]n February 26, 2015, by majority vote of the five local unions who represent employees at DC Water, Barbara Hutchinson, Esq. was elected to be the Chief Negotiator."[4]

On April 9, 2015, WASA sent a response to the AFGE Locals asserting that AFSCME Local 2091 and NAGE Local R3-06 had each contacted WASA to dispute that Ms. Hutchinson had been authorized to negotiate on behalf of Compensation Unit 31.[5] WASA stated it was "prepared to begin negotiation of a successor agreement on compensation," but only after all five unions in the compensation unit signed a notice identifying who was authorized to negotiate on behalf of the compensation unit.[6]

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[1] Compensation Unit 31 is made up of employees represented by five local unions, namely: AFGE Local 631, AFGE Local 872, AFGE Local 2553, AFSCME, Dist. Council 20, Local 2091, and NAGE Local R3-06. *See D.C. WASA and AFGE Local 872 & AFSCME Local 2091 and AFGE Locals 631, 1975, 2553 & NAGE*, 46 D.C. Reg. 122, Slip Op. No. 510, PERB Case Nos. 96-UM-07, 97-UM-01, 97-UM-03, and 97-CU-01 (1997) (hereinafter "Op. No. 510").

[2] PERB Rule 520.8 states: "[t]he Board or its designated representative shall investigate each complaint." PERB Rule 520.10 states that "[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings…." Here, WASA generally denied the AFGE Locals' legal allegations, but did not dispute the complaint's material factual allegations, which were that: (1) the AFGE Locals requested to begin compensation bargaining on behalf of Compensation Unit 31; and (2) WASA refused that request until all of the unions in the compensation unit provided clarification about who was authorized to bargain on behalf of the unit. *See* Complaint at 3, Exhibit 1; *see also* Answer at 4, 6. Therefore, because these material facts are undisputed by the parties, leaving only legal questions to be resolved, the Board can properly decide this matter based upon the pleadings in the record. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 5337, Slip Op. No. 1374 at p. 11, PERB Case No. 06-U-41 (2013); *see also American Federation of Government Employees, AFL-CIO Local 2978 v. District of Columbia Department of Health*, 60 D.C. Reg. 2551, Slip Op. No. 1356 at p. 7-8, PERB Case No. 09-U-23 (2013).

[3] Complaint at 3.

[4] Complaint, Exhibit 5A.

[5] Complaint at 3, Exhibit 1.

[6] Complaint, Exhibit 1.

On April 14, 2015, Ms. Hutchinson sent another letter to WASA in which she again asserted that she was the compensation unit's chief negotiator, and requested that the parties meet on April 24, 2015, to begin negotiations.[7] Ms. Hutchinson further asserted that there is no legal requirement to identify a chief negotiator before negotiations can begin. The letter stated that "[a]ny internal practices of the Unions in Compensation Unit 31 have no bearing on negotiation of successor agreement [*sic*]." It further asserted that there is no legal requirement "that each Union in a compensation unit serve a joint request to begin bargaining."[8]

On April 21, 2015, WASA sent a response to Ms. Hutchinson asserting that it was "not prepared to meet until the instant issues regarding selection of a chief negotiator are resolved between the AFGE Locals, AFSCME Local 2091 and NAGE Local R3-06."[9] Although WASA concurred that there is no express requirement that a chief negotiator be selected before negotiations can begin, it asserted that there is an express requirement in D.C. Official Code § 1-617.17 that the parties negotiate in good faith. WASA argued that if Ms. Hutchinson was not authorized to bargain on behalf of AFSCME Local 2091 and NAGE Local R3-06, she could not bargain in good faith. WASA reiterated that it was prepared to bargain, but only "after this matter has been resolved amongst the locals."[10]

On April 22, 2015, Ms. Hutchinson sent a letter to WASA asserting that WASA had "no authority to intervene in the appointment of Union representatives" and offered additional dates to begin negotiations.[11] The AFGE Locals allege that WASA did not respond to Ms. Hutchinson's April 22nd letter.[12]

On May 8, 2015, the AFGE Locals filed the instant unfair labor practice complaint alleging that WASA's refusal to bargain constituted violations of D.C. Official Code §§ 1-617.04(a)(1) and (2), and §§ 1-617.17(b) and (f)(1).

In its May 11, 2015 Answer, WASA admitted that it refused to bargain with Ms. Hutchinson, but asserted that it was not required to bargain with her because AFSCME Local 2091 and NAGE Local R3-06 disputed that she was authorized to bargain on behalf of the compensation unit.[13] WASA asserted that D.C. Official Code § 1-617.17(b) only required it to "meet with labor organizations… which have been authorized to negotiate compensation…." WASA contended that since Ms. Hutchinson's status as the chief negotiator for Compensation Unit 31 was in dispute, its request that the parties clarify who was authorized to bargain on behalf of the compensation unit before it proceeded with the negotiations was "fair and reasonable."[14]

[7] Complaint at 4, Exhibit 8.
[8] *Id.*
[9] Complaint at 4, Exhibit 9.
[10] *Id.*
[11] Complaint at 5, Exhibit 10.
[12] Complaint at 5.
[13] Answer at 4, 6.
[14] *Id*. at 6.

AFSCME Local 2091 and NAGE Local R3-06 both filed Motions for Leave to Intervene in the case, each "vigorously" disputing Ms. Hutchinson's status as the chief negotiator for the compensation unit.[15] NAGE Local R3-06 further asserted that no "chief negotiator for Compensation Unit 31 has been named by the unions which comprise the Compensation Unit."[16]

II. Analysis

It is uncontested that AFSCME Local 2091 and NAGE Local R3-06 disputed Ms. Hutchinson's status as the chief negotiator for Compensation Unit 31. The complaint conceded (and WASA confirmed in its Answer) that shortly after the AFGE Locals' sent their March 20th bargaining request to WASA, both AFSCME Local 2091 and NAGE Local R3-06 contacted WASA independently to dispute that Ms. Hutchinson had been "elected" as chief negotiator for the compensation unit.[17] NAGE Local R3-06, in its correspondence with WASA, further asserted that it "did not participate in any such vote, if one did occur, to select a Chief Negotiator" and that it "has yet to be determined who will be the Chief Negotiator for Compensation Unit 31."[18] Although the AFGE Locals asserted to WASA in their March 20th letter that Ms. Hutchinson had been "elected" to be chief negotiator on February 26, 2015, the complaint alleged that it was the March 20th letter itself that "appoint[ed]" Ms. Hutchinson to be chief negotiator.[19] This is consistent with Ms. Hutchinson's un-notarized "Affidavit" (included with the complaint as an Exhibit), in which Ms. Hutchinson asserted that she was "appointed as Chief Negotiator for Compensation Unit 31, *by letter* of March 20, 2015, sent to [WASA]."[20]

Thus, since there is no definitive evidence that Ms. Hutchinson was ever "elected" by all five locals in Compensation Unit 31 to be the unit's chief negotiator, and since the AFGE Locals' March 20th letter that allegedly "appointed" Ms. Hutchinson as chief negotiator was only signed by the three Presidents of the AFGE Locals,[21] the Board concludes that it is possible that the AFGE Locals' March 20th request to bargain was not a request to bargain on behalf of the entire compensation unit, but was rather merely a request to bargain compensation on behalf of the AFGE Locals alone, independent from Compensation Unit 31.

In *AFSCME, Dist. Council 20 v. D.C. Gov't, et al.*, 35 D.C. Reg. 5175, Slip Op. No. 185, PERB Case No. 88-U-23 (1988) (hereinafter "Op. No. 185"), aff'd, *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 (D.C. Super. Ct. Mar. 30, 1990), the Board held that agencies do not have an obligation to bargain separately with a single local union within an authorized

[15] AFSCME Local 2091 Motion for Leave to Intervene at 1; NAGE Local R3-06 Motion for Leave to Intervene at 1.
[16] NAGE Local R3-06 Motion for Leave to Intervene at 1.
[17] *See* Complaint at 3-4; Answer at 4, Exhibit 1; AFSCME Motion for Leave to Intervene at 1; *and* NAGE Motion for Leave to Intervene at 1.
[18] Answer, Exhibit 1.
[19] *See* Complaint at 3.
[20] *See* Complaint, Exhibit 5.
[21] *See AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at p. 7 (D.C. Super. Ct. Mar. 30, 1990) (holding that for purposes of compensation bargaining, "AFSCME was not a 'party'" by itself in Compensation Units I & II, which consisted of six local unions, but rather "[i]t was 1/6 of a 'party' composed of Compensation Units I and II").

compensation unit regarding compensation matters affecting the employees in the entire compensation unit.[22] Rather, the Board held that that obligation extends to all of the labor organizations representing the compensation unit's employees, to which each local is but one of multiple labor organizations authorized to represent employees in compensation negotiations.[23]

In its affirmance of Op. No. 185, the D.C. Superior Court unambiguously held that a single local union within a compensation unit is "not entitled to bargain separately with the District of Columbia."[24] The Court reasoned that:

> (1) Separate bargaining between [a single local union within a compensation unit] and the District of Columbia would have the effect of dissolving the bargaining unit composed of the [compensation unit, and] would violate the statutory policy which favors multi-unit negotiations and would be inconsistent with prior PERB rulings. [D.C. Official Code § 1-617.16(b); *AFGE v. OLRCB*, 32 D.C. Reg. 3354, Slip Op. No. 111, PERB Case No. 85-U-14 (1985)].
>
> (2) Separate bargaining would undermine a "basic tenet of union recognition in the collective bargaining context…. Once an appropriate bargaining unit has been established, the statutory interest in stability and constancy in bargaining obligations requires adherence to that unit." [*Boise Cascade Corp. v. NLRB*, 860 F.2d 471, 475 (1985) (quoting *Shell Oil Co.*, 194 NLRB 988 (1972), *enf'd sub nom., OCAW v. NLRB*, 486 F.2d 1266 (1973))].[25]

Additionally, the Court held that a single local union within a compensation unit is not a "party" for purposes of compensation bargaining, but rather each local union is just one part of the overall "party" comprised of all the locals in the compensation unit.[26]

Although PERB's and the Court's holdings only referenced bargaining with a "single" local within a compensation unit, the underlying principle of the cases is that, under D.C. Official Code § 1-616.17(b), agencies are only obligated to bargain with compensation units as a whole, and not with individual unions or even factions of unions within the units.[27] Here, the AFGE Locals comprised only a part of the overall compensation unit.[28] Further, § 1-617.17(b)

[22] P. 3-4.
[23] *Id.*
[24] *AFSCME, Dist. Council 20 v. D.C. PERB*, No. 8-88 at 6-7.
[25] *Id.*
[26] *Id.* at 7 (holding that for purposes of compensation bargaining, "AFSCME was not a 'party'" by itself, but rather "[i]t was 1/6 of a 'party' composed of Compensation Units I and II").
[27] *Id.* at 6-7.
[28] As three-fifths of the unions that comprise Compensation Unit 31, the AFGE Locals' appointment of Ms. Hutchinson may have been valid. *See AFGE v. OLRCB*, 32 D.C. Reg. 3354, Slip Op. No. 111, PERB Case No. 85-

required WASA to only bargain compensation matters with parties that were "authorized" to do so. Here, Ms. Hutchinson's authority to negotiate on behalf of the entire compensation unit was "vigorously" challenged by the other locals in the unit. Therefore, since it is possible that Ms. Hutchinson was only authorized to speak on behalf of the AFGE Locals and not the entire compensation unit, the Board cannot conclude that WASA acted in violation of the CMPA when it refused to commence compensation negotiations until "after this matter has been resolved amongst the Locals."[29]

Additionally, although the AFGE Locals and WASA were correct that there is no legal requirement to name a chief negotiator before compensation bargaining can commence, since the AFGE Locals in this matter claimed that there was a chief negotiator, and since the other unions in the unit disputed that contention, it cannot be concluded that WASA interfered with the compensation unit members' rights or otherwise violated the CMPA when it reasonably expressed confusion about the situation and chose not to bargain until the unions in the compensation unit provided some clarification.

Lastly, the Board finds that it is not necessary to resolve the question of whether or not Ms. Hutchinson had been duly elected or appointed by "a majority of the unions" to be the chief negotiator for Compensation Unit 31 because that question is not material to the outcome of this case.[30] The only question before the Board is whether WASA committed an unfair labor practice or otherwise violated the CMPA when it expressed confusion about the mixed messages it had received from the various unions in Compensation Unit 31 and therefore chose not to begin negotiations until after the unions provided clarification and/or resolved their disputes. Since the Board has found that the confusing nature of the messages WASA received was sufficient by itself to justify WASA's response, it is not necessary to parse through and make factual determinations about the validity or invalidity of the messages themselves.[31]

U-14 (holding that since a settlement compensation agreement had been approved and ratified by over 70% of the members within the compensation unit, the agreement was proper and enforceable on the entire compensation unit even though one of the three locals within the compensation unit had voted not to ratify the agreement); *see also* Op. No. 185 at 3-4 (holding that because 4 of the 5 local unions within a compensation unit had approved and ratified a settlement compensation agreement, the one local that did not ratify the agreement cannot unilaterally demand additional bargaining or declare an impasse and thus require bargaining to continue). However, such is an internal matter for the compensation unit itself to resolve, not WASA or PERB. Furthermore, Slip Op. Nos. 111 and 185 are easily distinguishable from the facts of this case since they dealt primarily with the ratification of settled agreements after the respective negotiations had completed. Here, the negotiations have yet to begin. Also, in Slip Op. Nos. 111 and 185, it was a majority of all the members in the compensation units who had voted to ratify the agreements, not the presidents of the various locals within the units. Here, it was only the three presidents of the AFGE Locals who allegedly appointed Ms. Hutchinson as chief negotiator. Finally, as noted in this Decision and Order, the question of whether Ms. Hutchinson's alleged appointment as chief negotiator for Compensation Unit 31 was valid or not is not before the Board for resolution. Indeed, the only question before the Board is whether WASA violated the CMPA when it chose not to bargain until the unions in the compensation unit resolved their disputes. Since the validity or invalidity of Ms. Hutchinson's alleged appointment is immaterial to the Board's resolution of that question, the Board will not address it.

[29] Answer at 3.

[30] *See AFGE v. DC PERB*, Case No. 2013 CA 005870 P(MPA) at p. 6 (D.C. Sup. Ct. Jul 30, 2015) (finding that PERB can disregard factual disputes that are moot or that otherwise would not affect the outcome of its decision).

[31] *Id*.

Therefore, while in most cases an agency's refusal to bargain with the exclusive representative will be an unfair labor practice, the Board finds, based on the specific facts of this case, that WASA's refusal of the AFGE's Locals request did not violate the CMPA. Accordingly, the AFGE Locals' complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The AFGE Locals' complaint is dismissed with prejudice: and

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Ann Hoffman, and Yvonne Dixon.

October 29, 2015

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-U-23, Op. No. 1549 was sent by File and ServeXpress to the following parties on this the 30th day of October, 2015.

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/s/ Sheryl Harrington
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
	)	
Metropolitan District 1199DC, National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO, Chapter 2095	)	
	)	
Petitioner	)	
	)	
v.	)	**PERB Case No. 15-AC-01**
	)	
District of Columbia Department of Behavioral Health	)	**Opinion No. 1550**
	)	**(Corrected Copy)**
Agency	)	
	)	

DECISION AND ORDER

On May 22, 2015, Metropolitan District 1199DC, National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO, Chapter 2095 ("Petitioner"), in accordance with Section 516 of the Rules of the Public Employee Relations Board (PERB), filed a Petition to Amend Certification of a bargaining unit at the Department of Behavioral Health ("Agency"). On June 8, 2015, Petitioner filed a Second Amended Petition to Amend Certification of Representation ("Petition"). The Petition applied to the unit certified under PERB Certification No. 45 as:

> All non-professional, non-supervisory employees in the Commission on Mental Health Services, Department of Human Services, excluding management executives, confidential employees, supervisors, non-professional employees of the Construction, Electrical, Mechanical, Preventive Maintenance, Garage and Fabric Care Sections, and any employees engaged in personnel work in other than a purely clerical capacity or employees engaged in administering the provisions of D.C. Law 2-139.

Board Rule 516.1 provides:

> An exclusive representative shall file a petition with the Board to amend its certification whenever there is a change in the identity of the exclusive representative that does not raise a question concerning representation (e.g., whether the employees have designated a particular organization as their bargaining agent).

In support of the Petition and Amended Petition, Petitioner stated:

1. On or about July 23, 2014, Metropolitan District 1199DC, National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO ("Union") Petitioner's parent organization, amended its bylaws so that its former Locals were converted to Chapters. The change in name reflects a change in the internal organization of the Union.
2. Pursuant to Certification Nos. 45 and 119, Chapter 2095, formerly Local 2095, AFSCME, AFL-CIO, District 1199DC National Union of Hospital and Health Care Employees and American Federation of Government Employees, Local 383 jointly represent the bargaining unit described above.
3. The change in identity does not raise a question concerning representation.

In accordance with Board Rule 516.2, the Agency responded and expressed no objection to the proposed amendment and requested that the Department of Behavioral Health be identified as the former Department of Mental Health.

On June 10, 2015, the American Federation of Government Employees, Local 383 ("AFGE Local 383") filed a Motion to Intervene in this matter as a necessary party and requested to consolidate this matter with PERB Case No. 15-RC-01. In view of the fact that the provisions of Board Rule 516 have been met and no objection has been filed by the parties in interest, we grant the Petition to Amend the Certification as requested.

We also grant AFGE Local 383's motion to intervene in this matter, but deny its request to consolidate this case with PERB Case No. 15-RC-01.

ORDER

IT IS HEREBY ORDERED THAT:

1. Certification No. 45 is amended to reflect that the name of the Petitioner is now "Metropolitan District 1199DC, National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO, Chapter 2095."

2. Certification No. 45 is amended to reflect that the name of the Agency is now "District of Columbia Department of Behavioral Health."

3. Certification No. 45 remains in effect, certifying Metropolitan District, 1199DC, National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO, Chapter 2095 and

AFGE, Local 383 as the exclusive representatives for the bargaining unit at the District of Columbia Department of Behavioral Health described in PERB Case No. 87-R-15.

Unit Description:

> All non-professional, non-supervisory employees in the District of Columbia Department of Behavioral Health (formerly Department of Mental Health and previously the Commission on Mental Health Services, Department of Human Services), excluding management executives, confidential employees, supervisors, non-professional employees of the Construction, Electrical, Mechanical, Preventive Maintenance, Garage and Fabric Care Sections, and any employees engaged in personnel work in other than a purely clerical capacity or employees engaged in administering the provisions of D.C. Law 2-139.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Yvonne Dixon and Ann Hoffman.

October 29, 2015

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-AC-01, Opinion No. 1550, was served by File & ServXpress on the following parties on this the 4th day of November, 2015.

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PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Protective Services Police Department Labor Committee,	
Petitioner,	PERB Case No. 15-N-04
and	Opinion No. 1551
Department of General Services,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The Fraternal Order of Police/Protective Services Police Department Labor Committee ("Union" or "FOP") filed a Negotiability Appeal ("Appeal") of the Department of General Services' ("Agency" or "DGS") written declaration of non-negotiability of several of the Union's counterproposals that it made during the parties' negotiation of a noncompensation collective bargaining agreement. The Agency filed a timely Answer to the Union's Appeal.

II. Discussion

Pursuant to D.C. Official Code §§ 1-605.02(5) and 1-617.02(b)(5), the Board is authorized to make determinations as to whether a matter is within the scope of bargaining. The Board's jurisdiction to decide such questions is invoked by the party presenting a proposal that has been declared nonnegotiable by the party responding to the proposal.[1]

[1] *See* Board Rule 532.1

The Board applies the U.S. Supreme Court's standard concerning subjects for bargaining established in *National Labor Relations Board v. Borg-Warner Corp.*, 356 U.S. 3342 (1975): "Under this standard, the three categories of bargaining subjects are as follows: (1) mandatory subjects, over which the parties must bargain; (2) permissive subjects, over which the parties may bargain; and (3) illegal subjects, over which the parties may not legally bargain."[2]

As acknowledged in many previous cases, D.C. Official Code § 1-617.08(b) provides, "[A]ll matters shall be deemed negotiable, except those that are proscribed by this subchapter." The Board has held that this language creates a presumption of negotiability.[3] The subject(s) of a negotiability appeal and the context in which its negotiability is appealed are determined by the petitioner, not the party declaring the matter nonnegotiable.[4] The Board reviews the disputed proposals and separately addresses each in light of the statutory dictates and relevant case law.

III. Analysis of Proposals

The Union's proposals are set forth below.[5] The proposals are followed by: (1) DGS's arguments in support of nonnegotiability; (2) FOP's arguments in support of negotiability; and (3) the findings of the Board. The Board considers each proposal as a whole, unless the Union has requested that only a particular portion of a proposal be considered.

Union Proposal 1:

> Article 16 (Grievance Procedure), Section E, Paragraph 6
>
> The parties agree that it is their intent that arbitration awards issued pursuant to this Agreement shall be final and binding on both parties. If either party requests review of a final award before the Public Employee Relations Board and the award is ultimately upheld, the party who unsuccessfully sought review will pay 2/3 of the other party's reasonable attorney fees incurred in any stage of defense of the award.

Agency: DGS argues that FOP's proposal is nonnegotiable, because PERB does not have original jurisdiction to award attorney's fees.[6]

Union: FOP argues that its proposal does not require PERB to order attorney's fees, but rather that the proposal is a negotiated settlement of attorney's fees.[7]

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[2] *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 29 D.C. Reg. 2975, Slip Op. No. 43 at p. 2, PERB Case No. 82-N-01 (1982).
[3] See *Int'l Ass'n of Firefighters, Local 36 v. D.C. Dep't of Fire and Emergency Services*, 51 D.C. Reg. 4185, Slip Op. No. 742, PERB Case No. 04-N-02 (2004), for a discussion on negotiability.
[4] *International Association of Fire Fighters, Local 36 and D.C. Fire & Emergency Medical Services Dep't*, Slip Op. No. 515, PERB Case No. 97-N-01 (1997).
[5] The Union withdrew its proposals of Article 18 (Training), Section C and Article 21 (Scheduling), Section C.
[6] Answer at 3.
[7] Petition at 3-4.

Board: The Union's proposal does not require PERB to award attorney's fees in contravention of its original jurisdiction under D.C. Official Code § 1-617.13.[8] The Union's proposal instead proposes a pre-negotiated settlement regarding attorney's fees. The Agency's argument that the Board is prevented from awarding attorney's fees does not address the actual language of the proposal. The Board has upheld an arbitrator's award of fees, where the collective bargaining agreement does not limit the equitable remedial powers of an arbitrator.[9] In the present case, the proposal is a negotiated settlement of fees prior to the disposition of an action, and not a requirement that the Board award fees. The Board does not find grounds that would prevent the Agency from negotiating a settlement of attorney's fees under a collective bargaining agreement.

The Board finds that the Union's proposal is negotiable.

Union Proposal 2:

In earlier negotiations, the Union filed a negotiability appeal of several proposals (Sections A, B, and C) under its proposed Article 30 (Reductions-in-Force and Furloughs). These exact proposals were before the Board in Opinion No. 1532.[10] The Board found that the Union's proposals would interfere with the Agency's procedures for implementing a RIF in contravention of the Abolishment Act.[11]

The Court of Appeals has stated, "[W]hen applicable, collateral estoppel renders conclusive the determination of issues of fact or law previously decided in another proceeding."[12] The Board rendered a final decision on the negotiability of these proposals. Therefore, the Board continues to find Article 30, Sections A, B, and C nonnegotiable.[13]

[8] *AFGE, Local 2725 v. D.C. Dep't of Health,* 59 D.C. Reg. 6003, Slip Op. No. 1003 at p.6, PERB Case No. 09-U-65 (2012).
[9] *FOP/DOC Labor Committee and DOC,* Slip Op. No. 1303, PERB Case No. 10-A-02 (2012).
[10] *FOP/Protective Servs. Police Dep't Labor Committee and Dep't of General Servs.,* Slip Op. No. 1532, PERB Case No. 15-N-02 (July 31, 2015).
[11] Slip Op. No. 1532 at p.6. The Abolishment Act authorizes agency heads to identify positions for abolishment, establishes the rights of existing employees affected by the abolishment of a position, and establishes procedures for implementing and contesting an abolishment. D.C. Official Code § 1-624.08(a)-(i), (k). The Abolishment Act provides: "Notwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable." D.C. Official Code § 1-624.08(j).
[12] *Modiri v. 1342 Rest. Group, Inc.,* 904 A.2d 391, 394 (D.C.2006) (citing *Davis v. Davis,* 663 A.2d 499, 501 (D.C.1995)).
[13] According to the D.C. Court of Appeals, collateral estoppel, or issue preclusion, "prohibits 'the relitigation of factual or legal issues decided in a previous proceeding and essential to the prior judgment.' " *Elwell v. Elwell,* 947 A.2d 1136, 1140 (D.C.2008) (quoting*Borger Mgmt., Inc. v. Sindram,* 886 A.2d 52, 59 (D.C.2005)). Thus, when applicable, collateral estoppel renders conclusive the determination of issues of fact or law previously decided in another proceeding. *Modiri v. 1342 Rest. Group, Inc.,* 904 A.2d 391, 394 (D.C.2006) (citing *Davis v. Davis,* 663 A.2d 499, 501 (D.C.1995)).

Union Proposals 3:

> Article 32 (Licenses)
>
> Section B
> The Employer is responsible for all costs incurred in obtaining required commissions, fingerprints and photographs for employment with PSPD.
>
> Section C
> If the Employer fails to provide secured lockers for storage of service weapons at the worksite, the Employer will pay any costs associated with employees obtaining requisite permits to carry their service weapon in their home state or the District of Columbia.

Agency: DGS does not contend that FOP's proposal is substantively nonnegotiable, but asserts that the proposals should be addressed in compensation negotiations, because they concern wages.[14]

Union: FOP asserts that DGS is barred as a matter of equity from raising the defense that the proposals should be negotiated during compensation bargaining, because DGS has negotiated similar provisions during noncompensation bargaining.[15]

Board: The Board determined that Section C is negotiable in Opinion No. 1532.[16] The Board found that the Agency's argument that Section C should be reserved for compensation bargaining did not comport with D.C. Official Code § 1-617.17(b), where compensation bargaining was meant for a broad range of occupational groups and not for a specific reimbursement for a specific group of employees.[17] The Board concluded that Section C is negotiable, because Section C concerned a specific reimbursement that affected only a specific group of employees. Therefore, based on collateral estoppel, the Board continues to find Section C negotiable, as the Board already determined that Section C is negotiable in Opinion No. 1532.

As for Section B, DGS raises the same defense that Section B should be negotiated during compensation bargaining as it did for FOP's negotiability appeal of Section C in Opinion No. 1532. In the Board's prior decision, the Board relied upon D.C. Official Code § 1-617.17(b) to find that the Union's Section C proposal did not "concern total compensation for a broad range of occupational groups, as envisioned under the CMPA."[18]

[14] Answer at 8-9.
[15] Appeal at 6-7.
[16] *FOP/Protective Servs. Police Dep't Labor Committee and Dep't of General Servs.,* PERB Case No 15-N-02.
[17] *FOP/Protective Servs. Police Dep't Labor Committee,* Slip Op. No. 1532 at p.7.
[18] *Id*.

Compensation bargaining is governed by D.C. Official Code § 1-617.17(b), which provides that management and labor organizations "negotiate in good faith with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters." The Board finds the reasoning in Opinion No. 1532 for Section C is applicable to Section B. Section B would govern a specific apportioning of cost for a small group of employees and does not concern compensation bargaining envisioned by D.C. Official Code § 1-617.17(b), which involves bargaining for broad occupational groups.[19]

DGS does not dispute the substantive negotiability of Section B. Therefore, based on the reasoning above, the Board finds that Section B is negotiable.

ORDER

IT IS HEREBY ORDERED THAT:

1. Article 16 (Grievance Procedure), Section E, Paragraph 6 is negotiable.
2. Article 30 (Reductions-in-Force and Furloughs) Sections A, B, and C are nonnegotiable.
3. Article 32 (Licenses), Section B and C are negotiable.
4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, and Member Keith Washington.

Washington, D.C.

October 29, 2015

[19] *Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-N-04 was served to the following parties via File & ServeXpress on this the 30th day of October 2015:

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
	)	
Fraternal Order of Police/	)	
Metropolitan Police Department	)	
Labor Committee	)	
Petitioner,	)	**PERB Case No. 09-U-34**
	)	
v.	)	**Opinion No. 1552**
	)	
District of Columbia	)	**(Corrected Copy)**
Metropolitan Police Department	)	
Respondent.	)	
	)	

DECISION AND ORDER

On May 15, 2009, Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union" or "FOP") filed an unfair labor practice complaint alleging that the Metropolitan Police Department ("Respondent" or "MPD") (1) refused and failed to engage in bargaining and (2) improperly interfered with the Union's rights to participate in negotiations relating to training, time-in-grade requirements, methods of evaluating and determining qualifications for promotional examinations in violation of D.C. Official Code 1-617.04(a)(1) and (5).

The Board adopts the Hearing Examiner's findings and recommendations that MPD did not violate the D. C. Official Code § 1-617.04(a)(1) and (5) as alleged. The Hearing Officer's recommendations were reasonable, supported by the record and consistent with the Board's precedents.[1]

I. Hearing Examiner's Report and Recommendation

A. Duty to Bargain

[1] *Fraternal Order of Police/Metropolitan Police Department/Labor Committee v. District of Columbia Metropolitan Police Department,* 59 D.C. Reg. 5485, Slip Op. No. 991, PERB Case No. 08-U-19 (2019); *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department,* 59 D.C. Reg. 6579, Slip Op. No. 1118, PERB Case No. 08-U-19 (2011); and *American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority,* 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

As early as January 1998, MPD has had established rules specifying how officers could seek promotion to sergeant, lieutenant and captain.[2] Prior to 2009, the rule required officers to remain in grade for 5 years before becoming eligible to apply to the position of sergeant and for sergeants to remain in grade for 3 years before becoming eligible to apply for a lieutenant position. This was known as the "5 and 3 year rule."[3] In March 2009, MPD proposed rulemaking to change the eligibility qualifications for taking the sergeant and lieutenant promotional examinations.[4] The proposed eligibility requirements provided that an officer remain in grade for four years prior to qualifying to take the sergeant's exam, and a sergeant remain in grade for two years prior to qualifying for the lieutenant's exam. This came to be known as the "4 and 2 year rule".[5] In early March 2009, FOP orally requested bargaining over the proposed changes to time-in-grade requirements for promotional examinations.[6] The Hearing Examiner found that the parties met on March 19, 2009, and engaged in bargaining over the proposed changes.[7]

On March 25, 2009, FOP emailed MPD listing a number of requests for clarification on the proposed changes to the eligibility applications that it wanted to discuss at the next meeting. Specifically, the Union wanted a written explanation for the changes and the reason the current pool of applicants was not sufficient. In addition, the Union proposed that lieutenants remain in grade for 7 years before eligibility for captain; that new training, mentoring, and education standards be implemented for all promotees; that all promotion and special assignment processes be conducted entirely by an outside neutral third party; and that the department designate funds for outside education classes for members.

By letter dated April 8, 2009, MPD rejected the Union's proposed changes as "non-negotiable" arguing that the proposals were an infringement on management rights and beyond the scope of impact and effects bargaining.[8]

On May 1, 2009, MPD issued Circular No. 09-01, "Announcement of the 2009 Promotional Process for Sergeant, Lieutenant and Captain."[9] According to that document, candidates were eligible to apply for promotions when they had been in the appropriate grade for the required number of years as of September 30, 2009.

On May 1, 2009, Detective Sergeant Robert Alder requested Chief of Police Cathy L. Lanier to change the eligibility date from September 30, 2009 to October 7, 2009, to enable 30 sergeants who were promoted on October 7, 2007 to become eligible to apply for the rank of

[2] R&R at 2
[3] R&R at 2
[4] R&R at 2
[5] R&R at 2
[6] R&R at 2
[7] R&R at 2
[8] R&R at 2
[9] Lieutenants and captains were not part of FOP's bargaining unit.

Lieutenant.[10] On May 6, 2009, without consulting the Union, MPD amended Circular 09-01 changing the eligibility date for the 2009 promotional process to October 31, 2009.[11]

On May 15, 2009, FOP filed an unfair labor practice complaint against MPD. The hearing was held on November 7, 2014. During the hearing, FOP claimed that the complaint included the allegation that MPD had engaged in direct dealing with a member of the bargaining unit and bypassing the union. MPD argued, to the contrary, that the complaint did not provide adequate notice of a claim of direct dealing or bypassing the union.

The Hearing Examiner found that the parties' collective bargaining agreement had a management rights clause. He went on to state that PERB has long held that an employer may assert a general management rights provision authorizing it to act unilaterally with respect to a particular term and condition of employment in light of a "clear and unmistakable" waiver by the Union.[12] He went on to find that the "clear and unmistakable" waiver standard requires bargaining partners to unequivocally and specifically express their mutual intention to permit unilateral employer action with respect to a particular employment term, in spite of the statutory duty to bargain that would otherwise apply.[13] The Hearing Examiner found that FOP, by agreeing to include several specific provisions in the management rights clause in the collective bargaining agreement, effectively waived any right it may otherwise have had to bargain on these issues.[14]

The Hearing Examiner further found that the management rights clause gave Respondent the right to make unilateral changes in the unit employees' terms and conditions of employment during the life of the collective bargaining agreement.[15] This included the right to "direct employees of the Department," to "hire, promote, transfer, assign and retain employees in positions within the Department," to "alter, rearrange, change, extend, limit or curtail its operations or any part thereof," to "determine the qualifications of employees for appointment and promotion," and to "formulate, change or modify Department rules, regulations and procedure."[16]

With respect to the promotional process, the Hearing Examiner found that "the Union relinquished its right to demand bargaining over the implementation of a policy prescribing the time-in-grade requirements and methods of evaluating and determining qualifications for promotional examinations."[17] The Hearing Examiner further found that on March 19, 2009, MPD engaged in impact and effects bargaining as requested by FOP.[18] Therefore, by exercising its management rights and unilaterally implementing the requirements and qualifications

[10] Union Exhibit 6
[11] Union Exhibit 7
[12] R&R at 4. See *University of the District of Columbia Faculty Association/National Education Association v. University of the District of Columbia*, 43 D.C. Reg. 5594, Slip Op. No. 387, PERB Case No. 93-U-22, 93-U-23 (1996); *Teamsters Locals 639 & 670 v. D.C. Public Employee Relations Board*, 631 A.2d 1205, 1217 (D.C. 1993).
[13] R&R at 4.
[14] R&R at 5.
[15] R&R at 3.
[16] R&R at 4.
[17] R&R at 5.
[18] R&R at 2.

mentioned above concerning the promotional examinations for sergeants, lieutenants and captains, the Hearing Examiner concluded that MPD did not commit a violation.[19]

B. Direct Dealing

In addition, the Hearing Officer found that the May 1, 2009 memorandum from Sergeant Robert Alder and the May 6, 2009 policy amendment were "subject to the parties" management rights clause and thus not actionable.[20]

The Hearing Examiner found that the terminology used in the Complaint, "improper interference" and repeated references to the term refusal to bargain, did not adequately provide MPD with notice that it was being charged with direct dealing and bypassing the Union."[21] The Hearing Examiner noted that MPD stated that it was only during the hearing that it realized that FOP was charging it with a violation that encompassed direct dealing with a bargaining unit employee and bypassing the union.[22] The Hearing Examiner was not convinced by FOP's arguments that its interpretation of paragraphs 3, 15 and 16 of the Complaint should have put MPD on notice that it was complaining about direct dealing and bypassing the union.

II. FOP's Exceptions

FOP has taken several exceptions to the Hearing Examiner's Report and Recommendations.

First, FOP raises an exception to the Hearing Examiners finding that the Respondent did engage in good faith bargaining. FOP asserts that once MPD began negotiating with FOP it was required to continue bargaining in good faith about the changes in the promotional process, and impact and effects.[23]

Second, FOP raises an exception to the Hearing Examiner's finding that FOP had clearly and unmistakably waived its right to bargain over the proposed changes to the promotional process.[24] In this regard, FOP citing *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983), asserts that it did not waive its ability to bargain on any management rights or the right to bargain over impact and effects.

[19] R&R at 4.
[20] Because the Hearing Examiner found that the charge of direct dealing and bypassing the union were not properly addressed in the Complaint, we decline to address whether Sgt. Alder's memorandum and MPD's response are subject to the management rights clause. *AFGE v. DC PERB*, Case No. 2013 CA 005870 P (MPA) at 6 (D.C. Sup. Ct., July 30, 2015) (PERB can disregard factual disputes that are moot or that otherwise would not affect the outcome of its decision).
[21] R&R at 5.
[22] *Id.*
[23] FOP Exceptions at 13. Citing *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, Slip Op. No. 1391, PERB Case Nos. 09-U-52 & 09-U-53 (2013).
[24] R&R at 5.

Third, FOP raises an exception to the Hearing Examiner's finding that its training and educational proposals were (1) subject to the management rights clause and (2) exceeded the scope of permissible impact and effects bargaining.[25] In this regard, FOP asserts that its training and education proposals related to the impact and effects of MPD's proposed changes to the promotional process.

Fourth, FOP raises an exception to the Hearing Examiner's finding that the Complaint did not adequately provide the MPD with notice of the direct dealing and bypassing the union charge.[26] FOP asserts that the alleged facts set forth in the complaint put MPD on notice of being charged with direct dealing and bypassing the union. FOP argues that it was not required to use the express words "direct dealing" to sufficiently plead a violation of the Act. Further, MPD should be estopped from arguing that direct dealing was not properly pleaded because in PERB Case 09-U-50, MPD filed exceptions to the Hearing Examiner's Report and Recommendation in that matter asserting direct dealing was not properly pleaded in 09-U-50 but instead had been properly pleaded in this case.

Fifth, FOP raises an exception to the Hearing Examiner's finding that MPD did not engage in direct dealing or bypass the union in violation of the CMPA.[27] In this regard, FOP states that Hearing Examiner Arline Pacht found in PERB Case No. 09-U-50 that MPD engaged in direct dealing in the instant case by directly dealing with Sergeant Robert Alder regarding the date of eligibility for the promotional examinations in violation of the CMPA in this case and PERB should adopt that finding in this case.

III. MPD Response to FOP Exceptions.

First, in response to FOP's assertion that the Hearing Examiner erred in finding that MPD did not refuse to bargain, MPD states that FOP never requested to bargain after its March 25, 2009 proposals were rejected as non-negotiable. In addition, MPD also states that FOP submitted no other proposals for consideration.

Second, in response to FOP's assertion that it did not waive its right to bargain over the proposed changes to the bargaining process, MPD says that FOP is merely disagreeing with the Hearing Examiner's finding. Citing *American Federation of Government Employees, Local 631, Police Department Labor Committee v. District of Columbia Water and Sewer Authority*,[28] MPD states the "[…]Board has consistently held that mere disagreement with the Hearing Examiner's findings of fact do not constitute a valid exception or support a claim of reversible error. MPD points out that FOP acknowledges in its Exceptions that the Hearing Examiner applied the correct "clear and unmistakable" waiver standard but it disagrees with the Hearing Examiner's conclusion.

[25] R&R at 5.
[26] R&R at 5.
[27] R&R at 6.
[28] 59 D.C. Reg. 6050, Slip Op. No. 1008 at 10, PERB Case No. 08-U-48 at 8 (2012). See also, *Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496, PERB Case No. 95-U-20 (1996).

Third, in response to FOP's assertion that the Hearing Examiner erred in finding that its training and educational proposals were not appropriate issues for impact and effects bargaining, MPD states again that FOP is merely disagreeing with the Hearing Examiner.[29] MPD states further that FOP's proposals including additional training and education were not impact and effects proposals and MPD had no obligation to bargain over FOP's unrelated proposals.

Fourth, in response to FOP's objection to the Hearing Examiner's finding that FOP did not properly put MPD on notice of the direct dealing and bypassing the Union allegation, MPD states FOP was merely repeating post hearing brief arguments and disagreeing with the Hearing Examiner's findings.[30] MPD points out that PERB has not adopted a "notice pleading" standard as urged by the FOP but requires the FOP to include all the legal and factual claims alleged to have been violated in the Complaint.

Fifth, in response to FOP's exception to the Hearing Examiner's finding that MPD did not engage in direct dealing and bypassing the union in violation of the CMPA, MPD says that FOP's reliance on statements by the Hearing Examiner in PERB Case No. 09-U-50 is misplaced. In that case, there was no allegation that Sergeant's Alder's memorandum was direct dealing, thus it is inappropriate to rely on the Hearing Examiner's statement. In addition, MPD states that FOP's mere disagreement with the Hearing Examiner's interpretation of evidence is not a proper basis to overturn the Hearing Examiner's decision.

IV. Analysis

A. *MPD fulfilled its duty to bargain*.

Under D.C. Official Code § 1-618.8 agencies may exercise certain management rights that are non-negotiable. The Board has held, however, that under D.C. Official Code § 1-618.8(a) management's rights do not relieve an agency of its obligation to bargain with the exclusive representative of its employees over the impact and effects of, and procedures concerning, the implementation of management right decisions.[31] "It is well-settled Board precedent that when a union requests impact and effects bargaining, an agency is required to bargain before implementing the change."[32] In *American Federation of Government Employees, Local 631 v. District of Columbia Department of General Services*[33], policies concerning management rights about criminal background checks, traffic record checks and drug and alcohol testing for safety sensitive positions were at issue. The Board found among other things that when the D.C. Department of General Services responded point by point to Petitioner's proposals by a letter, without any face-to-face meetings, that DGS did not fail to bargain in good faith.[34] The Decision and Order was upheld by the District of Columbia Superior Court.[35]

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[29] Id.
[30] Id.
[31] *IBPO, Local 446, AFL-CIO v. D.C. General Hospital, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994).*
[32] Id.
[33] 60 D.C. Reg. 12068 (2013), Slip Op. No. 1401, PERB Case No. 13-U-23 (July 29, 2013). Affirmed *Civil Case No. 2013 CA 005870(July 30, 2015).*
[34] Id. at 7-8.

FOP cited *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*[36] holding that "PERB has held that once an agency begins the bargaining process, it must continue to bargain in good faith and cannot terminate bargaining by asserting that the rights at issue are non-negotiable management rights." In that case, MPD initiated negotiations about management rights and invited FOP to submit proposals in a situation where the existing collective bargaining agreement contained a provision that restricted management's right to assign work. MPD submitted a counterproposal and then refused to bargain over the proposals asserting that they infringed upon management rights. In that case, the Board said "MPD should not invoke its management rights to justify its unilateral termination of impact and effects bargaining once it engaged in that process."[37] Under the unique circumstances of that case, the Board held that MPD could not lawfully terminate bargaining at that point in the process, with MPD's counterproposal still on the table to be discussed. To the extent that FOP seems to believe that impact and effects bargaining must proceed to impasse, the Board has held that an agency does not violate its duty to bargain in good faith just because the parties do not reach an agreement.[38]

In this case, after one bargaining session, FOP submitted proposals that MPD believed exceeded the scope of impact and effects bargaining and were thus considered non-negotiable. MPD's response was not a refusal to bargain. It expressed MPD's position on FOP's proposals. Notwithstanding FOP's protestations that its proposals were an extension of impact and effects bargaining, the Hearing Examiner found that the proposals "exceed[ed] the scope of permissible impact and effect proposals."[39] Additionally, the impact and effects bargaining was initiated by FOP and it did not seek further bargaining after receiving MPD's response to its proposals. In the absence of a timely request to bargain by the union, an agency does not violate the CMPA by not engaging in bargaining.[40]

Because MPD responded to FOP's subsequent proposals as non-negotiable and beyond the scope of impact and effects bargaining, MPD responded to everything that was presented for consideration by FOP. There is no evidence that FOP sought to engage in further bargaining or that MPD refused to bargain as alleged by the union. Consequently, we conclude that because there was impact and effects bargaining between FOP and MPD on March 19, 2009, MPD did not prematurely terminate impact and effects bargaining with FOP.

B. MPD did not violate the Act by unilaterally making changes in the promotional process.

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[35] Id.
[36] 60 DC Reg. 9212 (2013), Slip Op. No. 1391, PERB Case Nos. 09-U-52 & 09-U-53 (May 28, 2013)
[37] Id. at 23. The Board observed in fn 4 regarding management rights under the 2005 amendment to the CMPA that "management may not repudiate any previous agreement concerning management rights during the term of the agreement."
[38] *AFGE, Local 383 v. D.C. Department of Disability Services*, 59 D.C. Reg. 10771 (2012), Slip Op. No. 1284 at 4, PERB Case No. 09-U-56 (June 21, 2012). See also, *American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO and D.C. Child and Family Services Agency*, 61 D.C. Reg. 12856 (2014), Slip Op. No. 1497, PERB Case No. 10-I-06 (November 20, 2014).
[39] R&R at 5.
[40] *D.C. Nurses Association v. D.C. Department of Mental Health*, 59 D.C. Reg. 9763, Slip Op. No. 1259, PERB Case No. 12-U-14 (2012).

PERB has held that a party may contractually waive its right to bargain about a subject. The D.C. Superior Court has noted that a party to a CBA can waive a statutory right through clear and unmistakable language in the agreement.[41] The Board has held that a waiver of a right to bargain must be clear and unmistakable.[42]

The Hearing Examiner found that "the Respondent did not violate the Act with respect to its unilateral implementation of the time-in-grade requirements and methods of evaluating and determining qualifications for promotional examinations for sergeants, lieutenants' [sic] and captains."[43] Relevant provisions of the CBA include the right to "direct the employees in the Department," to "alter, rearrange, change, extend, limit or curtail its operations or any part thereof," to "determine the qualifications of employees for appointment and promotion," and to "formulate, change or modify Department rules, regulations and procedures."[44] As stated by the Hearing Examiner, these "provisions of the management rights clause taken together explicitly authorized the Respondent's unilateral action" to make changes to the promotional process.

Specifically, Article 4 of the CBA, which is the management rights clause, states in pertinent part:

> "The Department shall retain the sole right, authority, and complete discretion to maintain the order and efficiency of the public service entrusted to it, and to operate and manage the affairs of the Metropolitan Police Department in all aspects including, but not limited to, all rights and authority held by the Department prior to the signing of this agreement. Such management rights shall not be subject to the negotiated grievance procedure or arbitration. The Union recognizes that the following rights, when exercised in accordance with applicable laws, rules and regulations, which in no way are wholly inclusive, belong to the Department: …
> 4. To hire, promote, transfer, assign and retain employees in positions in the Department; …
> 7. To determine the qualifications of employees for appointment, promotion, step increases, and to set standards of performance, appearance and conduct;"[45]

In its exceptions, FOP states that it did not clearly and unmistakably waive its right to bargain over the changes in the promotional process. By that, FOP appears to assert that there was not an explicit management right addressing the promotional process. Such specific language is not required as the Hearing Examiner suggested above when he stated that several

[41] *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, Slip Op. No. 1478, PERB Case No.07-U-10 (June 9, 2014)
[42] *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia,* 41 DC Reg. 1585 (1994), Slip Op. No. 297 at p. 5, PERB Case No. 90-U-23 (March 17, 1992).
[43] R&R at 5.
[44] R&R at 5.
[45] CBA, Article 4, Management Rights, page 2.

provisions of the management rights clause taken together authorize unilateral action by management.

C. The Hearing Examiner relied on contract language in the CBA and concluded that setting promotion qualifications is a management right and that FOP clearly and unmistakably waived its right to bargain on that issue. Based on our review of the record, we agree with the Hearing Examiner and find that Respondent did not violate the Act by unilaterally making changes in the promotional process without first bargaining with the Union.

C.*FOP's proposals exceeded the scope of permissible impact and effects bargaining.*

The Board has held that "an exercise of management rights does not relieve the employer of its obligation to bargain with respect to impact and effect, and procedures concerning the exercise of the management rights decisions."[46] In this case, FOP communicated its desire to engage in bargaining.[47] MPD accepted FOP's request to bargain. It is undisputed in the record that the parties held an impact and effects bargaining session on March 19, 2009.

Thereafter, the FOP requested information related to the promotion process and made significant proposals about how MPD should train its officers so they would have a better understanding of labor relations, MPD regulations, supervisory skills, administrative processes, public speaking and writing skills. In addition, FOP wanted lieutenants to remain in grade for seven years before being eligible to sit for the captain's examination. These are not subjects that flow naturally from proposed changes to the time-in-grade requirements for promotion. Training of officers is related to job performance after senior level officers have been promoted, and not impact and effects bargaining about the promotional process. Impact and effects bargaining, here, should be about the proposed changes to the promotional process and not any other subject about which FOP desired to bargain.

FOP's argument that the union's training and education proposals are not covered by the management rights clause is irrelevant. The point is that training and education is not a proper subject of impact and effects bargaining relative to the proposed change in the promotional process. Cases cited by FOP do not make this distinction, do not address the impact and effects situation, and do not apply in this proceeding. Consequently, we conclude that MPD was correct when it did not respond to FOP's training proposals.

There was impact and effects bargaining between the parties. There is no requirement that agreement be reached or that there be continuing sessions. It appears FOP wanted to continue to bargain about other terms in the contract and wanted to use impact and effects

[46]AFGE, Local 1403 v. District of Columbia Office of Corporate Counsel, Slip Op. No. 709 at p.6, PERB Case No. 03-N-02 (July 25, 2003); *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital, 41 D.C. Reg. 232 (1994)1, Slip Op. No. 312 at p. 3, PERB Case No. 91-U-06 (May 27, 1992). Washington Teachers Union, Local 6, AFL-CIO v. District of Columbia Public Schools, 38 DCR 2654 (1991), Slip Op. No. 271, PERB Case No. 90-U-28 (April 2, 1991).*

'[47] The record is clear that FOP made a timely request to engage in impact and effects bargaining as is required by *District of Columbia Nurses Association v. District of Columbia Department of Mental Health*, 59 D.C. Reg. 9763, Slip Op. No. 1259, PERB Case No. 12-U-14 (April 25, 2012).

bargaining to try to reopen the contract.[48] A proposal that is not within the scope of impact and effects bargaining is non-negotiable.[49] Further, the training of lieutenants and captains has nothing to do with FOP unit members. In light of the above, MPD engaged in impact and effects bargaining with FOP, before implementing changes to a management right and thus did not violate Section 1-617.04(a)(1) and (5). Therefore, the Complaint as to this issue was denied by the Hearing Officer. We agree.

D. FOP's Complaint did not adequately put MPD on notice that it was being charged with direct dealing and bypassing the union.

PERB Rule 520.3(d) requires a complaint to have a "clear and complete statement of the facts constituting the alleged unfair labor practice , including date, time and place of occurrence of each particular act alleged, and the manner in which D.C. Official Code 1-618.4 of the CMPA is alleged to have been violated." The Board may not rule on allegations that are not properly before it.[50]

FOP claimed that the complaint's language in paragraphs 3, 15 and 16[51] placed MPD on notice that it was being charged with a violation. FOP considered MPD's failure to refer Sergeant Alder's "Request for reconsideration of the eligibility requirements for the 2009 Promotional Process," to the union and its subsequent approval of the request was direct dealing with a unit member and bypassing the union, and was an unfair labor practice in violation of D.C. Official Code §1-617.04(a).

The Hearing Examiner found that "the term 'improper interference' and repeated references to the term refusal to bargain, did not adequately provide the Respondent with notice that it was being charged with direct dealing and bypassing the Union." The Hearing Examiner further noted that "the ULP Complaint does not contain any language that the Respondent is being charged with direct dealing with a bargaining unit employee and bypassing the Union."[52]There was no language that connected the "improper interference" mentioned in Paragraph 3 to the statements of fact in Paragraphs 15 and 16. In fact, the "improper interference" reference in Paragraph 3 specifically states "improper interference with Complainant's rights to participate in negotiating the training and time-in-grade requirements

[48] Id. See also *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 454-5, 77 S. Ct. 912, 916-17 (June 3, 1957) – Contract will not be abrogated because one party is unhappy with a term and would prefer to negotiate a better arrangement.
[49] *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections,* 49 DC Reg. 11141 (2002), Slip Op. No. 692, PERB Case No. 01-N-01 (September 30, 2002).
[50] *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department,* 61 DC Reg. 8003 (2014), Slip Op. No. 1316 at pp. 5-6, PERB Case No. 09-U-50 (August 24, 2012).
[51] ¶ 3 "… Respondent's refusal and failure to bargain and improper interference with Complainant's rights to participate in negotiating the training and time-in-grade requirements and methods of evaluating and determining qualifications for promotional examinations …"
¶ 15 "On May 1, 2009, Detective Sergeant Robert Alder, requested a special exception to the 4-2-1 year rule for the 2009 Promotional Process to enable thirty sergeants to be eligible to participate in the 2009 Promotional Process."
¶ 16 "On May 6, 2009, without bargaining, the MPD unilaterally changed the 4-2-1 rule to allow the exception requested by Detective Sergeant Robert Alder."
[52] R&R at 5-6.

and methods of evaluating and determining qualifications for promotional examinations presently scheduled to be administered on July 29, 2009." There is no mention of direct dealing or bypassing the union. FOP made the same arguments to the Hearing Examiner in its post hearing brief. Absent sufficient notice in the complaint to MPD and the Hearing Examiner about what was being alleged to be a violation, PERB is prohibited from considering the matter.[53] FOP seemed to be of the belief that with various elements of the charge at different places in the Complaint, the MPD should have been able to see the connection. We agree with the Hearing Examiner that the terms in the Complaint do not provide adequate notice.

PERB upholds Hearing Examiner's findings and conclusions when they are reasonable, supported by the record, and consistent with precedent. A mere disagreement with the Hearing Examiner's findings is not a basis for a reversal of findings that are fully supported in the record. The Board concludes MPD did not violate CMPA because FOP did not clearly state in its Complaint that MPD was being charged with direct dealing and bypassing the union.[54]

Finally, FOP asserts that language by a Hearing Examiner in an unrelated case should resolve the issue of notice to the MPD in this case. Hearing Examiner Arline Pacht in PERB Case No. 09-U-50 found that MPD engaged in direct dealing in the instant case by receiving a May 1, 2009 communication from Sgt. Robert Alder and responding to it without communicating with FOP. That case concerned a May 21, 2009 email that the Chief of Police sent to the entire police force, and not the May 1, 2009 letter from Sgt. Alder and MPD's subsequent action of expanding the eligibility dates for the promotional examination that is the subject of the instant case. The Board declined to adopt Hearing Examiner Pacht's recommendation that MPD had violated the CMPA by expanding the eligibility dates after responding to Sgt. Alder's memorandum because there was no such allegation in that complaint. Accordingly, FOP's reliance on the Hearing Examiner's unsupported statement in that case does not help it here.

V. Conclusion

Based on the foregoing, FOP's allegations that MPD refused to bargain and to negotiate about the training, time-in-grade requirements, and methods of evaluating and determining qualifications for promotional examinations and that it refused to engage in impact and effects bargaining are dismissed.

We agree with the Hearing Examiner that there was no violation of the Act concerning direct dealing or bypassing the Union because the allegation was not properly raised in the Complaint.

ORDER

[53] Id. See also, *Gina H. Douglas v. Sharon Pratt Dixon and The American Federation of State, County and Municipal Employees, District Council 20*, Slip Op. No. 315, PERB Case No. 92-U-03 (June 10, 1992).
[54] Also in its Exceptions, FOP sought to address the merits of whether MPD engaged in direct dealing and bypassing the union in violation of the CMPA. In view of the finding that this allegation was not properly pleaded, the matter is moot and there is no need to consider MPD's behavior. *AFGE v. DC PERB*, Case No. 2013 CA 005870 P (MPA)(D.C. Sup. Ct. Jul 30, 2015) at 6.

IT IS HEREBY ORDERED THAT:

1. Petitioner's unfair labor practice complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Keith Washington, Yvonne Dixon and Ann Hoffman.

October 29, 2015

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-34, Opinion No. 1552, was served by File & ServXpress on the following parties on this the 4th day of November, 2015.

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/s/ Sheryl Harrington

PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Complainant,	PERB Case Nos. 12-U-05, 12-U-10, and 13-U-28
	Opinion No. 1553
v.	
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Before the Board are three consolidated unfair labor practice cases, case numbers 12-U-05, 12-U-10, and 13-U-28, in which the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") alleges that the Metropolitan Police Department ("MPD") did not respond to requests for information. The Director consolidated the cases for hearing along with a fourth case, case number 11-U-20. In addition to an information request, that case involved a claim of retaliation against protected union activity and a claim of interfering, coercing, or restraining an employee in the exercise of protected rights. Case number 11-U-20 will be the subject of a separate decision and order.

In each of the consolidated cases, FOP requested information related to investigations conducted by MPD's Internal Affairs Division ("IAD"). FOP filed with the Board requests for subpoenas duces tecum, seeking documents generally the same as those sought by the requests for information, and MPD moved to quash the subpoenas. Those requests and motions were referred to the hearing examiner.

Following a hearing held on December 12, 2014, and briefing by the parties, the hearing examiner submitted his Report and Recommendations on April 28, 2015. MPD submitted exceptions to the Report and Recommendations, and FOP submitted an opposition to MPD's exceptions. The hearing examiner's Report and Recommendation, MPD's exceptions, and FOP's opposition are before the Board for disposition.

II. Discussion

A. Standard for Requests for Information

An agency has an obligation to furnish information a union requests that is both relevant and necessary to the union's role in processing a grievance, in pursuing an arbitration proceeding, or in collective bargaining. Failure to do so is an unfair labor practice.[1] Applying this standard, the hearing examiner found that MPD committed unfair labor practices by failing to respond to requests for information in case numbers 12-U-05 and 12-U-10 but not in case number 13-U-28.

B. Case Number 12-U-05

On July 28, 2011, Delroy Burton, who was then FOP's executive steward, submitted to MPD requests for certain information regarding any investigations of sworn members' use of non-authorized vehicles, all complaints initiated or requested by Director Thomas Wilkins, and all investigations initiated or requested to be opened by Assistant Chief Michael Anzallo. On that same date, FOP also submitted a Freedom of Information Act ("FOIA") request for most of the same items.[2] MPD admitted that it failed to provide any information in response to the information request.[3] At the hearing, Burton testified that the chairman of FOP was the subject of an investigation into a complaint that he was observed making a traffic stop in an unmarked vehicle. The information requested was needed for purposes of comparison, for *Douglas*-factor analysis, and for a proper defense of the chairman.[4] The hearing examiner stated that the relevance and necessity of this request for information "is self-evident."[5]

MPD argued as a defense that FOP requested the same documents through FOIA and "as a result of the FOP's FOIA action, the MPD produced responsive, voluminous and time intensive information."[6] The hearing examiner rejected MPD's defense, stating that FOP has the right to duplicate its request by using other means provided by laws regarding governmental obligations to respond to requests for information. In its exceptions, MPD replies that it does not deny FOP's right to use all available laws, but its defense is that MPD's FOIA response was also responsive

[1] *Washington Teachers' Union, Local No. 6 v. D.C. Pub. Sch.*, 61 D.C. Reg. 1537, Slip Op. 1448, PERB Case No. 04-U-25 (2014).
[2] Report & Recommendations 9-10; MPD Ex. 4; MPD Ex. 5.
[3] Answer 12-U-05 ¶ 4.
[4] Tr. 34.
[5] Report & Recommendations 25.
[6] Report & Recommendations 11.

to the request for information. MPD argues that it "should not be obligated to duplicate its response as that would be an unnecessary misuse of governmental resources."[7]

Citing *Psychologists Union, Local 3758 v. D.C. Department of Mental Health*,[8] FOP asserts that it should not be forced to undertake a time-consuming effort to look elsewhere for information in the employer's possession. FOP argues that MPD's production of documents as a result of expensive FOIA litigation is not a defense to MPD's unfair labor practice of failing to respond to the information request in question. The Board agrees. MPD's subsequent production of the information in response to a court order[9] after giving no response to FOP's request goes to the appropriate remedy, not to the issue of whether there was a violation. MPD's admitted failure to respond and FOP's proof of the relevance and necessity of the information established the violation.

As to the remedy, it is proper to require MPD to post a notice of its violation, to cease and desist from further violations, and to pay reasonable costs, as the hearing examiner recommended, but MPD will not be ordered to provide information it has already provided.[10] The FOIA request contains all seven items in the request for information plus three more.[11] It is undisputed that MPD complied with the FOIA request.[12]

C. **Case Number 12-U-10**

On March 10, 2011, Burton filed a grievance stating that IAD did not permit Shop Steward Officer Benjamin Fetting to represent Officers Andrew Zabavsky and José Rodriguez at an interview.[13] On or about September 8, 2011, Burton sent a letter to Commander LoJacono requesting information related to the investigation of and allegations against Officers Fetting, Rodriguez, and Zabavsky. On September 27, 2011, MPD delivered to Burton a letter stating that his request cannot be considered until the three officers designated him as their representative as required by section 3112.11 of the District Personnel Manual (DPM).[14]

Burton testified that the requested information was relevant and necessary for FOP to defend the three officers in pending disciplinary actions.[15] The hearing examiner found that those actions were "directly related to the RFI."[16]

The hearing examiner rejected MPD's ground for declining to respond:

[7] Exceptions 8.
[8] 54 D.C. Reg. 2644, Slip Op. No. 809 at p. 6, PERB Case No. 05-U-41 (2005).
[9] MPD Ex. 7 ¶ 7(Declaration of Teresa Quon Hyden).
[10] *See Walter N. Yoder & Sons, Inc. and Sheet Metal Workers Int'l Ass'n, Local Union 100*, 270 N.L.R.B. 652, 652-53 (1984).
[11] MPD Ex. 4; MPD Ex. 5.
[12] MPD Ex. 7 (Declaration of Teresa Quon Hyden); Tr. 35 (testimony of Delroy Burton).
[13] MPD Ex. 15.
[14] Complaint 12-U-10 ¶¶ 1-3; Answer 12-U-10 ¶¶ 1-3.
[15] Report & Recommendation 12.
[16] Report & Recommendation 25.

> DPM § 3112.11 provides that copies of reports of investigation shall be furnished to the subject of an investigation or to his or her representative. These personnel regulations do not, and cannot, constrain the FOP's statutory right to information necessary and relevant to the Union's role as the exclusive representative or its duty to represent Rodriguez, Zabavsky and Fetting in the instant case. DPM § 3112.11 is a personnel regulation and not statutory as is the CMPA. Simply stated, since FOP holds the certification as the exclusive representative for all members of the bargaining unit, DPM § 3112.11 cannot be read or applied so as to limit any FOP statutory rights to relevant and necessary information under the CMPA.[17]

In addition, the hearing examiner found that the record showed that Rodriguez and Zabavsky designated FOP in writing to represent them in the grievance that was the basis of the request for information.[18] The hearing examiner recommended that the Board sustain the complaint "and grant FOP's *Notice of Deposition Duces Tecum*, Case No. 12-U-05."[19]

In its exceptions, MPD asserted that D.C. regulations requiring written authorization of the member involved in an investigation are derived from the CMPA, which provides

> All official personnel records of the District government shall be established, maintained, and disposed of in a manner designed to ensure the greatest degree of applicant or employee privacy while providing adequate, necessary, and complete information for the District to carry out its responsibilities under this chapter. Such records shall be established, maintained, and disposed of in accordance with rules and regulations issued by the Mayor.[20]

Section 3112.11 of the DPM requires copies of investigatory reports to "be furnished upon request to the subject of investigation or to his or her representative designated in writing." Section 3112.14 prohibits the Office of Personnel or an independent personnel authority from making such a report "available to the public, to witnesses, or, except as provided in this section, to the parties concerned in the investigation."

Like the confidentiality provisions, MPD continues, the duty of an agency to provide information upon request is also derived from the CMPA, but, unlike the CMPA it is not derived from an explicit statement of that duty. Rather, the duty to provide information is derived from section 1-617.04(a)(5), which prohibits the District, its agents, and representatives from refusing

[17] Report & Recommendation 26.
[18] Report & Recommendation 26 (citing FOP Ex. 15).
[19] Report & Recommendation 30.
[20] D.C. Official Code § 1-631.01.

to bargain in good faith.[21] "Reading these two portions of the CMPA and their derivative rights and obligations show[s] that they are not in conflict," MPD asserts.

MPD further asserts that, in the grievance Burton submitted, Officers Rodriguez and Zabavsky authorized Burton to represent them "in this grievance" only. The authorization does not state that it extends to other matters or extends forever. The grievance does not contain an authorization from Officer Fetting.[22] On April 28, 2011, Zabavsky sent Commander LoJacono a letter notifying him that Fetting would represent him and that Fetting has Zabavsky's permission to view his records.[23]

Citing PERB opinion numbers 1302 and 1521,[24] FOP replied that "PERB has already explicitly ruled that DPM § 3112.11 is not a proper basis for denying an information request and Hearing Examiner Rogers properly found that the MPD's denial of the information request in this matter, relying solely on DPM § 3112.11, constitutes an unfair labor practice."[25] On the issue of whether FOP provided authorizations, FOP notes that section 3112.11 does not contain a provision limiting how long an authorization lasts, as Commander LoJacono acknowledged.[26] The hearing examiner made a factual determination that the authorization continued and covered the investigation.

Contrary to FOP's characterization, PERB opinion numbers 1302 and 1521 do not establish a blanket rule that sections 3112.11 and 3112.14 are not a proper basis for denying an information request. FOP quoted opinion number 1302 wherein the Board stated that "an employer's claim of confidentiality will *generally* not stand scrutiny once information is proven to be relevant and necessary to a union's legitimate collective bargaining functions."[27] The Board went on to say, "This determination is generally to be decided on a case by case basis. . . ."[28] Both cases cited by FOP recognize, as the Board has consistently held, that a union's right to information "has always been balanced against confidentiality concerns."[29] The test is "whether the information sought is relevant and necessary to the union's legitimate collective bargaining functions and whether this need is outweighed by privacy concerns."[30]

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[21] Exceptions 10.
[22] Exceptions 10-11.
[23] MPD Ex. 12.
[24] *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 59 D.C. Reg. 11371, Slip Op. No. 1302, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16 (2012); *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 62 D.C. Reg. 11756, Slip Op. No.1521, PERB Case Nos. 07-U-40, 08-U-28, 08-U-34, 08-U-37, 08-U-39, 08-U-50, 09-U-11 and 09-U-40 (2015).
[25] Opp'n to Exceptions 10.
[26] Tr. 148-49.
[27] *F.O.P./Metro. Police Dep't Labor Comm.*, Slip Op. No. 1302 at 2 (emphasis added).
[28] *Id.*
[29] *D.C. Nurses Ass'n v. Mayor of D.C.*, 45 D.C. Reg. 6736, Slip Op. No. 558 at 5, PERB Case Nos. 95-U-03, 97-U-16, and 97-U-28, (1998).
[30] *Univ. of D.C. Faculty Ass'n v. Univ. of D.C.*, 36 D.C. Reg. 3333, Slip Op. No. 215 at p. 3, PERB Case No. 88-U-16 (1989), quoted in *F.O.P./Metro. Police Dep't Labor Comm.*, Slip Op. No. 1302 at 22, and *F.O.P./Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, Slip Op. No. 1521 at 3.

The hearing examiner did not apply either prong of this test. Instead, he erroneously stated that "[t]hese personnel regulations do not, and cannot, constrain the FOP's statutory right."[31] Actually, these personnel regulations protecting confidentiality can constrain FOP's statutory right if the test is not satisfied in a given case.

With regard to the first prong of the test, the hearing examiner did not expressly find that the requested information is relevant and necessary to the union's legitimate collective bargaining functions. But he did find that "[t]he officers are members of the FOP bargaining unit and Rodriguez and Zabavsky were grievants represented by FOP in disputes directly related to the RFI." This finding supports a conclusion that FOP's request for documents related to the investigation of and allegations against Rodriguez and Zabavsky were relevant and necessary to processing a grievance. Officer Fetting, however, was not one of the grievants. There is no evidence in the record that he was investigated or that allegations were made against him. Perhaps for this reason FOP, in its request for a subpoena, seeks information related to Officers Rodriguez and Zabavsky but not Officer Fetting. FOP did not prove the relevance and necessity of its request for documents related to an investigation of and allegations against Fetting.

With regard to the second prong of the test—balancing the union's legitimate collective bargaining functions against privacy concerns—the Board notes that Rodriguez and Zabavsky authorized FOP to represent them in their grievance. Even if MPD were correct that this authorization does not satisfy section 3112.11, the authorization establishes that the privacy concerns in this case are minimal or nonexistent. And on the other hand, "the information sought goes to the heart of the alleged . . . violation. Thus, the need of the Union for the information clearly outweighs the confidentiality concerns expressed by [MPD]."[32] Upon review of the record, the Board concludes that the test is satisfied.

Moreover, the hearing examiner's finding that the designation of a representative by Officers Rodriguez and Zabavsky "clearly satisfied DPM § 3112.11" is supported by the record.

As noted, the requested subpoena duces tecum, which the hearing examiner recommends issuing, seeks documents related to Officers Rodriguez and Zabavsky only. This recommendation is reasonable, supported by the record, and consistent with Board precedent.

D. Case Number 13-U-28

On January 10, 2013, Burton submitted a request for information concerning an investigation of Lieutenant Michael Lockerman. The investigation resulted from a complaint that Lieutenant Lockerman made a derogatory comment about sergeants in MPD's Court Liaison Division. On January 18, 2013, Inspector Brian Grogan responded by stating that he could not comply with the request because DPM § 3112.14 exempted the records from disclosure.

[31] Report & Recommendation 26.
[32] *Univ. of D.C. Faculty Ass'n v. Univ. of D.C.*, 36 D.C. Reg. 3333, Slip Op. No. 215 at p. 3, PERB Case No. 88-U-16 (1989)

Inspector Grogan advised, however, that the investigation had been closed with a finding of insufficient facts.[33]

At the hearing, Burton testified that the information was relevant and necessary to FOP's defense of Sergeant Arthur Hayes, who had received a notice of proposed adverse action following an IAD investigation of allegedly insubordinate remarks made to Lieutenant Lockerman at a staff meeting.[34]

In its post-hearing brief, MPD asserted that FOP did not have an authorization from Lieutenant Lockerman pursuant to DPM § 3112.11 and that DPM § 3112.14 precluded disclosure of Lockerman's investigation. MPD stated that in the hearing examiner's report and recommendation for PERB Case 08-U-13 the hearing examiner had said that "[w]hile the Union would not normally be entitled to information concerning MPD's discipline of management officials, under these unique and narrow facts the relevance and necessity of the . . . investigative reports . . . is self-evident."[35] In PERB Case 08-U-13, the misconduct of the management official was the same as that of the union member, but in the present case it is not, MPD argued.[36]

The hearing examiner stated that he did not find facts linking the investigation of Lockerman to the discipline of Hayes. "[T]he two investigations involved two separate incidents and two different allegations of misconduct."[37] Because of the dissimilarity of the misconduct, the hearing examiner did not accept FOP's claim that "Lockerman may serve as a ***comparator employee*** as regards the penalty Hayes received under MPD's analysis of *Douglas* factor 6."[38] The hearing examiner quoted the Merit Systems Protection Board's criteria for comparator employee: "The comparator employee must be in the same work unit, have the same supervisors, and the misconduct must be substantially similar."[39] The hearing examiner concluded that the requested information was not relevant and necessary to FOP's defense of Hayes and that MPD's denial of the request for information was not a violation of D.C. Official Code § 1-617.04(a). He recommended that the Board dismiss case number 13-U-28 with prejudice.[40]

Neither party filed exceptions to the hearing examiner's recommendation with regard to case number 13-U-28. The Board finds that his recommendation is reasonable, supported by the record, and consistent with Board precedent.

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[33] Report & Recommendation 15-17.
[34] Tr. 51-56; Report & Recommendation 16-17.
[35] Report & Recommendation 19.
[36] MPD Post-Hearing Br. 15-16; Report & Recommendation 18-19.
[37] Report & Recommendation 28.
[38] *Id.*
[39] *Id.* (quoting *Von Muller v. Dep't of Energy*, 2006 M.S.P.B. 176 (2002)).
[40] Paragraph 7 of the complaint quotes D.C. Code § 1-617.04(a) (2) and (3) but does not allege that those provisions were violated and does not allege any facts. The hearing examiner stated that FOP presented no facts or argument in support of these charges. Any allegation based upon D.C. Code § 1-617.04(a) (2) and (3) has been abandoned. Report & Recommendation 1 n.1

ORDER

IT IS HEREBY ORDERED THAT:

1. MPD shall cease and desist from refusing to bargain in good faith by failing to provide certain information and to timely provide other information requested by the Complainant in conjunction with the administration of the parties' collective bargaining agreement.

2. MPD shall furnish the Complainant with all documents requested in the subpoena duces tecum Complainant filed in Case No. 12-U-10.

3. MPD shall conspicuously post where notices to employees are normally posted a notice that the Board will furnish to MPD. The notice shall be posted within ten (10) days from MPD's receipt of the notice and shall remain posted for thirty (30) consecutive days.

4. MPD shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from receipt of the notice that it has been posted accordingly.

5. Upon request, MPD shall reimburse FOP for its reasonable costs in Case Numbers 12-U-05 and 12-U-10.

6. The complaint in Case 13-U-28 is dismissed with prejudice.

7. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairman Charles Murphy and Members Keith Washington, Ann Hoffman, and Yvonne Dixon

October 29, 2015
Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case Numbers 12-U-05, 12-U-10, and 13-U-28 is being transmitted to the following parties on this the 16th day of November 2015.

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