

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council passes Law 21-91, Office of the Attorney General Personnel and Procurement Clarification Temporary Amendment Act of 2016
- D.C. Council passes Resolution 21-439, Wage Theft Prevention Clarification Congressional Review Emergency Declaration Resolution of 2016
- Department of Behavioral Health announces funding availability for substance abuse prevention centers in Wards 1, 2, 5, and 6
- Department of Energy and Environment establishes licensure and registration guidelines for wildlife control operators
- Department of Health solicits applications for the Fiscal Year 2016 Preventive Health and Health Services Block grant
- Office of the Deputy Mayor for Planning and Economic Development solicits real estate developers for the Crummell School Site
- District Department of Transportation announces funding availability for the Fiscal Year 2017 Highway Safety Behavioral Grant Program

# DISTRICT OF COLUMBIA REGISTER

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ADMINISTRATOR

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## COUNCIL OF THE DISTRICT OF COLUMBIA

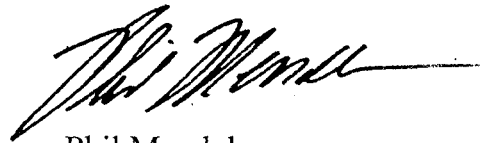
## NOTICE

## D.C. LAW 21-91

**"Office of the Attorney General Personnel and Procurement  
Clarification Temporary Amendment Act of 2016"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-525 on first and second readings December 15, 2015, and January 5, 2016, respectively. Following the signature of the Mayor on January 21, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-275 and was published in the January 29, 2016 edition of the D.C. Register (Vol. 63, page 989). Act 21-275 was transmitted to Congress on February 3, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-275 is now D.C. Law 21-91, effective March 23, 2016.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

February	3, 4, 5, 8, 9, 10, 11, 12, 22, 23, 24, 25, 26, 29
March	1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22

## COUNCIL OF THE DISTRICT OF COLUMBIA

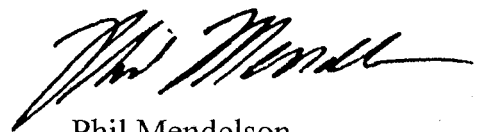
## NOTICE

## D.C. LAW 21-92

**"Washington Metropolitan Area Transit Authority Safety  
Regulation Temporary Amendment Act of 2016"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-534 on first and second readings December 15, 2015, and January 5, 2016, respectively. Following the signature of the Mayor on January 21, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-276 and was published in the January 29, 2016 edition of the D.C. Register (Vol. 63, page 991). Act 21-276 was transmitted to Congress on February 3, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-276 is now D.C. Law 21-92, effective March 23, 2016.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

February	3, 4, 5, 8, 9, 10, 11, 12, 22, 23, 24, 25, 26, 29
March	1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22



## COUNCIL OF THE DISTRICT OF COLUMBIA


## NOTICE

## D.C. LAW 21-93

**"Microstamping Implementation Temporary  
Amendment Act of 2016"**

As required by Section 412(a) of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 21-537 on first and second readings December 15, 2015, and January 5, 2016, respectively. Following the signature of the Mayor on January 21, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-277 and was published in the January 29, 2016 edition of the D.C. Register (Vol. 63, page 993). Act 21-277 was transmitted to Congress on February 3, 2016 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 21-277 is now D.C. Law 21-93, effective March 23, 2016.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

February	3, 4, 5, 8, 9, 10, 11, 12, 22, 23, 24, 25, 26, 29
March	1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22

## ENROLLED ORIGINAL

## A RESOLUTION

21-438

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to create a rebate program for the installation and registration of a security camera system on the exterior of a building owned or leased as a residence, business, nonprofit, or religious institution, and to establish a special fund to implement the rebate program.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Private Security Camera Incentive Program Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) On January 5, 2016, the Council passed the Private Security Camera Incentive Program Emergency Act of 2016, effective January 15, 2016 (D.C. Act 21-274; 63 DCR 803) (the “emergency legislation”), to create a rebate program for the installation and registration of a security camera system on the exterior of a building owned or leased as a residence, business, nonprofit, or religious institution, and to establish a special fund to implement the rebate program.

(b) On February 2, 2016, the Council passed a temporary version of the emergency legislation, the Private Security Camera Incentive Program Temporary Act of 2016, enacted on February 18, 2016 (D.C. Act 21-318; 63 DCR 2208) (the “temporary legislation”), with amendments.

(c) On March 1, 2016, the Council passed the Neighborhood Engagement Achieves Results Amendment Act of 2016, enacted on March 26, 2016 (D.C. Act 21-356; 63 DCR 4659) (the “permanent legislation”), which included, as subtitle K of title II, a permanent version of the temporary bill, with amendments to provide for a voucher program.

(d) This congressional review emergency is needed to ensure that there is no gap in the law between the expiration of the emergency legislation, which is set to expire on April 14, 2016, and the effective date of the temporary legislation, which is projected to become law on April 29, 2016.

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 Private Security Camera Incentive Program Congressional Review Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-439

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the Accrued Sick and Safe Leave Act of 2008 to clarify that employees in the building and construction industry covered by a bona fide collective bargaining agreement shall be exempted from the paid leave requirements of the act only if the agreement expressly waives those requirements; to amend the Minimum Wage Act Revision Act of 1992 to exempt an employer from keeping precise time records for bona fide executive, administrative, professional, as well as certain other, employees, to require an employer or a temporary staffing firm to provide notice regarding payment to an employee in a second language if the Mayor has made available a translation of the sample notice template in that second language and the employer knows that second language to be the employee's primary language or the employee requests notice in that second language, and to require the Mayor to make available, in any language required for a vital document under the Language Access Act of 2004, a translation of the sample template to be used by an employer or a temporary staffing firm when providing notice to an employee regarding payment; and to amend An Act To provide for the payment and collection of wages to continue to exempt an employer from paying wages to bona fide executive, administrative, and professional employees at least twice during each calendar month, provided that the employer pays wages to such employees at least once per month.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Wage Theft Prevention Clarification Congressional Review Emergency Declaration Resolution of 2016".

Sec. 2. (a) On July 14, 2014, the Council unanimously passed the Wage Theft Prevention Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-157; 61 DCR 10157) (the "Act"), to prevent employers' failure to pay earned wages through enforcement by the District and to create a private right of action for injured employees.

(b) Following the passage of the Act, the Council has identified several unintended consequences of the Act, including the requirement that all employees, including white-collar, salaried employees, be paid at least twice per month, the requirement that all employers keep records of the "precise time worked" each day and each workweek by all employees, and the requirement that an employer provide notice to an employee regarding payment in an

## ENROLLED ORIGINAL

employee's primary language, without providing a limit on the languages in which that notice must be furnished.

(c) It was not the Council's intent to require that white-collar, salaried employees be paid at least twice a month or to require an employer to keep records of the precise time worked by all employees, including those not compensated on an hourly or other unit-of-time basis. Further, requiring notice to be furnished in any language that might be an employee's primary language will be unnecessarily burdensome and costly.

(d) To address these unintended consequences, on February 3, 2015, the Council passed the Wage Theft Prevention Clarification Emergency Amendment Act of 2015, effective February 26, 2015 (D.C. Act 21-8; 62 DCR 2669) (the "initial emergency legislation"), and, on March 3, 2015, the Council passed the Wage Theft Prevention Clarification Temporary Amendment Act of 2015, effective June 4, 2015 (D.C. Law 21-2; 62 DCR 4552) (the "initial temporary legislation").

(e) Following the passage of the initial emergency legislation and the initial temporary legislation, it also has come to the Council's attention that the Act inadvertently deleted language allowing employees in the building and construction industry to bargain to waive the paid-leave requirements of the Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-131.01 *et seq.*), through a bona fide collective bargaining agreement from those paid-leave requirements, regardless of whether the agreement addresses sick leave. Blanket exemption of this group of employees from the paid-leave requirements was not the Council's intent.

(f) To prevent the provisions of the initial emergency legislation and the initial temporary legislation from expiring and to clarify that building and construction industry employees are not exempt from the paid-leave requirements of the Act, the Council, on January 5, 2016, passed the Wage Theft Prevention Clarification Emergency Amendment Act of 2016, effective January 27, 2016 (D.C. Act 21-291; 63 DCR 1207) (the "Emergency Act"), and, on February 2, 2016, passed the Wage Theft Prevention Clarification Temporary Amendment Act of 2016, enacted on February 18, 2016 (D.C. Act 21-322; 63 DCR 2220) (the "Temporary Act").

(g) The Emergency Act will expire on April 26, 2016, 3 days before the Temporary Act is projected to become law. A congressional review emergency is necessary to ensure that the provisions of the Emergency Act continue in effect, without interruption, until the Temporary Act becomes law.

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 Wage Theft Prevention Clarification Congressional Review Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-440

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to revise the salary limitation for the Chancellor of the District of Columbia Public Schools and to authorize the provision of certain employment benefits to the Chancellor.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Chancellor of the District of Columbia Public Schools Salary and Benefits Approval Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) Kaya Henderson was appointed Interim Chancellor of the District of Columbia Public Schools (“DCPS”) on November 1, 2010. On March 11, 2011, she was nominated to serve as Chancellor of DCPS and was unanimously confirmed by the Council on June 21, 2011. She has served as Chancellor continuously since that time.

(b) Over the past 5 1/2 years under Chancellor Henderson’s leadership, DCPS has realized dramatic improvements toward the goals of increasing District-wide math and reading proficiency, improving the proficiency rates of DCPS’ lowest-performing schools, increasing high school graduation rates, improving student satisfaction, and increasing DCPS’ overall enrollment.

(c) According to the National Assessment of Education Progress’s 2015 Trial Urban District Assessment results, DCPS continues to be the fastest-improving urban school district in the country. DCPS students grew by 8 points in 4th grade reading over the 2013 test, representing the biggest increase of any school district and the largest increase in the history of the 4th grade reading test. DCPS students also saw a 4-point increase in 4th grade math scores.

(d) The percentage of DCPS high school students who graduate in 4 years has increased by 6 percentage points, from 58% to 64%. Last school year, 52% more students took Advanced Placement exams compared to 5 years ago. Student satisfaction at DCPS has also vastly improved, going from 65% when Chancellor Henderson started in the role to 83% at the end of school year 2014-2015.

(e) Under Chancellor Henderson’s leadership, DCPS has increased its audited enrollment with 4 consecutive years of growth, enrolling the highest number of students in over 5 years. DCPS is on track to meet its goal of enrolling more than 50,000 students by 2017.

(f) Based on the dramatic improvements achieved under the steady leadership of the Chancellor over the last 5 1/2 years and the commitment to continuing the progress of DCPS, the

## ENROLLED ORIGINAL

Mayor has signed a new contract that increases the Chancellor's present salary and provides for certain employment benefits.

(g) There is an immediate need to approve the salary and benefits provided under the contract in order to ensure the retention of the Chancellor and to allow for the prompt payment of the negotiated salary. The Chancellor's previous contract has expired, and the new contract was signed effective January 2, 2016.

(h) On February 2, 2016, the Council passed the Chancellor of the District of Columbia Public Schools Salary and Benefits Approval Emergency Amendment Act of 2016, effective February 18, 2016 (D.C. Act 21-313; 63 DCR 2197) ("Emergency Act"). It expired on April 1, 2016.

(i) Temporary legislation, the Chancellor of the District of Columbia Public Schools Salary and Benefits Approval Temporary Amendment Act of 2016, enacted on March 3, 2016 (D.C. Act 21-323; 63 DCR 3652), was recently transmitted to Congress for the 30-day review period required by 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)). It is projected to become law on April 28, 2016, 27 days after the expiration of the Emergency Act.

(j) A congressional review emergency is needed to prevent a gap in the law as the Chancellor has already begun receiving the salary and benefits agreed to under the new contract and as provided in the Emergency Act.

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 Chancellor of the District of Columbia Public Schools Salary and Benefits Approval Congressional Review Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-441

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to clarify that a District government attorney, hearing officer, or administrative law judge who is required to be a member of the District of Columbia Bar as a prerequisite of employment shall file a Certificate of Good Standing from the Committee on Admissions of the District of Columbia Court of Appeals with the Department of Human Resources by December 15 of each year, to allow an attorney employed by the Council of the District of Columbia to file a Certificate of Good Standing with the Office of the Secretary to the Council of the District of Columbia, to allow the Director of the Department of Human Resources or the Secretary to the Council of the District of Columbia to verify good standing through electronic means, to clarify that the Director of the Department of Human Resources and the Secretary to the Council of the District of Columbia shall publish in the District of Columbia Register, on an annual basis, a list of all attorneys, hearing officers, and administrative law judges who have not met the Certificate of Good Standing filing requirement, and to authorize the Secretary to the Council of the District of Columbia to issue policy directives regarding timing, waiver, and notice of the Certificate of Good Standing filing requirement.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Certificate of Good Standing Filing Requirement Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) On December 17, 2014, the Council passed the District Government Certificate of Good Standing Filing Requirement Amendment Act of 2014, effective March 13, 2015 (D.C. Law 20-241; 62 DCR 1335) (the “2014 Act”), which clarified that hearing officers and administrative law judges are required to file a Certificate of Good Standing if their employment requires that they be members of the District of Columbia Bar. Previously, the law required only attorneys to file such certificates, but it was discovered in 2014 that certain administrative law judges and hearing officers were allegedly presiding over their cases without being in good standing with the District of Columbia Bar. In order to close this loophole, the Council passed the 2014 Act.

(b) Additionally, the 2014 Act transferred responsibility for collecting Certificates of

**ENROLLED ORIGINAL**

Good Standing from the District's Department of Human Resources ("DCHR") to the Board of Ethics and Government Accountability ("BEGA"). However, enforcement and regulatory authority remains with the DCHR. Thus, the 2014 Act created a bifurcated process in which one agency, BEGA, acts solely as a repository for the Certificates of Good Standing, but another agency, DCHR, is responsible for ensuring that attorneys, hearing officers, and administrative law judges comply with the law and is the agency with rulemaking authority. In order to streamline the process and to prevent duplicity, it is necessary to transfer collection authority back to DCHR.

(c) Further, section 881 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective July 25, 2002 (D.C. Law 14-182; D.C. Official Code § 1-608.81) (the "1978 Act"), requires attorneys employed by an independent agency to file certificates of good standing with DCHR if they meet the applicable requirements. The 1978 Act, confusingly, and incorrectly, defines the Council of the District of Columbia as an "independent agency."

(d) Accordingly, the 1978 Act required attorneys employed by the Council of the District of Columbia to file their Certificates of Good Standing with DCHR, which falls under the executive branch of the District government. This violates the spirit of separation of powers, as it requires legislative branch employees to report to an agency overseen by the executive branch. Thus, on January 5, 2016, the Council passed the Certificate of Good Standing Filing Requirement Emergency Amendment Act of 2016, effective January 27, 2016 (D.C. Act 21-289; 63 DCR 1202) (the "emergency legislation"), and on February 2, 2016, passed the Certificate of Good Standing Filing Requirement Temporary Amendment Act of 2016, enacted on February 18, 2016 (D.C. Act 21-320; 63 DCR 2215) (the "temporary legislation"), to clarify that an attorney employed by the Council of the District of Columbia who is required to file a Certificate of Good Standing shall file his or her certificate with the Office of the Secretary to the Council of the District of Columbia and not with DCHR.

(e) In order to further aid DCHR and the Office of the Secretary to the Council of the District of Columbia in streamlining this process, and to reduce the burden on the District of Columbia Court of Appeals, DCHR, and the Office of the Secretary to the Council of the District of Columbia, the emergency legislation and the temporary legislation further allow DCHR and the Office of the Secretary to the Council of the District of Columbia to verify the good standing of attorneys, hearing officers, and administrative law judges through electronic means.

(f) The emergency legislation will expire on April 26, 2016, 3 days before the temporary legislation is projected to become law. A congressional review emergency is necessary to ensure that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation becomes law.

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 Certificate of Good Standing Filing Requirement Congressional Review Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.



## ENROLLED ORIGINAL

## A RESOLUTION

21-442

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to approve the salary of the Director of the Homeland Security and Emergency Management Agency.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Director of the Homeland Security and Emergency Management Agency Salary Approval Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There is an immediate need to pass the Director of the Homeland Security and Emergency Management Agency Salary Approval Congressional Review Emergency Amendment Act of 2016 to approve a salary increase for Christopher Geldart to correspond with his skills, experience, and accomplishments as the director of the Homeland Security and Emergency Management Agency.

(b) This bill is necessary to prevent a gap in the law as the emergency legislation, the Director of the Homeland Security and Emergency Management Agency Salary Approval Emergency Amendment Act of 2016, effective March 23, 2016 (D.C. Act 21-353; 63 DCR 4641), expires on April 1, 2016.

(c) The Director of the Homeland Security and Emergency Management Agency Salary Approval Temporary Amendment Act of 2016, passed on 1st reading on March 1, 2016 (Engrossed version of Bill 21-0637) will be on the agenda for the April 5, 2016, legislative meeting for final reading, but it will not become law until after the expiration of the emergency legislation. This congressional review emergency legislation is therefore necessary to prevent a gap in the law.

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 Director of the Homeland Security and Emergency Management Agency Salary Approval Congressional Review Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-443

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the Marijuana Possession Decriminalization Amendment Act of 2014 to clarify that, for the purposes of the act, a private club is a place to which the public is invited, but does not include a private residence, and that the prohibition on consumption of marijuana in public is not limited by the Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014, and to establish a private club task force to provide a report making recommendations regarding the licensing and operation of venues at which marijuana may be consumed within the parameters of 401(a)(1) of the District of Columbia Uniform Controlled Substances Act of 1981; and to amend Chapter 28 of Title 47 of the District of Columbia Official Code to require the Mayor to revoke any license, certificate of occupancy, or permit held by an entity that knowingly permits a violation of section 301(a) of the Marijuana Possession Decriminalization Amendment Act of 2014 to occur at the specific address or unit identified in the license, certificate of occupancy, or permit.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Marijuana Possession Decriminalization Clarification Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) On January 5, 2016, the Council of the District of Columbia passed the Marijuana Possession Decriminalization Clarification Emergency Amendment Act of 2016, effective January 14, 2016 (D.C. Act 21-0273; 63 DCR 801). This emergency legislation will expire on April 13, 2016.

(b) On February 2, 2016, the Council passed the Marijuana Possession Decriminalization Clarification Temporary Amendment Act of 2016, enacted on February 18, 2016 (D.C. Act 21-0319; 63 DCR 2211), which is pending congressional review. The temporary legislation’s projected law date is April 29, 2016.

(c) In order to prevent a gap in the law between the expiration of the emergency legislation and the temporary legislation taking effect, it is now necessary to pass congressional review emergency legislation.

**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 Marijuana Possession Decriminalization Clarification Congressional Review Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-447

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To confirm the appointment of Ms. Laura S. Newland as the Executive Director of the Office on Aging.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Executive Director of the Office on Aging Laura Newland Confirmation Resolution of 2016".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Ms. Laura S. Newland  
2703 Blueridge Avenue  
Silver Spring, MD 20902

as the Executive Director of the Office on Aging, established by section 301 of the District of Columbia Act on the Aging, effective October 29, 1975 (D.C. Law 1-24; D.C. Official Code § 7-503.01), 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), to serve at the pleasure of the Mayor.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-448

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To confirm the appointment of Ms. Susanne Slater to the Housing Production Trust Fund Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Housing Production Trust Fund Board Susanne Slater Confirmation Resolution of 2016".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Ms. Susanne Slater  
5700 Nebraska Avenue, N.W.  
Washington, D.C. 20015  
(Ward 3)

as a member, representing the financial services industry, of the Housing Production Trust Fund Board, established by section 3a of the Housing Production Trust Fund Act of 1988, effective June 8, 1990 (D.C. Law 8-133; D.C. Official Code § 42-2802.01), replacing David Bowers, for a term to end January 14, 2017.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-449

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To confirm the appointment of Ms. Nakeisha Neal Jones to the District of Columbia Housing Authority Board of Commissioners.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Housing Authority Board of Commissioners Nakeisha Neal Jones Confirmation Resolution of 2016".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Ms. Nakeisha Neal Jones  
32 Burns Street, N.E.  
Washington, D.C. 20019  
(Ward 8)

as a public member of the District of Columbia Housing Authority Board of Commissioners, established by section 12 of the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-211), replacing Bernadette Tolson, for a term to end July 12, 2017.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-450

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To approve proposed rules to amend Chapter 8 of Title 23 of the District of Columbia Municipal Regulations to establish a methodology to be used by the Alcoholic Beverage Control Board for computing a licensee's history of violations.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Computation of ABC Violation History Regulations Approval Resolution of 2016".

Sec. 2. Pursuant to D.C. Official Code § 25-211(b), the Mayor transmitted to the Council on February 5, 2016, proposed rules of the Alcoholic Beverage Control Board ("Board") to establish a methodology to be used by the Board to compute a licensee's violation history in order to assess a penalty against the licensee for a violation. The Council approves the proposed rules, published at 62 DCR 13029, to amend Chapter 8 of Title 23 of the District of Columbia Municipal Regulations.

Sec. 3. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor and the Chairperson of the Alcoholic Beverage Control Board.

Sec. 4. Fiscal impact statement.

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

ENROLLED ORIGINAL

A RESOLUTION

21-451

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To confirm the appointment of Mr. Christopher Shorter as the Director of the Department of Public Works.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Director of the Department of Public Works Christopher Shorter Confirmation Resolution of 2016”.

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. Christopher Shorter  
5359 Call Place, S.E.  
Washington, D.C. 20019  
(Ward 7)

as the Director of the Department of Public Works, established by Reorganization Plan No. 4 of 1983, effective March 1, 1984 (part D of subchapter VI of Chapter 15 of Title 1 of the D. C. Official Code), 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), to serve at the pleasure of the Mayor.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.



ENROLLED ORIGINAL

## A RESOLUTION

21-452

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to amend the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008 to clarify that certain contracts for development of Square 3128 are exempt from portions of the Procurement Practices Reform Act of 2010.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “DMPED Procurement Clarification Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The McMillan Reservoir Slow Sand Filtration Site (“McMillan Site”) was conveyed to the District by the federal government in 1987.

(b) In March 2006, the District transferred jurisdiction of the property to the National Capital Revitalization Corporation (“NCRC”) and NCRC selected Vision McMillan Partners (“VMP”) to develop the McMillan Site in 2007. NCRC was largely exempt from the District’s procurement laws, which at that time were set forth in the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*).

(c) In January 2008, the Council passed the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008, effective March 26, 2008 (D.C. Law 17-138; D.C. Official Code § 2-1225.01 *et seq.*) (the “Act”), legislation that dissolved the NCRC and transferred its projects to the District under the authority of the Deputy Mayor for Planning and Economic Development (“DMPED”). In order to transition the former NCRC projects to DMPED with minimal disruption, section 201(b) of the Act (D.C. Official Code § 2-1225.11(b)) provided that NCRC contracts transferred to DMPED would continue to be exempt from the District of Columbia Procurement Practices Act of 1985.

(d) By 2009, DMPED and VMP began execution of a series of changes to the original deal, eventually resulting in an agreement that the District would prepare the McMillan site’s infrastructure, and VMP would have the exclusive right to negotiate and purchase the resulting development pads.

(e) In 2010, the Council passed the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), which supplanted the

## ENROLLED ORIGINAL

majority of the District's procurement law contained in the District of Columbia Procurement Practices Act of 1985. At that time, however, the exemption from District procurement laws in section 201(b) of the Act was not updated to reflect the existence of a new body of procurement law.

(f) In 2014, the Council approved 3 resolutions authorizing the Mayor to dispose of property at the McMillan Site to VMP for redevelopment into a combination of healthcare facilities, apartment buildings, townhouses, a recreational center, and open green space. In November 2015, the Council approved a resolution to extend the authority provided by those resolutions to provide the District and VMP the time necessary to complete preparations of the McMillan Site for transfer to VMP.

(g) As a result of the realignment of duties between the District and VMP culminating in the planned unit development approved in 2014 by Zoning Commission Order No. Z.C. 13-14, the infrastructure work necessary to prepare the site for development is set to begin. The agreement between the District and VMP is such that the District bears financial responsibility for the infrastructure work and site preparation required to ready the McMillan Site for delivery to VMP. Under the agreement, VMP will perform the work on behalf of the District.

(h) Given the outdated exemption reference in the NCRC reorganization law to the District of Columbia Procurement Practices Act of 1985, there is ambiguity as to whether there is legal authority for the District to move forward with the necessary contracts between VMP and the District to complete the work. Those contracts are set to begin coming to the Council for approval this spring.

(i) Providing an exemption for the McMillan project from the Procurement Practices Reform Act of 2010 will clarify that DMPED and VMP may still move forward with the contracts as contemplated, which, because of the nature of the development agreement, do not allow for competition because VMP is performing the work associated with the pre-development costs paid by the District.

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 DMPED Procurement Clarification Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-453

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to amend the Business Improvement Districts Act of 1996 to repeal the sunset provision.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Business Improvement Districts Sunset Repeal Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; D.C. Official Code § 2-1215.01 *et seq.*) (“BID act”), was enacted with a sunset provision that provided that the act would expire 20 years from the effective date.

(b) Without timely action, the BID act shall expire in May. Emergency legislation is necessary to repeal the undesired expiration of the BID act.

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 Business Improvement Districts Sunset Repeal Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-454

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to amend the Education Licensure Commission Act of 1976 to clarify requirements for postsecondary educational institutions providing degree-granting or non-degree-granting online programs or courses that are authorized to operate under a reciprocity agreement.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Higher Education Licensure Commission Clarification Emergency Declaration Resolution of 2016".

Sec. 2. (a) The District of Columbia seeks to ensure that a wide array of postsecondary learning opportunities are available for our residents. Across the country, at least 7 million students are using online technology to access postsecondary courses. Postsecondary online distance education expands learning opportunities by providing flexible, accessible methods for acquiring new skills and fulfilling degree requirements.

(b) The rapid growth of distance education has brought to the forefront the need to provide a coherent and comprehensive structure that focuses on consumer protection and security while maintaining the unique features of online distances learning. Students in online distance education programs require stronger protections because they are completing their courses and programs outside the visibility of traditional oversight and monitoring structures. Many other states have already taken steps to protect their residents, and the District must move forward to keep up with best practices in postsecondary licensing.

(c) To address this need, the Council passed the Higher Education Licensure Commission Amendment Act of 2015, effective February 27, 2016 (D.C. Law 21-74; to be codified at § 38-1301 *et seq.*), which provided the Higher Education Licensure Commission ("HELIC") with the authority to license distance education programs and enter into reciprocity agreements with other jurisdictions regarding licensing online distance education programs, which would result in ensuring security and consumer protections while making the process and costs for providing distance education far less involved.

(d) Since then, the HELIC has been preparing its application to enter into the State Authorization Reciprocity Agreement ("SARA"). However, in preparing the application to enter into SARA, the HELIC learned that it is statutorily prohibited from complying with the SARA membership requirements because the HELIC cannot authorize any educational institution to

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operate in the District if the institution's title contains the words "United States, federal, American, national, or civil service, or any other words which might reasonably imply an official connection with the government of the United States, . . . or the government of the District of Columbia[.]" (D.C. Official Code § 38-1309(c-1)).

(e) In order to join SARA, the HELC must agree to abide by SARA policies and procedures, which include not imposing additional regulatory requirements on SARA-approved institutions that want to provide distance education in the District. Therefore, this emergency legislation would provide a waiver from the naming prohibition for any postsecondary educational institutions providing degree-granting or non-degree-granting online instruction to residents of the District through an online presence that is authorized to operate under a reciprocity agreement.

(f) The HELC's SARA application will be reviewed on June 9, 2016 and must be submitted 6 weeks before that date. Without this emergency legislation, the HELC's SARA application will not be accepted because the HELC cannot comply with both its statutory mandate to prohibit the authorization of education institutions with prohibited names to operate in the District, while also upholding SARA's requirement that the District not impose additional regulatory requirements on SARA-approved institutions.

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 Higher Education Licensure Commission Clarification Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-455

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to amend the District of Columbia Uniform Controlled Substances Act of 1981 to add certain classes and substances to the list of Schedule I controlled substances.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Revised Synthetics Abatement and Full Enforcement Drug Control Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The existing classification system has made it quite difficult to prosecute the possession and distribution of synthetic drugs.

(b) Prosecuting the possession and distribution of synthetic drugs is a key component in combating the public health issue evidenced by increased overdoses and related emergency medical services transports in the District.

(c) The Revised Synthetics Abatement and Full Enforcement Drug Control Emergency Amendment Act of 2016 will reform the existing classification system in a way that enhances the effectiveness of prosecutions for the possession and distribution of synthetic drugs.

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 Revised Synthetics Abatement and Full Enforcement Drug Control Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-456

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to amend the District of Columbia Election Code of 1955 to change the procedures for presidential primary ballot access and clarify that the approved political party's presidential primary plan shall be transmitted to the Board of Elections no later than 24 hours after March 16; and to amend the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 to eliminate the requirement to file with the Director of Campaign Finance and with the principal campaign committee, if applicable, reports of receipts and expenditures 8 days before the June 2016 primary election.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Primary Election Filing Requirement Emergency Declaration Resolution of 2016".

Sec. 2. (a) Section 5(b)(2) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 700; D.C. Official Code § 1-1001.05(b)(2)), allows each political party to determine its own rules for ballot access.

(b) The next primary election will take place on June 14, 2016. Under current law, candidates must submit their petitions to the District of Columbia Board of Elections by March 16, 2016, to be listed on the ballot.

(c) The Democratic political party's plan stipulates that, if the candidate chooses to file with the political party in lieu of collecting signatures, the candidate's registration with the political party must be submitted by 7:00 p.m. on March 16. This party plan was approved by the Board of Elections.

(d) However, this registration deadline is beyond the closing time of the Board of Elections at 5:00 p.m. Therefore, the political party transmitted the certification on March 17.

(e) This emergency legislation clarifies that the political party, for purposes of the June 14, 2016, primary election, is permitted 24 hours after March 16 to transmit the certification, while recognizing that the political party's rules do not supersede the deadline under section 5(b)(2) (D.C. Official Code § 1-1001.05(b)(2)).

(f) Section 309 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1163.09), requires the treasurer of each political committee, political action committee, and independent expenditure committee to file reports of receipts and

**ENROLLED ORIGINAL**

expenditures with the Director of Campaign Finance and, if applicable, with the principal campaign committee.

(g) Section 309(b) (D.C. Official Code § 1-1163.09(b)) prescribes mandatory filing dates in the 7 months preceding the date on which, and in each year during which, an election is held for the office sought, including the 10th day of June and 8 days before an election.

(h) This year, a primary election will be held on June 14, 2016. Reports of receipts and expenditures must therefore be filed on both June 6, 2016, and June 10, 2016.

(i) The additional filing on June 6, 2016, is unnecessary and will unduly burden filers and cause administrative redundancy for the Office of Campaign Finance. By enforcing the later deadline of June 10, 2016, the Office of Campaign Finance will be able to collect all relevant information in order to carry out its monitoring and auditing responsibilities.

(j) This emergency legislation eliminates the requirement for the filing of receipts and expenditures 8 days before only the June 14, 2016, primary election. The requirement will remain in effect for subsequent elections.

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 Primary Election Filing Requirement Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.



## ENROLLED ORIGINAL

## A RESOLUTION

21-457

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to confirm the appointment of Mr. Michael D. Gill to the District of Columbia Board of Elections.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Board of Elections Michael D. Gill Confirmation Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The District of Columbia Board of Elections (“Board”) is a 3-member, independent agency that convenes to consider and vote on election administration, ballot access, and voter registration matters.

(b) Section 3 of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.03), provides that members of the Board shall be appointed for 3-year terms with the advice and consent of the Council. Further, “a member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.” The day-to-day operations and Board management is conducted by an Executive Director, General Counsel, and a number of support personnel.

(c) Since July 7, 2014, 2 sitting members of the Board have been holding over. One member of the Board was recently appointed and confirmed in January 2016, and the other 2 members continue to hold over.

(d) On February 17, 2016, Chairman Mendelson introduced, at the request of the Mayor, Proposed Resolution 21-0570, the District of Columbia Board of Elections Michael Gill Confirmation Resolution of 2016, to confirm the appointment of Mr. Michael D. Gill to the Board for a term to end July 7, 2017.

(e) On March 10, 2016, the Committee on the Judiciary held a public roundtable to consider Mr. Gill’s nomination.

(f) As there is only one permanent member of the Board and no permanent Executive Director, it is necessary to confirm Mr. Gill on an emergency basis.

(g) Without this action, the Board will lack sufficient direction and be unable to adequately prepare for the June 2016 primary election and the November 2016 general election.

**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 District of Columbia Board of Elections Michael D. Gill Emergency Confirmation Resolution of 2016 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-458

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To confirm, on an emergency basis, the appointment of Mr. Michael D. Gill to the District of Columbia Board of Elections.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Board of Elections Michael D. Gill Emergency Confirmation Resolution of 2016".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. Michael D. Gill  
1824 Randolph Street, N.W.  
Washington, D.C. 20011  
(Ward 4)

as a member of the District of Columbia Board of Elections, established by section 3 of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.03), for a term to end July 7, 2017.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-459

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to confirm the appointment of Mr. David Michael Bennett to the District of Columbia Board of Elections.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Board of Elections David Michael Bennett Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The District of Columbia Board of Elections (“Board”) is a 3-member, independent agency that convenes to consider and vote on election administration, ballot access, and voter registration matters.

(b) Section 3 of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.03), provides that members of the Board shall be appointed for 3-year terms with the advice and consent of the Council. Further, “a member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.” D.C. Official Code § 1-1001.03(c). The day-to-day operations and Board management is conducted by an Executive Director, General Counsel, and a number of support personnel.

(c) Since July 7, 2014, 2 sitting members of the Board have been holding over. One member of the Board was recently appointed and confirmed in January 2016, and the other 2 members continue to hold over.

(d) On February 9, 2016, Chairman Mendelson introduced, at the request of the Mayor, Proposed Resolution 21-568, the District of Columbia Board of Elections Michael Bennett Confirmation Resolution of 2016, to confirm the appointment of Mr. David Michael Bennett to the Board for a term to end July 7, 2018.

(e) On March 10, 2016, the Committee on the Judiciary held a public roundtable to consider Mr. Bennett’s nomination. During the public roundtable, the Committee noted Mr. Bennett’s pending nomination to the Board of Governors of the United States Postal Service and the concerns – were he to be confirmed by the United States Senate – that his nomination might implicate D.C. Official Code § 1-1001.04(a)(3).

(f) As there is only one permanent member of the Board and no permanent Executive Director, it is necessary to confirm Mr. Bennett on an emergency basis.

**ENROLLED ORIGINAL**

(g) Many issues related to compliance with federal law, efficient vote tabulation, and equipment procurement remain unresolved. Without this action, the Board will lack sufficient leadership to solve these issues and will be unable to adequately prepare for the June 2016 primary election and the November 2016 general election.

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 District of Columbia Board of Elections David Michael Bennett Emergency Confirmation Resolution of 2016 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-460

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To confirm, on an emergency basis, the appointment of Mr. David Michael Bennett to the District of Columbia Board of Elections.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Board of Elections David Michael Bennett Emergency Confirmation Resolution of 2016".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. David Michael Bennett  
6679 32<sup>nd</sup> Place, N.W.  
Washington, D.C. 20015  
(Ward 4)

as a member of the District of Columbia Board of Elections, established by section 3 of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.03), for a term to end July 7, 2018.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-461

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to declare the sense of the Council regarding the 2011 surplus review of Group Hospitalization and Medical Services, Inc.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sense of the Council Regarding the 2011 Surplus Review of Groups Hospitalization and Medical Services, Inc. Emergency Declaration Resolution of 2016”.

Sec. 2. (a) Emergency legislation is necessary to immediately express the sense of the Council regarding the long-delayed 2011 surplus review of Group Hospitalization and Medical Services, Inc. (“GHMSI”) under the Medical Insurance Empowerment Amendment Act of 2008 (“MIEAA”).

(b) It has been 7 years since the Council enacted MIEAA to hold GHMSI accountable to its community reinvestment obligation and 3½ years since the District of Columbia Court of Appeals determined that the Department of Insurance, Securities, and Banking (“DISB”) had failed to complete the surplus review as required by MIEAA. It has been more than a year since GHMSI filed a reinvestment plan and DISB has not issued a final order on the merits of that plan. In addition, it is now nearly 2½ years past the deadline for completion of the surplus review set by the District of Columbia Court of Appeals.

(c) These years of delay in implementing MIEAA have created the opportunity for Maryland, Virginia, and Congress to enact laws that undermine the District’s authority as GHMSI’s primary regulator, which in turn undermines the authority of the Council.

(d) The DISB Commissioner testified before the Committee on Business, Consumer, and Regulatory Affairs (“Committee”) on October 7, 2015, October 28, 2015, and February 29, 2016, that a decision would be issued soon. At the February 29, 2016, hearing, members of the Committee advised DISB that they expected a prompt decision regarding the review of the 2011 surplus.

(e) To date, DISB has not issued a final order. This delay has allowed other jurisdictions to challenge the District’s authority and has denied the public \$56 million in excess surplus that by law was required to be dedicated to community health reinvestment.

**ENROLLED ORIGINAL**

(f) It is urgent that there be no further delay and that DISB promptly develop and order GHMSI to implement a plan for dedicating \$56 million in excess 2011 surplus to community health reinvestment under MIEAA.

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 Sense of the Council Regarding the 2011 Surplus Review of Group Hospitalization and Medical Services., Inc. Emergency Resolution of 2016 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.



## ENROLLED ORIGINAL

## A RESOLUTION

21-462

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare, on an emergency basis, the sense of the Council that the Department of Insurance, Securities, and Banking should promptly develop and order Group Hospitalization and Medical Services, Inc. to implement a plan for reinvesting \$56 million in excess 2011 surplus pursuant to the Medical Insurance Empowerment Amendment Act of 2008.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sense of the Council Regarding the 2011 Surplus Review of Group Hospitalization and Medical Services, Inc. Emergency Resolution of 2016”.

Sec. 2. The Council finds that:

(1) Group Hospitalization and Medical Services, Inc. (“GHMSI”), a subsidiary of CareFirst BlueCross BlueShield, is the District’s only nonprofit hospital and medical services corporation, which was chartered by Congress in 1939 as a charitable and benevolent institution.

(2) On December 16, 2008, following a determination by the Committee on Public Services and Consumer Affairs that “deep uncertainty surrounding CareFirst’s degree of dedication to its charitable public health mission” compelled the enactment of legislation to provide “a framework to ensure that CareFirst meets its public health obligation to the community,” the Council unanimously enacted the Medical Insurance Empowerment Amendment Act of 2008, effective March 25, 2009 (D.C. Law 17-369; 56 DCR 1346) (“MIEAA”).

(3) MIEAA requires the Department of Insurance, Securities, and Banking (“DISB”) to review GHMSI’s surplus at least every 3 years to determine if it is excessive. If it is determined to be excessive, DISB must order GHMSI to submit a fair and equitable plan for dedicating the portion of the excess attributable to the District for community health reinvestment.

(4) MIEAA further requires that if GHMSI fails to submit a plan as ordered, DISB shall deny rate increases for 12 months, or issue such orders as are necessary to enforce MIEAA, including developing a plan and ordering GHMSI to implement it.

(5) On October 29, 2010, DISB determined that GHMSI’s 2008 surplus of \$687 million was not excessive under MIEAA and ordered a subsequent review by July 31, 2012.

(6) On September 13, 2012, following an expedited petition for review of the October 29, 2010 decision, the District of Columbia Court of Appeals (“Court”) unanimously

## ENROLLED ORIGINAL

determined that DISB had failed to apply MIEAA, as mandated by the Council, and remanded the case for the next surplus review, to be completed no later than 3 years from the date of the previous order.

(7) On December 30, 2014, DISB determined that GHMSI's 2011 surplus was excessive by \$268 million over the target of \$696 million (721% Risk Based Capital) ("RBC") and ordered GHMSI to submit a plan for dedicating \$56 million of that excess attributable to the District to community health reinvestment by February 13, 2015, subsequently amended to March 16, 2015.

(8) On March 16, 2015, GHMSI submitted a plan claiming that its surplus was not excessive and that, in any case, it had already reinvested \$56 million.

(9) One week after GHMSI submitted its plan to DISB, on March 23, 2015, Virginia enacted a law prohibiting GHMSI from reinvesting excess surplus pursuant to the Commissioner's order without the approval of the Virginia State Corporation Commission.

(10) One month after GHMSI submitted its statement to DISB, on April 14, 2015, Maryland enacted a law prohibiting GHMSI from reinvesting excess surplus pursuant to the Commissioner's order without the approval of the Commissioner of the Maryland Insurance Administration.

(11) On April 28, 2015, the Court denied petitions for review of the December 30, 2014 order by DISB. The Court determined that the petition was not ripe for review because DISB had "not yet determined whether the community health reinvestment plan submitted by GHMSI is 'fair and equitable'" under MIEAA.

(12) On December 18, 2015, Congress amended GHMSI's charter to prohibit it from reinvesting excess surplus without the agreement of the District, Maryland, and Virginia, but expressly exempted the pending 2011 surplus review from this requirement.

(13) On March 1, 2016, GHMSI reported a 2015 surplus of \$960 million (882% RBC). This shows that a reinvestment of the \$56 million ordered by the DISB would result in a surplus of \$904 million (829% RBC), which far exceeds the target surplus of 721% RBC established by the December 30, 2014 order by DISB.

(14) To date, the Commissioner has not issued a final order in the 2011 GHMSI surplus review under MIEAA.

(15) It has been 7 years since the Council enacted MIEAA, and its intent to hold GHMSI accountable has never been effectuated, which undermines the Council's legislative authority.

(16) It has been more than 2 years since the date the Court determined that the remanded proceeding should be completed.

(17) It has been more than a year since GHMSI filed a reinvestment plan, and DISB has not issued a final order on the merits of that plan.

(18) During the delay, Maryland, Virginia, and Congress have taken steps to limit the District's authority as the GHMSI's primary regulator, which undermines the District's home rule.

(19) The delay means that \$56 million in excess surplus funds have not yet been devoted to community health reinvestment as they should have been.

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Sec. 3. It is the sense of the Council that DISB should promptly bring the 2011 surplus review to a conclusion by:

(1) Within 20 days of the effective date of this resolution, publishing notice of the agency's intent in the District of Columbia Register to develop a community reinvestment plan for \$56 million in excess GHMSI 2011 surplus consistent with MIEAA;

(2) Allowing public comment on a community reinvestment plan until 30 days after publication of notice in the District of Columbia Register; and

(3) Approving the plan within 45 days of the deadline for public comment and ordering GHMSI to implement that plan within 30 days.

Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor and the Commissioner of the Department of Insurance, Securities, and Banking.

Sec. 5. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-463

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to amend the Fiscal Year 1997 Budget Support Act of 1996 and section 24-225 of the District of Columbia Municipal Regulations to include civic associations as an entity for which the Mayor is authorized to waive or reduce public space permit fees, except for application fees.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Civic Associations Public Space Permit Fee Waiver Emergency Declaration Resolution of 2016”.

Sec. 2. (a) Section 603a of the Fiscal Year 1997 Budget Support Act of 1996, effective December 2, 2011 (D.C. Law 19-48; D.C. Official Code § 10-1141.03a), authorizes the Mayor to waive or reduce permit fees, except for application fees, for the use of public space, public rights of way, and public structures for projects that:

(1) Are conducted by a Business Improvement District or Community Improvement District;

(2) In the Mayor’s determination, serve a public benefit;

(3) Do not impose costs on the District government; and

(4) Do not involve commercial sponsorship.

(b) Under current law, public space permit fees are calculated by block face, resulting in substantial permit fees even for modest projects. While Business Improvement Districts and Community Improvement Districts may seek a waiver of these fees, civic associations are not eligible for a fee waiver despite their similar function.

(c) This emergency legislation redresses this issue by authorizing the Mayor to waive public space permit fees for civic associations, thereby removing a significant financial barrier to the implementation of projects that provide a public benefit, and encouraging the critical role that civic associations play in enhancing the District’s public space. Moving this measure on an emergency basis will allow the Executive to consider waiver requests in time for the summer, whereas a permanent version of the bill may not become effective by then, due to congressional review.

**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 Civic Associations Public Space Permit Fee Waiver Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-464

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to amend Chapter 13A of Title 47 of the District of Columbia Official Code to remove references to the discontinued Tax Sale Resource Center and to clarify the amounts required to be paid to receive a tax deed.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Tax Sale Resource Center Clarifying Emergency Declaration Resolution of 2016".

Sec. 2. (a) The emergency legislation will remove references to the discontinued Tax Sale Resource Center and clarify the amounts required to be paid to receive a tax deed.

(b) Emergency legislation is necessary to update and clarify current law immediately and to give proper legal notice as required for due process.

(c) The emergency will also make a conforming amendment that was inadvertently omitted from previous legislation, which removes an obsolete cross reference.

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 Tax Sale Resource Center Clarifying Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

21-465

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to approve Modification Nos. M020 and M021 and proposed Modification No. M023 to Human Care Agreement No. DCRL-2013-H-0039A with The National Center for Children and Families to continue to provide case management and traditional and therapeutic family-based foster care services for children and youth, and to authorize payment for the services received and to be received under these modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Modifications to Human Care Agreement No. DCRL-2013-H-0039A Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists a need to approve Modification Nos. M020 and M021 and proposed Modification No. M023 to Human Care Agreement No. DCRL-2013-H-0039A with The National Center for Children and Families to continue to provide case management and traditional and therapeutic family-based foster care services for children and youth, and to authorize payment for the services received and to be received under these modifications.

(b) The District awarded Human Care Agreement No. DCRL-2013-H-0039A to The National Center for Children and Families for a base year from December 12, 2013, through December 11, 2014.

(c) The first option year for Human Care Agreement No. DCRL-2013-H-0039A was exercised for the period from December 12, 2014, through December 11, 2015.

(d) By Modification No. M020, on December 9, 2015, the District exercised a partial option for the second option year of Human Care Agreement No. DCRL-2013-H-0039A in the not-to-exceed amount of \$981,306.15 for the period from December 12, 2015, through January 14, 2016.

(e) By Modification No. M021, on January 12, 2016, the District exercised a partial option for the second option year of Human Care Agreement No. DCRL-2013-H-0039A in the not-to-exceed amount of \$1,706,578.68 for the period from January 15, 2016, through March 15, 2016.

(f) Modification No. M022 was administrative in nature and did not increase the value of the human care agreement.

## ENROLLED ORIGINAL

(g) By Modification No. M023, the District proposes to exercise the remainder of the second option year for the period from March 16, 2016, through December 11, 2016 in the not-to-exceed amount of \$7,821,587.27, making the total not-to-exceed amount for option year two \$10,563,472.10.

(h) Council approval is necessary because as a result of Modification No. M021 and proposed Modification No. M023 the value of the human care agreement is increased to be more than \$1 million during a 12-month period.

(i) Approval is necessary to allow the continuation of these vital services. Without this approval, The National Center for Children and Families cannot be paid for services provided in excess of \$1 million.

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 Modifications to Human Care Agreement No. DCRL-2013-H-0039A Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.



ENROLLED ORIGINAL

A RESOLUTION

21-466

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. CW41701 with Systems and Methods, Inc. to operate and manage the District’s State Disbursement Unit in support of the Child Enforcement Program, and to authorize payment for the services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. CW41701 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) The Office of Contracting and Procurement, on behalf of the Office of the Attorney General, Child Support Services Division, proposes to enter into a multiyear agreement with Systems and Methods, Inc. to operate and manage the State Disbursement Unit.

(b) The estimated total expenditure under this multiyear contract with Systems and Methods, Inc. is in the amount of \$8,340,000.

(c) Approval is necessary to allow the District to receive the benefit of these vital services from Systems and Methods, Inc.

(d) These critical services can only be obtained through an award of this multiyear contract with Systems and Methods, Inc.

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 Contract No. CW41701 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-467

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the existence of an emergency with respect to the need to approve Modification No. M0003 and proposed Modification Nos. M008 and M010 to Contract No. CW29248 to provide employee work uniforms and accessories to the District and to authorize payment for the goods and services received and to be received under the contract modifications.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modifications to Contract No. CW29248 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists a need to approve Modification No. M0003 and proposed Modification Nos. M008 and M010 to Contract No. CW29248 with Morgan's Inc. T/A Jimmie Muscatello's to provide employee work uniforms and accessories to the District and to authorize payment for the goods and services received and to be received under the contract modifications.

(b) On December 7, 2015, by Modification No. M003, the Office of Contracting and Procurement ("OCP"), on behalf of the Department of Youth Rehabilitation Services, Fire and Emergency Medical Services, Metropolitan Police Department, and Office of the State Superintendent of Education, exercised a partial option for Option Year One of Contract No. CW29248 to provide employee work uniforms and accessories to the District for the period from December 9, 2015, to June 8, 2016, in the amount of \$999,000.

(c) By proposed Modification No. M008, OCP intends to modify Contract No. CW29248 to include the following services within the scope of work: alterations of uniforms purchased during the period from June 9, 2016, through December 8, 2016, in the amount of \$18,236.45.

(d) Modification No. M010 is now necessary to exercise the remainder of Option Year One for the period from June 9, 2016, through December 8, 2016, and increase the total estimated contract amount for Option Year One to \$4,028,949.04.

(e) Council approval is necessary since these modifications increase the contract by more than \$1 million during a 12-month period.

(f) Approval is necessary to allow the continuation of these vital services. Without this approval, Morgan's Inc. T/A Jimmie Muscatello's cannot be paid for goods and services provided in excess of \$1 million for the contract period December 9, 2015, through December 8, 2016.

**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 Modifications to Contract No. CW29248 Approval and Payment Authorization Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-179

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To recognize and congratulate Bishop Alfred A. Owens, Jr. on his 50<sup>th</sup> anniversary as Senior Pastor of Greater Mount Calvary Holy Church, and for his outstanding service to the District of Columbia.

WHEREAS, Archbishop Alfred A. Owens, Jr., D.Min., Pastor (“Bishop Owens”) is a native Washingtonian, attended District of Columbia public schools, graduated from Cardozo High School, and earned a Bachelor’s degree in English from Miner’s D.C. Teachers College;

WHEREAS, in 1985, Bishop Owens satisfied the course requirements for a Master of Arts degree in English from Howard University, and he also received his Master of Divinity degree and Doctor of Ministry Degree from Howard University School of Divinity;

WHEREAS, Bishop Owens founded Greater Mt. Calvary Holy Church in 1966 with only 7 members and now he pastors an adult membership of more than 7,000;

WHEREAS, Greater Mount Calvary Holy Church is located in Ward 5 at 610 Rhode Island Avenue, N.E., and has been an active member of the Ward 5 community for over 20 years;

WHEREAS, Calvary Christian Academy has educated and nurtured thousands of children;

WHEREAS, CATAADA House (Calvary’s Alternative to Alcohol and Drug Addiction) is recognized by the Superior Court of the District of Columbia as one of the outpatient clinics to which it refers those in need of help in overcoming substance abuse and other addictions;

WHEREAS, Greater Mount Calvary Holy Church’s Food Bank and Clothing Boutique has fed and clothed thousands of the District’s most needy citizens, has partnered with Feed the Children, Pepsi, and Wal-Mart to serve nearly 10,000 additional residents with non-perishable food and personal care items, including 400 Thanksgiving and 500 Christmas meals;

**ENROLLED ORIGINAL**

WHEREAS, Greater Mount Calvary Holy Church’s Anchor of Hope Homeless Ministry provides life skills training and assistance to homeless citizens transitioning to established living;

WHEREAS, Greater Mount Calvary Holy Church’s Health Care was one of the first churches in the nation to develop an HIV/AIDS healthcare program, and encompasses one of the first faith-based, nonprofit HIV/AIDS programs in the District and has provided much-needed support to families who would otherwise not be served;

WHEREAS, the Greater Mount Calvary Holy Church Family Life Center is one of Ward 5’s community and wellness hubs, providing community access to a sports and fitness facility, barbershop, hair salon, and multi-purpose room often used by the community;

WHEREAS, on March 18, 2016, Bishop Owens will be celebrating his 50<sup>th</sup> Pastoral Anniversary and his 70<sup>th</sup> birthday at the Marriott Marquis in the District of Columbia; and

WHEREAS, under the leadership of Bishop Owens, Greater Mount Calvary Holy Church has provided distinguished service and extensive contributions to the District of Columbia and its residents.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Bishop Alfred Owens Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes and honors Bishop Alfred A. Owens, Jr. on his 50th anniversary as Senior Pastor of Greater Mount Calvary Holy Church and on his 70<sup>th</sup> birthday, and for his outstanding service to the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-180

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To recognize and honor the St. John’s College High School Boys Varsity Basketball team for its outstanding 2016 championship season.

WHEREAS, St. John’s College High School was established in 1851 and is the second oldest Christian Brothers school in the United States;

WHEREAS, St. John’s College High School, located in northwest Washington, D.C., remains a bastion of academic excellence with 100% of St. John’s graduates being accepted into 4-year colleges or universities;

WHEREAS, St. John’s succeeds in preparing young men and women for a life dedicated to leadership, achievement, and service to the community;

WHEREAS, on February 22, 2016, the St. John’s College High School Boys Varsity Basketball team defeated DeMatha 71-57 to win the 2016 Washington Catholic Athletic Conference (“WCAC”) championship, the school’s first boys’ basketball WCAC title since 2000;

WHEREAS, players Anthony Cowan, Jeffrey Downtin, and Kylia Sykes were named first-team All-WCAC, and Coach Sean McAloon was named WCAC Coach of the Year;

WHEREAS, the St. John’s College High School Varsity Boys Basketball Team includes:

- Coleman Ayers
- Lloyd Bryan
- DeJuan Clayton
- Anthony Cowan
- Jeffrey Downtin
- Mike Grimes
- Emmanuel Hylton
- Reese Mona
- Matthew Morsell

**ENROLLED ORIGINAL**

Richard Njoku  
Benjamin Reese  
Qwanzi Samuels  
Kylia Sykes  
Tre Wood

WHEREAS, the St. John’s College High School Varsity Boys Basketball Team has triumphed, and excelled on the court and in the classroom.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “St. John’s College High School Varsity Boys Basketball Team Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia heartily congratulates Coach Sean McAloon for his coaching excellence and the members of the St. John’s College High School Varsity Basketball Team for their accomplished athletic abilities.

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

## ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-181

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To recognize, honor, and express the Council's overwhelming gratitude to Joslyn N. Williams for his commitment to excellence and for his numerous contributions to the District of Columbia and her citizens.

WHEREAS, Joslyn N. Williams is the first African-American president of the Metropolitan Washington Council, AFL-CIO, having been elected initially in 1982 and every 3 years since;

WHEREAS, formerly, Joslyn N. Williams had been the Director of AFSCME Council 26, and, as an employee with the Library of Congress, had increased membership in the union threefold;

WHEREAS, during his tenure at the Metro Washington Council, Joslyn N. Williams increased affiliation to over 90% of eligible local unions, diversified the executive board and committees, oversaw the creation of the annual DC Labor FilmFest, obtained funding for legal assistance for unemployed workers, oversaw the creation and expansion of labor's Community Services Agency, and ensured organized labor's participation in recent successful efforts to win the minimum wage in the region;

WHEREAS, Joslyn N. Williams served as the Assistant Director of the AFL-CIO Department of Field Mobilization and is a member of the AFL-CIO Central Labor Council Advisory Committee;

WHEREAS, Joslyn N. Williams is a former regional director of the Coalition of Black Trade Unionists, a labor member of the Workforce Investment Council in the District of Columbia, and a mayoral appointee to the board of the Metropolitan Washington Airports Authority;

WHEREAS, Joslyn N. Williams served in the District of Columbia as a member of many boards and commissions, including the Tax Revision Commission, the Unemployment Compensation Study Commission, the Anacostia Waterfront Corporation, the DC Convention Center Authority and commissions which developed proposals for health care coverage, telecommunications, and cable television;



**ENROLLED ORIGINAL**

WHEREAS, Joslyn N. Williams served as an election observer for the first universal elections in South Africa and has traveled extensively in Europe, Africa, and Central America, representing the AFL-CIO, including to Swaziland in 2015 for a conference of the International Trade Union Confederation; and

WHEREAS, Joslyn N. Williams is a native of Jamaica.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Joslyn N. Williams Recognition Resolution of 2016".

Sec. 2. The Council of the District of Columbia recognizes, honors, and salutes Joslyn N. Williams for his commitment to excellence and for his numerous contributions to the District of Columbia and her citizens.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-182

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To honor the Gay and Lesbian Activists Alliance on the occasion of its 45th anniversary and to recognize the distinguished citizens and organizations to which it will pay tribute at its anniversary reception.

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

WHEREAS, GLAA ranks as the oldest continuously active gay, lesbian, bisexual, and transgender (“LGBT”) rights organization in the country;

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

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

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

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

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

WHEREAS, GLAA has provided leadership in coalition efforts on a wide range of public issues, from family law to human rights, healthcare, youth and seniors, and public safety:

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

WHEREAS, GLAA, at its 45th Anniversary Reception on April 21, 2016, will present its Distinguished Service Awards to individuals who have served the LGBT community in the District of Columbia, specifically: June Crenshaw, Monica Palacio, and Sterling A. Washington;

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Gay and Lesbian Activists Alliance 45th Anniversary Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia salutes GLAA on the occasion of its 45th Anniversary Reception on April 21, 2016, and thanks its members for their long record of dedicated service that has advanced the welfare not only of the lesbian, gay, bisexual, and transgender community, but of the entire population of the District of Columbia.

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

ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-183

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To recognize and congratulate the Howard D. Woodson High School Warriors Boys Basketball Team for becoming the 2016 District of Columbia Interscholastic Athletic Association and District of Columbia State Athletic Association basketball champions.

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team defeated the Theodore Roosevelt Senior High School boys basketball team on Wednesday, February 24, 2016 to become District of Columbia Interscholastic Athletic Association (“DCIAA”) Champions for 2016, successfully defending their 2015 DCIAA championship;

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team defeated the Gonzaga College High School basketball team, 105-102, in a double overtime victory in the District of Columbia State Athletic Association (“DCSAA”) semifinals on March 3, 2016 at the Verizon Center;

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team defeated Friendship Collegiate Public Charter School varsity boys team, 60-47, on March 6, 2016, at George Washington University’s Smith Center to become the 2016 DCSAA Champions, winning the DCSAA championship for the first time in the school’s history;

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team Head Coach Lawrence “Trey” Mines was named the DCIAA Coach of the Year for 2016, the third consecutive year he has received the honor, having also been named Coach of the Year in 2014 and 2015;

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team member Kiyon Boyd was named All DCIAA for 2016;

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team member Antwan Walker was named All DCIAA and DCIAA Player of the Year in 2016, the second consecutive year he has received both honors, and was also named the 2016 DCSAA Most Valuable Player;

ENROLLED ORIGINAL

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team was the 2015 St. Albans School Bishop T. Walker Invitational Basketball Tournament Champion team and the 2016 Prince George, Virginia Tournament Champion team;

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team had 5 players with a scoring average of 10 points or better;

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team maintained an overall team grade point average of 2.67;

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team finished their 2015-2015 season with a historic 33-0 record, achieving their second undefeated season within the DCIAA, ending the season as The Washington Post’s No. 1 ranked boys’ basketball team for the first time in the school’s history, becoming the first District of Columbia public school to finish with the No. 1 ranking since 2000, and also becoming the first city public school to finish the entire season undefeated since 1985; and

WHEREAS, the Howard D. Woodson High School Warriors Boys Basketball Team roster for the 2015-2016 season includes:

- |                               |                               |
|-------------------------------|-------------------------------|
| #1 Derquan Washington, G, So. | #11 Anthony Braxton, G, Sr.   |
| #2 Kavon Montgomery, G/F, Sr. | #13 Clent McCoy, G, Sr.       |
| #3 Tyshawnn Simms, G, Jr.     | #15 Antwan Walker, F, Sr.     |
| #4 Kiyon Boyd, G/F, So.       | #20 Franco Rawlings, G/F, Fr. |
| #5 Tamontae Chambliss, G, Sr. | #22 Urlick Evans, C, Jr.      |
| #10 Shyheem Jackson, G, Jr.   | #23 Noah Boykin, F, So.       |

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Howard D. Woodson High School Warriors Boys Basketball Team DCIAA and DCSAA Championship Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes, honors, and salutes the achievement and sportsmanship of the Howard D. Woodson High School Warriors Boys Basketball Team and congratulates the players and coaches on their historic championship season.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-184

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To recognize the Friendship Collegiate Public Charter School Knights Varsity Boys Basketball Team for their 2016 season.

WHEREAS, the Friendship Collegiate Public Charter School Knights Varsity Boys Basketball Team defeated the IDEA Public Charter High School basketball team 65-60 on February 27, 2016, at Trinity University to become the 2016 Public Charter School Athletic Association Champion team;

WHEREAS, the Friendship Collegiate Public Charter School Knights Varsity Boys Basketball Team finished their 2016 season by competing in the 2016 District of Columbia State Athletic Association championship game on March 6, 2016, at George Washington University's Smith Center;

WHEREAS, the Friendship Collegiate Public Charter School Knights Varsity Boys Basketball Team members have all earned grade point averages of 3.5 or higher on a 4.0 scale;

WHEREAS, the Friendship Collegiate Public Charter School Knights Varsity Boys Basketball Team has potentially 4 to 6 seniors that will receive both academic and athletic scholarships to colleges and universities across the nation;

WHEREAS, the Friendship Collegiate Public Charter School Knights Varsity Boys Basketball Team exemplifies the meaning of scholar athlete and models the school's mission and values of integrity, responsibility, confidence, patience, persistence, caring, commitment, and respect; and

WHEREAS, Friendship Collegiate Public Charter School Knights Varsity Boys Basketball Team roster for the 2015-2016 season includes:

- |                              |                            |
|------------------------------|----------------------------|
| #0 Alani Moore, PG, Sr.      | #1 Keon Queen, F, Jr.      |
| #2 Quavon Blackwood, G, Sr.  | #5 LeAndre Thomas, PF, Sr. |
| #10 Emmanuel Johnson, G, Sr. | #13 Ike Okwara, G, Sr.     |
| #15 Eric Moseley, G, Jr.     | #20 Jaleel Lee, G, Jr.     |
| #21 Kevon Hines, G, Sr.      | #23 Cassius Blount, G, Sr. |

**ENROLLED ORIGINAL**

#25 Eric King, SF/PF, Sr.  
#35 Jamal Farooq, F, Jr.

#34 Heratio Carr, F, Jr.  
#50 Sam Pearson, F, Sr.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Friendship Collegiate Public Charter School Knights Varsity Boys Basketball Team Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes the Friendship Collegiate Public Charter School Knights Varsity Boys Basketball Team for their 2016 season.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-185

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare the month of April as “Safe Digging Month” in the District of Columbia.

WHEREAS, excavation and digging activities begin in spring and summer, Common Ground Alliance and the National Association of Pipeline Safety Representatives (“NAPSR”) have designated April as National Safe Digging Month;

WHEREAS, the Public Service Commission of the District of Columbia, as a member of NAPSR, is educating consumers about safe digging practices, underground infrastructure damage prevention, and public safety;

WHEREAS, the Public Service Commission of the District of Columbia encourages District residents, all excavators, utilities, institutions, businesses, and their contractors to call 811 before digging near their home, building, plant, or business;

WHEREAS, residents must be aware that natural gas pipelines, electric power lines, or other facilities may be buried only a few inches underground in easy striking distance even for shallow digging projects;

WHEREAS, the 811 nationwide one-call number provides those who intend to dig or excavate a convenient and easy access to the District One Call Center to request locating and marking of natural gas pipelines, electric power lines, and underground facilities; and

WHEREAS, to prevent loss of life, damage to property and the environment, and curtailment or disruption of services, the Public Service Commission of the District of Columbia promotes calling 811 before digging and making resources available for such promotion.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Washington, D.C. Safe Digging Month Recognition Resolution of 2016”.



**ENROLLED ORIGINAL**

Sec. 2. The Council of the District of Columbia declares the month of April as “Safe Digging Month” in the District of Columbia.

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

ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-186

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To recognize and preserve the cultural history and heritage of the District of Columbia and to formally recognize the 154<sup>th</sup> anniversary of District of Columbia Emancipation Day on April 16, 2016, as an important day in the history of the District of Columbia and the United States.

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

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

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

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

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

WHEREAS, nine months after the signing of the District of Columbia Compensated Emancipation Act, on January 1, 1863, President Lincoln signed the Emancipation Proclamation of 1863, to begin to end institutionalized enslavement of people of African descent in Confederate states;

## ENROLLED ORIGINAL

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

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

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

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

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

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

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

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

WHEREAS, the District of Columbia Emancipation Day Parade and Fund Act of 2004, effective March 17, 2005 (D.C. Law 15-240; D.C. Official Code § 1-181 *et seq.*), established the

## ENROLLED ORIGINAL

Emancipation Day Fund to receive and disburse monies for the Emancipation Day Parade and activities associated with the celebration and commemoration of the District of Columbia Emancipation Day;

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

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

WHEREAS, April 16, 2016, is the 154<sup>th</sup> anniversary of District of Columbia Emancipation Day, which symbolizes the triumph of people of African descent over the cruelty of institutionalized slavery and the goodwill of people opposed to the injustice of slavery in a democracy;

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

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

WHEREAS, the 154<sup>th</sup> anniversary of District of Columbia Emancipation Day is a singularly important occasion that links the historic Presidency of Abraham Lincoln with the equally historic Presidency of Barack H. Obama, as the first President of the United States of African descent;

WHEREAS, the 154<sup>th</sup> Anniversary of District of Columbia Emancipation Day accords with the 151st anniversary of the assassination of the 16th President of the United States, Abraham Lincoln, who was shot on April 14, 1865 and died on April 15, 1865.

WHEREAS, the 154<sup>th</sup> anniversary of District of Columbia Emancipation Day marks the 16th anniversary of legislation introduced by Councilmember Vincent B. Orange and Councilmember Carol Schwartz establishing April 16, District of Columbia Emancipation Day, as a private legal holiday;

**ENROLLED ORIGINAL**

WHEREAS, the 154<sup>th</sup> anniversary of District of Columbia Emancipation Day marks the 11th anniversary of legislation introduced by Councilmember Vincent B. Orange establishing April 16, District of Columbia Emancipation Day, as an annual public legal holiday requiring the closing of the government of the District of Columbia, including the schools and the courts;

WHEREAS, the 154<sup>th</sup> anniversary of District of Columbia Emancipation Day garners additional national significance as it will officially be celebrated April 15, 2016, giving the entire United States a 3-day reprieve on filing its 2015 taxes because District of Columbia holidays are treated as federal holidays for tax-filing purposes;

WHEREAS, Councilmember Vincent B. Orange's contributions towards creating the legislation to establish District of Columbia Emancipation Day as well as his tireless efforts to maintain and commemorate the holiday every year in the District are commended and deserve the utmost gratitude and appreciation; and

WHEREAS, District of Columbia Emancipation Day activities have been transferred to the Executive Office of the Mayor and the Council of the District of Columbia is confident that Mayor Muriel Bowser will continue to recognize and uphold the significance of the holiday.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Emancipation Day 154<sup>th</sup> Anniversary Recognition Resolution of 2016".

Sec. 2. The Council of the District of Columbia finds the 154<sup>th</sup> anniversary of District of Columbia Emancipation Day is an important, historic occasion for the District of Columbia and the nation and serves as an appropriate time to reflect on how far the District of Columbia and the United States have progressed since institutionalized enslavement of people of African descent; and, most importantly, the 154<sup>th</sup> anniversary reminds us to reaffirm our commitment to forge a more just and united country that truly reflects the ideals of its founders and instills in its people a broad sense of duty to be responsible and conscientious stewards of freedom and democracy.

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

## ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-187

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To honor and recognize The George Washington University Colonials Men's Basketball team on winning the 2016 National Invitation Tournament Championship.

WHEREAS, after winning the program's first-ever National Invitation Tournament ("NIT") game in 2015, The George Washington University Colonials this season won 5 consecutive NIT games to win the NIT Championship;

WHEREAS, the Colonials' appearance in the 2016 NIT marked the third straight year the team has earned a berth in a postseason basketball tournament;

WHEREAS, the Colonials' 28 wins this season marked a new program record for wins in a season;

WHEREAS, 4 of the 5 members of the NIT All-Tournament team were George Washington University student athletes;

WHEREAS, the Colonials' 16 wins at the Charles E. Smith Center marked a new program record for home wins in a season;

WHEREAS, the team has now won more than 20 games in 3 straight seasons for the second time in school history;

WHEREAS, the Colonials have won 24 consecutive home games against nonconference opponents, including wins this season against Virginia (a No. 1 seed in the NCAA Tournament) and Big East Champion Seton Hall;

WHEREAS, the Colonials also beat 2 teams from the Big Ten at home this season, the team's first 2 home wins against Big Ten opposition since 1977;

WHEREAS, the Colonials have compiled a 42-6 record at the Charles E. Smith Center since the start of the 2013-14 season;

## ENROLLED ORIGINAL

WHEREAS, 3 Colonials made up half of the 6-man Atlantic 10 All-Academic team, representing 14 conference schools, adding to the school's conference-best all-time total of All-Academic student-athletes; and

WHEREAS, in December, The George Washington University basketball team ranked in the *AP & USA Today* Top 25 polls for the first time in 10 years.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "The George Washington University Colonials Men's Basketball Team Recognition Resolution of 2016".

Sec. 2. The Council of the District of Columbia is proud to honor The George Washington University Colonials Men's Basketball Team for its commendable winning seasons and congratulates the team on a job well done.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-188

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare March 30, 2016, as “National Doctors’ Day” in the District of Columbia to honor the medical staff at United Medical Center.

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

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

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

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

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

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

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

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “United Medical Center Doctors’ Appreciation Day Recognition Resolution of 2016”.



**ENROLLED ORIGINAL**

Sec. 2. The Council of the District of Columbia congratulates the staff at United Medical Center on the occasion of National Doctor's Day, commends the staff for their extraordinary commitment to the patients and residents in the District of Columbia, and declares March 30, 2015, as "National Doctors' Day" in the District of Columbia.

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

## ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-189

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To commemorate Capital Caring's 2016 Hospice Comes to Washington event, and its efforts in addressing the growing need for hospice care among underserved communities in the nation's capital.

WHEREAS, the 3-day Capital Caring's 2016 Hospice Comes to Washington event, April 12-14, 2016, brings together key stakeholders, community leaders, policy makers, activists, and supporters in addressing the state of advanced illness care in the District, as well as discussing innovative approaches and best practices for faith- and community-based organizations to bridge gaps in advanced illness care;

WHEREAS, for nearly 40 years, Capital Caring has improved care for those facing life-limiting illness through direct support of patients and their families, public education, and advocacy;

WHEREAS, since its inception in 1977, Capital Caring has provided hospice, palliative care, and counseling to more than 96,000 patients and their families;

WHEREAS, over 700 employees and 900 volunteers have traveled more than 1.8 million miles to provide these services to nearly 1,200 patients each day, regardless of their ability to pay;

WHEREAS, as one of the nation's oldest and largest nonprofit providers of hospice and palliative care, Capital Caring is proud to provide over \$3 million in charitable care to patients last year alone; and

WHEREAS, Hospice Comes to Washington has both inspired the national hospice movement and driven expanded access to hospice and advanced care for residents of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Hospice Comes to Washington Recognition Resolution of 2016".

**ENROLLED ORIGINAL**

Sec. 2. The Council of The District of Columbia recognizes Hospice Comes to Washington as a critical event in helping to create the best possible advanced care policies, and commends Capital Caring for its service and commitment to District patients.

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

## ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-190

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To honor the expansion of the Schedule H Homeowner and Renter Property Tax Credit and celebrate the assistance it has afforded many more District residents.

WHEREAS, the Schedule H Homeowner and Renter Property Tax Credit is a critical tool to help low-income residents cope when they face substantial property tax burdens:

WHEREAS, Schedule H is especially important to seniors and others with fixed incomes who face increasing property taxes due to rising home values in their neighborhoods;

WHEREAS, until 2014, residents could receive Schedule H only if their income was below \$20,000;

WHEREAS, until 2014, applying for Schedule H was complicated and as a result many residents simply did not apply;

WHEREAS, the Council recognized these problems and moved to increase the Schedule H income eligibility to \$50,000, to increase the maximum credit from \$750 to \$1,000, and to make the credit easier to apply for;

WHEREAS, these changes showed immediate results, with the number of households claiming Schedule H growing almost three-fold in one year, from 6,400 in 2013 to 17,900 in 2014;

WHEREAS, the average Schedule H credit increased from \$580 in 2013 to \$780 in 2014;  
and

WHEREAS, the total amount of critical property tax assistance provided to District residents grew from \$4 million in 2013 to \$14 million in 2014.

**ENROLLED ORIGINAL**

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Schedule H Homeowner and Renter Property Tax Credit Expansion Recognition Resolution of 2016.”

Sec. 2. The Council of the District of Columbia salutes the Schedule H credit and all who worked towards its successful expansion to help the residents of the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-191

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To declare April 24-30, 2016, as “National Reentry Week” in the District of Columbia.

WHEREAS, the United States Department of Justice (“DOJ”) is designating the week of April 24-30, 2016, as National Reentry Week;

WHEREAS, the DOJ has asked the U.S. Attorney’s Office to coordinate reentry events, including meetings between local reentry stakeholders, reentry court proceedings, employer roundtables, or other events designed to raise awareness about the importance of reentry work;

WHEREAS, the DOJ has made more than \$400 million in Second Chance Act funds available since 2009 to support comprehensive adult and juvenile reentry services;

WHEREAS, the Council of the District of Columbia has passed landmark legislation, often referred to as “Ban the Box,” prohibiting potential employers from inquiring into an applicant’s criminal background until after an offer of conditional employment has been extended;

WHEREAS, each year, more than 600,000 individuals return to their communities after serving time in federal and state prison, and another 11.4 million individuals cycle through local jails;

WHEREAS, the District is unique in that it does not have its own prison system, thus, all sentenced felons, regardless of District of Columbia residency, could be detained in any federal correctional facility;

WHEREAS, this federal inmate population includes 4,900 District of Columbia residents in 116 Bureau of Prisons facilities across 34 states, often housed at long distances from the District that do not promote rehabilitation or successful reentry;

**ENROLLED ORIGINAL**

WHEREAS, it is estimated that 60,000 people in the District of Columbia have criminal records, with more than 8,000 returning each year to the District from various prison populations;

WHEREAS, positive reentry continues to be a priority for District government with continued support of the Office of Returning Citizens Affairs (“ORCA”), which serves as a liaison between the Mayor, the returning citizen community, and District government agencies;

WHEREAS, ORCA also provides constituent services and information to the returning citizen community through programmatic activities and outreach materials;

WHEREAS, the Corrections Information Council monitors the conditions of confinement of all District of Columbia residents, as incarcerated in the federal Bureau of Prisons, the District’s Department of Corrections, and contract facilities;

WHEREAS, nearly a quarter of Americans has had some sort of encounter with the criminal justice system, mostly for relatively minor, non-violent offenses;

WHEREAS, supporting effective reentry is an essential to helping individuals return to productive, law-abiding lives, which can result in overall crime reduction, making our neighborhoods better places to live; and

WHEREAS, it is incumbent upon all of us to prepare those who have paid their debt to society for substantive opportunities following incarceration, and further addressing common obstacles that too many returning citizens encounter.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “National Reentry Week Recognition Resolution of 2016”.

Sec. 2. The Council declares April 24-30, 2016, as “National Reentry Week” in the District of Columbia.

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

## ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-192

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To celebrate and honor the accomplishments and service of Specialist Antoinette Scott, the first female veteran from the District of Columbia to receive the Purple Heart for service in Iraq.

WHEREAS, the District has the utmost gratitude for all the men and women who have served and continue to serve our country in the armed forces;

WHEREAS, the contributions and sacrifices of the men and women who served in the armed forces have been vital in maintaining the security and prosperity enjoyed by our citizens;

WHEREAS, veterans receive the Purple Heart medal as a result of being wounded while engaged in combat with an enemy force, construed as a singularly meritorious act of essential service;

WHEREAS, March is designated as Women's History Month and is an opportunity to recognize the contributions of and sacrifices by women;

WHEREAS, Specialist ("SPC") Antoinette Scott is a native Washingtonian, having graduated from Dunbar Senior High School and worked as a nurse at DC General Hospital;

WHEREAS, SPC Scott, as a member of the military from 1996 to 2004 as part of the D.C. Army National Guard, served in both Operation Iraqi Freedom and Operation Enduring Freedom;

WHEREAS, while deployed in Iraq, SPC Scott was operating a 5-ton cargo vehicle transporting soldiers to the Baghdad International Airport ("BIAP") when an improvised explosive device detonated and her convoy came under enemy fire;

WHEREAS, although there were no casualties, SPC Scott sustained severe injuries and was immediately transported to BIAP Hospital for treatment;

WHEREAS, SPC Scott survived the attack and became a lifetime member of the Military Order of the Purple Heart;



**ENROLLED ORIGINAL**

WHEREAS, SPC Scott has dedicated her civilian life to the promotion of health and fitness within the veteran community and continues to serve District residents as a volunteer Zumba instructor to women at the Unity Health Clinic of Kenilworth; and

WHEREAS, the District seeks to honor and recognize veterans who are recipients of the Purple Heart medal.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Antoinette Scott Recognition Resolution of 2016”.

Sec. 2. The District of Columbia is grateful for the Antoinette Scott’s service and continuing commitment to health and veteran’s issues.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-193

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 5, 2016

To recognize the professionalism and dedication of the employees of the Metropolitan Police Department, the District of Columbia Housing Authority Police Department, and the Department of General Services' Protective Services Division during National Police Week, and to declare the week of May 15<sup>th</sup> as "National Police Week" in the District of Columbia.

WHEREAS, President John F. Kennedy signed a proclamation in 1962 designating May 15 as Peace Officers Memorial Day and the week in which that date falls as Police Week;

WHEREAS, the Metropolitan Police Department, the District of Columbia Housing Authority Police Department, and the Department of General Services' Protective Services Division are tasked with protecting more than 670,000 residents and 20.2 million visitors a year;

WHEREAS, the mission of the Metropolitan Police Department is to safeguard the District of Columbia and protect its residents and visitors by providing the highest quality of police service with integrity, compassion, and a commitment to innovation;

WHEREAS, the District of Columbia Housing Authority Police Department is committed to the prevention of crime, the protection of life and property, and the preservation of peace and safety in and around public housing in the District of Columbia;

WHEREAS, the Department of General Services' Protective Services Division is responsible for law enforcement activities and physical security of all properties owned, leased, or otherwise under the control of the government of the District of Columbia;

WHEREAS, the sworn and civilian members of the Metropolitan Police Department routinely demonstrate their professionalism and dedication to the job by building community trust, responding to calls for service, and cultivating relationships with residents;

WHEREAS, the Metropolitan Police Department works collaboratively with partners in the community and social service agencies to build positive relationships between youth and the

## ENROLLED ORIGINAL

police on projects like Youth Creating Change, the Junior Cadet Program, and the Junior Police Academy;

WHEREAS, the Metropolitan Police Department conducts extensive outreach efforts, reaching more than 30,000 youth and adults in 2015 through events such as National Night Out, Beat the Street, movie nights, Halloween Safe Haven, holiday parties, Senior Bingo, and Play Streets;

WHEREAS, the Metropolitan Police Department provides a secure presence during First Amendment assemblies and other significant events such as presidential inaugurations and international summits;

WHEREAS, the heroic efforts of the Metropolitan Police Department greatly reduced the potential for additional casualties during the Navy Yard shooting;

WHEREAS, the Metropolitan Police Department is deploying more than 2,800 body-worn cameras to 7 police districts and 3 substations in 2016 with the goals of promoting transparency and increasing accountability;

WHEREAS, the District of Columbia Housing Authority Police Department works in partnership with District of Columbia Housing Authority residents, the larger community, and the Metropolitan Police Department to ensure community safety for residents of public housing; and

WHEREAS, the Department of General Services' Protective Services Division creates presentations to educate District government employees on safety scenarios such as workplace violence.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "National Police Week Recognition Resolution of 2016".

Sec. 2. The Council declares the week of May 15<sup>th</sup> as "National Police Week" in the District of Columbia and recognizes the Metropolitan Police Department, the District of Columbia Housing Authority Police Department, and the Department of General Services' Protective Services Division for protecting and serving our residents, employees, and visitors.

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

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**NOTICE OF INTENT TO ACT ON NEW LEGISLATION**

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

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

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**COUNCIL OF THE DISTRICT OF COLUMBIA****PROPOSED LEGISLATION****BILLS**

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|---------|--|
| B21-706 | Fair Criminal Record Screening for Housing Act of 2016<br><br>Intro. 4-19-16 by Councilmembers McDuffie and Bonds and referred to the Committee on Judiciary with comments from the Committee on Housing and Community Development   |
| <hr/>   |  |
| B21-707 | Access to Contraceptives Amendment Act of 2016<br><br>Intro. 4-19-16 by Councilmembers McDuffie, Cheh, Grosso, Silverman, Allen, Evans, Nadeau, and Chairman Mendelson and referred to the Committee on Health and Human Services with comments from the Committee on Business, Consumer, and Regulatory Affairs |
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| B21-708 | End Taxation Without Representation Amendment Act of 2016<br><br>Intro. 4-19-16 by Councilmembers Allen, Nadeau, Grosso, Silverman, May, McDuffie, Cheh, Todd, Alexander, and Bonds and referred to the Committee on Transportation and the Environment and Committee of the Whole                               |
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B21-709 Earth Day Bicycling Tax Holiday Act of 2016  
Intro. 4-19-16 by Councilmembers Bonds, Nadeau, Cheh, Todd, and Grosso and referred to the Committee on Finance and Revenue with comments from the Committee on Transportation and the Environment

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B21-710 Surplus of District Land Clarification Amendment Act of 2016  
Intro. 4-19-16 by Councilmember Cheh and referred sequentially to the Committee on Transportation and the Environment and the Committee of the Whole

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### **PROPOSED RESOLUTIONS**

PR21-635 Taxicab Commission Linwood Jolly Confirmation Resolution of 2016  
Intro. 4-5-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

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PR21-636 Board of Pharmacy James Appleby Confirmation Resolution of 2016  
Intro. 4-5-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services

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PR21-637 Board of Pharmacy Daphne Bernard Confirmation Resolution of 2016  
Intro. 4-5-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services

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PR21-638 Board of Pharmacy Eddie Curry Confirmation Resolution of 2016  
Intro. 4-5-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services

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PR21-639 Board of Pharmacy Reginal Bellamy Confirmation Resolution of 2016  
Intro. 4-5-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services

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PR21-640      The Institute of World Politics Revenue Bonds Project Approval Resolution of 2016

Intro. 4-5-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

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PR21-641      Corrections Information Council Phylisa Carter Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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PR21-642      District of Columbia Board of Ethics and Government Accountability Shomari Wade Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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PR21-643      Commission on Re-Entry and Returning Citizens Affairs Yasmine A. Arrington Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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PR21-644      Commission on Re-Entry and Returning Citizens Affairs Keith Campbell Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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PR21-645      Commission on Re-Entry and Returning Citizens Affairs Brian Ferguson Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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PR21-646 Commission on Re-Entry and Returning Citizens Affairs Nicole D. Porter  
Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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PR21-647 Commission on Re-Entry and Returning Citizens Affairs Eric Weaver  
Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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PR21-648 Board of Industrial Trades Mr. Brian Cooper Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR21-649 Board of Industrial Trades Mr. Keith Jones Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR21-650 Board of Industrial Trades Ms. Victoria Leonard Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR21-651 Board of Industrial Trades Mr. Robert Louis Smith Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR21-652 Board of Industrial Trades Mr. Alvin D. Venson, Sr. Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR21-653 Board of Industrial Trades Mr. Petrick Washington Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR21-654 Board of Physical Therapy Timothy Vidale Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services

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PR21-655 Board of Physical Therapy Margaret Plack Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services

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PR21-656 Board of Physical Therapy Joel Hemphill Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health and Human Services

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PR21-657 District of Columbia Board of Ethics and Government Accountability Norma Hutcheson Confirmation Resolution of 2016

Intro. 4-8-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

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PR21-658 Fee Based Use and Revenue Generation Regulation Approval Resolution of 2016

Intro. 4-19-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

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COUNCIL OF THE DISTRICT OF COLUMBIA  
**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT**  
MARY M. CHEH, CHAIR

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**NOTICE OF PUBLIC HEARING ON**

**B21-0650, the Renewable Portfolio Standard Expansion Amendment Act of 2016;**  
**B21-0412, the Solar Energy Amendment Act of 2015; and**  
**B21-369, the Commission on Climate Change and Resiliency Establishment Act of 2015**

Thursday, May 12, 2016  
at 1:00 p.m.  
in Room 500 of the  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

On Thursday, May 12, 2016, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B21-0650, the Renewable Portfolio Standard Expansion Amendment Act of 2016; B21-0412, the Solar Energy Amendment Act of 2015; and B21-369, the Commission on Climate Change and Resiliency Establishment Act. The hearing will begin at 1:00 p.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B21-0650, the Renewable Portfolio Standard Expansion Amendment Act of 2016, would raise the renewable portfolio standard (RPS) requirements to 50% by 2032, and the solar carve out requirement to 5% by 2032. It would also extend the current price of alternative compliance payments for failure to meet the solar carve out provisions of the RPS through 2023, with a graduated decline until it reaches the price of other Tier 1 energy source alternative compliance payments in 2033. The bill would also establish a "Solar for All" program with the goal of accelerating the installation of solar systems on the homes of low-income homeowners in the District. B21-0412, the Solar Energy Amendment Act of 2015, would the extend current price of alternative compliance payments for failure to meet the solar carve out provisions of the RPS through 2023 and limit the use of solar incentive funds from the Renewable Energy Development Fund to programs for low-income households. B21-369, the Commission on Climate Change and Resiliency Establishment Act of 2015, would establish a Commission on Climate Change and Resiliency to assess the potential risks of climate change to the District and to make recommendations regarding the District's preparedness, mitigation efforts, and adaptation plans.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official 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](mailto: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](mailto: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](mailto:abenjamin@dccouncil.us) or faxed to (202) 724-8118. The record will close at the end of the business day on March 8, 2016.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
NOTICE OF PUBLIC HEARINGS  
FISCAL YEAR 2017 PROPOSED BUDGET AND FINANCIAL PLAN,  
FISCAL YEAR 2017 BUDGET SUPPORT ACT OF 2016,  
FISCAL YEAR 2017 BUDGET REQUEST ACT OF 2016, AND  
COMMITTEE MARK-UP SCHEDULE**

4/19/2016

**SUMMARY**

March 24, 2016	Mayor Transmits the Fiscal Year 2017 Proposed Budget and Financial Plan
April 4, 2016	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2016 Proposed Budget and Financial Plan
April 6, 2016 to April 26, 2016	Committee Public Hearings on the "Fiscal Year 2017 Budget Request Act of 2016." (The Committees may also simultaneously receive testimony on the sections of the Fiscal Year 2017 Budget Support Acts that affect the agencies under each Committee's purview)
April 29, 2016	Committee of the Whole Public Hearing on the "Fiscal Year 2017 Budget Request Act of 2016", "Fiscal Year 2017 Budget Support Act of 2016", "Fiscal Year 2016 Second Revised Budget Request Emergency Adjustment Act of 2016", "Fiscal Year 2016 Second Revised Budget Request Temporary Adjustment Act of 2016", and the "Fiscal Year 2016 Second Revised Budget Request Emergency Declaration Resolution of 2016"
May 4-5, 2016	Committee Mark-ups and Reporting on Agency Budgets for Fiscal Year 2017
May 17, 2016	Committee of the Whole and Council consideration of the "Fiscal Year 2017 Budget Request Act of 2016", and the "Fiscal Year 2017 Budget Support Act of 2016"
May 31, 2016	Council consideration of the "Fiscal Year 2017 Budget Request Act of 2016"
June TBD	Council consideration of the "Fiscal Year 2017 Budget Support Act of 2016"

The Council of the District of Columbia hereby gives notice of its intention to hold public hearings on the FY 2017 Proposed Budget and Financial Plan, the "Fiscal Year 2017 Budget Request Act of 2016", and the "Fiscal Year 2017 Budget Support Act of 2016". The hearings will begin Monday, April 4, 2016 and conclude on Friday, April 29, 2016 and will take place in the Council Chamber (Room 500), Room 412, Room 120, or Room 123 of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

The Committee mark-ups will begin Wednesday, May 4, 2016 and conclude on Thursday, May 5, 2016 and will take place in the Council Chamber (Room 500) of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

Persons wishing to testify are encouraged, but not required, to submit written testimony in advance of each hearing to Nyasha Smith, Secretary to the Council of the District of Columbia; Suite 5; John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004 or to the corresponding Committee office. If a written statement cannot be provided prior to the day of the hearing, please have at least 15 copies of your written statement available on the day of the hearing for immediate distribution to the Council. The hearing record will close two business days following the conclusion of each respective hearing. Persons submitting written statements for the record should observe this deadline. For more information about the Council's budget oversight hearing and mark-up schedule please contact the Council's Office of the Budget Director at (202) 724-8544.

ADDENDUM OF CHANGES TO THE PUBLIC HEARING SCHEDULE

<u>New Date</u>	<u>Original Date</u>	<u>Hearing</u>
April 7, 2016	April 6, 2016	Committee on the Judiciary - Room 500 (Criminal Justice Coordinating Council)
April 11, 2016	April 13, 2016	Committee on Finance & Revenue - Room 500 (Commission on Arts & Humanities, Real Property Tax Appeals Commission and Office of Partnerships and Grant Services)
April 22, 2016	April 22, 2016	Committee on Transportation & the Environment (Time change from 11:00am to 9:30am)
April 25, 2016	April 13, 2016	Committee on Finance & Revenue - Room 412 (Office of the Chief Financial Officer and DC Lottery)
April 27, 2016	April 8, 2016	Committee on Health & Human Services - Room 412 (Department of Health Care Finance)
April 27, 2016	April 13, 2016	Committee on Housing and Community Development - Room 120
April 28, 2016	April 22, 2016	Committee on Health & Human Services - Room 412
April 29, 2016		(Add-on) Committee of the Whole - Room 500 (FY 2016 Second Revised Budget Request Emergency Adjustment Act of 2016, FY 2016 Second Revised Budget Request Temporary Adjustment Act of 2016, and the FY 2016 Second Revised Budget Request Emergency Declaration Resolution of 2016)

**PUBLIC HEARING SCHEDULE**

**COMMITTEE OF THE WHOLE** **Chairman Phil Mendelson**

<b>MONDAY, APRIL 4, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Subject</b>
10:00 a.m. - End	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2017 Proposed Budget and Financial Plan

**COMMITTEE OF THE WHOLE** **Chairman Phil Mendelson**

<b>WEDNESDAY, APRIL 6, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
9:30 a.m. - End	Office of Zoning Office of Planning Deputy Mayor for Planning & Economic Development

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: [cow@dccouncil.us](mailto:cow@dccouncil.us).

**COMMITTEE ON THE JUDICIARY** **Chairperson Kenyan McDuffie**

<b>WEDNESDAY, APRIL 6, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Department of Youth Rehabilitation Services Office of Victim Services and Justice Grants Office of Human Rights

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, [kmitchell@dccouncil.us](mailto:kmitchell@dccouncil.us) or by calling 202-727-8275.

**COMMITTEE ON HEALTH & HUMAN SERVICES** **Chairperson Yvette Alexander**

<b>WEDNESDAY, APRIL 6, 2016; Room 120</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Department of Behavioral Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-741-0909.

**COMMITTEE ON THE JUDICIARY** **Chairperson Kenyan McDuffie**

<b>THURSDAY, APRIL 7, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Metropolitan Police Department Office of Police Complaints Criminal Justice Coordinating Council

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, [kmitchell@dccouncil.us](mailto:kmitchell@dccouncil.us) or by calling 202-727-8275.

**COMMITTEE OF THE WHOLE** **Chairman Phil Mendelson**

<b>THURSDAY, APRIL 7, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
9:30 a.m. - End	University of the District of Columbia Department of Human Resources Office of Labor Relations and Collective Bargaining Office of Employee Appeals Public Employee Relations Board

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: [cow@dccouncil.us](mailto:cow@dccouncil.us).

**COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT** **Chairperson Anita Bonds**

<b>THURSDAY, APRIL 7, 2016; Room 120</b>	
<b>Time</b>	<b>Agency</b>
11:00 a.m. - End	Advisory Commission on Caribbean Community Affairs Office of African American Affairs Office of Asian and Pacific Islander Affairs Office of Latino Affairs Office on African Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, [omontiel@dccouncil.us](mailto:omontiel@dccouncil.us) or by calling or by calling 202-724-8198.

**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT** **Chairperson Mary Cheh**

<b>FRIDAY, APRIL 8, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
11:00 a.m. - End	District Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or by calling 202-724-8062.

**COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT** **Chairperson Anita Bonds**

<b>FRIDAY, APRIL 8, 2016; Room 120</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Office of Lesbian, Gay, Bisexual, Transgender and Questioning Affairs
	Office of Religious Affairs
	Office of Veterans Affairs
	Office of Women's Policy and Initiatives

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, [omontiel@dccouncil.us](mailto:omontiel@dccouncil.us) or by calling 202-724-8198.

**COMMITTEE ON FINANCE & REVENUE** **Chairperson Jack Evans**

<b>MONDAY, APRIL 11, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Commission on the Arts and Humanities
	Real Property Tax Appeals Commission
	Office of Partnerships and Grant Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, [sloy@dccouncil.us](mailto:sloy@dccouncil.us) or by calling 202-724-8058.

**COMMITTEE OF THE WHOLE** **Chairman Phil Mendelson**

<b>MONDAY, APRIL 11, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Executive Office of the Mayor
	Office of the City Administrator
	Office of the Secretary
	Office of the Senior Advisor
	Contracts Appeals Board
	Office of Contracting and Procurement
	Office of the Chief Technology Officer

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: [cow@dccouncil.us](mailto:cow@dccouncil.us).

**COMMITTEE ON HEALTH & HUMAN SERVICES** **Chairperson Yvette Alexander**

<b>TUESDAY, APRIL 12, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Department of Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-741-0909.

**COMMITTEE ON THE JUDICIARY** **Chairperson Kenyan McDuffie**

<b>TUESDAY, APRIL 12, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Fire and Emergency Medical Services Department
	Office of Unified Communications
	Homeland Security and Emergency Management Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, [kmitchell@dccouncil.us](mailto:kmitchell@dccouncil.us) or by calling 202-727-8275.

**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT** **Chairperson Mary Cheh**

<b>TUESDAY, APRIL 12, 2016; Room 120</b>	
<b>Time</b>	<b>Agency</b>
11:00 a.m. - End	Department of Energy and Environment

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or by calling 202-724-8062.

**COMMITTEE ON EDUCATION** **Chairperson David Grosso**

<b>TUESDAY, APRIL 12, 2016; Room 123</b>	
<b>Time</b>	<b>Agency</b>
11:00 a.m. - End	Public Charter School Board
	State Board of Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

**COMMITTEE ON HEALTH & HUMAN SERVICES** **Chairperson Yvette Alexander**

<b>WEDNESDAY, APRIL 13, 2016; Room 412</b>	
Time	Agency
10:00 a.m. - End	Health Benefit Exchange Authority
	Child and Family Services Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-741-0909.

**COMMITTEE ON EDUCATION** **Chairperson David Grosso**

<b>WEDNESDAY, APRIL 13, 2016; Room 120</b>	
Time	Agency
10:00 a.m. - End	District of Columbia Public Library System
	Office of the Deputy Mayor for Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

**COMMITTEE ON THE JUDICIARY** **Chairperson Kenyan McDuffie**

<b>THURSDAY, APRIL 14, 2016; COUNCIL CHAMBER (Room 500)</b>	
Time	Agency
10:00 a.m. - End	Office of the Attorney General
	Office of Administrative Hearings
	Board of Ethics and Government Accountability
	Board of Elections
	Office of Campaign Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, [kmitchell@dccouncil.us](mailto:kmitchell@dccouncil.us) or by calling 202-727-8275.

**COMMITTEE ON EDUCATION** **Chairperson David Grosso**

<b>THURSDAY, APRIL 14, 2016; Room 412</b>	
Time	Agency
10:00 a.m. (this hearing will end after the last witness and reconvene at 5:00pm)	District of Columbia Public Schools (Public Witnesses only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

**COMMITTEE OF THE WHOLE** **Chairman Phil Mendelson**

<b>THURSDAY, APRIL 14, 2016; Room 120</b>	
Time	Agency
10:00 a.m. - End	Metropolitan Washington Council of Governments
	Council of the District of Columbia
	District of Columbia Auditor
	New Columbia Statehood Commission
	Office of Budget and Planning
	District of Columbia Retirement Board/Funds
	Retiree Health Contribution

Persons wishing to testify about the performance of any of the foregoing agencies may send an email to: [cow@dccouncil.us](mailto:cow@dccouncil.us).

**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT** **Chairperson Mary Cheh**

<b>THURSDAY, APRIL 14, 2016; Room 123</b>	
Time	Agency
11:00 a.m. - End	Department of Parks and Recreation
	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or by calling 202-724-8062.

**COMMITTEE ON HEALTH & HUMAN SERVICES** **Chairperson Yvette Alexander**

<b>MONDAY, APRIL 18, 2016; COUNCIL CHAMBER (Room 500)</b>	
Time	Agency
10:00 a.m. - End	Department of Disability Services
	Office of Disability Rights

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-741-0909.

**COMMITTEE ON EDUCATION** **Chairperson David Grosso**

<b>MONDAY, APRIL 18, 2016; Room 412</b>	
Time	Agency
10:00 a.m. - End	Office of State Superintendent of Education

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

**COMMITTEE ON HEALTH & HUMAN SERVICES** **Chairperson Yvette Alexander**

<b>WEDNESDAY, APRIL 20, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Department of Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-741-0909.

**COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS** **Chairperson Vincent Orange**

<b>WEDNESDAY, APRIL 20, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Alcoholic Beverage Regulation Administration
	Department of Consumer and Regulatory Affairs
	Department of Insurance, Securities and Banking
	Office of Tenant Advocate
	Department of Small and Local Business Development
	Deputy Mayor for Greater Economic Opportunity

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Peter Johnson, [pjohnson@dccouncil.us](mailto:pjohnson@dccouncil.us) or by calling 202-727-6683.

**COMMITTEE ON THE JUDICIARY** **Chairperson Kenyan McDuffie**

<b>WEDNESDAY, APRIL 20, 2016; Room 120</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Corrections Information Council
	Department of Corrections
	Department of Forensic Sciences
	Office of the Chief Medical Examiner
	Office of Returning Citizen Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Katherine Mitchell, [kmitchell@dccouncil.us](mailto:kmitchell@dccouncil.us) or by calling 202-727-8275.

**COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT** **Chairperson Anita Bonds**

<b>THURSDAY, APRIL 21, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Housing Finance Agency
	District of Columbia Housing Authority

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, [omontiel@dccouncil.us](mailto:omontiel@dccouncil.us) or by calling 202-724-8198.

**COMMITTEE ON EDUCATION** **Chairperson David Grosso**

<b>THURSDAY, APRIL 21, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses only)

Persons wishing to testify about the performance of any of the foregoing agencies may do so online at: <http://bit.ly/EdOversight16> or by calling 202-724-8061.

**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT** **Chairperson Mary Cheh**

<b>FRIDAY, APRIL 22, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
9:30 a.m. - End	Department of General Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or by calling 202-724-8062.

**COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS** **Chairperson Vincent Orange**

<b>MONDAY, APRIL 25, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Office of Cable Television, Film, Music and Entertainment
	Office of the People's Counsel
	Public Service Commission
	Department of Employment Services
	Office of Risk Management

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Peter Johnson, [pjohnson@dccouncil.us](mailto:pjohnson@dccouncil.us) or by calling 202-727-6683.



**COMMITTEE ON FINANCE & REVENUE** **Chairperson Jack Evans**

<b>MONDAY, APRIL 25, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Washington Metropolitan Area Transit Authority
	Office of the Inspector General
	Office of Partnerships and Grant Services
	Events DC
	Destination DC
	Office of the Chief Financial Officer
	District of Columbia Lottery and Charitable Games Control Board

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, [sloy@dccouncil.us](mailto:sloy@dccouncil.us) or by calling 202-724-8058.

**COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT** **Chairperson Anita Bonds**

<b>TUESDAY, APRIL 26, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Office on Aging
	Advisory Neighborhood Commissions

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, [omontiel@dccouncil.us](mailto:omontiel@dccouncil.us) or by calling 202-724-8198.

**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT** **Chairperson Mary Cheh**

<b>TUESDAY, APRIL 26, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
11:00 a.m. - End	Department of Motor Vehicles
	District of Columbia Taxicab Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or by calling 202-724-8062.

**COMMITTEE ON HEALTH & HUMAN SERVICES** **Chairperson Yvette Alexander**

<b>WEDNESDAY, APRIL 27, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Department of Health Care Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-741-0909.

**COMMITTEE ON HOUSING & COMMUNITY DEVELOPMENT** **Chairperson Anita Bonds**

<b>WEDNESDAY, APRIL 27, 2016; Room 120</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Department of Housing and Community Development
	Housing Production Trust Fund
	Rental Housing Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Oscar Montiel, [omontiel@dccouncil.us](mailto:omontiel@dccouncil.us) or by calling 202-724-8198.

**COMMITTEE ON HEALTH & HUMAN SERVICES** **Chairperson Yvette Alexander**

<b>THURSDAY, APRIL 28, 2016; Room 412</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Children and Youth Investment Trust Corporation
	United Medical Center
	Deputy Mayor for Health and Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us) or by calling 202-741-0909.

**COMMITTEE OF THE WHOLE** **Chairman Phil Mendelson**

<b>FRIDAY, APRIL 29, 2016; COUNCIL CHAMBER (Room 500)</b>	
<b>Time</b>	<b>Agency</b>
10:00 a.m. - End	Request Act of 2016", "Fiscal Year 2017 Budget Support Act of 2016", "Fiscal Year 2016 Second Revised Budget Request Emergency Adjustment Act of 2016", "Fiscal Year 2016 Second Revised Budget Request Temporary Adjustment Act of 2016", and the "Fiscal Year 2016 Second Revised Budget Request Emergency Declaration Resolution of 2016"

**COMMITTEE MARK-UP SCHEDULE****WEDNESDAY, MAY 4, 2016; COUNCIL CHAMBER (Room 500)**

<b>Time</b>	<b>Committee</b>
10:00 a.m. - 12:00 p.m.	Committee on Business, Consumer and Regulatory Affairs
12:00 p.m. - 2:00 p.m.	Committee on Finance and Revenue
2:00 p.m. - 4:00 p.m.	Committee on Transportation and the Environment
4:00 p.m. - 6:00 p.m.	Committee on Health and Human Services

**THURSDAY, MAY 5, 2016; COUNCIL CHAMBER (Room 500)**

<b>Time</b>	<b>Committee</b>
10:00 a.m. - 12:00 p.m.	Committee on Housing and Community Development
12:00 p.m. - 2:00 p.m.	Committee on the Judiciary
2:00 p.m. - 4:00 p.m.	Committee on Education
4:00 p.m. - 6:00 p.m.	Committee of the Whole

**Council of the District of Columbia  
Committee on Finance and Revenue  
Notice of Public Roundtable**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

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**COUNCILMEMBER JACK EVANS, CHAIR  
COMMITTEE ON FINANCE AND REVENUE**

**ANNOUNCES A PUBLIC ROUNDTABLE ON:**

**PR 21-0640, the “Institute of World Politics Revenue Bonds Project Approval Resolution of 2016”**

**Monday, April 25, 2016**

**9:45 a.m.**

**Room 412 - John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Monday, April 25, 2016 at 9:45 a.m. in Room 412, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 21-640, the “The Institute of World Politics Revenue Bonds Project Approval Resolution of 2016”, would authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$10 million of District of Columbia revenue bonds to assist The Institute of World Politics in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project is located at 1521-1525 16<sup>th</sup> Street, NW.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or [sloy@dccouncil.us](mailto:sloy@dccouncil.us), and provide your name, organizational affiliation (if any), and title with the organization by 9:45 a.m. on Friday, April 22, 2016. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to [sloy@dccouncil.us](mailto:sloy@dccouncil.us) or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**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

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**Reprog. 21-181:** Request to reprogram \$2,088,596 of Local funds budget authority within the Department of Housing and Community Development was filed in the Office of the Secretary on April 18, 2016. This reprogramming will ensure all personal services (PS) costs are properly aligned across all divisions and activities.

RECEIVED: 14 day review begins April 19, 2016

**ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-082437 License Class/Type: C Arena

Applicant: Aramark Entertainment, LLC

Trade Name: Aramark Entertainment, LLC (Verizon Center)

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

**601 F ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 2 am	10 am - 2 am
Monday:	8 am - 2 am	8 am - 2 am
Tuesday:	8 am - 2 am	8 am - 2 am
Wednesday:	8 am - 2 am	8 am - 2 am
Thursday:	8 am - 2 am	8 am - 2 am
Friday:	8 am - 2 am	8 am - 2 am
Saturday:	8 am - 2 am	8 am - 2 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Posting Date: April 22, 2016  
Petition Date: June 6, 2016  
Hearing Date: June 20, 2016  
Protest Date: September 7, 2016

License No.: ABRA-102500  
Licensee: Betty's Gojo Restaurant and Lounge, LLC  
Trade Name: Betty's Gojo  
License Class: Retailer's Class "C" Restaurant  
Address: 7616 Georgia Avenue, N.W.  
Contact: Fikere Workineh: (202) 714-6166

WARD 4

ANC 4A

SMD 4A02

Notice is hereby given that this licensee 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 14<sup>th</sup> 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 on September 7, 2016 at 4:30pm.

**NATURE OF OPERATION**

A neighborhood restaurant serving Ethio-American food. Offering Entertainment with a Total Occupancy Load of 49 seats.

**HOURS OF OPERATION**

Sunday through Saturday 6:00 am – 2:00 am

**HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION**

Sunday 10:00 am – 2:00 am, Monday through Saturday 8:00 am – 2:00 am

**HOURS OF LIVE ENTERTAINMENT**

Sunday through Saturday 6:00 pm – 2:00 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Posting Date: April 22, 2016  
Petition Date: June 6, 2016  
Hearing Date: June 20, 2016

License No.: ABRA-101583  
Licensee: Bohemian Restaurants, LLC  
Trade Name: Bistro Bohem  
License Class: Retailer's Class "C" Restaurant  
Address: 1840 6th Street, N.W.  
Contact: Vendula Sidzina: 202-351-9008

WARD 6

ANC 6E

SMD 6E02

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

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requests to add a Sidewalk Cafe with 19 seats.

**CURRENT HOURS OF OPERATION**

Sunday through Thursday 7:00 am – 2:00 am, Friday and Saturday 7:00 am - 3:00 am

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION**

Sunday 10:00 am – 2:00 am, Monday through Thursday 11:30 am - 2:00 am, Friday 11:30 am- 3:00 am, Saturday 10:00 am - 3:00 am

**PROPOSED HOURS OF OPERATION FOR SIDEWALK**

Sunday through Thursday 7:00 am – 1:00 am, Friday and Saturday 7:00 am - 2:00 am

**PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE**

Sunday 10:00 am – 1:00 am, Monday through Thursday 11:30 am - 1:00 am, Friday 11:30 am- 2:00 am, Saturday 10:00 am - 2:00 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Posting Date: April 22, 2016  
Petition Date: June 6, 2016  
Hearing Date: June 20, 2016

License No.: ABRA-077797  
Licensee: Café Bistro Med, LLC  
Trade Name: Café 8  
License Class: Retailer's Class "C" Restaurant  
Address: 424 8<sup>th</sup> Street, S.E.  
Contact: Turan Tombul: 202-423-1423

WARD 6

ANC 6B

SMD 6B04

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

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requests to add a Summer Garden with 12 seats.

**CURRENT HOURS OF OPERATION**

Sunday 11:00 am – 11:00 pm, Monday through Thursday 6:00 am to 11:00 pm, Friday and Saturday 6:00 am - 12:00 am

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION**

Sunday 11:00 am – 11:00 pm, Monday through Thursday 8:00 am to 11:00 pm, Friday and Saturday 8:00 am - 12:00 am

**CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE**

Sunday through Thursday 11:00 am – 11:00 pm, Friday and Saturday 11:00 am - 12:00 am

**PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SUMMER GARDEN**

Sunday 11:00am – 11:00pm, Monday through Thursday 10:00 am to 11:00 pm, Friday and Saturday 10:00 am to 12:00 am



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-000001

License Class/Type: C Club

Applicant: National Press Club of Washington

Trade Name: National Press Club

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

**529 14TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	24 hours -	11 am -2 am
Monday:	24 hours -	11 am - 2 am
Tuesday:	24 hours -	11 am - 2 am
Wednesday:	24 hours -	11 am - 2 am
Thursday:	24 hours -	11 am - 2 am
Friday:	24 hours -	11 am - 2 am
Saturday:	24 hours -	11 am - 2 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-000114

License Class/Type: C Club

Applicant: The Army & Navy Club

Trade Name: The Army & Navy Club

ANC: 2B05

Has applied for the renewal of an alcoholic beverage license at the premises:

**901 17TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	24 hours -	11:30 am - 1 am
Monday:	24 hours -	11:30 am - 1 am
Tuesday:	24 hours -	11:30 am - 1 am
Wednesday:	24 hours -	11:30 am - 1 am
Thursday:	24 hours -	11:30 am - 1 am
Friday:	24 hours -	11:30 am - 1 am
Saturday:	24 hours -	11:30 am - 1 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-000895

License Class/Type: C Club

Applicant: The Congressional Club

Trade Name: The Congressional Club

ANC: 1B12

Has applied for the renewal of an alcoholic beverage license at the premises:

**2001 NEW HAMPSHIRE AVE NW**

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:

**6/6/2016**

A HEARING WILL BE HELD ON:

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	12 pm - 11 pm	12 pm - 11 pm
Monday:	12 pm - 11 pm	12 pm - 11 pm
Tuesday:	12 pm - 11 pm	12 pm - 11 pm
Wednesday:	12 pm - 11 pm	12 pm - 11 pm
Thursday:	12 pm - 11 pm	12 pm - 11 pm
Friday:	12 pm - 11 pm	12 pm - 11 pm
Saturday:	12 pm - 11 pm	12 pm - 11 pm

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-010135

License Class/Type: C Club

Applicant: Diplomatic & Consular Officers Retired, Inc.

Trade Name: Diplomatic & Consular Officers Retired

ANC: 2A08

Has applied for the renewal of an alcoholic beverage license at the premises:

**1801 F ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	10 am - 11 pm	10 am - 11 pm
Monday:	10 am - 11 pm	10 am - 11 pm
Tuesday:	10 am - 11 pm	10 am - 11 pm
Wednesday:	10 am - 11 pm	10 am - 11 pm
Thursday:	10 am - 11 pm	10 am - 11 pm
Friday:	10 am - 11 pm	10 am - 11 pm
Saturday:	9 am - 11 pm	9 am - 11 pm

**ENDORSEMENTS: Summer Garden**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-060161

License Class/Type: C Club

Applicant: Fraternal Order of Police

Trade Name: Fraternal Order Of Police

ANC: 2C02

Has applied for the renewal of an alcoholic beverage license at the premises:

**711 4TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 2 am	10 am -2 am
Monday:	7 am - 2 am	8 am - 2 am
Tuesday:	7 am - 2 am	8 am - 2 am
Wednesday:	7 am - 2 am	8 am - 2 am
Thursday:	7 am - 2 am	8 am - 2 am
Friday:	7 am - 2 am	8 am - 2 am
Saturday:	7 am - 2 am	8 am - 2 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-022107

License Class/Type: C Marine Vessel

Applicant: Premier Yachts Inc.

Trade Name: Odyssey Cruises

ANC: 6D04

Has applied for the renewal of an alcoholic beverage license at the premises:

**600 WATER ST SW D**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8:30 am - 2:30 am	10:00 am -2:00 am
Monday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Tuesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Wednesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Thursday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Friday:	8:30 am - 3:30 am	8:30 am - 3:00 am
Saturday:	8:30 am - 3:30 am	8:30 am - 3:00 am

**ENDORSEMENTS: Entertainment**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-077414

License Class/Type: C Marine Vessel

Applicant: Spirit Cruises LLC

Trade Name: Spirit of Mt. Vernon

ANC: 6D04

Has applied for the renewal of an alcoholic beverage license at the premises:

**600 WATER ST SW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8:30 am - 2:30 am	10:00am -2:00 am
Monday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Tuesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Wednesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Thursday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Friday:	8:30 am - 3:00 am	8:30 am - 3:00 am
Saturday:	8:30 am - 3:00 am	8:30 am - 3:00 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-077414-2

License Class/Type: C Marine Vessel

Applicant: Spirit Cruises LLC

Trade Name: Spirit of Washington

ANC: 6D04

Has applied for the renewal of an alcoholic beverage license at the premises:

**600 WATER ST SW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8:30 am - 2:30 am	10:00am -2:00 am
Monday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Tuesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Wednesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Thursday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Friday:	8:30 am - 3:00 am	8:30 am - 3:00 am
Saturday:	8:30 am - 3:00 am	8:30 am - 3:00 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-077414-3

License Class/Type: C Marine Vessel

Applicant: Spirit Cruises LLC

Trade Name: The Capital Elite

ANC: 6D04

Has applied for the renewal of an alcoholic beverage license at the premises:

**600 WATER ST SW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8:30 am - 2:30 am	10:00am -2:00 am
Monday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Tuesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Wednesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Thursday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Friday:	8:30 am - 3:00 am	8:30 am - 3:00 am
Saturday:	8:30 am - 3:00 am	8:30 am - 3:00 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-077414-4

License Class/Type: C Marine Vessel

Applicant: Spirit Cruises LLC

Trade Name: National Elite

ANC: 6D04

Has applied for the renewal of an alcoholic beverage license at the premises:

**600 WATER ST SW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8:30 am - 2:30 am	10:00am -2:00 am
Monday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Tuesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Wednesday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Thursday:	8:30 am - 2:30 am	8:30 am - 2:00 am
Friday:	8:30 am - 3:00 am	8:30 am - 3:00 am
Saturday:	8:30 am - 3:00 am	8:30 am - 3:00 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-091194

License Class/Type: C Marine Vessel

Applicant: DC Cruises

Trade Name: DC Cruises

ANC: 6D04

Has applied for the renewal of an alcoholic beverage license at the premises:

**1300 Maine AVE SW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11 am - 8 pm	11 am -8 pm
Monday:	12 pm - 8 pm	12 pm - 8 pm
Tuesday:	12 pm - 8 pm	12 pm - 8 pm
Wednesday:	12 pm - 12 am	12 pm - 12 am
Thursday:	12 pm - 12 am	12 pm - 12 am
Friday:	12 pm - 12 am	12 pm - 12 am
Saturday:	11 am - 12 am	11 am - 12 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-060432

License Class/Type: C Restaurant

Applicant: Atsede Corporation

Trade Name: Nile Market & Kitchen

ANC: 4B01

Has applied for the renewal of an alcoholic beverage license at the premises:

**7815 GEORGIA AVE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	10 am - 11 pm	12 pm - 11 pm
Monday:	10 am - 11 pm	12 pm - 11 pm
Tuesday:	10 am - 11 pm	12 pm - 11 pm
Wednesday:	10 am - 11 pm	12 pm - 11 pm
Thursday:	10 am - 11 pm	12 pm - 11 pm
Friday:	10 am - 12 am	12 pm - 12 am
Saturday:	10 am - 12 am	12 pm - 12 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-060603

License Class/Type: C Restaurant

Applicant: Cavit Ozturk

Trade Name: Cafe Divan

ANC: 2E02

Has applied for the renewal of an alcoholic beverage license at the premises:

**1834 WISCONSIN AVE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	10 am - 11 pm	10 am - 11 pm
Monday:	11 am - 10:30 pm	11 am - 10:30 pm
Tuesday:	11 am - 10:30 pm	11 am - 10:30 pm
Wednesday:	11 am - 10:30 pm	11 am - 10:30 pm
Thursday:	11 am - 10:30 pm	11 am - 10:30 pm
Friday:	11 am - 11 pm	11 am - 11 pm
Saturday:	10 am - 11 pm	10 am - 11 pm

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-071023

License Class/Type: C Restaurant

Applicant: Rumba Inc.

Trade Name: Rumba Cafe

ANC: 1C07

Has applied for the renewal of an alcoholic beverage license at the premises:

**2443 18TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11 am - 2 am	11 am -2 am
Monday:	11 am - 2 am	11 am - 2 am
Tuesday:	11 am - 2 am	11 am - 2 am
Wednesday:	11 am - 2 am	11 am - 2 am
Thursday:	11 am - 2 am	11 am - 2 am
Friday:	11 am - 3 am	11 am - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

**ENDORSEMENTS: Entertainment Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-075357

License Class/Type: C Restaurant

Applicant: Brut, LLC

Trade Name: Proof

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

**775 G ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11 am - 2 am	11 am -2 am
Monday:	11 am - 2 am	11 am - 2 am
Tuesday:	11 am - 2 am	11 am - 2 am
Wednesday:	11 am - 2 am	11 am - 2 am
Thursday:	11 am - 2 am	11 am - 2 am
Friday:	11 am - 3 am	11 am - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

**ENDORSEMENTS: Entertainment Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-075403

License Class/Type: C Restaurant

Applicant: Nispero, LLC

Trade Name: El Nuevo Migueleno

ANC: 1C06

Has applied for the renewal of an alcoholic beverage license at the premises:

**1721 COLUMBIA RD NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11 am - 2 am	11 am -2 am
Monday:	11 am - 2 am	11 am - 2 am
Tuesday:	11 am - 2 am	11 am - 2 am
Wednesday:	11 am - 2 am	11 am - 2 am
Thursday:	11 am - 2 am	11 am - 2 am
Friday:	11 am - 3 am	11 am - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

**ENDORSEMENTS: Dancing Entertainment Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-081030

License Class/Type: C Restaurant

Applicant: Debebe Addis

Trade Name: Mesobe Restaurant and Deli Market

ANC: 1B01

Has applied for the renewal of an alcoholic beverage license at the premises:

**1853 7TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	10 am - 12 am	11 am -12 am
Monday:	10 am - 12 am	11 am - 12 am
Tuesday:	10 am - 12 am	11 am - 12 am
Wednesday:	10 am - 12 am	11 am - 12 am
Thursday:	10 am - 12 am	11 am - 12 am
Friday:	10 am - 12 am	11 am - 12 am
Saturday:	10 am - 12 am	11 am - 12 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-083263

License Class/Type: C Restaurant

Applicant: Credo, LLC

Trade Name: Estadio

ANC: 2F02

Has applied for the renewal of an alcoholic beverage license at the premises:

**1520 14TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11 am - 11 pm	11 am - 11 pm
Monday:	11 am - 12 am	11 am - 12 am
Tuesday:	11 am - 12 am	11 am - 12 am
Wednesday:	11 am - 12 am	11 am - 12 am
Thursday:	11 am - 12:30 am	11 am - 12:30 am
Friday:	11 am - 1 am	11 am - 1 am
Saturday:	11 am - 1 am	11 am - 1 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-084598

License Class/Type: C Restaurant

Applicant: Smith Commons DC LLC

Trade Name: Smith Commons

ANC: 6A02

Has applied for the renewal of an alcoholic beverage license at the premises:

**1245 H ST NE**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 11 pm	11 am - 11 pm
Monday:	8 am - 11 pm	11 am - 11 pm
Tuesday:	8 am - 11 pm	11 am - 11 pm
Wednesday:	8 am - 2 am	11 am - 11 pm
Thursday:	8 am - 2 am	11 am - 11 pm
Friday:	8 am - 2 am	11 am - 2 am
Saturday:	8 am - 2 am	11 am - 2 am

**ENDORSEMENTS: Entertainment Summer Garden**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-088683

License Class/Type: C Restaurant

Applicant: Quan LLC

Trade Name: DOI MOI/2 BIRDS 1 STONE

ANC: 2B09

Has applied for the renewal of an alcoholic beverage license at the premises:

**1800 14TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11am - 2am	11am -2am
Monday:	11am - 2am	11am - 2am
Tuesday:	11am - 2am	11am - 2am
Wednesday:	11am - 2am	11am - 2am
Thursday:	11am - 2am	11am - 2am
Friday:	11am - 3am	11am - 3am
Saturday:	11am - 3am	11am - 3am

**ENDORSEMENTS: Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-088831

License Class/Type: C Restaurant

Applicant: Roadside Deli Projects, LLC

Trade Name: DGS Delicatessen

ANC: 2B07

Has applied for the renewal of an alcoholic beverage license at the premises:

**1317 CONNECTICUT AVE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 12 am	8 am - 12 am
Monday:	8 am - 12 am	8 am - 12 am
Tuesday:	8 am - 12 am	8 am - 12 am
Wednesday:	8 am - 12 am	8 am - 12 am
Thursday:	8 am - 12 am	8 am - 12 am
Friday:	8 am - 1 am	8 am - 1 am
Saturday:	8 am - 1 am	8 am - 1 am

**ENDORSEMENTS: Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-089158

License Class/Type: C Restaurant

Applicant: Ima Pizza H Street NE, LLC

Trade Name: H & PIZZA

ANC: 6A01

Has applied for the renewal of an alcoholic beverage license at the premises:

**1118 H ST NE**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 2 am	8 am - 2 am
Monday:	8 am - 2 am	8 am - 2 am
Tuesday:	8 am - 2 am	8 am - 2 am
Wednesday:	8 am - 2 am	8 am - 2 am
Thursday:	8 am - 2 am	8 am - 2 am
Friday:	8 am - 4am	8 am - 3 am
Saturday:	8 am - 4am	8 am - 3 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-089845

License Class/Type: C Restaurant

Applicant: EC Restaurant (DC Penn Ave ) Corp.

Trade Name: Elephant & Castle Pub Restaurant

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

**1201 PENNSYLVANIA AVE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	6:30 am - 2 am	8 am - 2 am
Monday:	6:30 am - 2 am	8 am - 2 am
Tuesday:	6:30 am - 2 am	8 am - 2 am
Wednesday:	6:30 am - 2 am	8 am - 2 am
Thursday:	6:30 am - 2 am	6:30 am - 2 am
Friday:	6:30 am - 3 am	6:30 am - 3 am
Saturday:	6:30 am - 3 am	6:30 - 3 am

**ENDORSEMENTS: Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-089846

License Class/Type: C Restaurant

Applicant: EC Restaurants (DC-19th) Corp.

Trade Name: Elephant & Castle Pub Restaurant

ANC: 2B06

Has applied for the renewal of an alcoholic beverage license at the premises:

**900 19TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	6:30 - 2 am	8 am - 2 am
Monday:	6:30 - 2 am	8 am - 2 am
Tuesday:	6:30 am - 2 am	8 am - 2 am
Wednesday:	6:30 am - 2 am	8 am - 2 am
Thursday:	6:30 am - 2 am	8 am - 2 ma
Friday:	6:30 am - 3 am	8 am - 3 am
Saturday:	6:30 am - 3 am	8 am - 3 am

**ENDORSEMENTS: Entertainment Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-091662

License Class/Type: C Restaurant

Applicant: Pinstripes, Inc.

Trade Name: Pinstripes

ANC: 2E05

Has applied for the renewal of an alcoholic beverage license at the premises:

**3222 M ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 11:30 am	8 am - 11 am
Monday:	8 am - 11:30 am	8 am - 11 am
Tuesday:	8 am - 11:30 am	8 am - 11 am
Wednesday:	8 am - 11:30 am	8 am - 11 am
Thursday:	8 am - 11:30 am	8 am - 11 am
Friday:	8 am - 1 am	8 am - 12:30 am
Saturday:	8 am - 1 am	8 am - 12:30 am

**ENDORSEMENTS: Entertainment Summer Garden**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-093308

License Class/Type: C Restaurant

Applicant: Ultimo, LLC

Trade Name: Malbec Restaurant

ANC: 2B04

Has applied for the renewal of an alcoholic beverage license at the premises:

**1633 17TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11:30 am - 11 pm	11:30 am - 11 pm
Monday:	11:30 am - 11 pm	11:30 am - 11 pm
Tuesday:	11:30 am - 11 pm	11:30 am - 11 pm
Wednesday:	11:30 am - 11 pm	11:30 am - 11 pm
Thursday:	11:30 am - 11 pm	11:30 am - 11 pm
Friday:	11:30 am - 2 am	11:30 am - 2 am
Saturday:	11:30 am - 2 am	11:30 am - 2 am

**ENDORSEMENTS: Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-093867

License Class/Type: C Restaurant

Applicant: Brothers 2Gether, LLC

Trade Name: DC Harvest

ANC: 6C05

Has applied for the renewal of an alcoholic beverage license at the premises:

**517 H ST NE**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	9 am - 12 am	9 am - 11 pm
Monday:	9 am - 12 am	9 am - 11 pm
Tuesday:	9 am - 12 am	9 am - 11 pm
Wednesday:	9 am - 1 am	9 am - 12 am
Thursday:	9 am - 1 am	9 am - 12 am
Friday:	9 am - 2 am	9 am - 1 am
Saturday:	9 am - 2 am	9 am - 1 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-094010

License Class/Type: C Restaurant

Applicant: G Street Food 15 LLC

Trade Name: G Street Food

ANC: 2B05

Has applied for the renewal of an alcoholic beverage license at the premises:

**1030 15TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 10 pm	9 am - 10 pm
Monday:	7 am - 10 pm	9 am - 10 pm
Tuesday:	7 am - 10 pm	9 am - 10 pm
Wednesday:	7 am - 10 pm	9 am - 10 pm
Thursday:	7 am - 10 pm	9 am - 10 pm
Friday:	7 am - 10 pm	9 am - 10 pm
Saturday:	7 am - 10 pm	9 am - 10 pm

**ENDORSEMENTS: Entertainment**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-094712

License Class/Type: C Restaurant

Applicant: Ima Pizza Store 9, LLC

Trade Name: & Pizza

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

**1005 E ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 2 am	8 am - 2 am
Monday:	7 am - 2 am	8 am - 2 am
Tuesday:	7 am - 2 am	8 am - 2 am
Wednesday:	7 am - 2 am	8 am - 2 am
Thursday:	7 am - 2 am	8 am - 2 am
Friday:	7 am - 3 am	8 am - 3 am
Saturday:	7 am - 3 am	8 am - 3 am

**ENDORSEMENTS:**

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-095433

License Class/Type: C Restaurant

Applicant: Biricoco, LLC

Trade Name: Al Crostino

ANC: 1B02

Has applied for the renewal of an alcoholic beverage license at the premises:

**1926 9TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11 am - 1:30 am	11 am -1:30 am
Monday:	11 am - 1:30 am	11 am - 1:30 am
Tuesday:	11 am - 1:30 am	11 am - 1:30 am
Wednesday:	11 am - 1:30 am	11 am - 1:30 am
Thursday:	11 am - 1:30 am	11 am - 1:30 am
Friday:	11 am - 2:30 am	11 am - 2:30 am
Saturday:	11 am - 2:30 am	11 am - 2:30 am

**ENDORSEMENTS: Entertainment**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-095459

License Class/Type: C Restaurant

Applicant: CHIKITING LLC

Trade Name: BAD SAINT

ANC: 1A06

Has applied for the renewal of an alcoholic beverage license at the premises:

**3226 11TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	10AM - 2AM	11AM - 1AM
Monday:	10AM - 2AM	11AM - 1AM
Tuesday:	10AM - 2AM	11AM - 1AM
Wednesday:	10AM - 2AM	11AM - 1AM
Thursday:	10AM - 2AM	11AM - 1AM
Friday:	10AM - 3AM	11AM - 2AM
Saturday:	10AM - 3AM	11AM - 2AM

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-095574

License Class/Type: C Restaurant

Applicant: Q on Conn. LLC

Trade Name: Fat Pete's BBQ

ANC: 3C04

Has applied for the renewal of an alcoholic beverage license at the premises:

**3407 CONNECTICUT AVE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	6am - 2am	10am - 1am
Monday:	6am - 2am	10am - 1am
Tuesday:	6am - 2am	10am - 1am
Wednesday:	6am - 2am	10am - 1am
Thursday:	6am - 2am	10am - 1am
Friday:	6am - 3am	10am - 2am
Saturday:	6am - 3am	10am - 2am

**ENDORSEMENTS: Entertainment**

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-096845

License Class/Type: C Restaurant

Applicant: Ima Pizza Store 13, LLC

Trade Name: & Pizza

ANC: 2B05

Has applied for the renewal of an alcoholic beverage license at the premises:

**1215 CONNECTICUT AVE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 2 am	8 am - 2 am
Monday:	7 am - 2 am	8 am - 2 am
Tuesday:	7 am - 2 am	8 am - 2 am
Wednesday:	7 am - 2 am	8 am - 2 am
Thursday:	7 am - 2 am	8 am - 2 am
Friday:	7 am - 4 am	8 am - 3 am
Saturday:	7 am - 4 am	8 am - 3 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-098132

License Class/Type: C Restaurant

Applicant: Hoang LLC

Trade Name: Pho 14

ANC: 1A05

Has applied for the renewal of an alcoholic beverage license at the premises:

**1436 PARK RD NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11 am - 9:30 pm	11 am -9:30 pm
Monday:	11 am - 9:30 pm	11 am - 9:30 pm
Tuesday:	11 am - 9:30 pm	11 am - 9:30 pm
Wednesday:	11 am - 9:30 pm	11 am - 9:30 pm
Thursday:	11 am - 10 pm	11 am - 10 pm
Friday:	11 am - 10 pm	11 am - 10pm
Saturday:	11 am - 10 pm	11 am - 10 pm

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-098875

License Class/Type: C Restaurant

Applicant: Ollijack DC, LLC

Trade Name: The Grilled Oyster Company

ANC: 3C06

Has applied for the renewal of an alcoholic beverage license at the premises:

**3701 Newark ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 1 am	8 am - 1 am
Monday:	7 am - 1 am	8 am - 1 am
Tuesday:	7 am - 1 am	8 am - 1 am
Wednesday:	7 am - 1 am	8 am - 1 am
Thursday:	7 am - 1 am	8 am - 1 am
Friday:	7 am - 2 am	8 am - 2 am
Saturday:	7 am - 2 am	8 am - 2 am

**ENDORSEMENTS: Summer Garden**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-101295

License Class/Type: C Restaurant

Applicant: Uni Corp.

Trade Name: Uni Bistro

ANC: 6C04

Has applied for the renewal of an alcoholic beverage license at the premises:

**403 H ST NE**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 1 am	11 am - 12 am
Monday:	8 am - 1 am	11 am - 12 am
Tuesday:	8 am - 1 am	11 am - 12 am
Wednesday:	8 am - 1 am	11 am - 12 am
Thursday:	8 am - 1 am	11 am - 12 am
Friday:	8 am - 1 am	11 am - 12 am
Saturday:	8 am - 1 am	11 am - 12 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-086069

License Class/Type: D Restaurant

Applicant: Whole Foods Market Group, Inc.

Trade Name: Whole Foods Market

ANC: 3B02

Has applied for the renewal of an alcoholic beverage license at the premises:

**2323 WISCONSIN AVE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 10 pm	7 am - 10 pm
Monday:	7 am - 10 pm	7 am - 10 pm
Tuesday:	7 am - 10 pm	7 am - 10 pm
Wednesday:	7 am - 10 pm	7 am - 10 pm
Thursday:	7 am - 10 pm	7 am - 10 pm
Friday:	7 am - 10 pm	7 am - 10 pm
Saturday:	7 am - 10 pm	7 am - 10 pm

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-086071

License Class/Type: D Restaurant

Applicant: Whole Foods Market Group, Inc.

Trade Name: Whole Foods Market

ANC: 2F02

Has applied for the renewal of an alcoholic beverage license at the premises:

**1440 - 1446 P ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	9 am - 12 am	9 am - 12 am
Monday:	8 am - 12 am	9 am - 12 am
Tuesday:	8 am - 12 am	9 am - 12 am
Wednesday:	8 am - 12 am	9 am - 12 am
Thursday:	8 am - 12 am	9 am - 12 am
Friday:	8 am - 12 am	9 am - 12 am
Saturday:	8 am - 12 am	9 am - 12 am

**ENDORSEMENTS: Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-086073

License Class/Type: D Restaurant

Applicant: Whole Foods Market Group, Inc.

Trade Name: Whole Foods Market

ANC: 3E01

Has applied for the renewal of an alcoholic beverage license at the premises:

**4530 40TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 9:30 pm	10 am -9:30 pm
Monday:	8 am - 10:30 pm	9 am - 10:30 pm
Tuesday:	8 am - 10:30 pm	9 am - 10:30 pm
Wednesday:	8 am - 10:30 pm	9 am - 10:30 pm
Thursday:	8 am - 10:30 pm	9 am - 10 :30pm
Friday:	8 am - 10:30 pm	9 am - 10:30 pm
Saturday:	8 am - 10:30 pm	9 am - 10:30 pm

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-086913

License Class/Type: D Restaurant

Applicant: Whole Foods Market Group Inc

Trade Name: Whole Foods Market

ANC: 2A07

Has applied for the renewal of an alcoholic beverage license at the premises:

**2201 I ST NW B**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7am - 10pm	10am - 10pm
Monday:	7am - 10pm	8am - 10pm
Tuesday:	7am - 10pm	8am - 10pm
Wednesday:	7am - 10pm	8am - 10pm
Thursday:	7am - 10pm	8am - 10pm
Friday:	7am - 10pm	8am - 10pm
Saturday:	7am - 10pm	8am - 10pm

**ENDORSEMENTS: Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-089877

License Class/Type: D Restaurant

Applicant: DB Adams Morgan, LLC

Trade Name: Doener Bistro

ANC: 1C06

Has applied for the renewal of an alcoholic beverage license at the premises:

**1654 COLUMBIA RD NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11 am - 11 pm	11 am - 11 pm
Monday:	11 am - 11 pm	11 am - 11 pm
Tuesday:	11 am - 11 pm	11 am - 11 pm
Wednesday:	11 am - 11 pm	11 am - 11 pm
Thursday:	11 am - 11 pm	11 am - 11 pm
Friday:	11 am - 3 am	11 am - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

**ENDORSEMENTS: Entertainment Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-092826

License Class/Type: D Restaurant

Applicant: Chatham Washington DC Leaseco LLC

Trade Name: Residence Inn by Marriott

ANC: 2A04

Has applied for the renewal of an alcoholic beverage license at the premises:

**801 NEW HAMPSHIRE AVE NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	6am - 9:30pm	8am -9:30pm
Monday:	6am - 9:30pm	8am - 9:30pm
Tuesday:	6am - 9:30pm	8am - 9:30pm
Wednesday:	6am - 9:30pm	8am - 9:30pm
Thursday:	6am - 9:30pm	8am - 9:30pm
Friday:	6am - 9:30pm	8am - 9:30pm
Saturday:	6am - 9:30pm	8am - 9:30pm

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-096611

License Class/Type: D Restaurant

Applicant: ADAMS MORGAN COFFEE SHOP INC.

Trade Name: ADAMS MORGAN RESTAURANT & COFFEE

ANC: 1C03

Has applied for the renewal of an alcoholic beverage license at the premises:

**2204 18TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	7 am - 10 pm	8 am - 10 pm
Monday:	7 am - 10 pm	8 am - 10 pm
Tuesday:	7 am - 10 pm	8 am - 10 pm
Wednesday:	7 am - 10 pm	8 am - 10 pm
Thursday:	7 am - 10 pm	8 am - 10 pm
Friday:	7 am - 11 pm	8 am - 11 pm
Saturday:	7 am - 11 pm	8 am - 11 pm

**ENDORSEMENTS: Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Posting Date: April 22, 2016

Petition Date: June 6, 2016

Hearing Date: June 20, 2016

License No.: ABRA-099451

Licensee: Flores, LLC

Trade Name: Joselyn Restaurant Bar & Lounge

License Class: Retailer's Class "C" Restaurant

Address: 3303 Georgia Avenue, N.W.

Contact: Jose Flores: (202) 641-3036

WARD 1

ANC 1A

SMD 1A09

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

**NATURE OF SUBSTANTIAL CHANGE**

Requesting a Change of Hours for live entertainment.

**CURRENT HOURS OF OPERATION**

Sunday through Thursday 6:00 am to 2:00 am, Friday and Saturday 6:00 am to 3:00 am

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION**

Sunday through Thursday 10:00 am to 2:00 am, Friday and Saturday 10:00 am to 3:00 am

**CURRENT HOURS OF LIVE ENTERTAINMENT**

Sunday through Saturday 6:00 pm to 1:00am

**PROPOSED HOURS OF LIVE ENTERTAINMENT**

Sunday through Thursday 6:00 pm to 2:00 am, Friday and Saturday 6:00 pm to 3:00 am

**ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION  
ON  
4/15/2016**

**\*\*RESCIND**

Notice is hereby given that:

License Number: ABRA-008658

License Class/Type: C Restaurant

Applicant: La Fourchette Inc.

Trade Name: La Fourchette

ANC: 1C07

Has applied for the renewal of an alcoholic beverage license at the premises:

**2429 18TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**5/31/2016**

**A HEARING WILL BE HELD ON:**

**6/13/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	10 am - 2 am	10 am -2 am
Monday:	11:30 am - 2 am	11:30 am - 2 am
Tuesday:	11:30 am - 2 am	11:30 am - 2 am
Wednesday:	11:30 am - 2 am	11:30 am - 2 am
Thursday:	11:30 am - 2 am	11:30 am - 2 am
Friday:	11:30 am - 2 am	11:30 am - 2 am
Saturday:	11 am - 3 am	11 am - 3 am

**ENDORSEMENTS: Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-086808

License Class/Type: C Multipurpose

Applicant: Riot Act DC, LLC

Trade Name: Penn Social

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

**801 E ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	8 am - 2 am	10 am - 2 am
Monday:	8 am - 2 am	8 am - 2 am
Tuesday:	8 am - 2 am	8 am - 2 am
Wednesday:	8 am - 2 am	8 am - 2 am
Thursday:	8 am - 2 am	8 am - 2 am
Friday:	8 am - 3 am	8 am - 3 am
Saturday:	8 am - 3 am	8 am - 3 am

**ENDORSEMENTS: Sidewalk Cafe Summer Garden**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-101200 License Class/Type: C Hotel

Applicant: HHLP Georgetown Lessee LLC

Trade Name: Ritz Carlton Georgetown

ANC: 2E05

Has applied for the renewal of an alcoholic beverage license at the premises:

**3100 SOUTH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	24 hours -	8 am -2 am
Monday:	24 hours -	8 am - 2 am
Tuesday:	24 hours -	8 am - 2 am
Wednesday:	24 hours -	8 am - 2 am
Thursday:	24 hours -	8 am - 2 am
Friday:	24 hours -	8 am - 3 am
Saturday:	24 hours -	8 am - 3 am

**ENDORSEMENTS: Entertainment Summer Garden**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Posting Date: April 22, 2016  
Petition Date: June 6, 2016  
Hearing Date: June 20, 2016

License No.: ABRA-092192  
Licensee: Fernando Postigo  
Trade Name: Sol Mexican Grill  
License Class: Retailer's Class "C" Tavern  
Address: 1251 H Street, N.E.  
Contact: Fernando Postigo: (202) 351-9917

WARD 6

ANC 6A

SMD 6A02

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

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requests an expansion of the premises to include 60 additional seats with Total Occupancy Load of 155 seats.

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

Sunday through Thursday 11:00 am to 11:00 pm, Friday and Saturday 11:00 am to 3:00 am

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION**

Sunday through Thursday 11:00 am to 10:45 pm, Friday and Saturday 11:00 am to 2:00 am

**CURRENT HOURS OF LIVE ENTERTAINMENT**

No Entertainment Sunday through Thursday, Friday and Saturday 6:00 pm to 1:00 am



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-079281

License Class/Type: D Multipurpose

Applicant: CULTURAL DEVELOPMENT CORPORATION

Trade Name: Source

ANC: 1B12

Has applied for the renewal of an alcoholic beverage license at the premises:

**1835 14TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	9 am - 12	12 pm - 12 am
Monday:	9 am - 12 am	12 pm - 12 am
Tuesday:	9 am - 12 am	12 pm - 12 am
Wednesday:	9 am - 12 am	12 pm - 12 am
Thursday:	9 am - 12 am	12 apm - 12 am
Friday:	9 am - 12 am	12 pm - 12 am
Saturday:	9 am - 12 am	12 pm - 12 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: April 22, 2016
Petition Date: June 6, 2016
Hearing Date: June 20, 2016
Protest Date: September 7, 2016

License No.: ABRA-102009
Licensee: Coffee House Holdings, Inc.
Trade Name: Starbucks Coffee #726
License Class: Retailer's Class "D" Restaurant
Address: 801 18th Street, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 2

ANC 2B

SMD 2B06

Notice is hereby given that this licensee 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 on September 7, 2016 at 1:30pm.

NATURE OF OPERATION

A coffee shop serving breakfast all day, along with savory small plates and desserts paired with wine and beer selections. Sidewalk Cafe with an occupancy load of 59 seats.

HOURS OF OPERATION FOR PREMISES

Sunday through Saturday 5:00 am – 11:00 pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES

Sunday 12:00 pm – 11:00 pm, Monday through Friday 2:00 pm- 11:00 pm, Saturday 12:00 pm – 11:00 pm

HOURS OF OPERATION FOR SIDEWALK CAFE

Sunday 11:00 am- 3:00 pm, Monday through Friday 9:00 am- 6:30 pm, Saturday 11:00 am – 3:00 pm

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

Sunday 12:00 pm- 3:00 pm, Monday through Friday 2:00 pm- 6:30 pm, Saturday 12:00 pm– 3:00 pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Posting Date: April 22, 2016  
Petition Date: June 6, 2016  
Hearing Date: June 20, 2016  
Protest Date: September 7, 2016

License No.: ABRA-102480  
Licensee: Coffee House Holdings, Inc.  
Trade Name: Starbucks Coffee #728  
License Class: Retailer's Class "D" Restaurant  
Address: 1401 New York Avenue, N.W.  
Contact: Stephen O'Brien: (202) 625-7700

WARD 2

ANC 2C

SMD 2C01

Notice is hereby given that this licensee 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 14<sup>th</sup> 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 on September 7, 2016 at 1:30pm.

**NATURE OF OPERATION**

A coffee shop serving breakfast all day, along with savory small plates and desserts paired with wine and beer selections.

**HOURS OF OPERATION**

Sunday through Saturday 5:00 am – 11:00 pm

**HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION**

Sunday 12:00 pm – 11:00 pm, Monday through Friday 2:00 pm- 11:00 pm, Saturday 12:00 pm – 11:00 pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Posting Date: April 22, 2016  
Petition Date: June 6, 2016  
Hearing Date: June 20, 2016  
Protest Date: September 7, 2016

License No.: ABRA-102025  
Licensee: Coffee House Holdings, Inc.  
Trade Name: Starbucks Coffee #9392  
License Class: Retailer's Class "D" Restaurant  
Address: 550 C Street, S.W.  
Contact: Stephen O'Brien: (202) 625-7700

WARD 6

ANC 6D

SMD 6D01

Notice is hereby given that this licensee 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 14<sup>th</sup> 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 on September 7, 2016 at 1:30pm.

**NATURE OF OPERATION**

A coffee shop serving breakfast all day, along with savory small plates and desserts paired with wine and beer selections. Sidewalk Cafe with an occupancy load of 48 seats.

**HOURS OF OPERATION FOR PREMISES**

Sunday through Saturday 5:00 am – 11:00 pm

**HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR PREMISES**

Sunday 12:00 pm – 11:00 pm, Monday through Friday 2:00 pm- 11:00 pm, Saturday 12:00 pm – 11:00 pm

**HOURS OF OPERATION FOR SIDEWALK CAFE**

Sunday through Thursday 7:00 am- 10:00 pm, Friday and Saturday 7:00 am- 11:00 pm

**HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SIDEWALK CAFE**

Sunday 12:00 pm- 10:00 pm, Monday through Thursday 2:00 pm- 10:00 pm, Friday 2:00 pm- 11:00 pm, Saturday 12:00 pm– 11:00 pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Posting Date: April 22, 2016  
Petition Date: June 6, 2016  
Hearing Date: June 20, 2016  
Protest Date: September 7, 2016

License No.: ABRA-102023  
Licensee: Coffee House Holdings, Inc.  
Trade Name: Starbucks Coffee #23832  
License Class: Retailer's Class "D" Restaurant  
Address: 625 H Street, N.E.  
Contact: Stephen O'Brien: (202) 625-7700

WARD 6

ANC 6C

SMD 6C05

Notice is hereby given that this licensee 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 14<sup>th</sup> 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 on September 7, 2016 at 1:30pm.

**NATURE OF OPERATION**

A coffee shop serving breakfast all day, along with savory small plates and desserts paired with wine and beer selections.

**HOURS OF OPERATION**

Sunday through Saturday 5:00 am – 11:00 pm

**HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION**

Sunday 12:00 pm – 11:00 pm, Monday through Friday 2:00 pm – 11:00 pm, Saturday 12:00 pm – 11:00 pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

ON

**3/4/2016**

**\*\*CORRECTION**

Notice is hereby given that:

License Number: ABRA-095816

License Class/Type: C Restaurant

Applicant: Sapol Varadaa, LLC

Trade Name: Thai Phoon

ANC: \*\*2B01

Has applied for the renewal of an alcoholic beverage license at the premises:

**2011 S ST NW**

***PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:***

**4/18/2016**

***A HEARING WILL BE HELD ON:***

**5/2/2016**

***AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009***

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11:30 am - 12 am	11:30 am - 12 am
Monday:	11:30 am - 12 am	11:30 am - 12 am
Tuesday:	11:30 am - 12 am	11:30 am - 12 am
Wednesday:	11:30 am - 12 am	11:30 am - 12 am
Thursday:	11:30 am - 12 am	11:30 am - 12 am
Friday:	11:30 am - 12 am	11:30 am - 12 am
Saturday:	11:30 am - 12 am	11:30 am - 12 am

**ENDORSEMENTS: Sidewalk Café**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

ON

**3/4/2016**

**\*\*RESCIND**

Notice is hereby given that:

License Number: ABRA-095816

License Class/Type: C Restaurant

Applicant: Sapol Varadaa, LLC

Trade Name: Thai Phoon

ANC: \*\*3C09

Has applied for the renewal of an alcoholic beverage license at the premises:

**2011 S ST NW**

***PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:***

**4/18/2016**

***A HEARING WILL BE HELD ON:***

**5/2/2016**

***AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009***

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	11:30 am - 12 am	11:30 am - 12 am
Monday:	11:30 am - 12 am	11:30 am - 12 am
Tuesday:	11:30 am - 12 am	11:30 am - 12 am
Wednesday:	11:30 am - 12 am	11:30 am - 12 am
Thursday:	11:30 am - 12 am	11:30 am - 12 am
Friday:	11:30 am - 12 am	11:30 am - 12 am
Saturday:	11:30 am - 12 am	11:30 am - 12 am

**ENDORSEMENTS: Sidewalk Café**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/22/2016**

Notice is hereby given that:

License Number: ABRA-075952

License Class/Type: C Hotel

Applicant: ICD Hotels Washington, LLC

Trade Name: W Washington DC

ANC: 2C01

Has applied for the renewal of an alcoholic beverage license at the premises:

**515 15TH ST NW**

**PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
BEFORE:**

**6/6/2016**

**A HEARING WILL BE HELD ON:**

**6/20/2016**

**AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009**

<b>Days</b>	<b>Hours of Operation</b>	<b>Hours of Sales/Service</b>
Sunday:	24 hours -	10 am -2 am
Monday:	24 hours -	8 am - 2 am
Tuesday:	24 hours -	8 am - 2 am
Wednesday:	24 hours -	8 am - 2 am
Thursday:	24 hours -	8 am - 2 am
Friday:	24 hours -	8 am - 3 am
Saturday:	24 hours -	8 am - 3 am

**ENDORSEMENTS: Cover Charge Dancing Entertainment Sidewalk Cafe Summer G**

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING****\*\*CORRECTION**

Posting Date: April 8, 2016  
 Petition Date: May 23, 2016  
 Roll Call Hearing Date: June 6, 2016  
 Protest Hearing Date: August 3, 2016

License No.: ABRA-102223  
 Licensee: CW Yards LLC  
 Trade Name: Whaley's  
 License Class: Retailer's Class "C" Restaurant  
 Address: 301 Water Street, S.E.  
 Contact: Stephen J. O'Brien: 202-625-7700

WARD 6

ANC 6D

SMD 6D07

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 14<sup>th</sup> 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 August 3, 2016 at 1:30pm.

**NATURE OF OPERATION**

New full-service upscale casual seafood restaurant. Live Entertainment will be provided. Total Occupancy Load is 71. Two Summer Gardens, one with 32 seats and one with 18 seats.

**HOURS OF OPERATION, ALCOHOLIC BEVERAGE****SALES/SERVICE/CONSUMPTION AND LIVE ENTERTAINMENT INSIDE PREMISES**

Sunday through Thursday 10am – 1am, Friday and Saturday 10am – 2am

**HOURS OF OPERATION AND ALCOHOLIC BEVERAGE****SALES/SERVICE/CONSUMPTION IN THE TWO SUMMER GARDENS**

Sunday through Saturday 10am – 1am

**HOURS OF LIVE ENTERTAINMENT FOR THE TWO SUMMER GARDENS**

Sunday \*\*and Saturday 10am – 8pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING****\*\*RESCIND**

Posting Date: April 8, 2016  
 Petition Date: May 23, 2016  
 Roll Call Hearing Date: June 6, 2016  
 Protest Hearing Date: August 3, 2016

License No.: ABRA-102223  
 Licensee: CW Yards LLC  
 Trade Name: Whaley's  
 License Class: Retailer's Class "C" Restaurant  
 Address: 301 Water Street, S.E.  
 Contact: Stephen J. O'Brien: 202-625-7700

WARD 6

ANC 6D

SMD 6D07

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 14<sup>th</sup> 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 August 3, 2016 at 1:30pm.

**NATURE OF OPERATION**

New full-service upscale casual seafood restaurant. Live Entertainment will be provided. Total Occupancy Load is 71. Two Summer Gardens, one with 32 seats and one with 18 seats.

**HOURS OF OPERATION, ALCOHOLIC BEVERAGE****SALES/SERVICE/CONSUMPTION AND LIVE ENTERTAINMENT INSIDE PREMISES**

Sunday through Thursday 10am – 1am, Friday and Saturday 10am – 2am

**HOURS OF OPERATION AND ALCOHOLIC BEVERAGE****SALES/SERVICE/CONSUMPTION IN THE TWO SUMMER GARDENS**

Sunday through Saturday 10am – 1am

**HOURS OF LIVE ENTERTAINMENT FOR THE TWO SUMMER GARDENS**

Sunday \*\*through Saturday 10am – 8pm

## OFFICE OF THE DEPUTY MAYOR FOR EDUCATION

NOTICE OF PUBLIC MEETINGS REGARDING  
SURPLUS RESOLUTIONS PURSUANT TO D.C. OFFICIAL CODE §10-801

The District will conduct a public hearing to receive public comments on the proposed surplus of the following District properties. The date, time and location shall be as follows:

**Properties:** Square 3702, Lot0806 – 33 Riggs Road, NE (“Keene School Building”)

**Date:** May 19, 2016

**Time:** 6:30 p.m.

**Location:** *Keene School Auditorium*  
*33 Riggs Road, NE*  
*Washington, DC 20011*

**Contact:** Althea O. Holford  
Deputy Mayor for Education  
202.727.4036 or [althea.holford@dc.gov](mailto:althea.holford@dc.gov)

**DEPARTMENT OF HEALTH  
DISTRICT OF COLUMBIA BOARD OF PHARMACY**

**NOTICE OF PUBLIC HEARING**

**On Proposed Rulemaking Regarding Collaborative Practice Agreements Between  
Physicians and Pharmacists**

Pursuant to the Collaborative Care Expansion Amendment Act of 2012, effective October 22, 2012 (D.C. Law 19-0185; 60 DCR 7591, published May 31, 2013) (the Act), The District of Columbia Board of Pharmacy is conducting a public hearing to be held on **Thursday, May 5, 2016, 9:00am – 11:00am** at 899 North Capitol Street, NE, 2<sup>nd</sup> Floor.

The public hearing is being held to invite health care facilities and other stakeholders to an open forum to help the Board address public comments received regarding subsection 10003.2 of the Proposed Rulemaking for Collaborative Practice Agreements Between Physicians and Pharmacists that was published in the D.C. Register on October 9, 2015 at 62 DCR 13285. Presently, there are no members serving on the Board that have institutional pharmacy practice experience. As such, the Board is specifically seeking comment from pharmacists employed in hospitals, skilled nursing facilities and other institutional settings. However, comments from all stakeholders regarding this issue are welcome.

The Board received public comment requesting that the regulations be expanded to provide guidance to hospitals, skilled nursing facilities and other institutions regarding requirements (or lack thereof) of the collaborative agreements, pharmacists credentialing, or other organizational policies or practices.

Additionally, the Board received public comment requesting that subsection 10003.2 be amended as follows:

**10003            SIGNED AUTHORIZATION**

- 10003.1            The signatories to a collaborative practice agreement shall be a District of Columbia licensed physician involved directly in patient care and a District of Columbia licensed pharmacist involved directly in patient care.
- 10003.2            The physician may designate alternate physicians, and the pharmacist may designate alternate pharmacists, provided that the alternates meet the educational, licensure, and training requirements of this Chapter, and are involved directly in patient care ~~at a single, physical location~~ where patients receive services. Nothing in this Section shall be construed as prohibiting the practice of telemedicine if it is otherwise permitted by District law.

All written and oral testimony submitted as part of this public hearing should address only the specific comments set forth above. The Board has not opened the entire rulemaking document

for a new comment period. A thirty day (30) comment period was previously provided when the regulations were published in the DC Register on October 9, 2015.

To register to present testimony, please contact Karin Barron by email only at [Karin.Barron@dc.gov](mailto:Karin.Barron@dc.gov) before 4:00 pm Friday, April 29, 2016. The following information is needed for registration: name, address, telephone number and organization name (when applicable).

For the record, testimonies may be submitted in hard copy up until 11:00 am on Thursday, May 5, 2016 at 899 North Capitol Street, N.E., 2nd Floor, or electronically to [Karin.Barron@dc.gov](mailto:Karin.Barron@dc.gov).

Time permitting, there will be an open forum following testimonies for the public hearing attendees to provide feedback to the Board of Pharmacy. The open forum will end at 11:00 am.

Parking is available under the building at a cost. There is limited neighborhood parking. Check WMATA <http://www.wmata.com/> for other transportation options. The nearest Metro stop is Union Station.

**HISTORIC PRESERVATION REVIEW BOARD  
NOTICE OF PUBLIC HEARING**

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

**Case No. 15-22: Mount Vernon Seminary for Girls**  
**3801 Nebraska Avenue NW**  
**Square 1722, Lots 800-806, 809 and 810**  
**Applicant: U.S. General Services Administration**  
**Affected Advisory Neighborhood Commission: 3D**

**Case No. 16-08: U.S. Postal Service Mail Equipment Shops**  
**2135 5<sup>th</sup> Street NE**  
**Square 3620, Lot 814**  
**Applicant: U.S. Postal Service**  
**Affected Advisory Neighborhood Commission: 5E**

The hearing will take place at **9:00 a.m. on Thursday, May 26, 2016**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4<sup>th</sup> Street SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

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

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

If the Historic Preservation Review Board designates the property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may

apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

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

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

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

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

**DC DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
NOTICE OF PUBLIC HEARING**

Notice is hereby given that, pursuant to the requirements of D.C. Official Code Section 42-3171.03 (a)(1), the District of Columbia Department of Housing and Community Development (DHCD) has scheduled a public hearing on Thursday, May 26, 2016 at 6 p.m. at DHCD 1<sup>st</sup> Floor Conference Room, 1800 Martin Luther King Avenue SE, Washington, DC 20020, to consider the proposed disposition of the property noted below.

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood
0394, 0060	8th Street NW and T Street NW	Vacant Lot	1	R-4	Yes	Greater U Street Historic District/ Shaw

The above property was included in a round of Solicitation for Offer issued by DHCD to the general public on July 11, 2014. The above property was awarded to Manna, Inc., through a competitive selection process.

A project summary of Manna, Inc.'s proposal will be posted on the DHCD website.

The public hearing is being conducted in order to ensure that all citizens: (1) are informed about the selling of the properties identified above to the named buyer; and (2) have the opportunity to present publicly their views concerning such sale.

If you would like to present oral testimony, you are encouraged to register in advance either by emailing Andrea Lee at [Andrea.Lee@dc.gov](mailto:Andrea.Lee@dc.gov), or by calling 202-478-1355. Please provide your name, address, telephone number, and organization affiliation, if any. Telecommunications Device for the Deaf (TDD) relay service is available by calling (800) 201-7165. A sign language interpreter and language translation services are available upon request by calling Pamela Hillsman at 202-442-7251. If you require language translation, please specify which language (Spanish, Vietnamese, Chinese-Mandarin/Cantonese, Amharic, or French). Language translation services will be provided to pre-registered persons only. Deadline for requiring services of an interpreter is seven days prior to the hearing. Bilingual staff will provide services on an availability basis to walk-ins without registration.

Written statements may be submitted at the hearing, or until 4:45 p.m., Friday, May 27, 2016, and should be addressed to: Polly Donaldson, Director, DC Department of Housing and Community Development, ATTN: PADD, 1800 Martin Luther King Jr., Avenue SE, Washington, DC 20020.



**DC DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
NOTICE OF PUBLIC HEARING**

Notice is hereby given that, pursuant to the requirements of D.C. Official Code Section 42-3171.03 (a)(1), the District of Columbia Department of Housing and Community Development (DHCD) has scheduled a public hearing on Wednesday, June 1, 2016 at 6 p.m. at DHCD 1<sup>st</sup> Floor Conference Room, 1800 Martin Luther King Jr. Avenue SE, Washington, DC 20020, to consider the proposed disposition of the property noted below.

SSL	Property Address	Property Type	Ward	Zoning	Historic District	Neighborhood
5812, 0118	2200-2210 Hunter Place, SE	Vacant Lot	8	R-5-A	No	Barry Farms

The above property was included in a round of Solicitation for Offer issued by DHCD to the general public on July 11, 2014. The above property was awarded to Manna, Inc., through a competitive selection process.

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Written statements may be submitted at the hearing, or until 4:45 p.m., Thursday, June 2, 2016, and should be addressed to: Polly Donaldson, Director, DC Department of Housing and Community Development, ATTN: PADD, 1800 Martin Luther King Jr., Avenue SE, Washington, D.C. 20020.

## DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in Section 2 of the Gallery Place Project Graphics Amendment Act of 2004, effective April 5, 2005 (D.C. Law 15-278; 52 DCR 835 (February 4, 2005)), and Mayor's Order 2013-147, dated August 8, 2013, hereby adopts the following amendment of Appendix N (Signs) of Title 12 (D.C. Construction Codes Supplement of 2013), Subtitle A (Building Code Supplement of 2013) of the District of Columbia Municipal Regulations.

The amendment revises and updates the Illustrations referenced in Section N101.18.2, which govern the types and locations of signs authorized for the Gallery Place Project. As revised, the Illustrations reflect amendments that have been made to the underlying rules and include signs that are currently being displayed pursuant to those amendments.

A Notice of Proposed Rulemaking was published on February 5, 2016 at 63 DCR 1333. No comments were received, and no changes have been made from the previous version. The rules were adopted as final on March 14, 2016, and will become effective upon publication of this notice in the *D.C. Register*.

**Appendix N, SIGNS, of Title 12-A DCMR, BUILDING CODE SUPPLEMENT OF 2013, is amended as follows:**

**Section N101.18, RULES FOR GALLERY PLACE PROJECT GRAPHICS, is amended as follows:**

The Illustrations referenced in Section N101.18.2 are hereby superseded and replaced by the following revised Illustrations, dated November 2015. The revised Illustrations are incorporated by reference into Section N101.18.2 and shall be available in the office of the code official.

The illustrations also make reference to Heroic Graphic Areas, which are defined in the illustrations as areas that allow unlimited square footage for signage except for any physical limitations imposed by the physical area of the site or the illustrations. These areas also allow for digital video monitors, digital screens, and theater marquees, provided that they do not obscure the building's structural frame, spandrels, and architectural elements.

Revised illustrations are available on the Department of Consumer and Regulatory Affairs website at <http://dcra.dc.gov/page/agency-news> under "Administrative Publications".

**The Illustrations have been revised as follows:**

**Illustrations 1 and 2.** These Illustrations now contain a Heroic Graphic Area block on the Gallery Place project above the Metro entranceways at the corner of the Seventh Street and H

Streets (replacing the Storefront Signage Area). This block authorizes the type of Gallery Place Project Graphics that currently exist on the Project.

**Illustrations 3 and 3a.** These Illustrations include the addition of a Heroic Graphic Area block placed vertically from the ground of the alleyway between the Gallery Place Project and the Verizon Center to the top of the second story of the Gallery Place Project and horizontally from the south-facing façade of the Gallery Place Project to the north-facing façade of the Verizon Center. This block reflects an amendment to the rules that added Section N101.18.2a (Gallery Place Projects Graphics Displays in Private Alley), which authorized the installation of a free-standing digital display (the “G Street Alley Digital Signage”) in the private alleyway located between the Gallery Place Project and the Verizon Center. This Heroic Graphic Area is in addition to the Heroic Graphic Areas already identified in the Illustrations on the west-facing façade of Gallery Place,

**Explanatory Text.** The text accompanying the Illustrations has also been updated to include: (1) statements on each Illustration affirming that Gallery Place Signage must comply with 12-A DCMR § N101.18; (2) a correction to the language specifying that individual elements of storefront signs may only project up to eight inches (8 in.); (3) a clarification that the G Street Alley Digital Signage is limited to five hundred seventy square feet (570 sq. ft.); and (4) arrows added pointing to the defined elements of typical storefront façades on Illustrations 5 and 6.

## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING**Wildlife Protection**

The Director of the Department of Energy and Environment (Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2013 Repl.)), the Wildlife Protection Act of 2010, effective March 8, 2011 (D.C. Law 18-289; D.C. Official Code §§ 8-2201 *et seq.* (2013 Repl.)), and Mayor's Order 2014-123, dated May 27, 2014, hereby amends Chapter 15 (Fish and Wildlife) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to license individuals and register companies performing wildlife control activities, to create qualifications and conditions for licensure and registration, to set restrictions on the capture, handling, and transport of wildlife, to set restrictions on euthanasia of wildlife, to establish control requirements for specified species, to require the compilation of service records and annual reporting, to create standards for suspension of licensure and registration, and to establish fees for licensure. The rules also clarify that certain prohibited methods of wildlife control do not apply to Norway rats, roof rats, and house mice, as well as fish.

The licensing of wildlife control operators and the registration of wildlife control service providers performing services in the District are in line with the requirements of neighboring states. Many of the wildlife control operators and wildlife control service providers offering services in the District come from Maryland or Virginia. Both states require wildlife control operators to be licensed.

The Department published a Notice of Proposed Rulemaking in the *D.C. Register* on September 18, 2015, at 62 DCR 12532. The Department considered all comments received and made substantive changes to the proposed rulemaking. A Notice of Second Proposed Rulemaking, published in the *D.C. Register* on January 29, 2016, at 63 DCR 0001068 superseded the Notice of Proposed Rulemaking and reflected changes made in response to comments received from the public. Interested persons can find both the comments and the Department's response to those comments at <http://doee.dc.gov/service/fisheries-and-wildlife>. The Department did not receive any comments on the second proposed rulemaking and made no substantive changes.

**Chapter 15, FISH AND WILDLIFE, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION, is amended to add new Sections 1570 to 1579, as follows:**

**1570 WILDLIFE PROTECTION: WILDLIFE CONTROL OPERATOR LICENSING AND FEES**

1570.1 Except in accordance with § 1560, no person shall engage in wildlife control without a license from the Department of Energy and Environment (Department).

- 1570.2 To obtain a wildlife control operator license, an applicant shall:
- (a) Be at least eighteen (18) years of age;
  - (b) Certify that he or she has not been convicted of an offense involving wildlife or animal cruelty within the previous ten (10) years;
  - (c) Complete a wildlife control operator training class approved or administered by the Department;
  - (d) Pass an examination approved by or administered by the Department, with a score of no less than eighty percent (80%) correct responses;
  - (e) Provide proof of employment with a wildlife control services provider registered by the Department under § 1571 below;
  - (f) Present a valid District or state-issued ID; and
  - (g) Pay a fee in the amount of fifty dollars (\$50.00).
- 1570.3 The written examination shall include the following topics:
- (a) Animal life cycles;
  - (b) Wildlife control methods and best practices;
  - (c) Human health and safety issues; and
  - (d) Laws and regulations pertaining to wildlife in the District of Columbia.
- 1570.4 If an applicant fails to pass the examination, he or she shall:
- (a) Wait ten (10) business days before making another attempt; and
  - (b) Not take the examination more than three (3) times in a calendar year.
- 1570.5 A wildlife control operator license shall not be transferable.
- 1570.6 A wildlife control operator shall be in possession of the license while engaging in activities authorized by the license, and it shall be made available for inspection when requested by the Department.
- 1570.7 A wildlife control operator license shall be renewed every two years, with payment of a fifty dollar (\$50.00) fee.

- 1570.8 It is the responsibility of the operator to initiate any license renewal by submitting a renewal application to the Department at least thirty (30) days before the expiration date on his or her license.
- 1570.9 The wildlife control operator has up to thirty (30) days after the expiration of his or her license to submit a renewal application. A twenty-five dollar (\$25.00) late fee will be assessed in addition to the renewal fees.
- 1570.10 If a license has been expired for more than thirty (30) days, the wildlife control operator shall be subject to applicable penalties for operating without a license.
- 1570.11 If a license has been expired for more than one (1) year, the wildlife control operator shall submit a new application pursuant to § 1570.2.
- 1570.12 A wildlife control operator shall perform wildlife control activities in accordance with §§ 1570 through 1579 and any terms or conditions in the license.
- 1570.13 A wildlife control operator shall perform wildlife control activities only for the species designated by the license.
- 1570.14 A wildlife control operator shall notify the Department within ten (10) business days of any changes to the information in his or her license.
- 1570.15 A wildlife control operator must comply with all federal and District laws, including those that apply to Species of Greatest Conservation Need (SGCN) and threatened or endangered species.
- 1570.16 Nothing in this subsection shall be construed to prohibit owners of private property from taking action to protect their property or person in compliance with § 1560.2.

**1571 WILDLIFE PROTECTION: WILDLIFE CONTROL SERVICES PROVIDER REGISTRATION**

- 1571.1 A business shall not engage in providing wildlife control services in the District unless the business is registered by the Department as a wildlife control services provider and uses the service of a licensed wildlife control operator to control wildlife.
- 1571.2 A self-employed wildlife control operator must register as a wildlife control services provider.
- 1571.3 A wildlife control services provider registration is non-transferable and continues until the registration is withdrawn by the wildlife control services provider or suspended or revoked pursuant to § 1578.

- 1571.4 A wildlife control services provider does not have to take an examination administered by the Department to register with the Department.
- 1571.5 To register, the wildlife control services provider shall submit to the Department:
- (a) Documentation showing that the entity has a valid District of Columbia basic business license;
  - (b) The business name, address, e-mail address, phone number, and a contact name; and
  - (c) Documentation of liability insurance, that shall be kept in full force and effect as long as the wildlife control services provider is engaged in wildlife control, for at least:
    - (1) \$1,000,000 for each occurrence;
    - (2) \$1,000,000 for personal injury; and
    - (3) \$2,000,000 in the aggregate.
- 1571.6 The wildlife control services provider shall notify the Department within ten (10) business days of any changes to the information in his or her registration.

**1572 WILDLIFE PROTECTION: NOTICE TO CLIENTS**

- 1572.1 Before undertaking any wildlife control measures, a wildlife control services provider shall provide to the client, in writing, the following:
- (a) An assessment of the wildlife problem, including possible causes;
  - (b) The methods and practices that may be used to resolve the wildlife problem, clearly specifying possible lethal and nonlethal means;
  - (c) The agreed-upon disposition of the animal;
  - (d) The estimated charge; and
  - (e) Where applicable, the methods and practices which the client may employ to limit future problems of a similar nature.

**1573 WILDLIFE PROTECTION: RECORD KEEPING AND REPORTING**

- 1573.1 A wildlife control operator shall maintain records of all wildlife control services, documenting the following information at each service call:

- (a) Client's name and address;
- (b) Date of services;
- (c) Nature of the complaint about wildlife;
- (d) Methods employed to alleviate problem;
- (e) Number and species of wildlife handled;
- (f) Method and location of disposition of wildlife; and
- (g) Name of the licensed wildlife control operator who performed the service.

1573.2 On or before January 15<sup>th</sup> of each year, a wildlife control services provider shall submit an accurate summary of activities of the preceding calendar year to the Department for publication online. The summary shall contain the following information:

- (a) Name, phone number, and employment address of the wildlife control operator;
- (b) Total number of complaints about wildlife;
- (c) Number and kinds of wildlife handled and their disposition;
- (d) Number of wildlife euthanized and method of euthanasia employed; and
- (e) Time period covered.

1573.3 A wildlife control services provider shall keep all records required in §§ 1573.1 and 1573.2 for three (3) years, and shall make the records available for inspection by the Department, upon request.

1573.4 Wildlife control services providers shall report to the Department any potential outbreak or widespread occurrence of suspected disease.

#### **1574 WILDLIFE PROTECTION: CONTROL OF SPECIFIC SPECIES**

1574.1 A wildlife control operator and wildlife control services provider shall recommend and employ non-lethal means in preference to lethal means for the control of problem wildlife.

1574.2 The following wildlife shall be controlled using the methods outlined in this section and § 1576:



(a) Birds

Common Name	Scientific Name
Budgerigar	<i>Melopsittacus undulatus</i>
European starling	<i>Sturnus vulgaris</i>
Graylag goose	<i>Anser anser</i>
House sparrow	<i>Passer domesticus</i>
Mute swan	<i>Cygnus olor</i>
Rock pigeon	<i>Columba livia</i>

(b) Mammals

Common Name	Scientific Name
<b>Rodents</b>	
Deer mouse	<i>Peromyscus maniculatus</i>
Gray squirrel	<i>Sciurus carolinensis</i>
Groundhog	<i>Marmota monax</i>
White-footed mouse	<i>Peromyscus leucopus</i>
<b>Small Mammals</b>	
Eastern mole	<i>Scalopus aquaticus</i>
Raccoon	<i>Procyon lotor</i>
Red fox	<i>Vulpes vulpes</i>
Star-nosed mole	<i>Condylura cristata</i>
<b>Large Mammals</b>	
Black bear	<i>Ursus americanus</i>
Coyote	<i>Canis latrans</i>
White-tailed deer	<i>Odocoileus virginianus</i>

(c) Reptiles

Common Name	Scientific Name
Black rat snake	<i>Elaphe obsoleta obsoleta</i>

1574.3 Except as provided in § 1574.7 below, any species identified as a Species of Greatest Conservation Need (SGCN) as listed in the District’s Wildlife Action Plan, which may be found on the Department website, may not be euthanized, killed, relocated, distressed, displaced, or otherwise harmed without written permission from the Department.

1574.4 The Department may approve the request to control a particular SGCN animal for the following reasons:

- (a) If the animal is causing damage to personal property or threatening public health or safety;
- (b) If the animal is sick or injured; or
- (c) Additional reasons on a case-by-case basis.

- 1574.5 A migratory bird shall be controlled only in accordance with the federal Migratory Bird Treaty Act (16 U.S.C. §§ 703-712) and its' implementing regulations, and as follows:
- (a) A nest with eggs or young may not be moved, relocated, destroyed, or altered in any way without first obtaining a federal permit.
  - (b) A nest with no eggs or young may be removed from structures such as boats, docks, and construction equipment, or relocated without a federal permit.
- 1574.6 Bats are SGCN species and except as provided in § 1574.7, may only be controlled with written permission and guidance from the Department, including time restrictions for non-lethal exclusion of bat colonies, and decontamination protocols to prevent the spread of White-nose Syndrome.
- 1574.7 A wildlife control operator may humanely remove a SGCN from the interior of a residence, commercial, or government building without obtaining prior Department approval if:
- (a) The animal is trapped and unable to leave on their own;
  - (b) The animal is released immediately on-site, or taken to a licensed rehabilitation facility if it is sick, injured, or orphaned; and
  - (c) The Department is notified within twenty-four (24) hours of the removal.
- 1574.8 Amphibians and turtles shall not be controlled by wildlife control operators.
- 1574.9 For each transport of wildlife out of the District, the wildlife control operator or wildlife control provider must first obtain written permission from the receiving jurisdiction and then request and receive written permission from the Department.
- 1574.10 For each transport of wildlife into the District, the wildlife control operator or wildlife control provider must first obtain written permission from the Department and then obtain written permission from the jurisdiction the wildlife is leaving.
- 1574.11 Wildlife control operators shall notify the Department prior to performing any wildlife control on black bears or coyotes.

**1575 WILDLIFE PROTECTION: FERAL DOGS AND CATS**

- 1575.1 When no other control methods have been proven to be adequate, a wildlife control services provider may control feral dogs and cats.

1575.2 The control of feral cats by a wildlife control services provider shall be consistent with the District's policy in favor of trap, neuter, or spay, and return or adoption for controlling feral cats.

1575.3 The wildlife control services provider shall:

- (a) Minimize the use of euthanasia when medical treatment or adoption is possible; and
- (b) Make a good faith effort to provide for adoption of trapped, tamable kittens.

**1576 WILDLIFE PROTECTION: ACCEPTABLE METHODS OF WILDLIFE CONTROL**

1576.1 Live traps and exclusion devices may be used to control wildlife.

1576.2 Nets may be used to capture live birds and bats for immediate release.

1576.3 Mist nets must to be checked at least once every hour.

1576.4 Mist nets and rocket nets may be used indoors to capture live birds that are trapped in a building, in accordance with additional guidelines outlined in 50 C.F.R. § 21.12.

1576.5 Wildlife control operators must obtain a federal permit to use a mist net or rocket net outdoors.

1576.6 A live trap may be used to capture a SGCN trapped in a building if they are released immediately onsite, or if sick, injured, or orphaned taken to a licensed rehabilitation facility for care.

1576.7 All live traps and exclusion devices shall be labeled with the name, address, and phone number of the wildlife control services provider.

1576.8 A trap shall be set in a manner designed to catch the target wildlife and in a manner likely to avoid capture of and harm to non-target wildlife.

1576.9 A trap which is set shall be checked at least once every twenty-four (24) hours, or more frequently if environmental conditions require it to prevent harm to any animal.

1576.10 Remote trap technology may be used to check traps.

1576.11 If the remote trap does not send a report or electronic signal to the wildlife control operator or wildlife control services provider for a period of twenty-four (24)

hours, the wildlife control operator or services provider shall immediately check the trap.

1576.12 Captured non-target wildlife that is healthy and does not pose an unreasonable risk to the health and safety of persons or domestic animals shall be:

- (a) Released immediately at the site of capture; or
- (b) Relocated to a suitable location where nuisance problems are unlikely to continue, with the written permission of that property owner.

1576.13 Captured non-target wildlife that is believed to be sick, injured, orphaned, or poses an unreasonable risk to people or domestic animals, or is otherwise unfit for release on site shall be:

- (a) Transferred to the District's Animal Care and Control Agency;
- (b) Transferred to a licensed wildlife rehabilitator in the District; or
- (c) Euthanized in accordance with this section, if no other options are feasible.

1576.14 Captured target wildlife shall be:

- (a) Released at the site of capture;
- (b) With the written permission of that property owner relocated to a safe location where nuisance problems are unlikely to occur;
- (c) Surrendered to the District's Animal Care and Control Agency for evaluation and assessment, if the animal is exhibiting symptoms of disease;
- (d) Transferred to a licensed wildlife rehabilitator in the District, if the animal appears to be sick, injured, or abandoned; or
- (e) If no other options are feasible, euthanized in accordance with this section.

1576.15 A wildlife control services provider shall make every reasonable effort to keep dependent young with their parents by:

- (a) Using humane eviction or displacement and reuniting strategies; and
- (b) Not knowingly abandoning dependent young wildlife in a structure.

- 1576.16 In the case of an attempt to reunite dependent young, a wildlife control services provider may hold wildlife in captivity at a safe and secure location within the District for up to seventy-two (72) hours once authorized in writing by the Department.
- 1576.17 A wildlife services provider shall capture, handle, and transport captured wildlife in a manner that prevents or limits unnecessary discomfort, behavioral stress, or physical harm to the animal, including providing protections against weather extremes.
- 1576.18 Captured wildlife shall be kept in covered, secure safe containers in such a way as to:
- (a) Minimize stress to the animal and its exposure to the elements by covering the trap or vehicle with appropriate material;
  - (b) Ensure that the covering is of such material that the animal has adequate air supply and to prevent overheating; and
  - (c) Minimize potential hazards to the general public.
- 1576.19 Wildlife, or parts thereof, shall not be sold, bartered, traded, given to another person, or retained for any purpose, except that an animal may be given to a wildlife rehabilitator, veterinarian, or animal control officer within the District for rehabilitation or euthanasia.
- 1576.20 If relocation of healthy wildlife or rehabilitation of sick, injured, or orphaned wildlife is not feasible, a wildlife control services provider shall use the available method of euthanasia that is the quickest, least stressful, and least painful to the animal under the circumstances.
- 1576.21 Euthanasia is acceptable only when using methods that conform to the Report of the American Veterinary Medical Association Panel on Euthanasia: 2013 Edition for Free-Ranging Wildlife and Domestic Animals (AVMA Report).
- 1576.22 On a case-by-case basis, the Department may approve a method of euthanasia, not published in the AVMA Report, which utilizes advancements in technology that minimizes risks to animal welfare, personnel safety, and the environment for a particular set of circumstances.

**1577 WILDLIFE PROTECTION: PROHIBITED METHODS OF CONTROL**

- 1577.1 The Department may prohibit the use of toxicants on wildlife, where it is determined that the wildlife can be reasonably controlled using less harmful methods.

- 1577.2 The use of any toxicant to control pigeons, European starlings, or house sparrows shall be prohibited.
- 1577.3 The use of sticky or glue traps to control any wildlife is prohibited.
- 1577.4 Leg-hold and other body-gripping traps, body-crushing traps, snares, or harpoon-type traps shall not be used to control any wildlife.
- 1577.5 Wildlife shall not be kept in captivity longer than thirty-six (36) hours unless specifically authorized in writing by the Department.

**1578 WILDLIFE PROTECTION: DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION OF A LICENSE OR REGISTRATION**

- 1578.1 The Department may deny, suspend, modify, or revoke a license or registration issued pursuant to §§ 1570 or 1571, if applicant, registrant, or license holder has:
- (a) Threatened the public health, safety, or welfare, or the environment or engaged in cruelty to animals;
  - (b) Been convicted of an offense that directly involved wildlife or cruelty to animals within the previous ten (10) years;
  - (c) Violated or threatened violation of law, and the rules set forth in §§ 1570 to 1577, or the terms and conditions of the license or registration;
  - (d) Been convicted of an offense for cruelty to animals, pursuant to D.C. Official Code §§ 22-1001 *et seq.*;
  - (e) Engaged in fraudulent business practices;
  - (f) Failed to comply with one or more federal or District wildlife statutes or regulations;
  - (g) Misrepresented facts relating to wildlife or wildlife control to a client, customer, or the Department;
  - (h) Made a false statement or misrepresentation material to the issuance, modification, or renewal of a license or registration;
  - (i) Submitted a false or fraudulent record or report;
  - (j) Had its authorization to do business in the District of Columbia revoked or suspended;
  - (k) Failed to keep an active insurance policy as required by § 1571.5; or

- (l) Had an error in the terms and conditions of the registration or license that needs to be corrected.

- 1578.2 The notice of proposed denial, suspension, modification, or revocation shall be in writing and shall include the following:
- (a) The name and address of the applicant or the holder of the license or registration;
  - (b) The legal and factual basis for the proposed action, including citations to the specific statutory or regulatory provision(s);
  - (c) The effective date and duration, if any; and
  - (d) How and when the applicant or license or registration holder may request an administrative hearing and the consequences of failure to appeal.
- 1578.3 To appeal the denial, suspension, modification, or revocation, the applicant or license or holder may request an administrative hearing before the District of Columbia Office of Administrative Hearings in accordance with the Rules of Practice and Procedure set forth in Title 1, Chapter 28, of the D.C. Municipal Regulations.
- 1578.4 The applicant or license or registration holder shall have fifteen (15) calendar days from the date of service of the notice to deny, suspend, modify, or revoke the license or registration, or twenty (20) days if served by mail, to request a hearing to show cause why the license or registration should not be denied, suspended, modified, or revoked.
- 1578.5 The Department may serve a notice of denial, suspension, modification, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.
- 1578.6 The Department shall not reissue a license or registration to any person whose certification or license has been revoked until after at least one year following the revocation.
- 1578.7 The Department shall not reissue a license or registration to any person whose license or registration has been revoked until the applicant has submitted a new application, and complies with the requirements in §§ 1570.2 and 1571.
- 1579 WILDLIFE PROTECTION: ENFORCEMENT**
- 1579.1 The Mayor may bring an action in the Superior Court of the District of Columbia to enjoin the violation or threatened violation of §§ 1570-1577.

Section 1599, DEFINITIONS, is amended to add the following definitions:

**1599**            **DEFINITIONS**

1599.1            When used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Animal Care and Control Agency** - the agency established by Section 3 of the Animal Control Act of 1979, effective October 18, 1979 (D.C. Law 3-30; D.C. Official Code §§ 8-1802 *et seq.* (2013 Repl.)).

**Commensal rodent** - Norway rat, roof rat, and house mouse. A rat or mouse found within a structure or proximally located at the external base of a structure may be treated as a commensal rodent for purposes of §§ 1570 to 1579.

**Complaint** - a service call received by a wildlife control operator or services provider for wildlife control services.

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

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

**District** - the District of Columbia.

**Exclusion device** - a product used to prevent wildlife from entering an area.

**Licensed wildlife rehabilitator** - wildlife rehabilitator licensed in any state or the District or a person or agent credentialed by the District of Columbia or any State to treat sick, orphaned, or injured wildlife within the District.

**Live trap** - a trap that is intended to capture an animal without killing.

**Migratory bird** - a bird protected by the Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712, as defined in the Code of Federal Regulations for the U.S. Fish and Wildlife Service in 50 C.F.R. § 10.12 and listed in 50 C.F.R. § 10.13.

**Mist net** - a virtually invisible nylon mesh net suspended by two poles, often used by biologist to capture birds and bats for banding and other research.

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

**Potential outbreak** - an increase in the number or frequency of cases of infectious disease, or a change in disease eruption patterns, that could reasonably lead to or signify an outbreak or epidemic.



**Remote trap technology** - real-time trap monitoring with devices that are fail safe and that self-report.

**Rocket net** - a type of net that uses a projection system to capture a large number of animals at once.

**Species of Greatest Conservation Need (SGCN)** - an animal species that is listed in the District's Wildlife Action Plan as a species in need of conservation through targeted management actions, based on a set of criteria that are detailed in the Wildlife Action Plan. This includes animal species whose populations are imperiled, vulnerable or declining, or have their habitat at risk.

**Target wildlife** - the specific species of wildlife that a wildlife control operator or wildlife control service provider intended to capture.

**Threatened or endangered species** - species on the list established pursuant to the Endangered Species Act, 16 U.S.C. §§ 1531-1534, and set forth in the Code of Federal Regulations at 50 C.F.R. Part 17.

**Widespread outbreak** - occurrence of an infectious disease over a wide geographic area or affecting a large proportion of the population, also known as an epidemic.

**Wildlife** - includes any free-roaming wild animal, but shall not include domestic animals, commensal rodents, invertebrates, and fish.

**Wildlife control** - to harass, repel, evict, exclude, possess, transport, liberate, reunite, rehome, take, euthanize, kill, handle, catch, capture, release, surrender, displace, or relocate wildlife.

**Wildlife control operator** - person who is licensed to perform wildlife control services by the Department, but shall not include the Animal Care and Control Agency or a property manager as defined by D.C. Official Code § 47-2853.141.

**Wildlife control services provider** - the operator of a business which involves the charging of a fee for services in wildlife control.

## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING**Mold Assessment and Remediation Licensure Regulations**

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in Sections 103(b)(1)(B)(ii)(III) and 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03 (b)(1)(B)(ii)(III) and 8-151.07(4) (2013 Repl. & 2015 Supp.)); Title III, Subtitle B of the Air Quality Amendment Act of 2014, effective September 9, 2014 (D.C. Law 20-135; D.C. Official Code §§ 8-241.01 *et seq.* (2013 Repl. & 2015 Supp.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to promulgate a new Chapter 32 of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), the Mold Assessment and Remediation Licensure Regulations.

This rulemaking implements the provisions of Title III, Subtitle B of the Air Quality Amendment Act of 2014 by providing mold licensure and certification mechanisms for all mold assessment or remediation professionals who operate in the District of Columbia. This rulemaking also sets a threshold above which a property owner must employ assessment and remediation professionals if the property is rented for residential use.

The proposed regulations were first published in the *D.C. Register* on April 3, 2015 at 62 DCR 3941, followed by a Notice of Public Hearing posted in the *D.C. Register* on May 29, 2015, at 62 DCR 6954. A Notice of Second Proposed Rulemaking was published on September 25, 2015, at 62 DCR 12746. This Notice of Final Rulemaking includes non-substantial revisions that clarify the original intent of the rules, including a clarifying change to the definition of "dwelling unit," by adding a definition for "transient housing business," in accordance with Chapter 28 of Title 47 of the District of Columbia Official Code. The Department received comments on the second proposed rulemaking. All comments were given due consideration and provided a response. Interested persons can find both the comments and the Department's response at <http://doee.dc.gov/moldlicensureregs>.

These rules were adopted as final on January 12, 2016, and will become effective upon publication of this notice in the *D.C. Register*.

**Title 20, ENVIRONMENT, is amended by adding a new Chapter 32 as follows:**

**CHAPTER 32            MOLD LICENSURE AND CERTIFICATION**

<b>3200</b>	<b>PURPOSE AND SCOPE</b>
<b>3201</b>	<b>EXCEPTIONS AND THRESHOLD FOR MOLD PROFESSIONALS</b>
<b>3202</b>	<b>REQUIREMENTS AND FEES TO OBTAIN A LICENSE</b>
<b>3203</b>	<b>SCOPE OF MOLD LICENSES</b>
<b>3204</b>	<b>PROHIBITIONS AND LICENSEE OBLIGATIONS</b>

- 3205**        **MINIMUM PERFORMANCE STANDARDS AND WORK PRACTICES FOR LICENSEES**
- 3206**        **MINIMUM WORK GUIDELINES AND REQUIREMENTS FOR NON-LICENSEES: ASSESSMENT**
- 3207**        **LICENSEE INSURANCE REQUIREMENTS**
- 3208**        **APPLICANT AND LICENSEE TRAINING REQUIREMENTS**
- 3209**        **NOTIFICATION REQUIREMENTS**
- 3210**        **INDOOR MOLD REMEDIATION PROFESSIONAL RECORD-KEEPING REQUIREMENTS**
- 3211**        **INSPECTION**
- 3212**        **DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSES**
- 3213**        **ENFORCEMENT AND PENALTIES**
- 3299**        **DEFINITIONS**
- 3200**        **PURPOSE AND SCOPE**
- 3200.1        The purpose of this chapter is to implement Title III of the Air Quality Amendment Act of 2014 (Act), effective September 9, 2014 (D.C. Law 20-135; D.C. Official Code §§ 8-241.01 *et seq.*
- 3200.2        This chapter establishes (1) a licensing program for indoor mold assessment and remediation professionals performing work on all properties in the District of Columbia, (2) a mold contamination threshold for residential properties of ten square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area, and (3) guidelines for residential indoor mold assessment and remediation below the threshold level.
- 3200.3        Indoor mold remediation obligations of residential property owners and tenants are stated in D.C. Official Code § 8-241.04 (2013 Repl. & 2015 Supp.).
- 3201**        **EXCEPTIONS AND THRESHOLD FOR MOLD PROFESSIONALS**
- 3201.1        This chapter shall not apply to:
- (a)        The following activities when not conducted for the purpose of complying with D.C. Official Code § 8-241.04 (2013 Repl. & 2015 Supp.):
- (1)        Routine cleaning;
- (2)        The diagnosis, repair, cleaning, or replacement of plumbing, heating ventilation, air conditioning, electrical, or air duct systems or appliances;
- (3)        Commercial or residential real estate inspections; or
- (4)        The incidental discovery or emergency containment of indoor

mold growth during the conduct or performance of services listed in this subsection.

- (b) The repair, replacement, or cleaning of construction materials during the construction of a structure; or
- (c) A pest control inspection conducted by a person regulated under Chapter 23 of this title.

3201.2 A license shall not be required under this chapter to perform mold assessment or remediation in a residential property containing a total surface area of less than ten square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area.

3201.3 A license shall not be required under this chapter to perform mold assessment or remediation in an outdoor area or a non-residential property.

3201.4 A license shall not be required under this chapter to perform mold assessment or remediation when it is performed by the owner of a residential dwelling unit when the dwelling unit is owner occupied.

3201.5 An individual shall not be required to be licensed under this chapter to perform mold assessment or mold remediation while supervised by a licensee.

3201.6 An individual shall not be required to be licensed under this chapter if they are currently licensed by the District of Columbia or another jurisdiction in another field (including, but not limited to, medicine, architecture, or engineering) who provide to a licensee only consultation related to that other field. In such a case, the responsibility for the project or activity remains with the licensee.

3201.7 An individual shall not be required to be licensed under this chapter if they are performing the regulated activities of a licensed insurance adjuster, including investigation and review of losses to insured property, assignment of coverage, and estimation of the usual and customary expenses due under the applicable insurance policy, including expenses for reasonable and customary mold assessment and remediation.

3201.8 An individual who is performing mold assessment or remediation under the licensing exemption(s) of § 3201.2 and identifies indoor mold growth of ten square feet (10 ft.<sup>2</sup>) or more in an affected area shall:

- (a) Immediately cease all assessment or remediation work; and
- (b) Advise the person requesting the assessment or remediation that the exemption under § 3201.2 is no longer applicable and that any additional work in the area shall be conducted by a licensee under this chapter.

**3202 REQUIREMENTS AND FEES TO OBTAIN A LICENSE**

- 3202.1 Regardless of the exceptions in § 3201, an individual shall not engage in the business of mold assessment or mold remediation without a license issued pursuant to this section.
- 3202.2 Each individual applying for a license under this chapter shall be at least eighteen (18) years old at the time of application.
- 3202.3 An individual applying for a license under this chapter shall apply to the Department after passing an examination approved by the Department pursuant to this subsection.
- 3202.4 The Department may administer an examination following the standards enumerated in this section to assist in the licensure of indoor mold assessment and remediation professionals.
- 3202.5 The Department may approve examinations offered by organizations that are recognized in the mold assessment or mold remediation industry. The Department may also approve other states' examinations. The Department's website shall contain an active list of approved examinations.
- 3202.6 The Department shall adhere to the following standards for approval of mold assessment and remediation examinations:
- (a) The examination shall be proctored;
  - (b) The mold assessment examination shall cover:
    - (1) The physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate a hypothesis about the origin, identity, location, and extent of amplification of indoor mold growth; and
    - (2) Mold remediation strategies.
  - (c) The mold remediation examination shall cover remediation planning and the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter.
- 3202.7 The Department may consider the following standards when approving an examination:
- (a) The overall difficulty of the examination, including the depth and variety of questions, and the score required to pass;

- (b) The examination covers topics referenced in § 3208.7; and
- (c) The recognized organization providing the examination requires examinees to participate in initial and refresher training, following the standards in § 3208, in the areas of mold assessment or remediation.

3202.8 An individual shall have either passed a Department-approved examination or recertified their credential no more than two (2) years prior to submitting an application to the Department.

3202.9 An individual applying to be licensed as an indoor mold assessment or remediation professional shall meet one or more of the following education and experience requirements of this subsection:

- (a) At least a two (2) year associate degree, or the equivalent, with at least thirty (30) semester hours in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of one (1) year of documented relevant field experience;
- (b) A certified industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least six (6) months of documented relevant field experience; or
- (c) A high school diploma or the equivalent with a minimum of three (3) years of documented relevant field experience.

3202.10 An applicant for an indoor mold assessment or remediation professional license shall submit a completed application that includes the following:

- (a) A fee of three hundred dollars (\$300) for an initial application.
- (b) Documentation that the applicant meets the following requirements:
  - (1) The age requirement, as specified in § 3202.2;
  - (2) The examination requirement, as specified in § 3202.4 or 3202.5;
  - (3) One of the educational and experience requirements, as specified in § 3202.9;
  - (4) The insurance requirement, as specified in § 3207;
  - (5) Upon Department approval of training providers, the training requirements, as specified in § 3208; and

(6) Any other information that the Department requires for a complete application.

(c) For a renewal, submit the evidence required in § 3202.10(b)(2), (4), (5), and (6), and a fee of one hundred and five dollars (\$105).

3202.11 Submission of a current, valid license for mold assessment or remediation that is issued by another state, as approved by the Department following the standards established in this section, is sufficient for practice as an indoor mold assessment or remediation professional in the District of Columbia, if the applicant includes in an application to the Department:

(a) A fee of three hundred dollars (\$300) for an initial application.

(b) Documentation that the applicant meets the following requirements:

(1) The applicant is licensed and in good standing by an approved state; and

(2) Any other information that the Department requires for a complete application.

(c) For a renewal, submit the evidence required in paragraph (b) and a fee of one hundred and five dollars (\$105).

3202.12 The term of each license shall be two (2) years.

3202.13 A licensee whose license has expired but continues to hold himself or herself out as an indoor mold assessment or remediation professional is in violation of this chapter.

3202.14 Beginning in 2017, license fees charged by the Department may be adjusted annually based on the change in the Consumer Price Index value published by the U.S. Department of Labor for all-urban consumers.

### **3203 SCOPE OF MOLD LICENSES**

3203.1 An indoor mold assessment professional is permitted to:

(a) Record visual observations and take on-site measurements, including temperature, humidity, and moisture levels, during an initial or post-remediation mold assessment;

(b) Collect samples for mold analysis during a mold assessment;

- (c) Plan surveys to identify conditions favorable for indoor mold growth or to determine the presence, extent, amount, or identity of mold or suspected mold in a building;
- (d) Conduct activities recommended in a plan developed under paragraph (c) of this subsection and describe and interpret the results of those activities;
- (e) Determine locations at which the licensee or individuals under the licensee's supervision shall record observations, take measurements, or collect samples;
- (f) Prepare a mold assessment report, including the observations made, measurements taken, and locations and analysis;
- (g) Develop a mold management plan for a building or dwelling unit, including recommendations for periodic surveillance, response actions, and prevention and control of indoor mold growth;
- (h) Prepare a mold remediation protocol, including the evaluation and selection of appropriate remediation strategies, personal protective equipment, engineering controls, project layout, post-remediation verification evaluation methods and criteria, and preparation of plans and specifications; and
- (i) Evaluate a mold remediation project for the purpose of verifying that indoor mold identified for the remediation project has been remediated as outlined in a mold remediation protocol.

3203.2 An indoor mold remediation professional is permitted to:

- (a) Perform mold remediation, as defined in § 3299.1;
- (b) Prepare a mold remediation work plan providing instructions for the remediation efforts to be performed for a mold remediation project;
- (c) Conduct and interpret the results of activities recommended in a mold remediation work plan developed under paragraph (b) of this subsection; and
- (d) Complete appropriate sections of a verification report, as defined in § 3299.1.

## **3204 PROHIBITIONS AND LICENSEE OBLIGATIONS**

3204.1 An individual shall not perform indoor mold assessment or remediation in the District of Columbia, unless licensed by the Department, or exempted by § 3201.



- 3204.2        Regardless of the exceptions in § 3201, a person shall not use the name or title of “licensed,” “professional,” “certified,” or any other term or terms that communicates a level of expertise in mold assessment or remediation, unless that person is an individual licensed by the Department or employs individuals who are licensed with the Department.
- 3204.3        All persons using such names or titles as referenced in § 3204.2 shall have readily available their name and license number or the name and license number of the individual(s) who are an employee of that person and who are also licensed by the Department.
- 3204.4        All licensees shall:
- (a)        Perform only services that they are licensed to conduct;
  - (b)        Meet or exceed the minimum industry standards for mold assessment and remediation and the standards set in this chapter;
  - (c)        Disclose any known or potential conflict of interest to any party affected by such conflicts;
  - (d)        To the extent required by law, keep confidential any personal information (including medical conditions) obtained during the course of a mold-related activity;
  - (e)        Promptly furnish required documents or information to the Department and promptly respond to requests for information from the Department;
  - (f)        Maintain knowledge and skills for continuing professional competence;
  - (g)        Promptly report alleged misrepresentation or violations of the Act or this chapter to the Department;
  - (h)        Competently and efficiently perform their duties and report to the Department incompetent, illegal, or unethical conduct of any licensee; and
  - (i)        Supervise any person assisting with the licensee’s work and ensure that supervisees are following best practices and applicable laws and regulations.
- 3204.5        Licensees shall not:
- (a)        Accept or offer any compensation to any other mold licensee or their company for the referral of any mold-related business;

- (b) Assess or remediate any property in which the indoor mold assessment professional or indoor mold remediation professional or their company has any financial interest;
- (c) Misrepresent any professional qualifications or credentials;
- (d) Provide any information to the Department or client that is false, deceptive, or misleading;
- (e) Work if impaired as a result of drugs, alcohol, sleep deprivation, or other conditions and not allow supervisees to work if the licensee knows or reasonably should know that the supervisee is impaired;
- (f) Make any false, misleading, or deceptive claims, or claims that are not readily subject to verification, in any advertising, announcement, presentation, or competitive bidding;
- (g) Make a representation that is designed to take advantage of the fears or emotions of the public or a customer;
- (h) Retaliate against any person who reported in good faith to any District of Columbia agency, department, or instrumentality, alleging incompetent, illegal, or unethical conduct; or
- (i) Supervise the work of more than ten (10) individuals at one time.

3204.6 Indoor mold assessment professionals shall:

- (a) Provide to the client a mold assessment report following an initial mold assessment;
- (b) If the licensee includes the results of the initial assessment in a mold remediation protocol or a mold management plan, not provide a separate assessment report;
- (c) If indoor mold growth is identified in a mold assessment, provide to the client a mold remediation protocol before a remediation project begins;
- (d) Within ten (10) days, after successful completion of remediation activities, provide a verification report to the client and the appropriate indoor mold remediation professional or, if an indoor mold assessment professional ceases to be involved with a project before it passes verification, provide a final status report to the client and the appropriate indoor mold remediation professional; and

- (e) In all issued reports, protocols, or other documents, include the date when the document was issued to the client and all indoor mold assessment professionals' names, license numbers, and, if applicable, business name and addresses.

3204.7 When conducting mold remediation, indoor mold remediation professionals shall:

- (a) Provide to a client a mold remediation work plan for the project before the mold remediation preparation work begins;
- (b) Inquire of the client or property owner whether any known or suspected hazardous materials, including lead-based paint and asbestos, are present in the project area, and, if present, follow appropriate work practices in accordance with District and federal law;
- (c) Provide to the property owner a completed verification report not later than the tenth (10<sup>th</sup>) day after receiving the verification report from the indoor mold assessment professional; and
- (d) In all issued reports, plans, or other documents, include the date when the document was issued to the client and all indoor mold remediation professionals' names, license numbers, and, if applicable, business name and addresses.

**3205 MINIMUM PERFORMANCE STANDARDS AND WORK PRACTICES FOR LICENSEES**

3205.1 Indoor mold assessment professionals shall adhere to the following minimum standards:

- (a) If an indoor mold assessment professional determines that personal protective equipment should be used during a mold assessment project, the indoor mold assessment professional shall ensure that all individuals who engage in assessment activities and who will be, or are anticipated to be, exposed to indoor mold growth are provided with, fit tested for, and trained on the appropriate use and care of the specified personal protective equipment;
- (b) If samples for laboratory analysis are collected during the assessment:
  - (1) Sampling and analysis shall be performed according to industry best practices;
  - (2) Preservation methods shall be implemented for all samples where necessary;

- (3) Proper sample documentation, including the sampling method, the sample identification code, each location and material sampled, the date collected, the name of the person who collected the samples, and the project name or number, shall be recorded for each sample; and
  - (4) Proper chain of custody procedures shall be used;
- (c) If mold remediation is to be conducted by an indoor mold remediation professional, prepare a mold remediation protocol that is specific to each remediation project and provide the protocol to the client before the remediation begins. The mold remediation protocol shall specify:
- (1) The rooms or areas where the work shall be performed;
  - (2) The estimated quantities of materials to be cleaned or removed;
  - (3) The methods to be used for each type of remediation in each area;
  - (4) The personal protective equipment to be used by indoor mold remediation professionals. A minimum of an N-95 respirator is recommended during mold-related activities when indoor mold growth could or will be disturbed. An indoor mold assessment professional may specify additional or more protective personal protective equipment if he or she determines that it is warranted;
  - (5) The proposed types of containment, as described in (d) of this subsection, to be used during the project in each area; and
  - (6) The proposed verification procedures and criteria, as described in paragraph (h) of this subsection, for each type of remediation in each area;
- (d) Containment shall be specified in a mold remediation protocol when a total surface area of ten square feet (10 ft.<sup>2</sup>) or more of indoor mold growth is in an affected area, unless the indoor mold assessment professional describes in the mold remediation protocol why containment is not necessary;
- (e) If walk-in containment is used, supply and return air vents shall be covered with plastic, and air pressure within the walk-in containment shall be lower than the pressure in building areas adjacent to the containment;
- (f) An indoor mold assessment professional indicating a specific disinfectant, biocide, or antimicrobial coating in a mold remediation protocol shall recommend only products or brands if it is registered by the District of

Columbia and the United States Environmental Protection Agency for the intended use and uses consistent with the manufacturer's labeling instructions;

- (g) A decision by an indoor mold assessment professional to use products in paragraph (f) of this subsection shall take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with such products; and
- (h) In the remediation protocol for the project, the indoor mold assessment professional shall specify:
  - (1) At least one industry-recognized analytical method for use within each remediated area to determine whether the indoor mold growth identified for the project has been remediated as outlined in the mold remediation protocol;
  - (2) The criteria to be used for evaluating analytical results to determine whether the mold remediation project is verified as complete;
  - (3) That post-remediation assessment shall be conducted while walk-in containment is in place, if walk-in containment is specified for the project; and
  - (4) The procedures to be used in determining whether the underlying causes of the mold identified for the project have been remediated so that it is reasonably certain that the mold will not return from those same causes.

3205.2 Indoor mold remediation professionals shall adhere to the following standards:

- (a) An indoor mold remediation professional shall prepare a mold remediation work plan that is specific to each project, fulfills all the requirements of the mold remediation protocol, and provides specific instructions or standard operating procedures for how a mold remediation project shall be performed. The indoor mold remediation professional shall provide the mold remediation work plan to the client before site preparation work begins;
- (b) If an indoor mold assessment professional specifies in the mold remediation protocol that personal protective equipment is required for the project or if the indoor mold remediation professional determines that individuals require personal protective equipment, the indoor mold remediation professional shall provide the specified personal protective

equipment to all individuals who engage in remediation activities and who will, or are anticipated to, disturb or remove indoor mold growth. The recommended minimum personal protective equipment is an N-95 respirator;

- (c) Containment specified in the remediation protocol shall be used on a mold remediation project;
- (d) If walk-in containment is used, supply and return air vents shall be covered with plastic, and air pressure within the walk-in containment shall be lower than the pressure in building areas adjacent to the containment;
- (e) Signs advising that a mold remediation project is in progress shall be displayed at all accessible entrances to remediation areas and shall meet the following requirements:
  - (1) The signs shall be at least eight (8) inches by ten (10) inches in size and shall bear the words “NOTICE: Mold remediation project in progress” in black on a yellow background; and
  - (2) The text of the signs shall be legible from a distance of ten (10) feet;
- (f) No person shall remove or dismantle any walk-in containment structures or materials from a project site prior to receipt, by the indoor mold remediation professional overseeing the project, of a written notice from an indoor mold assessment professional that the project has been verified as complete as described under § 3299.1;
- (g) Disinfectants, biocides, and antimicrobial coatings may be used only if their use is specified in a mold remediation protocol, if they are registered by the District of Columbia and the United States Environmental Protection Agency for the intended use, and if the use is consistent with the manufacturer’s labeling instructions; and
- (h) If a protocol specifies the use of such a product, as referenced in paragraph (g), but does not specify the brand or type of product, an indoor mold remediation professional may select the brand or type of product to be used, subject to the other provisions of this chapter.

### **3206 MINIMUM WORK GUIDELINES AND REQUIREMENTS FOR NON-LICENSEES: ASSESSMENT**

3206.1 In general, an indoor mold assessment professional should be consulted when assessing the extent of a moisture problem, indoor mold growth, and performing other related activities.

- 3206.2 The following guidelines are applicable to non-licensed individuals performing mold assessment on areas potentially affected by less than ten square feet (10 ft.<sup>2</sup>) of indoor mold growth; unless exempt by § 3201, a non-licensed individual shall not perform mold assessment on ten square feet (10 ft.<sup>2</sup>) or more of indoor mold growth in an affected area.
- 3206.3 Prior to taking any steps to clean, scrape, remove, paint over, or otherwise remediate any indoor mold growth, a visual inspection should be performed that assesses the following:
- (a) The extent of water damage, indoor mold growth, and affected building materials;
  - (b) Crawl spaces, attics, behind wallboards, carpet backing and padding, wallpaper, baseboards, insulation, and other materials that are suspected of hiding indoor mold growth;
  - (c) Ventilation systems for damp conditions and indoor mold growth on system components, like filters, insulations, and coils or fins; and
  - (d) Certain materials that are susceptible to indoor mold growth when damp, including ceiling tiles, paper-covered gypsum wallboard (drywall), structural wood, and other cellulose-containing surfaces.
- 3206.4 If assessment work might disturb indoor mold growth, personal protective equipment, like gloves and respiratory protection, should be worn.
- 3206.5 If indoor mold growth or water-damaged materials are visually identified, remediation shall be conducted in accordance with the guidance document published by the Department.
- 3206.6 If ten or more square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area is visually identified, the property owner, unless if exempt by § 3201.4, shall hire an indoor mold assessment professional who is licensed pursuant to § 3202 to conduct an indoor mold assessment.

### **3207 LICENSEE INSURANCE REQUIREMENTS**

- 3207.1 An indoor mold assessment professional shall maintain general liability and errors and omissions insurance coverage of at least one million dollars (\$1,000,000) for preliminary and post-remediation mold assessment.
- 3207.2 An indoor mold remediation professional shall maintain a general liability insurance policy in an amount of at least one million dollars (\$1,000,000) that includes specific coverage for mold-related and general pollution claims.

3207.3 An indoor mold assessment professional or an indoor mold remediation professional shall maintain the applicable insurance policy unless covered under an employer's policy.

**3208 APPLICANT AND LICENSEE TRAINING REQUIREMENTS**

3208.1 Upon the Department's approval of training organizations, applicants and licensees shall meet the training requirements in this section.

3208.2 The same training performed to obtain and maintain a third-party accreditation can be used to meet the requirements in this section.

3208.3 Applicants and licensees shall take and complete training performed by Department-approved training providers.

3208.4 The Department shall require the following individuals to complete twenty-four (24) hours of training, with a minimum of four (4) hours of hands-on training, no more than two (2) years prior to submission of the application:

- (a) Applicants seeking an initial District indoor mold assessment or remediation professional license; and
- (b) Applicants that have allowed their District indoor mold assessment or remediation professional license to lapse for two (2) years or more.

3208.5 The Department shall require the following individuals to complete four (4) hours of refresher training no more than two (2) years prior to submission of the application: licensees seeking to renew a District indoor mold assessment or remediation professional license that either have not allowed their license to lapse or have allowed their license to lapse for less than two (2) years.

3208.6 Upon the Department's approval of training organizations, the Department shall develop and maintain an active list of approved training providers on its website.

3208.7 The Department shall consider the following standards when approving twenty-four (24) hour training courses:

- (a) For an indoor mold assessment professional, the course shall address the following topics:
  - (1) Role and responsibilities of an indoor mold assessment professional;
  - (2) Background information on mold, including health effects;



- (3) Employee personal protective equipment;
  - (4) Workplace safety hazards, including other environmental hazards, such as lead and asbestos;
  - (5) Knowledge of building construction related to eliminating moisture problems, including elements of airflow, mechanisms of moisture and heat flow, humidity, the building envelope, and porous and nonporous materials;
  - (6) Current relevant industry work practices and standards, including the use and reading of moisture meters and an understanding of HVAC systems;
  - (7) Pre-assessment planning and interpretation of previous mold assessment records;
  - (8) Mold assessment report development and recordkeeping;
  - (9) Inspection and sampling techniques for mold assessment;
  - (10) Designing a mold management plan, mold remediation protocol, and verification report;
  - (11) Public, employee, and building occupant relations;
  - (12) Liability and insurance issues relating to mold assessment; and
  - (13) Supervisory techniques for mold assessment activities including implementation of required work practices and prevention of unsafe work practices.
- (b) For an indoor mold remediation professional, the course shall address the following topics:
- (1) Role and responsibilities of an indoor mold remediation professional;
  - (2) Background information on mold including health effects;
  - (3) Employee personal protective equipment;
  - (4) Workplace safety hazards, including other environmental hazards such as lead and asbestos;
  - (5) Knowledge of building construction related to eliminating

moisture problems, including elements of airflow, mechanisms of moisture and heat flow, humidity, the building envelope, and porous and nonporous materials;

- (6) Current relevant industry work practices, including the use and reading of moisture meters, duct cleaning, and use of drying equipment;
  - (7) Pre-remediation planning and interpretation of a mold assessment report and a mold remediation protocol;
  - (8) Designing a mold remediation work plan;
  - (9) Liability and insurance issues relating to mold remediation;
  - (10) Recordkeeping for mold remediation projects; and
  - (11) Supervisory techniques for mold remediation activities including implementation of required work practices and prevention of unsafe work practices.
- (c) For an indoor mold assessment and remediation professional, the course should address the District's mold statute (D.C. Official Code §§ 8-231.01 *et seq.*) and this chapter.

3208.8 The Department shall consider the following standards when approving refresher training courses lasting four (4) hours: Comprehensive review of the respective twenty-four-hour (24) course topics with specific emphasis and update on current relevant mold assessment and remediation industry work practices and standards.

3208.9 When considering training providers for approval, the Department shall give preference to training providers that meet the following standards:

- (a) Instructors and guest speakers present in person at least fifty percent (50%) of the classroom instruction and all of the hands on instruction;
- (b) Courses that require hands-on practical training are presented in an environment that permits each student to have actual experience performing tasks associated with mold-related activities;
- (c) Student-to-instructor ratios and facilities are conducive to learning;
- (d) Those providing training have experience, education, or training in teaching workers or adults in the areas of mold assessment, remediation, or a related field;

- (e) Development and implementation of plans to maintain and improve the quality of the training program to reflect innovations in the field;
- (f) The provider is not also providing a Department-approved third-party examination;
- (g) The provider requires students to pass a closed-book, fifty (50) question multiple choice examination after training to ensure retention of topics covered by the course, requiring a passing score of seventy percent (70%) or higher; and
- (h) Upon the student passing training examinations in paragraph (g), the provider issues completion certificates to the students.

### **3209 NOTIFICATION REQUIREMENTS**

3209.1 An indoor mold assessment professional shall notify the Department when he or she determines that a property has ten or more square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area, in accordance with the following requirements:

- (a) The notification shall include the address of the site, a short description of the building and its mold condition, building owner, the date(s) of the assessment, and the name and license number of the indoor mold assessment professional; and
- (b) The notification shall be provided to the Department no more than five (5) calendar days after issuance of a mold assessment report, mold remediation protocol, or a mold management plan.

3209.2 An indoor mold remediation professional shall notify the Department of a planned mold remediation at a property when it has ten or more square feet (10 ft.<sup>2</sup>) of indoor mold growth in an affected area, in accordance with the following requirements:

- (a) The notification shall include the address of the site, a short description of the building, the building owner, the start date, the anticipated stop date, and the name and license number of the indoor mold remediation professional;
- (b) The indoor mold remediation professional shall notify the Department at least five (5) calendar days prior to the date when remediation is scheduled to start;
- (c) After notification, if the scheduled start date changes, the indoor mold remediation professional shall provide the Department with the proper scheduled date at least five (5) calendar days prior to the scheduled start of

remediation;

- (d) After notification, if the scheduled stop date changes by more than one (1) calendar day, the indoor mold remediation professional shall provide the Department with the proper stop date as soon as practicable but no later than one (1) calendar day after the indoor mold remediation professional is aware of the new stop date;
- (e) The notification requirements of paragraphs (b), (c), and (d) do not apply in the event of an emergency, however in an emergency the indoor mold remediation professional shall provide the Department with a notification according to paragraph (a) as soon as practicable but no later than the following business day after the indoor mold remediation professional identifies the emergency; and
- (f) The notification requirements of paragraphs (b), (c), and (d) do not apply when, previously unknown to the indoor mold remediation professional, 10 square feet or more (10 ft.<sup>2</sup>) of indoor mold growth in an affected area is revealed during the remediation process, in which case the indoor mold remediation professional shall provide the Department with a notification according to paragraph (a) as soon as practicable but no later than the following business day after the indoor mold growth is revealed.

### **3210 INDOOR MOLD REMEDIATION PROFESSIONAL RECORD-KEEPING REQUIREMENTS**

3210.1 An indoor mold remediation professional shall maintain the following records and documents on-site at a project for its duration:

- (a) A copy of the mold remediation work plan and all mold remediation protocols used in the preparation of the work plan;
- (b) A listing of the names and applicable license numbers for all individuals working on the remediation project; and
- (c) The written contract between the indoor mold remediation professional or his/her employer and the client, and any written contracts related to the mold remediation project between the indoor mold remediation professional or his/her employer and any other party.

### **3211 INSPECTION**

3211.1 The Department may inspect or investigate the business practices of any person that it has reason to believe is licensed in accordance with this chapter, holding themselves out as an indoor mold assessment or remediation professional, or performing work that shall only be performed by an indoor mold assessment or

remediation professional.

3211.2 The Department, upon presenting proper identification, shall have the right to enter at all reasonable times any area or environment, including, but not limited to, any containment area, building, construction site, storage, or office area, or vehicle to review and copy records or question any person for the purpose of ensuring compliance with this chapter.

3211.3 If a person denies access to the Department acting pursuant to the authority of the Act or this chapter, the Department may apply for an administrative search warrant in a court of competent jurisdiction, in addition to other actions authorized by law and regulations.

### **3212 DENIAL, SUSPENSION, MODIFICATION, OR REVOCATION OF LICENSES**

3212.1 The Department shall initiate an action denying, suspending, modifying, or revoking a license by issuing a notice of denial, suspension, modification, or revocation.

3212.2 Except as provided in § 3212.5, the notice of proposed denial, suspension, modification, or revocation shall be in writing, and shall include the following:

- (a) The name and address of the holder of the license;
- (b) A statement of the action or proposed action and the effective or proposed effective date and duration of the denial, suspension, modification, or revocation;
- (c) The ground upon which the Department is proposing to deny, suspend, modify, or revoke the certification or license;
- (d) Notice that the respondent has a right to request an administrative hearing before the District of Columbia Office of Administrative Hearings (OAH), in accordance with Rules of Practice and Procedure of OAH set forth in Chapter 28 of Title 1 of the District of Columbia Municipal Regulations;
- (e) A statement that the respondent has the right, at the respondent's expense, to legal representation at the hearing; and
- (f) Information notifying the respondent of any scheduled hearing date or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the suspension or immediate revocation, if applicable.

3212.3 The Department may issue a notice of denial, suspension, modification, or revocation, if the Department finds that the applicant or license holder:

- (a) Has failed to comply with a provision of the Act or a rule in this chapter;
- (b) Has misrepresented facts relating to a mold-related activity to a client, the Department, or other District agency;
- (c) Has made a false statement or misrepresentation material to the issuance, modification, or renewal of a license;
- (d) Has submitted a false or fraudulent record, invoice, or report;
- (e) Has a history of repeated violations of District regulation; or
- (f) Has had a certification or license denied, revoked, or suspended either by the Department or by another state or jurisdiction.

3212.4 Pursuant to § 3213.3, the applicant or license holder shall have (15) calendar days from the date of service of the notice of denial, suspension, modification, or revocation to request a hearing with OAH to show cause why the license should not be denied, revoked, modified, or suspended.

3212.5 The Department may immediately suspend a license to protect the public health, safety, or welfare, or the environment. The suspension shall be immediately effective pending further investigation.

3212.6 The Department may serve a notice of modification, suspension, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.

3212.7 An individual whose license has been revoked or denied by the Department shall not be eligible to apply for any license available under this chapter until a period of ninety (90) days has passed after the effective date of such suspension, revocation or denial.

### **3213 ENFORCEMENT AND PENALTIES**

3213.1 The Department may enforce a violation of the Act or this chapter by issuing one or more of the following:

- (a) Notice of Violation;
- (b) Notice of Infraction;
- (c) Cease and Desist Order, which shall take effect immediately, or a Compliance Order;

- (d) Notice of suspension, revocation, or denial of a license pursuant to § 3212; or
- (e) Any other order necessary to protect human health or the environment, or to implement this chapter consistent with the purposes of the Act.

3213.2 Orders issued pursuant to § 3213.1(b), (c), and (e):

- (a) Shall identify the name and address of the recipient;
- (b) Shall identify the alleged violation or threatened violation;
- (c) May require the respondent to conduct corrective action;
- (d) Shall make clear the basis for the order and that the respondent's failure to take the measures directed will constitute an additional violation of the Act or the chapter; and
- (e) Shall state the process for objecting to the order.

3213.3 A person may object to an order by requesting a hearing within fifteen (15) calendar days of service, or twenty (20) calendar days if service is made by United States mail, as follows:

- (a) If specific instructions are not on the order, the owner, individual, firm, or entity shall file a written request for a hearing, including the grounds for the objection, with 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.*), in accordance with the Rules of Practice and Procedure of the Office of Administrative Hearings set forth in Title 1 DCMR Chapter 28;
- (b) If a hearing is not requested within the specified time period, the order becomes final and remains in effect until the Department determines that any applicable corrective actions have been completed; and
- (c) A hearing request does not stay the effective date of a Cease and Desist Order.

3213.4 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 these rules.

## 3299

## DEFINITIONS

3299.1 When used in this chapter or Title III of the Air Quality Amendment Act of 2014, the following words and phrases shall have the meaning as described:

**Affected** – in close proximity, likely impacted from the same source of water intrusion or moisture accumulation.

**Certified industrial hygienist** - an industrial hygienist who is certified by the American Board of Industrial Hygiene.

**Certified safety professional** - any individual who has been certified by the American Society of Engineers, American Board of Industrial Hygiene, or other nationally recognized health and safety industry organization, as determined by the Department.

**Conflict of interest** - because of other past, present, or future planned activities or relationships, the licensee is unable, or potentially unable, to render impartial services to the client.

**Containment** – a component or enclosure designed or intended to prevent the release of mold or mold-containing dust or materials into surrounding areas in the building during mold-related activities.

**Containment area** – an area that has been enclosed to prevent the release of mold or mold-containing dust or materials into surrounding areas.

**Department** – The Department of Energy and Environment or its successor agency.

**Dwelling Unit** – a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. The term “dwelling unit” does not include any room or group of rooms in a transient housing business or a dormitory.

**Emergency** – a situation in which water damage has occurred and a delay in mold remediation would allow indoor mold growth to increase.

**Final Status Report** – a document issued by an indoor mold assessment professional that includes:

- (a) A description of relevant worksite observations;
- (b) The type and location of relevant measurements made and samples collected at the worksite;
- (c) Relevant data obtained at the worksite, such as temperature,



humidity, and material moisture readings;

- (d) The results of analytical evaluation of the samples collected at the worksite;
- (e) Copies of relevant photographs; and
- (f) Any conclusions that the indoor mold assessment professional has drawn.

**Indoor mold assessment professional** – an individual who conducts mold assessment as defined in this section and who is licensed under this chapter as an indoor mold assessment professional.

**Indoor mold growth** – mold that exists on an interior surface of a building, including common spaces, utility spaces, HVAC, or other systems, and is visible.

**Indoor mold remediation professional** – an individual who conducts mold remediation as defined in this section and who is licensed under this chapter as an indoor mold remediation professional.

**License** – any license issued by the Department under this chapter.

**Licensee** – an individual licensed under this chapter to perform mold assessment or remediation.

**Mold** – living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

**Mold analysis** – the examination of a sample collected during a mold assessment for the purpose of:

- (a) Determining the amount or presence of or identifying the genus or species of any living or dead mold or related parts (including spores and hyphae) present in the sample;
- (b) Growing or attempting to grow fungi for the purposes of paragraph (a); or
- (c) Identifying or determining the amount or presence of any fungal products, including but not limited to mycotoxins and microbial volatile organic compounds, present in the sample.

**Mold assessment** - an inspection, investigation, or survey, including by visual observation or other means, of a dwelling unit or other structure regarding

the presence, identification, or evaluation of mold that may include one or more of the following:

- (a) The development of a mold assessment report;
- (b) The development of a mold remediation protocol;
- (c) The development of a mold management plan; and
- (d) The collection or analysis of a mold sample(s).

**Mold assessment report** - a document prepared by an indoor mold assessment professional for a client that describes any observations made, measurements taken, and locations and analytical results of samples taken during a mold assessment. An assessment report can be either a stand-alone document or a part of a mold management plan or mold remediation protocol.

**Mold management plan** - a document prepared by an indoor mold assessment professional for a client that provides guidance on how to prevent and control indoor mold growth at a location.

**Mold professional** – indoor mold assessment and indoor mold remediation professionals.

**Mold-related activities** - the performance of a mold assessment, mold remediation, or related activities.

**Mold remediation** - the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter.

**Mold remediation protocol** - a document, prepared by an indoor mold assessment professional for a client, that:

- (a) Includes relevant photograph(s) of the scene of mold remediation prior to remediation;
- (b) Specifies the estimated quantities and locations of materials to be remediated; and
- (c) Specifies the proposed remediation methods and verification criteria for each type of remediation in each type of area for a mold remediation project.

**Mold remediation work plan** - a document, prepared by an indoor mold

remediation professional that fulfills all of the requirements of the mold remediation protocol and provides specific instructions or standard operating procedures for how a mold remediation project shall be performed.

**Person** - an individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, District government entity, or any other association of individuals.

**Personal Protective Equipment** – items worn on an individual that limit their exposure to mold, including but not limited to gloves, goggles, respirators, and body suits.

**Preventive activities** - actions intended to prevent future indoor mold growth at a remediated area, including repairing leaks and other sources of water intrusion, and applying biocides or anti-microbial compounds.

**Professional engineer** - an engineer registered in a United States or Canadian jurisdiction.

**Professional registered sanitarian** - a sanitarian registered in a United States or Canadian jurisdiction, or by a Department-approved national organization.

**Project** - mold-related activities at a particular address for which a specific start date and a specific stop date is or will likely be provided.

**Registered Architect** - An architect registered in a United States or Canadian jurisdiction.

**Relevant field experience** - experience that involves:

- (a) For a mold indoor mold assessment professional: conducting microbial sampling or investigations; or
- (b) For a mold indoor mold remediation professional: mold remediation as defined in this section.

**Residential Property** - a building that contains one or more dwelling units, including common areas. Each street address constitutes a different residential property.

**Routine cleaning** - cleaning that is ordinarily done on a regular basis.

**Start date** - the date on which the mold remediation begins. Preparation work is not considered mold remediation.

**Stop date** - the date following the day on which an indoor mold assessment professional issues a verification report to the client and the applicable indoor mold remediation professional.

**Supervise or supervision** - to direct and exercise control over the activities of an individual by being physically present at the job site or, if not physically present, accessible by telephone within ten minutes and able to be at the site within one hour of being contacted.

**Survey** - an activity undertaken in a building to determine the presence or absence, location, or quantity of indoor mold or to determine the underlying condition(s) contributing to indoor mold growth, whether by visual or physical examination or by collecting samples of potential mold for further analysis.

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

**Verification report** - a document that an indoor mold assessment professional issues when the indoor mold assessment professional determines that a project's remediation has been successful. The report includes:

- (a) A description of relevant worksite observations;
- (b) The type and location of relevant measurements made and samples collected at the worksite;
- (c) Relevant data obtained at the worksite, including but not limited to temperature, humidity, and material moisture readings;
- (d) The results of analytical evaluation of the samples collected at the worksite;
- (e) Copies of relevant photographs;
- (f) If necessary, recommendations of specific professional disciplines that may be needed to determine that the cause and origin of moisture leading to indoor mold growth has been properly

remediated;

- (g) If additional professional disciplines are recommended in paragraph (f), a statement that the project's verified completion is contingent upon said discipline(s) performing work that remediates the cause and origin of moisture leading to indoor mold growth;
- (h) An area for the indoor mold remediation professional that worked on the project to include his or her name, signature, company name, and license number, with language stating "I hereby certify that I completed mold remediation on this project"; and
- (i) Clear statements, based on the indoor mold assessment professional's observation, that:
  - (1) All project areas are free from visible mold, and visible dust and debris as they are related to the project;
  - (2) All work has been completed in compliance with the remediation protocol;
  - (3) All identified underlying causes of the mold have been remediated so that it is reasonably certain that the mold will not return from these same causes; and
  - (4) The project is verified as complete.

**Visible** - capable of being seen with the naked eye, either by a lay person following the guidelines in § 3206, or by an indoor mold assessment professional following the standards in this chapter and best industry practices.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)), and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of an amendment to Section 1934, entitled “Supported Living Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing reimbursement of supported living services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, for a five (5) year period beginning November 20, 2012. An amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2014 Repl. & 2015 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

Supported living services are provided to persons with an assessed need for assistance with acquisition, retention, or improvement in skills related to activities of daily living, and the social and adaptive skills necessary to enable persons enrolled in the Waiver to reside and successfully participate in the community. The most recent Notice of Final Rulemaking for 29 DCMR § 1934 (Supported Living Services) was published in the *D.C. Register* on August 28, 2015, at 62 DCR 011872. A Notice of Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on February 12, 2016, at 63 DCR 001719, was adopted and became effective on February 4, 2016, and remains in effect until June 3, 2016, or publication of this final rulemaking in the *D.C. Register*, whichever occurs first. The emergency and proposed rules amended the previously published final rules by: (1) clarifying words and/or phrases to reflect more person-centered language and to simplify interpretation of the rule; (2) requiring the use of DDS approved person-centered thinking and discovery tools; (3) clarifying requirements to require that daily progress notes include any health or behavioral events of change in status that are typical for the person; (4) modifying rates to reflect increased costs of providing services; (5) requiring that supports are aimed at skill building and include opportunities for community integration and competitive integrated employment; (6) adding Wellness to the list of professional services; (7) clarifying requirements around maintenance, repair and acquisition of adaptive equipment; (8) creating flexibility in the times that are considered awake and asleep

hours for the purposes of staffing and the rate reimbursement; (9) changing the vacancy factor to ninety five (95%); and (10) allowing authority to reimburse at a specialized rate, as necessary, for court-ordered intensive staffing to support persons with complex behaviors. DHCF received no public comments on the emergency and proposed rules and no substantive changes have been made.

The Director of DHCF adopted these rules as final on April 13, 2016, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 1934, SUPPORTED LIVING SERVICES, is amended to read as follows:**

**1934 SUPPORTED LIVING SERVICES**

1934.1 The purpose of this section is to establish standards governing Medicaid eligibility for supported living services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of supported living services for Medicaid reimbursement.

1934.2 Supported living services are provided to persons enrolled in the Waiver who have limited informal supports and have an assessed need for assistance with acquisition, retention, or improvement in skills related to activities of daily living, and who require assistance with the development of social and adaptive skills that are necessary to enable the person to reside in the community and successfully participate in community activities based upon what is important to and for the person as documented in his or her Individual Support Plan (ISP) and reflected in his or her Person-Centered Thinking and Discovery tools.

1934.3 To be eligible for all Medicaid reimbursable supported living services, each person shall:

- (a) Have a documented need for assistance with acquisition, retention or improvement in skills related to activities of daily living;
- (b) Require assistance with the development of social and adaptive skills necessary to enable the person to reside and integrate in the community and successfully participate in community activities; and
- (c) Have an ISP and Plan of Care that identifies the need for supported living services.

1934.4 To be eligible for Medicaid reimbursement, twenty-four (24) hour one-to-one

supported living services in a single occupancy supported living residence (SLR), each person shall:

- (a) Have a history of challenging behaviors that may put others at risk;
- (b) Require intensive supports as determined by a psychological assessment which is updated annually or pursuant to a court order; and
- (c) Have a behavior support plan (BSP) that identifies the challenging behaviors and the need for one-to-one supervision that was approved by the Department on Disability Services (DDS).

1934.5 Persons eligible for Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing must have a circulatory, respiratory, gastrointestinal, or neurological condition or any other serious medical condition that requires frequent monitoring or at least hourly care. The following documents are required for reimbursement for this service:

- (a) A physician's order or an advanced practice registered nurse's (APRN) order documenting the scope, frequency, and duration of skilled nursing services; and
- (b) A concise statement which sets forth the presenting problem that requires supported living with skilled nursing services and includes the responsibilities of the nurse.

1934.6 In order to be eligible for Medicaid reimbursable supported living periodic services in an SLR, each person shall:

- (a) Demonstrate a need for the acquisition, and improvement of skills related to activities of daily living and the social and adaptive skills necessary for community residence, as indicated in the ISP; and
- (b) Have an assessed need requiring less than twenty-four (24) hour supports and supervision.

1934.7 Medicaid reimbursable supported living services shall be provided in one of the following types of residences:

- (a) An SLR owned or leased by a Waiver provider; or
- (b) A home owned or leased by the person receiving supported living services.

1934.8 When Medicaid reimbursable supported living services are provided in an SLR, the SLR shall serve one (1) to three (3) related or unrelated persons. With the



exception of couples who chose to share a bedroom, the number of persons in the SLR shall not exceed the number of bedrooms in the residence unless written approval from DDS is obtained.

- 1934.9 In order to receive Medicaid reimbursement, the Waiver provider shall include the person living in the residence in the lease, when the SLR is owned or leased by the Waiver provider, unless the person does not meet the leasing eligibility criteria, in which case, the provider shall enter into a written residency agreement with the person. The lease or other written residency agreement shall include all of the responsibilities and protections from eviction that apply under the jurisdiction's landlord-tenant laws.
- 1934.10 In order to be eligible for Medicaid reimbursement, each SLR located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations and must adhere to the terms and conditions set forth in an agreement between the District of Columbia and the host state.
- 1934.11 In order to be eligible for Medicaid reimbursement, each provider, including an out-of-state provider of supported living services, shall be a Waiver provider agency and meet the following requirements:
- (a) Comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR;
  - (b) Provide verification of passing the DDS Provider Certification Review (PCR) for in-home supports, supported living or respite services for the last three (3) years. For providers with less than three (3) years of PCR certification, provide verification of a minimum of three (3) years of experience providing residential or respite services to the ID/DD population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia, if applicable; and
  - (c) Have an executed, signed, current Human Care Agreement with DDS, if required by DDS.
- 1934.12 In addition to the requirements described under § 1934.9, each out-of-state provider shall comply with the following additional requirements to receive Medicaid reimbursement:
- (a) Remain in good standing in the jurisdiction where the program is located, if licensed or certified by the host state;

- (b) Submit a copy of the current certification, licensing and/or survey performed by the host state and provider's corrective action, if applicable, to DDS; and
  - (c) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state full access to all sites and records for audits and other reviews.
- 1934.13 Medicaid reimbursable supported living services may be provided with or without transportation. Each Medicaid provider shall comply with the requirements set forth in Subsection 1904.5 of Title 29 DCMR, if transportation services are provided to enable persons to gain access to Waiver services and other community services and activities in a safe and efficient manner.
- 1934.14 If transportation services are provided by the Direct Support Professional (DSP), such that the DSP drives the person in the vehicle provided by the provider, the DSP shall meet the requirements governing transportation services set forth in Subsections 1904.5(j) and (k) (Provider Qualifications) of Chapter 19 of Title 29 DCMR.
- 1934.15 Each DSP shall meet all of the requirements set forth in Section 1906 (Requirements for Persons Providing Direct Services) of Chapter 19 of Title 29 DCMR.
- 1934.16 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirement procedures:
- (a) DDS shall provide a written service authorization before the commencement of services;
  - (b) The service name and Waiver provider delivering services must be identified in the ISP and Plan of Care;
  - (c) The ISP, Plan of Care, and Summary of Supports and Services must document the amount and frequency of services to be received; and
  - (d) The services to be provided shall not conflict with the service limitations described under Subsection 1934.25.
- 1934.17 Each provider of Medicaid reimbursable supported living services shall assist persons in the acquisition, retention, and improvement of skills related to activities of daily living, and other social and adaptive skills necessary to enable the person to become a fully integrated member of their community. To accomplish these goals, the provider shall:

- (a) Use the DDS-approved Person-Centered Thinking tools, the person's Positive Personal Profile, and the Job Search and Community Participation Plan to develop a functional assessment that includes what is important to and for the person, within the first month of providing services. This assessment shall be reviewed and revised annually or more frequently as needed;
- (b) Participate as a member of the person's support team, at his or her preference, including making recommendations for the development of the ISP and Plan of Care;
- (c) Review the person's ISP and Plan of Care goals, DDS- approved person centered thinking tools, Positive Person Profiles and Job Search and Community Participation plan, objectives, and activities at least quarterly and more often, as necessary, and submit quarterly reports to the person, family, as appropriate, guardian, and DDS Service Coordinator no later than seven (7) business days after the end of the first quarter or each subsequent quarter thereafter and in accordance with the requirements described, under Section 1908 (Reporting Requirements) and Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR;
- (d) Provide access and information as requested for service coordination, visits and reviews;
- (e) Assist in the coordination of all services that a person may receive; and
- (f) Develop and implement the person's Health Care Management Plan, in accordance with the DDS Health and Wellness Standards.

1934.18

Each provider of Medicaid reimbursable supported living services shall ensure that each person receives the level of support he/she needs for skill development, habilitation and other supports, when appropriate, which shall include, but not be limited to, support for the following categories, unless the person has demonstrated independence and capacity in any of the following areas. Supports provided shall be aimed at teaching the person to increase his or her skills and self-reliance:

- (a) Eating and food preparation, including learning about healthy eating choices;
- (b) Personal hygiene;
- (c) Dressing;
- (d) Monitoring medication administration and healthcare needs;

- (e) Communications;
- (f) Interpersonal and social skills;
- (g) Household chores;
- (h) Mobility;
- (i) Financial management;
- (j) Motor and perceptual skills;
- (k) Problem-solving and decision-making;
- (l) Human sexuality;
- (m) Opportunities to engage in community life, including but not limited to social, recreational, and religious activities utilizing community resources based on the person's interests, beliefs, culture, and preferences, and building and maintaining relationships;
- (n) Ensuring that adaptive equipment is appropriate, functioning and well maintained;
- (o) Opportunities for the person to seek employment and vocational supports to work in the community in a competitive and integrated setting, and
- (p) Other supports that are identified as important to or for the person receiving supports as identified in the person's ISP.

1934.19 Each provider of Medicaid reimbursable supported living services shall ensure that staff delivering day habilitation, individualized day supports, companion, employment readiness, or supported employment services shall receive training about the person's health care needs as identified by the nurse, and are informed about those needs that are relevant to the person in those settings and that are identified in the person's Health Care Management Plan and BSP.

1934.20 Each provider of Medicaid reimbursable supported living services shall ensure that each person enrolled in the Waiver receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care. Professional services may include, but are not limited to, the following disciplines:

- (a) Medicine;

- (b) Dentistry;
- (c) Education;
- (d) Nutrition;
- (e) Nursing;
- (f) Occupational therapy;
- (g) Physical therapy;
- (h) Psychology, including behavior supports;
- (i) Social work;
- (j) Speech, hearing, and language therapy; and
- (k) Wellness.

1934.21 Each provider of Medicaid reimbursable supported living services shall maintain the records as prescribed under Section 1909 of Title 29 DCMR for monitoring and auditing purposes for each person receiving services and shall also maintain the following documents:

- (a) If providing twenty-four (24) hour supported living services in a single occupancy or one-to-one supports, a copy of the annual BSP or court order;
- (b) Progress notes that describe the person's leisure and recreation activities, in accordance with his or her interests as identified in the ISP or Person-Centered Thinking and Discovery tools, and a schedule of when the person is in his or her home;
- (c) The records of any nursing care, procedures, and other supports related to the development and management of the Health Care Management Plan; and
- (d) A record of monitoring and maintenance of adaptive equipment, if applicable;

1934.22 Each provider of Medicaid reimbursable supported living services shall meet the requirements described under Section 1908 (Reporting Requirements), Section 1911 (Individual Rights), and Section 1938 (Home and Community-Based Setting Requirements) of Chapter 19 of Title 29 DCMR.

- 1934.23 Reimbursement for Medicaid reimbursable supported living services shall not include:
- (a) Cost of room and board;
  - (b) Cost of facility maintenance, upkeep and improvement, modifications or adaptations to an SLR or home to meet the requirements of the applicable life safety code;
  - (c) Safety monitoring as a stand-alone task;
  - (d) Activities for which payment is made by a source other than Medicaid;
  - (e) Time when the person is in school or employed; and
  - (f) Time when the person is hospitalized, on vacation independently, or any other time in which the person is not receiving direct care staff support from a provider.
- 1934.24 Medicaid reimbursable supported living services shall not include services delivered by the person's relative, legal guardian, or legally responsible person.
- 1934.25 Medicaid reimbursable supported living services shall not be authorized concurrently with the following Waiver services:
- (a) Residential Habilitation;
  - (b) Respite;
  - (c) Host Home;
  - (d) In-Home Supports; and
  - (e) Transportation, when the provider chooses to provide supported living services with transportation services.
- 1934.26 The reimbursement rate for Medicaid reimbursable supported living services shall be calculated based on the staff on duty and shall include:
- (a) All supervision of the DSP;
  - (b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, oversight, coordination, and maintenance of a Health Care Management Plan, and training for residential staff and day

and/ or vocational supervisory staff on a person's health care needs, as applicable;

- (c) All transportation, if applicable;
- (d) Programmatic supplies and fees;
- (e) Ongoing maintenance and coordination of the acquisition or repair of adaptive equipment;
- (f) Quality assurance costs, such as incident management systems and staff development; and
- (g) General administrative fees for Waiver services.

1934.27 Each provider of Medicaid reimbursable twenty-four (24) hour supported living services with skilled nursing shall:

- (a) Provide skilled nursing services and supports to the person living in the SLR;
- (b) Complete any skilled nursing assessment and document hourly nursing interventions and treatments; and
- (c) Provide as appropriate, all of the supported living activities listed in Subsections 1934.18 and 1934.19, and Subsection 1934.20.

1934.28 For twenty-four (24) hour supported living services with skilled nursing, in order to be eligible for Medicaid reimbursement, the duties of a registered nurse shall be consistent with the scope of practice standards for registered nurses set forth in Section 5414 of Title 17 DCMR. At a minimum, they shall include the following duties:

- (a) Prepare an initial routine physical assessment, including an individualized service nursing plan and evaluation;
- (b) Assist in the development of the Health Care Management Plan;
- (c) Coordinate the person's care and referrals;
- (d) Administer medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia, or consistent with the requirements of the appropriate jurisdiction;
- (e) Provide oversight of non-licensed medication administration personnel;

- (f) Provide wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician, as needed;
- (g) Provide oversight and supervision to a licensed practical nurse, when delegating and assigning nursing interventions;
- (h) Record progress notes during each visit and complete quarterly reports; and
- (i) Provide competency training to the day habilitation, employment readiness, individualized day support, companion, and/or supported employment nursing or supervisory staff, as applicable, on the person's healthcare needs by the nurse, including needs identified in the Health Care Management Plan.

1934.29 In order to be eligible for Medicaid reimbursement, the duties of a licensed practical nurse delivering twenty-four (24) hour supported living services with skilled nursing, shall be consistent with the scope of practice standards for a licensed practical nurse set forth in Chapter 55 of Title 17 DCMR. At a minimum, they shall include the following duties:

- (a) Record progress notes during each visit and on quarterly reports;
- (b) Report immediately, any changes in the person's condition, to the supervising registered nurse;
- (c) Provide wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and
- (d) Administer medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements of the jurisdiction in which the healthcare professional is licensed.

1934.30 In addition to the requirements at § 1934.21, each provider of Medicaid reimbursable supported living services with skilled nursing shall also maintain the following documents:

- (a) A copy of the physician's order or an APRN's order specifying the type, frequency, scope, and duration of the skilled nursing services, if applicable;
- (b) A copy of the job description detailing the duties of the nurse delivering the service, if applicable; and
- (c) A copy of each assessment that the nurse has conducted and documentation of the hourly nursing interventions and treatments, if



applicable.

- 1934.31 Medicaid reimbursable supported living skilled nursing services shall not include custodial care.
- 1934.32 Medicaid reimbursable supported living one-to-one services in a single occupancy means services provided to one person exclusively by a supported living service provider who has been trained in all general requirements and possesses all training required to implement the person's specific behavioral and/or clinical protocols and support plans for a pre-authorized length of time.
- 1934.33 Medicaid reimbursable supported living one-to-one services in a single-occupancy SLR shall only be permitted with prior annual approval by the DDS Restrictive Control Review Committee, or a medical treatment plan signed by the person's physician. Providers delivering one-to-one services shall require the person to have a BSP or DDS approved medical treatment plan that reflects the need for one-to-one supervision.
- (a) The BSP shall be developed according to the requirements set forth in the DDA/DDS Behavioral Supports Policy and Procedure available at the DDS website at <http://dds.dc.gov/page/policies-and-procedures-dda>.
- (b) If providers of Medicaid reimbursable supported living services are delivering one-to-one supported living services pursuant to a BSP, the assessment shall be updated on an annual basis to determine if the services are necessary.
- 1934.34 If one-to-one supported living services are delivered pursuant to a court order, the order shall be verified on an annual basis, to determine if the services are necessary.
- 1934.35 Supported living services shall be Medicaid reimbursable for emergency situations when the person is not physically residing at the SLR or home, but is temporarily residing in a hotel or other facility and continues to receive support from the provider.
- 1934.36 An acuity evaluation to set levels of support shall be determined by the Support Team and approved by the DDS Waiver Unit through review of current staffing levels; available health and behavioral records; and the results of the Level of Need Assessment and Screening Tool, or its successor, to determine if a person has a health, behavioral and/or functional acuity that requires increased supports. A person may be assessed at a support level that is consistent with their current staffing level if other acuity indicators are not in place.
- 1934.37 The Medicaid reimbursement rate for supported living services without transportation shall be as follows:

- (a) Basic Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours when individuals are awake and receiving services. The reimbursement rate shall be two hundred thirty one dollars and eleven cents (\$231.11) per day;
- (b) Basic Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours when the residents are receiving services. The reimbursement rate shall be two hundred forty-one dollars and thirty-nine cents (\$241.39) per day;
- (c) Moderate Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage. The reimbursement rate shall be three hundred twenty six dollars and twenty-two cents (\$326.22) per day;
- (d) Moderate Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage overnight. The reimbursement rate shall be three hundred thirty-six dollars and fifty cents (\$336.50) per day;
- (e) Intensive Support Level 1: Provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be three hundred seventy-five dollars and sixty-eight cents (\$375.68) per day;
- (f) Intensive Support Level 2: Provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred twenty-four dollars and ninety-eight cents (\$424.98) per day;
- (g) Basic Support Level 1: Provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 during all hours when individuals are awake and receiving services. The reimbursement rate shall be three hundred fifteen dollars and fifty-nine cents (\$315.59) per day;

- (h) Basic Support Level 2: Provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the residents are receiving services. The reimbursement rate shall be three hundred twenty-eight dollars and thirty-four cents (\$328.34) per day;
- (i) Moderate Support Level 1: Provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage overnight. The reimbursement rate shall be three hundred ninety-two dollars and twenty-nine cents (\$392.29) per day;
- (j) Moderate Support Level 2: Provides support in a SLR with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are in the home and adjusted for increased absenteeism. The rate shall be four hundred forty dollars and twenty-one cents (\$440.21) per day;
- (k) Intensive Support Level 1: Provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are in the home and adjusted for increased absenteeism. The rate shall be five hundred fifteen dollars and forty-three cents (\$515.43) per day;
- (l) Supported living periodic services, as described under Subsection 1934.6, shall be authorized up to sixteen (16) hours per day without transportation. The hourly rate shall be twenty-three dollars and ninety-six cents (\$23.96) billable in quarter hour units (fifteen minutes) of five dollars and ninety-nine cents (\$5.99) per billable unit;
- (m) There shall be a specialized service rate for supported living with skilled nursing services, described under Subsection 1934.5. The rate shall be five hundred three dollars and fifty-three cents (\$503.53) per day without transportation, when there are at least three (3) people living in the SLR and residing in a home that requires skilled nursing services and demonstrates extraordinary medical needs; and
- (n) There shall be a specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Subsection 1934.4. The rate shall be six hundred eight dollars and seven cents (\$608.07) for asleep overnight staff and six hundred twenty-seven dollars and fifteen cents (\$627.15) for one-to-one awake overnight staff.

1934.38 The Medicaid reimbursement rate for supported living services with transportation shall be as follows:

- (a) Basic Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 during all hours. The reimbursement rate shall be three hundred thirteen dollars and nine cents (\$313.09) per day;
- (b) Basic Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 1:3 during all awake hours. The reimbursement rate shall be three hundred twenty three dollars and thirty-seven cents (\$323.37) per day;
- (c) Moderate Support Level 1: Provides asleep overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during the remaining awake hours, and 1:3 staff asleep overnight coverage. The reimbursement rate shall be four hundred eight dollars and nineteen cents (\$408.19) per day;
- (d) Moderate Support Level 2: Provides awake overnight support for a home with three (3) residents and a direct care staff support ratio of 2:3 for eight (8) hours a day, 1:3 during remaining awake hours, and 1:3 staff awake coverage overnight. The reimbursement rate shall be four hundred eighteen dollars and forty-seven cents(\$418.47) per day;
- (e) Intensive Support Level 1: Provides support for a home with three (3) residents and a direct care staff support ratio of 1:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be four hundred fifty-seven dollars and sixty-six cents (\$457.66) per day;
- (f) Intensive Support Level 2: Provides support for a home with three (3) residents and a direct care staff support ratio of 2:3 for staff awake overnight and 2:3 during all awake hours when the residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be five hundred six dollars and ninety-five cents (\$506.95) per day;
- (g) Basic Support Level 1: Provides asleep overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 staff asleep overnight coverage and 1:2 staff awake coverage when residents are receiving services. The reimbursement rate shall be three hundred eighty-nine dollars and fifteen cents (\$389.15) per day;

- (h) Basic Support Level 2: Provides awake overnight support for a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 1:2 during all awake hours when the resident is receiving services. The reimbursement rate shall be four hundred one dollars and ninety cents (\$401.90) per day;
- (i) Moderate Support Level 1: Provides awake overnight daily rate for a home with two (2) residents and a direct care staff support ratio of 2:2 for four (4) hours a day, 1:2 during remaining awake hours and 1:2 staff awake coverage overnight shall be four hundred sixty-five dollars and eighty-six cents (\$465.86) per day;
- (j) Moderate Support Level 2: Provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for eight (8) hours a day, 1:2 during remaining awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be five hundred thirteen dollars and seventy-eight cents (\$513.78) per day;
- (k) Intensive Support Level 1: Provides support in a home with two (2) residents and a direct care staff support ratio of 1:2 for staff awake overnight and 2:2 for all awake hours when residents are receiving services and adjusted for increased absenteeism from day and employment programs. The reimbursement rate shall be five hundred eighty-eight dollars and ninety-nine (\$588.99) per day;
- (l) Supported Living periodic services, described under Subsection 1934.6, shall be authorized up to sixteen (16) hours per day. The hourly rate shall be twenty-seven dollars and eight cents (\$27.08) per hour billable in quarter hour units of six dollars and seventy-seven cents (\$6.77) per fifteen (15) minute unit; and
- (m) There shall be a specialized service rate for supported living with skilled nursing services, described under Subsection 1934.5. The reimbursement rate is five hundred fifty-nine dollars and ten cents (\$559.10) per day, when there are at least three (3) people living in the SLR and residing in a home that requires skilled nursing services and demonstrates extraordinary medical needs.
- (n) There shall be a specialized service rate for twenty-four hour one-to-one supported living service for a person living in a single occupancy SLR, described under Subsection 1934.4. The reimbursement rate is seven hundred thirty five dollars and sixty-two cents (\$735.62) for asleep overnight staff and seven hundred fifty-four dollars and seventy cents (\$754.70) for one-to-one awake overnight staff.

- 1934.39 There shall be a specialized service rate for intensive individualized staffing to support a person or persons who have complex behaviors that involve a risk to the health, safety or well-being of the person or others or required by court order. The specialized service rate shall be determined by DDS on a case-by-case basis as appropriate to correspond with court-ordered staffing ratios.
- 1934.40 For purposes of staffing and determining the Medicaid reimbursement rates for supported living services, assume sixteen (16) awake hours of the day on weekends or holidays and assume ten (10) to twelve (12) awake hours for all other days based on the level of support.
- 1934.41 For purposes of staffing and determining the Medicaid reimbursement rates for supported living services, the overnight period is an eight (8) hour period of time.
- 1934.42 The billable unit of service for Medicaid reimbursable supported living services, excluding periodic supported living services, shall be one (1) day (*i.e.* twenty-four (24) hours).
- 1934.43 The Medicaid reimbursement rate assumes a ninety-five percent (95%) annual occupancy and includes any unanticipated absences due to illness from any day/vocational services.
- 1934.44 Each provider of Medicaid reimbursable supported living services shall maintain the staffing ratio, described under Subsections 1934.37 and 1934.38, associated with the approved acuity rate for the residence. The DDA Service Coordinator shall generate an incident report if it is discovered that the staffing ratio is not maintained during DDA's quarterly visits to the SLR.
- 1934.45 The Medicaid provider shall notify the DDS Service Coordinator to schedule a meeting to address the cause of any unanticipated absences that may result in a less than ninety-five percent (95%) occupancy rate or a reduced staffing ratio.
- 1934.46 Medicaid reimbursable supported living periodic services are calculated based on the time the person is scheduled to be in their place of residence, except the provider may include the time the person is being transported by the provider to day programs, employment, professional appointments, community activities, and events.

**Section 1999, DEFINITIONS, is amended by adding the following:**

**Couples** - A couple refers to those married or unmarried persons in a relationship, including same-sex relationships.

**Health Care Management Plan** - A written document designed to evaluate a person's health care status and to provide recommendations regarding the

treatment and amelioration of health care issues by identifying types of risk, interventions to manage identified risks, persons responsible for carrying out interventions, and persons responsible for providing an evaluation of outcomes and timeframes.

**Supported Living Residence (SLR)** - A residence owned or leased by the provider or a residence owned or leased by the person receiving services.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Suppl.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of an amendment to Section 4209 of Chapter 42 (Home and Community-Based Services Waiver For Persons Who Are Elderly and Individuals with Physical Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules increase the reimbursement rates for services rendered by a personal care aide (PCA) by eight cents (\$0.08) per hour to comply with the with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).

A Notice of Emergency and Proposed Rulemaking was adopted and became effective on December 31, 2015, and remains in effect until April 29, 2016, or publication of this final rulemaking in the *D.C. Register*, whichever occurs first. That Notice was published in the *D.C. Register* on January 29, 2016 at 63 DCR 001099. No public comments were received and no substantive changes were made to the emergency and proposed rules.

The Director of DHCF adopted these rules as final on April 13, 2016, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

**Chapter 42, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS WITH PHYSICAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 4209, REIMBURSEMENT RATES: PERSONAL CARE AIDE SERVICES, is amended to read as follows:**

**4209 REIMBURSEMENT RATES: PERSONAL CARE AIDE SERVICES**

4209.1 A home care agency seeking reimbursement for personal care aide services shall meet the conditions of participation for home health agencies set forth in 42 C.F.R. § 484, and shall comply with the requirements set forth in the Health-Care and Community Residence Facility Act, Hospice, and Home-Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*).

4209.2 For dates of services beginning November 3 through December 31, 2015, each Provider shall be reimbursed five dollars (\$5.00) per unit of service for allowable



services in accordance with the Patient Protection and Affordable Care Act of 2010, approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat. 119), as amended, and supplemented by the Health Care and Education Reconciliation Act of 2010, approved January 5, 2010 (Pub. L. No. 111-152, 124 Stat. 1029) and the District of Columbia Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code §§ 32-131.01 *et seq.*). The reimbursement rate includes administrative costs following the recent review of the FY 2013 Home Health Agencies cost reports. No less than three dollars and forty-five cents (\$3.45) shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).

- 4209.3 For dates of services beginning January 1, 2016, each provider shall be reimbursed five dollars and two cents (\$5.02) per unit for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty-six cents (\$3.46) per fifteen (15) minutes for services rendered by a PCA, shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).
- 4209.4 Subsequent changes to the reimbursement rate(s) shall be posted on the Medicaid fee schedule at [www.dc-medicaid.com](http://www.dc-medicaid.com). DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate (s).
- 4209.5 A unit of service for PCA services shall be fifteen (15) minutes spent performing allowable tasks.
- 4209.6 Reimbursement for personal care aide services shall not exceed sixteen (16) hours of service per day per recipient.
- 4209.7 A provider of waiver services shall not bill the recipient or any member of the recipient's family for personal care aide services.
- 4209.8 DHCF may limit or deny services, if the cost of the services in addition to other home care services exceeds the estimated cost of institutional care.

**DISTRICT OF COLUMBIA RETIREMENT BOARD****NOTICE OF FINAL RULEMAKING**

The District of Columbia Retirement Board (the Board), pursuant to the authority set forth in § 121(e) of the District of Columbia Retirement Reform Act (Reform Act), approved November 17, 1979 (Pub. L. 96-122, 93 Stat. 866; D.C. Official Code § 1-711(e) (2014 Repl.)), hereby gives notice of the adoption of final rulemaking to amend the District of Columbia Retirement Board Rules under Chapter 15 (District of Columbia Retirement Board) of Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the final rules is to improve performance, accomplish the Board's mission, and enable the Board to better fulfill its fiduciary obligations. The rules will repeal and replace the current rules in Chapter 15 of Title 7 DCMR.

The Board approved the proposed rules on February 18, 2016 and stated its intent to publish the proposed rules as final in the Notice of Proposed Rulemaking published in the *D.C. Register* on March 11, 2016 at 63 DCR 003777. No comments were received and no substantive changes were made to the proposed rulemaking.

These rules will become effective upon publication of this notice in the *D.C. Register*.

**Chapter 15, DISTRICT OF COLUMBIA RETIREMENT BOARD, of Title 7 DCMR, EMPLOYMENT BENEFITS, is amended as follows:**

**Repeal Chapter 15 in its entirety and replace with a new Chapter 15 to read as follows:**

**1500 ESTABLISHMENT AND ORGANIZATION OF THE BOARD**

1500.1 The District of Columbia Retirement Board (the Board) was established as an independent agency of the government of the District of Columbia pursuant to § 1-121(a) of the District of Columbia Retirement Reform Act of 1979, as amended (93 Stat. 866, Public Law 96-122; D.C. Official Code § 1-711(a)).

1500.2 The Board shall have exclusive authority to manage and control the District of Columbia Police Officers and Fire Fighters' Retirement Fund and the District of Columbia Teachers' Retirement Fund (collectively, the Funds) established by the District of Columbia Retirement Reform Act (D.C. Official Code § 1-711(a)), and to administer the retirement benefits under the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998, as amended (D.C. Law 12-152; D.C. Official Code §§ 1-901.01 *et seq.*).

**1501 BOARD MEMBERS**

1501.1 The Board shall consist of twelve (12) members, whose terms of office, qualifications, and compensation are mandated by statute (D.C. Official Code § 1-711(b), (c)). The members are fiduciaries to the Funds.

- 1501.2 The Board shall conduct elections for members who are elected by the active and retired officers of the District of Columbia Metropolitan Police Department and the District of Columbia Fire and Emergency Medical Services Department and by the active and retired teachers of the District of Columbia Public Schools. (D.C. Official Code § 1-711(b)(2)).
- 1501.3 In case of notification of a vacancy on the Board of an elected member, action shall be initiated to fill the vacancy no more than thirty (30) business days after the Board's receipt of the written vacancy notification.
- 1501.4 Individual Board members sued in their capacity as Board members shall be represented by independent counsel, if appropriate, at the Board's expense.
- 1501.5 The Chief Financial Officer of the District of Columbia, or his or her designee, shall be a non-voting *ex officio* member (D.C. Official Code § 1-711(b)(11)).
- 1501.6 The Board shall elect one (1) member to be Chairperson who shall serve for a term of one (1) year unless removed by the Board (D.C. Official Code § 1-711(b)(10)). The Board may elect other officer positions at its discretion.

## **1502 STAFF**

- 1502.1 Assignments to, removal from, and the remuneration of the staff of the Board shall be determined by the Board's appointed Executive Director, consistent with applicable provisions of the Retirement Reform Act and the Comprehensive Merit Personnel Act. (D.C. Official Code §§ 1-711(g)(2), (k); §§ 1-601.01 *et seq.*).

## **1503 COMMITTEES**

- 1503.1 The Board shall establish standing or special committees at its discretion.

## **1504 REGULAR MEETINGS**

- 1504.1 The Board shall conduct statutorily mandated quarterly meetings each calendar year to consider, conduct and transact official Board business (regular meeting). The transaction of official Board business requires a majority of current voting members. The Board holds regularly scheduled meetings the third Thursday of each month, except August, beginning at 1 p.m. unless otherwise scheduled by the Board.
- 1504.2 The Board may schedule special or emergency meetings at its discretion.
- 1504.3 All meetings of the Board shall be held in the office of the Board unless otherwise designated by the Board.

**1505 NOTICE OF MEETINGS**

1505.1 Public notice shall be given in advance of a Board meeting or closed session in accordance with the District of Columbia Open Meetings Act (D.C. Law 18-350; D.C. Official Code § 2-576) (OMA).

**1506 OPEN MEETINGS**

1506.1 All meetings of the Board, whether regular, special, or emergency, at which official action is taken shall be open to the public as required by the Retirement Reform and Replacement Plan Acts (D.C. Official Code §§ 1-736(c), 1-909.05(e)) and OMA. No Board rule, regulation, resolution, or other official Board action shall be effective unless taken in an Open Meeting.

1506.2 Members of the public wishing to attend an Open Meeting should contact the Board's office at least one (1) business day prior to the scheduled meeting to confirm the meeting is still scheduled.

**1507 EXECUTIVE SESSION**

1507.1 Any Board meeting, or portion of a meeting, may be closed to the public as permitted by the Retirement Reform and Replacement Plan Acts and the OMA upon a majority vote of the Board.

1507.2 The Board may close a meeting, or any portion of a meeting, for the following reasons:

- (a) A law or court order requires that a particular matter or proceeding not be public (D.C. Official Code § 2-575(b)(1)):
  - (1) Deliberations, tentative or final decisions on investments or other financial matter that would jeopardize the Board's ability to implement an investment decision or to achieve investment objectives (D.C. Official Code §§ 1-909.05(e) and (f));
  - (2) Personnel matters (D.C. Official Code §§ 1-736(c) and 1-909.05(e); *see also* D.C. Official Code §§ 2-575(b)(9) and (10) below); and
  - (3) Individual Plan participant benefit information (D.C. Official Code §§ 1-736(b) and 1-909.05(d));
- (b) To discuss, establish, or instruct the Board's staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open

meeting would adversely affect the Board's bargaining position or negotiating strategy (D.C. Official Code § 2-575(b)(2));

- (c) To consult with an attorney to obtain legal advice and preserve the attorney-client privilege, or to approve settlement agreements (mere participation of the Board's general counsel at a Board meeting does not warrant closure) (D.C. Official Code § 2-575(b)(4));
- (d) To discuss disciplinary matters (D.C. Official Code § 2-575(b)(9));
- (e) To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of Board members or staff (D.C. Official Code § 2-575(b)(10));
- (f) To discuss trade secrets and commercial or financial information obtained from outside the government to the extent disclosure would result in substantial harm to the outside party's competitive position (D.C. Official Code § 2-575(b)(11));
- (g) To train and develop members of the Board and staff (D.C. Official Code § 2-575(b)(12));
- (h) To discuss investigations of alleged criminal or civil misconduct or violations of law or regulations if disclosure would harm the investigation (D.C. Official Code § 2-575(b)(14)).

1507.3 All materials and records of a closed meeting or executive session shall not be subject to disclosure under the OMA.

## **1508 RECORD OF MEETINGS**

1508.1 All Board and committee meetings shall be recorded by electronic means if possible. The Board shall maintain written minutes of each meeting.

1508.2 Unapproved draft minutes of the regular Board meetings shall be made available to the public via the Board's website at [dcrb.dc.gov](http://dcrb.dc.gov) no later than three (3) business days after the meeting. Approved final minutes of the Board meetings and related materials shall be made available within seven (7) business days after approval.

1508.3 Records of closed meetings or executive sessions shall not be disclosed to the public.

## **1509 FILING AND PUBLICATION OF ADOPTED MEASURE**

- 1509.1 Rules and regulations adopted by the Board that affect legal rights, duties, or privileges of specific parties other than Board members and its staff shall be filed in the District of Columbia Office of Documents, and non-emergency rules and regulations shall not become effective until after they are published in the *District of Columbia Register*, unless otherwise provide by law.

## OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06 (2012 Repl.)) (the “Act”), hereby gives notice of the intent to amend Chapter 41 (Use of District Property and Sources by Contractors) of Title 27 (Contracts and Procurement) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking updates Chapter 41 and implements the provisions in the Act that apply to contractor use of District supply sources, including the use and responsibility of District vehicles, property, and facilities. The current Chapter 41 contains regulations that are outdated and inconsistent with the Act.

The CPO gives notice of intent to take final rulemaking action in not less than thirty (30) days from the date of publication in the *D.C. Register*.

**Chapter 41, USE OF DISTRICT PROPERTY AND SOURCES BY CONTRACTORS, of Title 27 DCMR, CONTRACTS AND PROCUREMENT, is amended as follows:**

**Section 4100, CONTRACTOR USE OF DISTRICT SUPPLY SOURCES, is amended to read as follows:**

**4100 CONTRACTOR USE OF DISTRICT SUPPLY SOURCES**

4100.1 When it is in the best interest of the District, and if goods or services required in the performance of a District contract are available from District supply sources, the contracting officer may authorize contractors to use these sources in performing the following types of contracts:

- (a) Cost-reimbursement; or
- (b) Other types of contracts when the contracting officer determines that a substantial dollar portion of the contract is of a cost-reimbursement nature, or that the contract cost can be reduced by authorizing the use of District supply sources by the contractor.

4100.2 The authorization to the contractor to use District supply sources shall include, but not be limited to, consideration of the following factors:

- (a) The administrative cost of placing orders with District supply sources and the program impact of delay factors, if any;
- (b) The lower cost of items available through District supply sources;

- (c) The suitability of items available through District supply sources;
  - (d) Delivery factors, such as cost and time; and
  - (e) The recommendations of the contractor.
- 4100.3 The contracting officer shall issue authorizations to subcontractors to use District supply sources through, and with the approval of, the contractor.
- 4100.4 The contracting officer may include in the authorization to use District supply sources any limitations or conditions deemed necessary, such as the following:
- (a) A limitation on the authority to purchase from District supply sources to any overhead supplies, but not production supplies;
  - (b) A limitation on the authority for use of District sources to a specific dollar amount;
  - (c) A restriction on the authorization to use certain facilities or to specific contracts; or
  - (d) A specific provision setting forth whether vesting of title will differ from other property acquired or otherwise furnished by the contractor for use under the contract.
- 4100.5 When ordering from District supply sources, contractors shall follow all applicable rules, regulations, procedures, and contract terms.
- 4100.6 When ordering from District supply sources, contractors shall comply with the requirements of the contracting officer's authorization and order only those items required for performance of the contract.
- 4100.7 Title to property acquired by the contractor under the contracting officer's authorization may vest in either the District or the contractor, as provided in the contract. If the contract is silent on the vesting of title, title shall vest in the District.
- 4100.8 Supplies or services provided to a contractor from District supply sources do not contain any representation or warranty as to quality or suitability unless otherwise provided in a contract.

**Section 4101, CONTRACTOR USE OF DISTRICT VEHICLES AND RELATED SERVICES, is amended to read as follows:**



**4101 CONTRACTOR USE OF DISTRICT VEHICLES AND RELATED SERVICES**

- 4101.1 When it is in the best interest of the District, the contracting officer may authorize contractors in writing to use District-owned or leased vehicles and related services (including fuel and lubricants, vehicle inspection, maintenance, repair, and vehicle storage), in accordance with the provisions of this section.
- 4101.2 The contracting officer may authorize a contractor to use District-owned or leased vehicles and related services only if:
- (a) The number of vehicles and related services required for use by the contractor is predictable and expected to remain fairly constant;
  - (b) The proposed contract or contracts will bear the entire cost of the vehicle program;
  - (c) The vehicles will not be used for any purpose other than carrying out the contract for which the vehicles were provided;
  - (d) The contractor does not have and would not be expected to have an existing and continuing capability for providing the vehicles from its own resources; and
  - (e) Substantial savings are expected.
- 4101.3 District-owned or leased vehicles and related services used by the contractor under this section shall be used only in connection with the performance of one (1) or more specific District contracts for which use of the vehicles and related services was authorized.
- 4101.4 Before authorizing a contractor to use District-owned or leased vehicles and related services, the contracting officer shall do the following:
- (a) Determine whether the authorization will accomplish the District's contractual objectives and reduce costs;
  - (b) Obtain evidence that the contractor has in effect insurance in accordance with the provisions of the contract;
  - (c) Arrange for periodic checks to ensure that contractors are using the District-owned or leased vehicles and related services in accordance with the terms of the authorization;
  - (d) Ensure that the contractor establishes and enforces penalties for employees who use or authorize the use of District-owned or leased vehicles or

related services for purposes other than the performance of District contracts for which use of the vehicles and related services was authorized; and

- (e) Obtain a written statement from the contractor that the contractor will assume, without the right of reimbursement from the District, the cost or expense and liability of any use of the District-owned or leased vehicles and related services not related to the performance of the contract.

**Section 4102, USE OF DISTRICT PROPERTY AND FACILITIES, is amended to read as follows:**

**4102 USE OF DISTRICT PROPERTY AND FACILITIES**

4102.1 Except as provided otherwise in this chapter or the contract, each contractor and subcontractor shall furnish all property and facilities necessary to perform District contracts.

**Section 4103, FACILITIES CONTRACTS, is repealed and replaced with:**

**4103 [RESERVED]**

**Section 4104, PROVISION OF MATERIAL FOR PERFORMING CONTRACTS, is amended to read as follows:**

**4104 PROVISION OF MATERIAL FOR PERFORMING CONTRACTS**

4104.1 Except as provided otherwise in this section, each contractor and subcontractor shall furnish all material for performing District contracts.

4104.2 The contracting officer may provide material to the contractor or subcontractor when necessary to achieve significant economy, standardization, expedited production, or when it is otherwise determined to be in the best interest of the District.

4104.3 The solicitation shall specify material that the District will furnish in sufficient detail to enable offerors to accurately evaluate and respond to the solicitation.

**Section 4106, CONTRACTOR RESPONSIBILITY FOR DISTRICT PROPERTY, is amended to read as follows:**

**4106 CONTRACTOR RESPONSIBILITY FOR DISTRICT PROPERTY**

4106.1 Except as provided in the contract, the contractor shall be directly responsible and accountable for all District property, including all District property in the possession or control of a subcontractor.

- 4106.2 The contractor shall maintain and make available all property control records required under this chapter and account for all District property until relieved of the responsibility by the contracting officer under the terms of the contract or this section.
- 4106.3 The contractor shall assume responsibility for the control of District property upon:
- (a) Delivery of District furnished property into the contractor's custody or control; or
  - (b) Delivery to the contractor, when property is purchased by the contractor and the contract calls for reimbursement by the District. This requirement shall not alter or modify contractual requirements relating to passage of title;
- 4106.4 Property to which the District has acquired a lien or title solely as a result of advance, progress, or partial payments shall not be subject to the requirements of §§ 4106 and 4107 of this chapter.
- 4106.5 The contractor shall require subcontractors provided with District property under the prime contract to comply with the requirements of §§ 4106 and 4107 of this chapter. Procedures for ensuring subcontractor compliance shall be included in the contractor's property control system.
- 4106.6 Unless the contract or contracting officer provides otherwise, the contractor shall be relieved of property control responsibility for District property by the occurrence of any of the following:
- (a) Reasonable and proper consumption of property in the performance of the contract as determined by the contracting officer;
  - (b) Retention by the contractor, with the approval of the contracting officer, of property for which the District has received adequate consideration;
  - (c) The authorized sale of property, provided the proceeds are received by the District;
  - (d) Shipment from the contractor's plant, under District instructions, except when shipment is to a subcontractor or other location of the contractor; or
  - (e) A written determination by the contracting officer of the contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, which is followed by reimbursement of the District of any

amount required in the determination. If the property is rendered unserviceable by damage, the property shall be properly disposed of, and the determination shall refer to the documents evidencing disposal.

**Section 4107, PROPERTY CONTROL SYSTEMS, is amended to read as follows:**

**4107 PROPERTY CONTROL SYSTEMS**

- 4107.1 The contractor shall establish and maintain a system to record, control, protect, preserve, and maintain all District property. The system shall be reviewed and approved by the contracting officer before District property is provided or made available to the contractor. If the contracting officer finds any portion of the contractor's property control system to be inadequate, the contractor shall be required to take any necessary corrective action before the system can be approved.
- 4107.2 The property control system, and implementation of the property control system, may be reviewed at any time during the period of the contract by the contracting officer.
- 4107.3 If the contracting officer finds any portion of the contractor's property control system, or implementation of its property control system, to be inadequate, the contractor shall be required to take any necessary corrective action ordered by the contracting officer and the contracting officer may suspend the contractor's authority to use District property until the corrective action is taken.
- 4107.4 If District property is found to be in the possession or control of the contractor, although not provided under any contract, the contractor shall promptly record the property and furnish to the contracting officer all known circumstances and data pertaining to its receipt and a statement about whether it is needed for the performance of the contract.
- 4107.5 If unrecorded District property is found in the possession or control of the contractor, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the contracting officer.
- 4107.6 The contractor shall promptly report to the contracting officer all District property it receives in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use.
- 4107.7 The contractor shall furnish written receipts for all or specified classes of District property only when the contracting officer deems it essential for maintaining acceptable property controls.
- 4107.8 If overages, shortages, or damages are discovered upon receipt of District property, the contractor shall provide a statement of the condition and apparent

causes to the contracting officer. Only the quantity of property actually received shall be recorded on the official records.

**Section 4109, CONTRACTOR LIABILITY FOR DISTRICT PROPERTY, is amended to read as follows:**

**4109 CONTRACTOR LIABILITY FOR DISTRICT PROPERTY**

- 4109.1 Contractors shall be responsible and liable for District property in their possession, unless otherwise specified in the contract.
- 4109.2 When the District provides District property directly to a subcontractor, the provisions of this section shall apply to the subcontractor.
- 4109.3 Subcontractors shall be liable for loss of or damage to District property furnished through the prime contractor.
- 4109.4 A prime contractor that provides District property to a subcontractor shall not be relieved of any responsibility to the District that the prime contractor may have under the terms of the prime contract.
- 4109.5 Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor shall be liable for shortages, loss, damages, or destruction of District property. The contractor shall also be liable when the use or consumption of District property unreasonably exceeds the allowances provided for by the contract.
- 4109.6 The contractor shall investigate and report to the contracting officer all cases of loss, damage, or destruction of District property in its possession or control as soon as the facts become known, or when requested by the contracting officer. A report shall also be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the contractor's possession or control.
- 4109.7 The contractor shall require any of its subcontractors possessing or controlling District property accountable under the contract to investigate and report to the contractor all instances of loss, damage, or destruction of District property.

**Section 4110, DISTRICT RECORDS: GENERAL PROVISIONS, is amended to read as follows:**

**4110 DISTRICT RECORDS: GENERAL PROVISIONS**

- 4110.1 The contractor's property control records shall constitute the District's official property records unless an exception has been authorized by the contracting officer.

- 4110.2 The contractor shall establish and maintain adequate control records for all District property, including property provided to, and in the possession or control of, a subcontractor.
- 4110.3 The property control records specified in §§ 4110 and 4111 of this chapter shall be the minimum required by the District. The contracting officer may impose additional requirements as appropriate.
- 4110.4 Unless the contracting officer directs otherwise, if a subcontractor has an approved property control system for District property provided under its own prime contracts, the contractor shall use the records created and maintained under that system as the property control records for District property controlled by the subcontractor.
- 4110.5 The contractor’s property control system shall provide financial accounts for District property in the contractor’s possession or control.
- 4110.6 The property control system shall be subject to internal control standards and shall be supported by property records for all property.
- 4110.7 The records shall be safeguarded from tampering or destruction.
- 4110.8 The contractor shall make the property control records available to the contracting officer and to other authorized District personnel promptly after a request from the contracting officer or other authorized District personnel.
- 4110.9 The contractor shall maintain separate property records for each contract. However, the contractor may maintain a consolidated property record if it provides the required information and is specifically authorized by the contracting officer.
- 4110.10 The contractor’s property control system shall contain a system or technique to locate any item of District property within a reasonable period of time.

**Section 4111, CONTENTS OF PROPERTY CONTROL RECORDS, is amended to read as follows:**

**4111 CONTENTS OF PROPERTY CONTROL RECORDS**

- 4111.1 Official District property records shall identify all District property and provide a complete, current, auditable record of all transactions.
- 4111.2 The contractor’s property control records shall provide the following basic information for every item of District property in the contractor’s possession regardless of value:

- (a) The name, description, and commodity code;
- (b) Quantity received, issued, and on hand;
- (c) Unit price;
- (d) Contract number;
- (e) Location;
- (f) Disposition; and
- (g) Posting reference and date of transaction.

**Section 4113, CARE, MAINTENANCE, AND USE OF DISTRICT PROPERTY, is amended to read as follows:**

**4113 CARE, MAINTENANCE, AND USE OF DISTRICT PROPERTY**

- 4113.1 The contractor shall be responsible for the proper care, maintenance, and use of District property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the contract and this chapter.
- 4113.2 The removal of District property to storage, or its contemplated transfer, shall not relieve the contractor of the responsibilities set forth in this chapter.
- 4113.3 The contractor shall be responsible for a preventive maintenance program which includes the following:
- (a) Inspection of buildings at periodic intervals to ensure detection of deterioration and the need for repairs;
  - (b) Inspection of equipment at periodic intervals to ensure detection of maladjustment, wear, or impending breakdown;
  - (c) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;
  - (d) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;
  - (e) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time; and

- (f) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances.

4113.4 The contractor's maintenance program shall provide for disclosing and reporting to the contracting officer the need for major repair, replacement, and other capital rehabilitation work for District property in its possession or control.

4113.5 The contractor shall keep records of maintenance actions performed and any deficiencies in District property discovered as a result of inspections.

**Section 4114, PROPERTY USE PROCEDURES, is amended to read as follows:**

**4114 PROPERTY USE PROCEDURES**

4114.1 The contractor shall establish written procedures to ensure that District property will be used only for those purposes authorized in the contract and that required approvals are obtained. The contractor's written procedures shall include;

- (a) Establishment of a minimum level of use below which an analysis of need shall be made and retention justified;
- (b) Provision for recording authorized and actual use consistent with the established use levels;
- (c) A requirement for periodic analyses of needs for District property utilization based upon known requirements; and
- (d) Provision for prompt reporting to the contracting officer of all property for which retention is not justified.

4114.2 The contractor's property control records shall provide a basis for determining and allocating rental charges.

4114.3 The contractor's or subcontractor's authority to purchase, retain, or dispose of contractor inventory of District property shall be subject to the contract provisions and to any District restrictions on the disposition of property that is hazardous to public health, safety, or welfare.

**Section 4199, DEFINITIONS, is amended to read as follows:**

**4199 DEFINITIONS**

4199.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:



**District property** - all property owned by or leased to the District or acquired by the District under the terms of the contract, including property in the possession of or directly acquired by the District and subsequently made available to the contractor.

**District supply sources** - sources available to the District from which the contractor or subcontractor may obtain supplies for use in certain contracts.

**Facilities** - property used for production, maintenance, research, development, or testing. The term “facilities” includes personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing goods, in performing services, or for any administrative or general plant purpose, and real property (land and rights in land, ground improvements, utility distribution systems, and buildings and other structures), but does not include material.

**Material** - property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. The term includes assemblies, components, parts, raw and processed materials, and small tools and goods that may be consumed in normal use in performing a contract.

**Preventive maintenance** - maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences.

**Property** - all property, both real and personal, including facilities and material.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments to the Chief Procurement Officer, 441 4<sup>th</sup> Street, 700 South, Washington, D.C. 20001. Comments may be sent by email to [OCPRulemaking@dc.gov](mailto:OCPRulemaking@dc.gov), by postal mail or hand delivery to the address above, or by calling (202) 727-0252. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be requested at the same address, e-mail, or telephone number as above.

## OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

**NOTICE OF PROPOSED RULEMAKING**

The State Superintendent of Education, pursuant to the authority set forth in Sections 2a, 3(b)(11), (12) and (17) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2601.01, 38-2602(b)(11), (12), and (17) (2012 Repl. & 2015 Supp.)), and Sections 1002(a)(22) and (36) of the Non-Health Related Occupations and Professions Licensure Act of 1998, effective April 20, 1999 (D.C. Law 12-261; D.C. Official Code § 47-2853.04(a)(22) and (36) (2015 Repl.)), hereby gives notice of the intent to adopt the following proposed amendments to create a new Chapter 16 (Credentials for Teachers and School Administrators) in Title 5 (Education), Subtitle A (Office of the State Superintendent of Education) of the District of Columbia Municipal Regulations (DCMR), and delete in their entirety Sections 1600-1654, 1664-1667, and 1687 in Chapter 16 (License Requirements) in Title 5 (Education), Subtitle E (Original Title 5), of the DCMR.

The purpose of the proposed rulemaking is to update the current criteria and procedures under which the Office of the State Superintendent (OSSE) shall issue credentials to teachers and administrators in a manner that aligns with current research and needs; eliminate onerous credentials requirements; and streamline the process for awarding credentials in the District.

Additionally, the State Superintendent issued a separate Notice of Emergency Rulemaking, published on March 25, 2016 at 63 DCR 4469 that mirrors this proposed rulemaking but does not include provisions regarding pathways to obtaining advanced teaching credentials and advanced administrative services credentials. The emergency rulemaking was adopted on March 1, 2016 and became effective on that date. The emergency rulemaking will remain in effect for up to one hundred twenty (120) days after the date of adoption, expiring on June 29, 2016, or upon earlier amendment or repeal by the State Superintendent of Education or publication of a final rulemaking in the *D.C. Register*, whichever occurs first.

The State Superintendent of Education also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

**A new Chapter 16 is added to Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, as follows:**

**CHAPTER 16: CREDENTIALS FOR TEACHERS AND  
SCHOOL ADMINISTRATORS****1600 PURPOSE & SCOPE**

1600.1 The purpose of this chapter is to specify criteria under which the Office of the State Superintendent (OSSE) shall issue the following:

- (a) Teaching credential; and

(b) Administrative Services credential.

1600.2 OSSE shall issue a credential to any applicant who meets the criteria in this chapter including the criteria for a specific credential type, the criminal background check requirements described in Section 1606 and the submission of required application fees described in Section 1608.

1600.3 All credentials that are in effect as of the effective date of this rulemaking shall remain in effect until the date of their expiration.

## **1601 TEACHER CREDENTIALS**

1601.1 An individual shall hold a teaching credential to serve as a teacher in the District of Columbia Public Schools for the sub-specializations enumerated in this section.

1601.2 All individuals required to hold a teaching credential to serve as a teacher in a local education agency (LEA) in the District of Columbia must do so in accordance with the sub-specializations enumerated in this chapter.

1601.3 OSSE shall issue an initial, standard, and advanced teaching credential in accordance with the provisions of this chapter.

1601.4 All teaching credentials shall specify the discipline(s) and/or sub-specialization(s) in which the holder is authorized to teach.

1601.5 All applicants seeking an initial teaching credential in the District of Columbia shall:

(a) Have earned a bachelor's degree at a college or university accredited by one of the regional accrediting bodies approved by the U.S. Department of Education;

(b) Have successfully passed an examination approved by OSSE and developed to assess general reading, writing, mathematics skills and other general content knowledge as designated by OSSE, with a qualifying score determined by OSSE;

(c) Have successfully passed a subject matter content exam approved by OSSE, in the discipline(s) and/or sub-specializations(s) of the credential being sought; and

(d) Meet the requirements of Subsection 1601.6.

1601.6 An applicant shall be issued an initial teaching credential by meeting the requirements described in Subsection 1601.5 and submitting the following:

- (a) Documentation satisfactory to OSSE to confirm that the applicant
  - (1) Is admitted into an OSSE-approved teacher preparation program aligned with the content discipline of the credential being sought, or in a teacher preparation program approved by another state approved by OSSE in accordance with the interstate agreement provisions outlined in this chapter; and
  - (2) Is employed or contracted as a teacher by an LEA operating in the District of Columbia; or
- (b) Documentation satisfactory to OSSE to confirm that the applicant:
  - (1) Has at least two (2) years of effective full-time teaching experience in another state as measured by a summative evaluation rating or two (2) years of effective or equivalent teaching as measured by the student growth component of an evaluation rating. The experience shall be completed within the previous three (3) years, and the final year shall show a rating of effective or higher; and
  - (2) Has a valid, current teaching credential, in good standing, issued from another state approved by OSSE in accordance with the interstate agreement provisions outlined in this chapter; or
- (c) Documentation satisfactory to OSSE to confirm that the applicant:
  - (1) Is employed or contracted as a teacher by an LEA operating in the District of Columbia; and
  - (2) Has a written request for issuance of an initial teaching credential addressed to OSSE from the employing LEA.

1601.7 The term of the initial teaching credential shall expire on July 31st of the third (3<sup>rd</sup>) calendar year after issuance.

1601.8 The initial teaching credential is not renewable.

1601.9 An applicant shall be issued a standard teaching credential by meeting the following requirements and submitting the following:

- (a) Documentation satisfactory to OSSE to confirm that the applicant:
  - (1) Completed an educator preparation program approved by OSSE or an approved program in another state approved by OSSE in

accordance with the interstate agreement provisions outlined in this chapter;

- (2) Successfully passed an examination approved by OSSE, developed to assess general reading, writing, mathematics skills, and other general content knowledge as designated by OSSE;
  - (3) Successfully passed a subject matter content examination approved by OSSE, in the content discipline for which a credential is sought; and
  - (4) Successfully passed a grade-appropriate pedagogy examination approved by OSSE, or performance-based assessment, as designated by OSSE, with a qualifying score determined by OSSE; or
- (b) Documentation satisfactory to OSSE to confirm that the applicant:
- (1) Held an initial teaching credential in the District of Columbia;
  - (2) Completed at least two (2) years of effective or equivalent full-time teaching experience at an LEA in the District of Columbia within the three (3) year period prior to the application, as demonstrated by the applicant's summative evaluation rating from the employing LEA; and
  - (3) Successfully passed a grade-appropriate pedagogy examination approved by OSSE, or performance-based assessment, as designated by OSSE, with a qualifying score determined by OSSE; or
- (c) Documentation satisfactory to OSSE to confirm that the applicant:
- (1) Holds a teaching credential issued by another state approved by OSSE in accordance with the interstate agreement provisions outlined in this chapter;
  - (2) Successfully passed an examination approved by OSSE and developed to assess basic reading, writing, mathematics skills, and other general content knowledge designated by OSSE;
  - (3) Successfully passed a subject matter content examination approved by OSSE in the content discipline for which a credential is sought;
  - (4) Successfully passed a grade-appropriate pedagogy examination or performance-based assessment, as designated by OSSE; and

- (5) Has at least two (2) years of effective or equivalent full-time teaching experience in another state, as measured by a summative evaluation rating of two (2) years of effective or equivalent teaching based upon the student growth component of an evaluation rating. The experience shall be completed within three (3) years prior to an application for the credential, and the final year shall show a rating of effective or higher; or
- (d) Documentation satisfactory to OSSE to confirm that the applicant:
- (1) Is currently or has been employed as a teacher by an LEA operating in the District of Columbia;
  - (2) Has completed at least two (2) years of effective or equivalent full-time teaching experience at an LEA in the District of Columbia within the three (3) years prior to the application, as demonstrated by the applicant's summative evaluation rating from the employing LEA;
  - (3) Successfully passed an examination approved by OSSE, developed to assess general reading, writing, mathematics skills and other general content knowledge as designated by OSSE;
  - (4) Successfully passed a subject matter content examination approved by OSSE, in the content discipline for which a credential is sought; and
  - (5) Successfully passed a grade-appropriate pedagogy examination or performance-based assessment, as designated by OSSE, with a qualifying score determined by OSSE.

1601.10 A standard teaching credential shall be valid for a term of four (4) years.

1601.11 A standard teaching credential may be renewed if the requirements for renewal of this credential are met, in accordance with this chapter. A renewal period shall be for a term of four (4) years.

1601.12 An applicant shall be issued an advanced teaching credential by meeting the following requirements and submitting documentation satisfactory to OSSE to confirm that the applicant:

- (a) Has held a standard teaching credential, in accordance with this chapter, for at least one full initial term (four years); and

- (b) Has demonstrated exemplary teaching practice by achieving three (3) evaluation ratings of highly effective or the equivalent within five (5) years prior to the date of application, through the applicant's summative evaluation rating from the employing LEA.

1601.13 An advanced teaching credential shall be valid for a term of five (5) years.

1601.14 An advanced teaching credential may be renewed if the requirements for renewal of this credential are met, in accordance with this chapter. A renewal period shall be for a term of five (5) years.

## **1602 TEACHER CREDENTIALS: SUB-SPECIALIZATIONS**

1602.1 OSSE shall establish criteria for the preparation of teachers in the following sub-specializations:

- (a) Adult Basic Education (Adult)
- (b) Adult Education (Academic Subjects)
- (c) Art (Pre-kindergarten – Grade 12)
- (d) Bilingual Education (Pre-kindergarten – Grade 12)
- (e) Bilingual Special Education (Pre-kindergarten – Grade 12)
- (f) Biology (Grades 7 – 12)
- (g) Business Education (Grades 7 – 12)
- (h) Chemistry (Grades 7 – 12)
- (i) Computer Education Laboratory Teacher (Pre-kindergarten – Grade 12)
- (j) Computer Science (Grades 7 – 12)
- (k) Early Childhood Education (Pre-kindergarten – Grade 3)
- (l) Early Childhood – Montessori Primary (Pre-kindergarten – Grade 3)
- (m) Early Childhood Special Education (Pre-kindergarten – Grade 3)
- (n) Educational Technology Teacher Trainer (Pre-kindergarten – Grade 12)
- (o) Elementary Education (Grades 1 – 6)

- (p) Elementary Mathematics Resource (Grades 1-6)
- (q) Elementary Science Resource (Grades 1-6)
- (r) Elementary – Montessori Elementary (Grades 1-6)
- (s) English (Grades 7 - 12)
- (t) General Science (Grades 7 - 12)
- (u) Gifted and Talented Education (Pre-kindergarten – Grade 12)
- (v) Home Economics (Grades 7-12)
- (w) Mathematics (Grades 7 - 12)
- (x) Physical Education (Pre-kindergarten – Grade 12)
- (y) Physics (Grades 7 - 12)
- (z) Reading (Pre-kindergarten - Grade 12)
- (aa) Social Studies (Grades 7 - 12)
- (bb) Middle School Education (Grades 4 – 8)
- (cc) Industrial Arts (Grades 7-12)
- (dd) Marketing Education (Grades 7-12)
- (ee) Performing Arts – Visual Arts (Pre-kindergarten – Grade 12)
- (ff) Performing Arts – Music (Pre-kindergarten – Grade 12)
- (gg) Performing Arts – Drama and Theatre (Pre-kindergarten – Grade 12)
- (hh) Performing Arts – Dance (Pre-kindergarten – Grade 12)
- (ii) Foreign Languages (Pre-kindergarten – Grade 12)
- (jj) Health Education (Pre-kindergarten – Grade 12)
- (kk) Instrumental Music (Pre-kindergarten – Grade 12)
- (ll) Vocal Music (Pre-kindergarten – Grade 12)



- (mm) Non-Categorical Special Education (Pre-kindergarten – Grade 12)
- (nn) Categorical Special Education - (Pre-kindergarten – Grade 12)
- (oo) English as a Second Language (Pre-kindergarten – Grade 12)
- (pp) Technical and Industrial Occupations (Grades 7-12)

1602.2 OSSE shall not issue credentials in the following sub-specializations:

- (a) Athletic Trainer;
- (b) Athletic Coach;
- (c) Health Occupation; and
- (d) Military Science and Tactics.

1602.3 Individuals in possession of OSSE-issued credentials enumerated in Subsection 1602.2 that are in effect on the date of this regulation shall remain in effect until the credential's expiration date. After expiration, individuals employed to fulfill these roles shall be subject to the qualifications and conditions established by their employing LEA for these roles.

### **1603 ADMINISTRATIVE SERVICES CREDENTIALS**

1603.1 An individual shall hold an administrative services credential to serve as principal or assistant principal in the District of Columbia Public Schools.

1603.2 All individuals required to hold an administrative services credential to serve as a principal or assistant principal in a local education agency in the District of Columbia must do so in accordance with this section.

1603.3 OSSE shall issue an initial, standard, and advanced administrative services credential in accordance with the provisions of this section.

1603.4 An applicant shall be issued an initial administrative services credential by meeting the following requirements, as demonstrated by submitting documentation satisfactory to OSSE to confirm that the applicant:

- (a) Has earned a bachelor's degree at a college or university accredited by one of the regional accrediting bodies approved by the U.S. Department of Education;
- (b) Earned a graduate degree or higher at a college or university accredited by one of the regional accrediting bodies approved by the U.S. Department of

Education or successfully completed the requirements of a state approved program approved by OSSE for educational administrators, or holds a valid administrative services credential from another state; and

- (c) Has two (2) years full-time preschool-grade 12 school-based teaching or instructional leadership experience, or full-time preschool- grade 12 school-based experience in guidance counseling, social work, psychological services, or rehabilitative services for students with disabilities; but has not passed the School Leaders Licensure Assessment (SLLA).

1603.5 An initial administrative services credential shall be valid for a term of two (2) years.

1603.6 An initial administrative services credential is not renewable.

1603.7 An applicant shall be issued a standard administrative services credential by meeting the following requirements and submitting the following:

- (a) Documentation satisfactory to OSSE to confirm the applicant:

- (1) Has earned a bachelor's degree at a college or university accredited by one of the regional accrediting bodies approved by the U.S. Department of Education;
- (2) Earned a graduate degree or higher from an accredited institution of higher education or successfully completed the licensure requirements of a state approved program approved by OSSE for educational administrators, or holds a valid administrative services credential from another state;
- (3) Successfully completed four years of full-time preschool-grade 12 school-based teaching, instructional leadership experience, guidance counseling, social work, psychological services, or rehabilitative services for students with disabilities; and
- (4) Successfully completed the SLLA, with a qualifying score determined by OSSE;

- (b) Documentation satisfactory to OSSE to confirm the applicant:

- (1) Has earned a bachelor's degree at a college or university accredited by one of the regional accrediting bodies approved by the U.S. Department of Education;

- (2) Earned a graduate degree or higher from an accredited institution of higher education or successfully completed the licensure requirements of a state approved program approved by OSSE for educational administrators, or holds a valid administrative services credential from another state;
  - (3) Successfully completed two years of effective or the equivalent, full-time preschool-grade 12 school-based teaching or instructional leadership experience, or two years of effective or the equivalent, full-time preschool-grade 12 school-based experience in guidance counseling, social work, psychological services, or rehabilitative services for students with disabilities; as demonstrated by the applicant's summative evaluation rating from his or her LEA; and
  - (4) Successfully completed the SLLA, with a qualifying score determined by OSSE; or
- (c) Documentation satisfactory to OSSE to confirm the applicant:
- (1) Has earned a bachelor's degree at a college or university accredited by one of the regional accrediting bodies approved by the U.S. Department of Education;
  - (2) Holds a valid administrative services credential issued by another state approved by OSSE in accordance with the interstate agreement provisions outlined in this chapter;
  - (3) Successfully completed two years of effective or equivalent, full-time preschool-grade 12 school-based teaching or instructional leadership experience, in another state, as measured by a summative evaluation rating of two (2) years of effective or equivalent teaching based upon the student growth component of an evaluation rating; or, two years of effective or the equivalent, full-time preschool-grade 12 school-based experience in guidance counseling, social work, psychological services, or rehabilitative services for students with disabilities, as demonstrated by the applicant's summative evaluation rating from his or her LEA; and
  - (4) Successfully completed the SLLA, with a qualifying score determined by OSSE.

1603.8 A standard administrative services credential shall be valid for a term of four (4) years.

- 1603.9 A standard administrative services credential may be renewed if the requirements for renewal of this credential are met in accordance with this chapter. A renewal period shall be for a term of four (4) years.
- 1603.10 An applicant shall be issued an advanced administrative services credential by meeting the following requirements and submitting documentation satisfactory to OSSE to confirm that the applicant:
- (a) Has held a standard administrative services credential for at least one full term (four years); and
  - (b) Has demonstrated exemplary practice by achieving three (3) evaluation ratings of highly effective or the equivalent within five (5) years prior to the date of application, through the applicant's summative evaluation rating from the employing LEA.
- 1603.11 An advanced administrative services credential shall be valid for a term of five (5) years.
- 1603.12 An advanced administrative services credentials may be renewed if the requirements for renewal of this credential are met. A renewal period shall be for a term of five (5) years.

#### **1604 CREDENTIAL STATUSES AND RENEWAL REQUIREMENTS**

- 1604.1 The following statuses shall apply to the credentials described in this chapter:
- (a) Active;
  - (b) Expired;
  - (c) Revoked; and
  - (d) Suspended
- 1604.2 Each credential holder shall be responsible for knowing the requirements needed to maintain a valid District of Columbia credential. When a teaching credential is renewed, all sub-specializations for which the credential holder is authorized will be renewed.
- 1604.3 To renew a standard teaching credential, credential holders shall present:
- (a) Documentation showing that the credential holder has achieved a summative LEA teacher evaluation rating of effective or equivalent for a minimum of three (3) years during the four (4) year term of validity; or

- (b) Evidence showing that the credential holder has engaged in a minimum of one hundred twenty (120) hours of professional development activities during the four (4) year term of validity.
- 1604.4 A standard teaching credential that has expired cannot be renewed but may be reinstated by submitting and meeting the requirements for a new application.
- 1604.5 To renew an advanced teaching credential, a credential holder shall present documentation showing that the credential holder has achieved a summative LEA evaluation rating of highly effective or equivalent for a minimum of three (3) years during the five (5) year term of validity.
- 1604.6 An advanced teaching credential that has expired cannot be renewed but may be reinstated by submitting and meeting the requirements for a new application.
- 1604.7 To renew a standard administrative services credential, credential holders will present:
- (a) Documentation showing that the credential holder has achieved summative LEA administrator evaluation rating of effective or equivalent for a minimum of three (3) years during the four (4) year term of validity; or
- (b) Evidence showing that the credential holder has engaged in a minimum of 120 hours of professional development activities during the four (4) year term of validity.
- 1604.8 A standard administrative services credential that has expired cannot be renewed but may be reinstated by submitting and meeting the requirements for a new application.
- 1604.9 To renew an advanced administrative services credential, a credential holder shall present documentation showing that the credential holder has achieved a summative LEA administrator evaluation rating of highly effective or equivalent for a minimum of three (3) years during the five (5) year term of validity.
- 1604.10 An advanced administrative services credential that has expired cannot be renewed but may be reinstated by submitting and meeting the requirements for a new application.
- 1605 INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL**
- 1605.1 OSSE shall conduct periodic reviews to determine whether any state has established teacher preparation standards that are at least comparable or equivalent to teacher preparation standards in the District of Columbia.

- 1605.2 If OSSE determines that the teacher preparation standards established by any state are at least comparable or equivalent to teacher preparation standards in the District of Columbia, OSSE shall initiate negotiations with that state to provide reciprocity in teacher or administrative services credentialing.
- 1605.3 OSSE shall award a credential to any applicant who holds or qualifies for an equivalent credential awarded by a state that has established a reciprocity agreement with the District of Columbia.
- 1605.4 OSSE shall grant an appropriate credential to any applicant from another state that has completed teacher preparation that is at least comparable or equivalent to preparation that meets teacher preparation standards in the District of Columbia, as determined by OSSE, if both of the following circumstances exist:
- (a) A reciprocity agreement with the other state is pending completion, or the other state has declined to enter into a reciprocity agreement with the District of Columbia; and
  - (b) The applicant has met the requirements of the District of Columbia for obtaining a credential in accordance with this section.
- 1605.5 An interstate agreement established pursuant to this section shall not exempt an out-of-state applicant from being required to submit to, and comply with, a background or criminal history record check, in conjunction with obtaining a credential under this chapter.

## **1606 REQUIRED CRIMINAL BACKGROUND CHECKS**

- 1606.1 Each applicant for a credential under this chapter shall be required to undergo a criminal history record check prior to receiving the credential, and shall be required to submit to additional checks for purposes of renewing or continuing to hold the credential.
- 1606.2 OSSE shall develop policies or directives setting forth the criteria for the review of such records in accordance with applicable law.
- 1606.3 Criminal convictions, in accordance with Section 1607, and pending criminal charges shall be taken into account by OSSE with regard to criminal background information in determining whether or not an individual is qualified to hold the credential.
- 1606.4 Holding a credential issued by OSSE shall not exempt an individual from the criminal background check requirements of any employer.

**1607 DENIAL, SUSPENSION OR REVOCATION OF TEACHING AND ADMINISTRATIVE SERVICES CREDENTIALS**

1607.1 An application for a credential shall be denied by OSSE and a credential issued pursuant to this chapter shall be denied for renewal, suspended for a period determined by OSSE, or revoked by OSSE if the applicant or credential holder has:

- (a) Fraudulently or deceptively obtained or attempted to obtain the credential;
- (b) Pled guilty or nolo contendere with respect to, or received probation before judgment with respect to, or been convicted of, one of the following crimes as defined in the District of Columbia Official Code or a comparable crime in another state or federal law:
  - (1) Murder;
  - (2) Child abuse;
  - (3) Rape or sexual abuse;
  - (4) A sexual offense involving a minor or non-consenting adult;
  - (5) Child pornography;
  - (6) Kidnapping or abduction of a child;
  - (7) Illegal possession, use, sale, or distribution of controlled substances;
  - (8) Illegal possession or use of weapons;
  - (9) A felony involving moral turpitude to be defined as one characterized by behavior or acts that gravely violate moral sentiments or accepted moral standards of this community and are of a morally culpable quality; or
  - (10) A crime of violence as defined in District of Columbia Official Code Section 23-1331(4);
- (c) Failed to report suspected child abuse or neglect, as required by District of Columbia Official Code Section 4-1321.02; or
- (d) Been denied a credential or had his/her credential denied, suspended, or revoked in another jurisdiction within the previous five (5) years for a

cause which would be grounds for denial, suspension, or revocation under this section.

1607.2 The following reporting procedures shall govern this chapter with regard to conduct in this section:

- (a) Employees, agents, and contractors of local education agencies in the District of Columbia shall notify OSSE in writing if they become knowledgeable of a person with a current credential issued under this chapter or an applicant for a credential under this chapter who engages in an act listed in Subsection 1607.1.
- (b) The written notice shall include the following information:
  - (1) Name and current or last known address of the person being reported;
  - (2) Type of credential held or applied for by the person; and
  - (3) Specific act set forth in Subsection 1607.1 engaged in by the individual at issue.
- (c) OSSE shall establish and implement policies and procedures for the review of documents associated with the reporting of actions listed in Subsection 1607.1.

1607.3 OSSE shall send a potential or current credential holder written notification before denying an application for, denying the renewal of, suspending or revoking a credential for reasons set forth in Subsection 1607.1; or before denying an application or renewal for failure to achieve a summative evaluation rating of effective or highly effective (or their equivalent). The written notification shall include the following:

- (a) The intent to deny the application or to deny the renewal of, suspend, or revoke the credential, specifying the basis for the intended action;
- (b) Notice that a potential or current credential holder has the right to appeal the proposed action at a hearing;
- (c) Notice that, if the potential or current credential holder requests a hearing to appeal the proposed action, the decision to deny, suspend or revoke shall not become final until the conclusion of the hearing.
- (d) Notice that at a hearing the standard of proof shall be a preponderance of the evidence and that the burden of proof shall rest upon:



- (1) OSSE to sustain a decision to suspend or revoke a credential; and
  - (2) The applicant to reverse a decision to deny a credential.
- (e) Notice that an individual appealing the proposed action shall have the right, at his/her own expense, to be represented by an attorney or other representative at the hearing.
  - (f) Notice that a request for a hearing to appeal the proposed action shall be filed within ten (10) business days of the date of the written notification of the intent to deny the application or deny, suspend or revoke the credential as a result of moral character and fitness issues.
  - (g) Notice that, absent the timely filing of a request for a hearing, the decision shall become final on the eleventh (11th) business day after written notification of the intent to deny the application or deny the renewal of, suspend or revoke the credential as a result of character and fitness issues.
- 1607.4 If an application for or renewal of a credential is intended for denial by OSSE as a result of the failure to meet the requirements of Subsections 1601.12, 1603.4, 1606.7, or 1606.10 and the applicant requests a hearing under Subsection 1607.3, the LEA(s) that issued the summative evaluation(s) shall cooperate with OSSE in defense of the intended action.
- 1607.5 OSSE shall notify all other states of denial, suspension, and revocation decisions as part of the interstate certification data exchange.
- 1607.6 If the decision of denial, suspension, or revocation is based on Subsections 1607.1 (b), and if the decision subsequently is overturned in an appeal or other post decision proceeding, an applicant may re-apply for a credential, and a credential suspension or revocation shall end on the date a conviction or plea of guilty is overturned.
- 1607.7 A credential which has been suspended under this chapter shall be automatically reinstated at the end of a suspension period; provided that the credential has not expired during the period of suspension.
- 1607.8 If a credential expired during the period of suspension, a person may reapply and shall be required to meet the credential requirements in effect at the time the application is submitted for a new credential.
- 1608 FEES**
- 1608.1 Each application for a credential submitted to OSSE for processing under this chapter shall be accompanied by a fee established by OSSE.

- (a) OSSE shall determine the amount of revenue that shall be required to administer the teacher and administrator credentialing process, and shall establish an application processing fee in the amount deemed necessary for such purposes;
- (b) As required by Section 3 of the State Education Office Establishment Act of 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602), all revenue collected by OSSE under this subsection for the processing of credentials shall be deposited in the OSSE “Academic Certification and Testing Fund,” which shall be separate from the Local Operating Funds of the District of Columbia. Any unexpended funds in the Academic Certification and Testing Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia pursuant to Section 3(c)(2) of the State Education Office Establishment Act of 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(c)(2)).
- (c) All revenue collected by OSSE under this subsection for the processing of credentials shall be used for the purposes directly related to credentialing activities, shall include:
  - (1) Travel, including per diems;
  - (2) Educator professional training and development, including food and beverages, pursuant to 5 U.S.C. § 4109;
  - (3) Award programs, including food and beverages pursuant to 5 U.S.C. § 4503;
  - (4) Stipends;
  - (5) Professional organization membership dues;
  - (6) Day-to-day office operational needs related to credentialing activities;
  - (7) Salaries of individuals who perform, manage, monitor or oversee credentialing or support the processing and issuing of credentials; and
  - (8) The maintenance of credentialing program systems and records, including the creation and maintenance of any electronic or online system.
- (d) Fees shall be made payable to the D.C. Treasurer as specified by OSSE.

- (e) OSSE shall establish and publish on its website the application fee for first time applicants and renewals, and for requests for duplicate credentials.

## 1699 DEFINITIONS

1699.1 When used in this chapter, the following terms shall have the ascribed meanings:

- (a) **“Credential”** means a document issued under this chapter to a person who has met the eligibility standards and other requirements of this chapter and who is therefore authorized to perform the services permitted by law and regulation to be performed by a person holding such a credential, and to hold himself or herself out as authorized to perform such services.
- (b) **“Local Education Agency” or “LEA”** means an educational institution at the local level that exists primarily to operate a publicly funded school or schools providing elementary or secondary education in the District of Columbia, including the District of Columbia Public Schools (DCPS) and a District of Columbia public charter school.
- (c) **“Office of the State Superintendent of Education” or “OSSE”** means the District of Columbia state education level agency established by Section 2 of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601 (2012 Repl. & 2015 Supp.)).
- (d) **“School Leaders Licensure Assessment”** means the statewide assessment of school administration knowledge and skills that has been adopted by OSSE as a requirement for issuance of the administrative services credential.
- (e) **“Stipends”** means payments issued to a District of Columbia teacher, administrator, or other school-based professional in exchange for performing a service related to credentialing activities under this chapter.
- (f) **“Sub-specialization”** means the designation on a credential issued under this chapter authorizing a person to practice a specialty within a credential category.

**The following sections of Chapter 16, LICENSE REQUIREMENTS, of Title 5-E DCMR, ORIGINAL TITLE 5, are hereby deleted in their entirety:**

**Section 5E-1600 through 5E-1654**  
**Section 5E-1664 through 5E-1667**  
**Section 5E-1687**

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register* via email addressed to: [ossecomments.proposedregulations@dc.gov](mailto:ossecomments.proposedregulations@dc.gov); or by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Jamai Deuberry re: Credentials for Teachers and School Administrators, 810 First Street, NE 9<sup>th</sup> Floor, Washington, DC 20002. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at [www.osse.dc.gov](http://www.osse.dc.gov).

**DEPARTMENT OF ENERGY AND ENVIRONMENT****NOTICE OF PROPOSED RULEMAKING****Mold Assessment and Remediation Licensure Infractions**

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in 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 § 2-1801.04 (2012 Repl.)); 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. & 2015 Supp.)); Title III, Subtitle B of the Air Quality Amendment Act of 2014, effective September 9, 2014 (D.C. Law 20-135; D.C. Official Code §§ 8-241.01 *et seq.* (2013 Repl. & 2015 Supp.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to amend Chapter 40 (Department of Environment (DDOE) Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

This proposed rulemaking establishes a schedule of civil infractions for violation of the District's Mold Assessment and Remediation Licensure Regulations.

After careful consideration of comments, the proposed rules will be submitted to the Council of the District of Columbia for review and approval, in accordance with D.C. Official Code § 2-1801.04. The rules will become final upon Council approval, or thirty (30) days after submission, if the Council has not earlier disapproved the proposed rules, and following publication of the final rules in the *D.C. Register*.

**Chapter 40, DEPARTMENT OF ENVIRONMENT (DDOE) INFRACTIONS, Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:**

**A new Section 4004, MOLD ASSESSMENT AND REMEDIATION LICENSURE INFRACTIONS, is added to read as follows:**

**4004 MOLD ASSESSMENT AND REMEDIATION LICENSURE INFRACTIONS**

4004.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 20 DCMR § 3204.4(d) (failure to keep confidential personal information (including medical conditions) obtained during the course of a mold-related activity);
- (b) 20 DCMR § 3204.4(i) (failure to supervise any person assisting with the licensee's work or ensure that supervisees are following best practices and applicable laws and regulations);

- (c) 20 DCMR § 3204.5(d) (misrepresenting any professional qualifications or credentials);
- (d) 20 DCMR § 3204.5(e) (providing any information to the Department or client that is false, deceptive, or misleading);
- (e) 20 DCMR § 3204.5(f) (working if impaired as a result of drugs, alcohol, sleep deprivation, or other conditions and allowing supervisees to work if the licensee knows or reasonably should know that the supervisee is impaired);
- (f) 20 DCMR § 3204.5(g) (making any false, misleading, or deceptive claims, or claims that are not readily subject to verification, in any advertising, announcement, presentation, or competitive bidding);
- (g) 20 DCMR § 3204.5(h) (making a representation that is designed to take advantage of the fears or emotions of the public or a customer);
- (h) 20 DCMR § 3204.5(i) (retaliating against any person who reported in good faith to any District of Columbia agency, department, or instrumentality, alleging incompetent, illegal, or unethical conduct);
- (i) 20 DCMR § 3205.1(a) (failure to ensure that all individuals who engage in assessment activities and who will be, or anticipated to be, exposed to indoor mold growth are provided with, fit tested for, and trained on the appropriate use and care of the specified personal protective equipment);
- (j) 20 DCMR § 3205.1(e) (failure to cover supply and return air vents with plastic, or failure for air pressure within walk-in containment to be lower than the pressure in building areas adjacent to the containment, if walk-in containment is used);
- (k) 20 DCMR § 3205.2(b) (failure to provide personal protective equipment, if personal protective equipment is specified in the mold remediation protocol);
- (l) 20 DCMR § 3205.2(c) (failure to use containment on a mold remediation project when specified in the mold remediation protocol); and
- (m) 20 DCMR § 3205.2(d) (failure to cover supply and return air vents with plastic, or failure for air pressure within walk-in containment to be lower than the pressure in building areas adjacent to the containment, if walk-in containment is used).

4004.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 20 DCMR § 3202.1 (engaging in the business of mold assessment or mold remediation without a license);
- (b) 20 DCMR § 3204.2 (using a name, title, or term that communicates a level of expertise in mold assessment or remediation, without being licensed);
- (c) 20 DCMR § 3204.5(b) (accepting or offering any compensation to any other mold licensee or their company for the referral of any mold-related business);
- (d) 20 DCMR § 3204.5(c) (assessing or remediating any property in which the indoor mold assessment professional or indoor mold remediation professional or their company has any financial interest);
- (e) 20 DCMR § 3204.5(j) (supervising the work of more than ten (10) individuals at one time);
- (f) 20 DCMR § 3205.1(f) (recommending products or brands registered by the District of Columbia and the United Environmental Protection Agency for intended use and uses inconsistent with the manufacturer's labeling instructions);
- (g) 20 DCMR § 3205.1(g) (failure to take into account potential occupant sensitivities and possible adverse reaction to chemicals, when using disinfectants, biocides, or antimicrobial coatings);
- (h) 20 DCMR § 3205.2(e) (failure to display signs advising that a mold remediation project is in progress at all accessible entrances to remediation areas);
- (i) 20 DCMR § 3205.2(f) (removing or dismantling containment structures or materials from a project site prior to receipt of the specified written notice that the project has been verified as complete);
- (j) 20 DCMR § 3205.2(g) (using disinfectants, biocides, and antimicrobial coatings unspecified in a mold remediation protocol, unregistered by the District of Columbia and the United Environmental Protection Agency for the intended uses, and inconsistent with the manufacturer's labeling instructions);
- (k) 20 DCMR § 3207.1 (failure of an indoor mold assessment professional to maintain the specified insurance); and
- (l) 20 DCMR § 3207.2 (failure of an indoor mold remediation professional to maintain the specified insurance).

- 4004.3 Violation of any of the following provisions shall be a Class 3 infraction:
- (a) 20 DCMR § 3202.13 (holding oneself out as an indoor mold assessment or remediation professional after a license has expired);
  - (b) 20 DCMR § 3204.7(b) (failure to inquire of the client or property owner whether any known or suspected hazardous materials are present, and, if present, failure to follow appropriate work practices in accordance with District and federal law);
  - (c) 20 DCMR § 3205.1(c)(4) (failure to specify personal protective equipment in a mold remediation protocol);
  - (d) 20 DCMR § 3205.1(c)(5) (failure to specify containment in each project area);
  - (e) 20 DCMR § 3205.1(d) (failure to specify containment in a remediation protocol when a total surface area of ten square feet (10 ft.<sup>2</sup>) or more of indoor mold growth is in an affected area, unless the indoor mold assessment professional describes in the mold remediation protocol why containment is not necessary); and
  - (f) 20 DCMR § 3205.1(h)(3) (failure to conduct post-remediation assessment while walk-in containment is in place, if walk-in containment is specified for in the project).
- 4004.4 Violation of any of the following provisions shall be a Class 4 infraction:
- (a) 20 DCMR § 3204.3 (failure to have readily available a licensee's name and license number);
  - (b) 20 DCMR § 3204.4(c) (failure to disclose any known or potential conflict of interest to any party affected by such conflict);
  - (c) 20 DCMR § 3204.4(e) (failure to promptly furnish required documents or information to the Department and failure to promptly respond to requests for information from the Department);
  - (d) 20 DCMR § 3204.6(a) (failure to provide to the client a mold assessment report following an initial mold assessment);
  - (e) 20 DCMR § 3204.6(b) (providing a separate mold assessment report when also including the results of the initial assessment in a mold remediation protocol or a mold management plan);



- (f) 20 DCMR § 3204.6(c) (failure to provide to the client a mold remediation protocol before a remediation project begins, if indoor mold growth is identified in a mold assessment);
- (g) 20 DCMR § 3204.6(d) (failure to provide a verification report or a final status report within ten (10) days after successful completion of remediation activities);
- (h) 20 DCMR § 3204.7(a) (failure to provide to a client a mold remediation work plan for the project before the mold remediation preparation work begins);
- (i) 20 DCMR § 3204.7(c) (failure to provide to the property owner a complete verification report within ten (10) days after receiving the verification report from the indoor mold assessment professional);
- (j) 20 DCMR § 3205.1(b) (failure to follow specified sampling practices and procedures);
- (k) 20 DCMR § 3205.1(c) (failure to prepare a mold remediation protocol, as specified, that is specific to each remediation project and provide the protocol to the client before the remediation begins);
- (l) 20 DCMR § 3205.1(h)(1) (failure to specify at least one industry-recognized analytical method for use within each remediated area);
- (m) 20 DCMR § 3205.1(h)(2) (failure to specify the criteria to be used for evaluating analytical results to determine whether the mold remediation project is verified as complete);
- (n) 20 DCMR § 3205.1(h)(4) (failure to specify procedures to be used in determining whether the underlying causes of the mold identified for the project have been remediated so that it is reasonably certain that the mold will not return from those same causes);
- (o) 20 DCMR § 3205.2(a) (failure to provide a mold remediation work plan, as specified, to the client before site preparation work begins);
- (p) 20 DCMR § 3205.2(e)(1) or (2) (failure of signs to meet specified standards);
- (q) 20 DCMR § 3208.1 (failure to meet specified training requirements);
- (r) 20 DCMR § 3209.1 (failure of an indoor mold assessment professional to notify the Department in accordance with the specified requirements);

- (s) 20 DCMR § 3209.2 (failure of an indoor mold remediation professional to notify the Department in accordance with the specified requirements); and
- (t) 20 DCMR § 3210 (failure of an indoor mold remediation professional to maintain the specified records on-site at a project for its duration).

4004.5 Violation of any provision of Title III, Subtitle B of the Air Quality Amendment Act of 2014, effective September 9, 2014 (D.C. Law 20-135; D.C. Official Code §§ 8-241.01 *et seq.* (2013 Repl. & 2015 Supp.)) or the implementing rules in 20 DCMR Chapter 32 that is not cited elsewhere in this section, shall be a Class 5 infraction.

Please direct all comments on these proposed rules, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* care of “Mold Licensure Regulations Infractions,” Department of Energy and Environment, 1200 First Street NE, 5th Floor, Washington D.C. 20002, by U.S. mail, or via email at [moldlicensure.regs@dc.gov](mailto:moldlicensure.regs@dc.gov). Copies of the proposed rule may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above, for a small fee to cover the cost of reproduction, or on-line at: <http://doee.dc.gov/moldlicensureregs>.

**DEPARTMENT OF ENERGY AND ENVIRONMENT**

**NOTICE OF PROPOSED RULEMAKING**

**LIHEAP: Low Income Home Energy Assistance Program**

The Director of the Department of Energy and Environment (Department), pursuant to 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. & 2015 Supp.)); the District of Columbia Office of Energy Act of 1980, effective March 4, 1981 (D.C. Law 3-132; D.C. Official Code §§ 8-171.01 *et seq.* (2013 Repl.)); the Low Income Home Energy Assistance Act of 1981, approved August 13, 1981 (95 Stat. 893; 42 U.S.C. §§ 8621 *et seq.*); and Mayor’s Order 2006-61, dated June 14, 2006, hereby gives notice of intent to amend Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) by adopting a new Chapter 36 (Energy Assistance and Conservation Programs).

The proposed rules establish procedures for the administration of the Low Income Home Energy Assistance Program (LIHEAP) and other programs that provide energy assistance, weatherization, energy conservation, or other energy services to low income customers in the District of Columbia.

The Director gives notice of the intent to take final rulemaking action in not less than thirty (30) days after publication of this notice in the *D.C. Register*. Directions for submitting comments may be found at the end of this notice.

**Title 20 DCMR, ENVIRONMENT, is amended by adding a new Chapter 36 as follows:**

**CHAPTER 36 ENERGY ASSISTANCE AND CONSERVATION PROGRAMS**

- 3600 SCOPE - ENERGY ASSISTANCE AND CONSERVATION PROGRAMS**
- 3601 LIHEAP - GENERAL PROVISIONS**
- 3602 LIHEAP - STATE PLAN DEVELOPMENT**
- 3603 LIHEAP - APPLICATION PROCESS**
- 3604 LIHEAP - APPLICANTS**
- 3605 LIHEAP - ELIGIBILITY FOR A BENEFIT**
- 3606 LIHEAP - AVAILABLE PROGRAM BENEFIT, BENEFIT LIMITATIONS & PROGRAM SUSPENSION**
- 3607 LIHEAP - PROGRAM BENEFIT CALCULATION AND PAYMENT**
- 3608 LIHEAP - IN-KIND ASSISTANCE BENEFIT**
- 3609 LIHEAP - [RESERVED]**
- 3618 LIHEAP - VENDOR AGREEMENT**
- 3619 LIHEAP - DENIAL, REDUCTION, OR REVOCATION**
- 3620 LIHEAP - ADMINISTRATIVE APPEALS**
- 3699 DEFINITIONS**

**3600 SCOPE - ENERGY ASSISTANCE AND CONSERVATION PROGRAMS**

3600 This chapter provides the purposes, process, eligibility criteria, benefit and payment guidance, and appeal procedures for the Department's various programs that provide energy assistance, weatherization, energy conservation, or other energy services.

**3601 LIHEAP – GENERAL PROVISIONS**

3601.1 Sections 3601 through 3620 and the applicable definitions in § 3699 provide the purposes, process, eligibility criteria, benefit and payment guidance, and appeal procedures for the Department's Low Income Home Energy Assistance Program (Program).

3601.2 The Department may execute contracts, grants, and agreements as necessary to carry out the Program.

3601.3 The Department's application and use of LIHEAP funds shall adhere to the requirements of the Low Income Home Energy Assistance Act of 1981 approved August 13, 1981 (95 Stat. 893; 42 U.S.C. §§ 8621 *et seq.*).

3601.4 Nothing in this chapter shall be interpreted to mean that a benefit provided through this Program is an entitlement, continuing or otherwise.

3601.5 Nothing in this chapter shall be interpreted to mean that an energy assistance benefit is a grant subject to 1 DCMR §§ 5000 *et seq.* or the City-Wide Grants Manual and Sourcebook, and neither a notice to a person of a determination that is made pursuant to this chapter, nor the determination itself, shall be governed by their provisions.

**3602 LIHEAP – STATE PLAN DEVELOPMENT**

3602.1 The Department shall annually develop and submit for approval to the US Department of Health and Human Services, or its successor, a State Plan that meets the requirements of the Low Income Energy Assistance Act of 1981, approved August 13, 1981 (95 Stat. 893; 42 U.S.C. §§ 8621 *et seq.*) and the implementing regulations in 45 C.F.R. §§ 96.1 through 96.68, and §§ 96.80 through 96.89.

3602.2 The Department shall adhere to the terms of the approved State Plan.

3602.3 For each fiscal year that the Program is administered, the Department shall publish notice of the draft State Plan in the *D.C. Register* and provide the public with notice and an opportunity to provide written comments.

3602.4 The Department shall publish the approved State Plan within one (1) calendar month of the date the State Plan is approved by the U.S. Department of Health and Human Services.

**3603 LIHEAP – APPLICATION PROCESS**

3603.1 In order to be eligible to receive LIHEAP benefits, a person shall file an application with the Department.

3603.2 The Department shall prescribe, and provide a paper or electronic application to be signed by the applicant under penalty of perjury.

3603.3 An authorized representative may apply on behalf of an applicant if the applicant provides:

- (a) A written and signed statement stating why the applicant cannot complete an application without a representative; and
- (b) The name and address of the person authorized to act on the applicant's behalf.

3603.4 If requested by an applicant with a disability, or the representative of a person with a disability authorized pursuant to § 3603.2, the Department shall assist the applicant or representative with the aspects of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit an application.

3603.5 The Department may also assist an applicant in the application process who is unable to apply for the benefit in person for a reason other than disability, including making a visit to an applicant's home, if:

- (a) The applicant is sixty-five (65) or older, infirm, or unable to travel; or
- (b) The applicant's residence is located in a building or complex of buildings that house many other likely applicants.

3603.6 As a condition of eligibility, each applicant shall sign:

- (a) Upon receipt of the notice of an applicant's rights and responsibilities and the Department's responsibilities, a statement acknowledging his/her receipt; and
- (b) A release form authorizing the Department to obtain or verify information necessary to process the application.

- 3603.7 Each applicant shall cooperate fully in establishing his or her eligibility, the nature of the need, and the extent of the need, each of which shall include providing documentation or other proof of:
- (a) Household composition;
  - (b) Income; and
  - (c) Any additional information that the State Plan requires.
- 3603.8 The Department may obtain the information used in determining eligibility from a document, telephone conversation or interview for which notes are taken, data from another government agency or energy provider, or from internet data.
- 3603.9 The Department shall complete the eligibility and benefit determination in as short a time as possible after the date the Department receives a completed application, but not later than the standard identified in the State Plan, except that the following shall toll the deadline:
- (a) An applicant's failure to supply information to document facts stated in an application;
  - (b) An inability to contact an applicant after three (3) attempts;
  - (c) Evidence of misrepresentation in an application;
  - (d) A failure to respond by a third party from whom the Department has requested information and over whom the Department has no control; or
  - (e) A delay in receipt of necessary information over which the Department has no control.
- 3603.10 If the Department determines that an applicant's participation in an additional energy conservation or rebate program would assist an applicant in minimizing the need for a benefit, the Department may require that the applicant participate in an additional program.
- 3603.11 If an applicant is seeking an emergency benefit, as defined in this chapter, the Department shall take all reasonable steps necessary to process the application within the time period specified in the most recently approved State Plan.
- 3603.12 If an applicant is determined eligible for an emergency benefit or a regular benefit, as defined in this chapter, the Department shall provide the applicant with a LIHEAP Benefit Letter, which shall include:

- (a) A clear statement of the benefit amount or the benefit matrix used to calculate the amount;
- (b) A clear and detailed statement of the amount of the emergency or regular benefit for which the applicant has been determined eligible;
- (c) Additional information or authorization needed from the applicant for the Department to proceed with the disbursement the benefit; and
- (d) A clear and complete statement of the applicant's right to appeal the eligibility or assistance determination through fair hearing and administrative review proceedings, including each deadline for requesting the appeal and the applicant's procedural rights.

3603.13 The Department shall provide each applicant with notice of a determination.

#### **3604 LIHEAP – APPLICANTS**

3604.1 One person dwelling in the applicant household, or a representative authorized pursuant to § 3603.2, may apply for assistance on behalf of the entire household.

3604.2 For the purposes of determining eligibility and a benefit amount, a person who lives in the household shall be included in the LIHEAP household.

3604.3 A person temporarily away from home due to employment, hospitalization, vacation, or a visit shall be considered to be living in the household.

3604.4 A minor child who is away at school is considered to be living in the household if he or she returns to the home:

- (a) On a weekend during the school year;
- (b) During a calendar holiday; or
- (c) During a school vacation.

3604.5 The Department shall determine the makeup of the household pursuant to the definition provided in 42 U.S.C. § 8622.

#### **3605 LIHEAP – ELIGIBILITY FOR A BENEFIT**

3605.1 In order to be eligible for a Program benefit, each applicant household shall:

- (a) Be financially eligible, by meeting the annual income eligibility requirement of the State Plan;

- (b) Maintain a separate account, not included in the rent, for home energy service;
- (c) Not have exhausted the household's regular or emergency benefit for the fiscal year; and
- (d) Reside in the District of Columbia.

3605.2 The applicant must be at least eighteen (18) years old or emancipated.

3605.3 A determination of financial eligibility shall be based on the gross annual income of the household, unless the applicant can provide sufficient evidence that the gross annual income is not an accurate representation of current income.

3605.4 In order to be eligible for emergency assistance from this Program, an applicant household shall:

- (a) Satisfy the criteria of this section; and
- (b) Meet the criteria for emergency assistance identified in the State Plan.

3605.5 Notwithstanding another provision of this section, a household with a credit on the energy utility account in excess of one thousand dollars (\$1,000) at the time of application shall be deemed ineligible to receive a benefit for that utility account.

**3606 LIHEAP – AVAILABLE PROGRAM BENEFITS, BENEFIT LIMITS AND PROGRAM SUSPENSION**

3606.1 The Department may provide a regular, emergency, or in-kind benefit.

3606.2 Except as otherwise provided in this chapter, an eligible household may not receive more than one (1) each per year of:

- (a) A regular benefit; and
- (b) An emergency benefit.

3606.3 The Department may limit a benefit for an eligible household to an emergency benefit if the Department has:

- (a) Determined that available Program funds would likely be insufficient to pay all reasonably anticipated emergency benefits if regular benefits were to be paid; and
- (b) Given notice to the public of the determination and limitation.



3606.4 Notwithstanding the provisions of subsection 3606.1 the Department may provide an additional emergency benefit for a household if the Department has:

- (a) Determined that, upon consideration of likely demands on the Program and Program resources, the Department will have sufficient funds available to pay the additional emergency benefit; and
- (b) Given notice to the public of the availability of additional emergency benefits.

3606.5 If the Department determines that remaining funding may be insufficient to carry out the State Plan to the end of the fiscal year, the Department may:

- (a) Suspend the process of taking applications;
- (b) Suspend the process of awarding benefits; or
- (c) Revise the benefit matrix to provide lower benefit amounts.

3606.6 The Department shall provide notice to the public as soon as practicable after making a decision to suspend or modify the benefit matrix, but not later than forty-five (45) days after the decision is made.

### **3607 LIHEAP – PROGRAM BENEFIT CALCULATION AND PAYMENT**

3607.1 The Department may allocate funds by giving a priority to, or setting a higher benefit level for, a projected category of household applicant with higher home energy costs or needs in relation to household income.

3607.2 The Department may consider the following factors to develop eligibility and benefit level criteria in the benefit matrix, so if all other factors are equal, a larger household with a lower income receives the highest benefit for heating and cooling assistance:

- (a) Household size;
- (b) Fuel type;
- (c) Dwelling type;
- (d) Household income; and
- (e) Whether the household has exceeded the energy service account credit threshold defined in § 3605.5.

3607.3 The Department shall publish in the *D.C. Register* for notice and comment:

- (a) Benefit levels, including the formula or matrix that displays benefit amounts; and
- (b) Each change to the matrix or formula.

3607.4 An applicant found eligible for a Program benefit shall also be considered eligible for in-kind assistance addressed in § 3608.

**3608 LIHEAP – IN-KIND ASSISTANCE BENEFIT**

3608.1 No household shall be eligible to receive an in-kind assistance benefit unless the household meets the eligibility criteria in § 3605.

3608.2 Subject to available funding, the Department may provide a regular in-kind assistance benefit, as follows:

- (a) The Department shall provide a cooling fan if the applicant:
  - (1) Has not been disconnected from electric service, but has an inoperable air conditioning unit; and
  - (2)
    - (A) Is fifty-five (55) years of age or older;
    - (B) Has a documented medical condition; or
    - (C) Has children under age six (6) in the home; and
  - (3) A cooling fan is available in inventory.
- (b) The Department shall provide an Energy Reduction Kit:
  - (1) If the applicant has not received an Energy Reduction Kit in the five (5) years preceding the date of application; and
  - (2) An Energy Reduction Kit is available in inventory.

3608.3 Subject to available funding, the Department may provide an emergency in-kind assistance benefit, as follows:

- (a) The Department shall provide a portable heater and blanket if the household has been disconnected from gas service but has electric service;
- (b) The Department shall provide a portable heater and blanket if the household has five percent (5%) or less of available capacity of home heating oil, but has electric service; and

- (c) The Department shall provide a blanket if the household has been disconnected from electric service.

**3609** [RESERVED]

**3618 LIHEAP – VENDOR AGREEMENTS**

3618.1 In order to be eligible to receive a LIHEAP benefit payment made by the Department on behalf of a customer, an energy vendor shall execute an agreement with the Department.

3618.2 A vendor agreement shall include the following requirements:

- (a) The vendor's use of a benefit payment to reduce a customer's respective obligation;
- (b) Procedures for the continuation, or resumption, of household energy service in return for the Department's payment of a benefit to the vendor on behalf of the household;
- (c) Provisions for Department access to relevant electronic account information for each applicant who authorizes Department access;
- (d) Non-discrimination in customer service and provision of energy for a household by reason of payment of a benefit to the vendor on behalf of the household;
- (e) An accounting, regular reporting, and return of funds erroneously paid to the vendor, or unspent for the benefit of an eligible household;
- (f) Record-keeping for government audit purposes;
- (g) Recognition of the federal and District anti-deficiency requirements applicable to the Department, pursuant to the Federal Anti-Deficiency Act (96 Stat. 923; 31 U.S.C. §§ 1341, 1342, 1349, 1351); and the District Anti-Deficiency Act, effective April 4, 2003 (D.C. Law 14-285; D.C. Official Code §§ 47- 355.01- 355.08); and
- (h) Other measures that the Department determines are reasonably necessary for the stewardship of public funds.

**3619 LIHEAP – DENIAL, REDUCTION, OR REVOCATION**

3619.1 If an applicant is determined ineligible for a benefit, the Department shall provide a written notice of ineligibility, which shall include:

- (a) A statement of the determination of ineligibility and an explanation of that determination;
- (b) A statement of the action that the applicant must take, if any, to be found eligible;
- (c) Notice of the applicant's option to discuss the determination with a Department employee; and
- (d) Notice of the applicant's right to appeal the determination, as provided in § 3603.5.

3619.2 If the Department determines that a prior benefit decision was based on material error, falsity, misrepresentation, concealment, omission, or fraud, it shall:

- (a) Reopen the application;
- (b) Provide notice to the applicant of the Department's final action or intended action, which shall include the information in § 3619.1;
- (c) Provide the applicant with a reasonable opportunity to respond;
- (d) Reduce, increase, suspend, or revoke an award of a benefit; and
- (e) Notify the energy vendor of a change to the benefit amount.

**3620 LIHEAP – ADMINISTRATIVE APPEALS**

3620.1 Each applicant who is aggrieved by an action or inaction of the Department related to receipt of benefits under this program shall be entitled to a fair hearing with the District of Columbia Office of Administrative Hearings (OAH) or its successor in accordance with 1 DCMR §§ 2970 *et seq.*

3620.2 The applicant shall have ninety (90) calendar days following receipt of a notice of eligibility, in whole or in part, to request a fair hearing.

3620.3 Upon receipt of a fair hearing request, the Department shall offer the appellant or his or her authorized representative an opportunity for review of the benefit determination.

**3699**            **DEFINITIONS**

3699.1            When used in this chapter, the following terms shall have the meanings ascribed:

**Applicant** – the individual who is applying for energy assistance for his or her own needs or the needs of those in the household.

**Benefit matrix** – the grid that displays eligible regular benefit amounts as determined by fuel type, household size, income level, and other factors identified in the State Plan.

**Emergency benefit** – a payment of a benefit based on the determination that a household has been disconnected from energy service or the household's home heating oil is at five percent (5%) or less of capacity.

**Day** – a calendar day, unless stated otherwise.

**Department** – the Department of Energy and Environment.

**District** – the District of Columbia.

**Household** – an individual or group of individuals who are living together as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent, in accordance with section 8622(5) of the Low Income Home Energy Assistance Act of 1981, approved August 13, 1981 (95 Stat. 894; 42 U.S.C. § 8622(5)).

**LIHEAP** – Low Income Home Energy Assistance Program.

**Program** – Low Income Home Energy Assistance Program.

**Publish** – present to the public, including by making a printed copy available for examination or distribution, printing in a newspaper or magazine, distributing by e-mail, or posting on a website.

**Regular benefit** – a payment of a benefit based on a determination that the eligible household qualifies for a benefit using the criteria and algorithm of the LIHEAP benefits matrix excluding any benefits paid pursuant to the LIHEAP Heat and Eat program as authorized by Section 5083 of the Fiscal Year 2010 Budget Support Act of 2009, effective March 3, 2010 (D.C. Law 18-111; D.C. Official Code § 4-261.03).

**State Plan** – the application that is submitted annually to the Secretary of the U.S. Department of Health and Human Services as required under federal law for the receipt and use of federal LIHEAP funds.

**Written** – "In writing", "writing", or "written", denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostat, fax, photography, word processing computer output, and e-mail. A "signed" writing includes an electronic symbol or process attached to, or logically associated with, a writing, and executed or adopted by a person with the intent to sign the writing.

All persons desiring to comment on the proposed amendments to the District of Columbia's Low Income Home Energy Assistance (LIHEAP) regulations should file comments in writing not later than thirty (30) days after the publication of this notice in the *D.C. Register*. All comments should be labeled "Review of the Low Income Home Energy Assistance (LIHEAP) Regulations" and filed with the Department of Energy and Environment, Affordability and Efficiency Division, 1200 First Street, N.E., 5<sup>th</sup> Floor, Washington D.C. 20002, Attention: LIHEAP Regulations Comments, or by e-mail to [liweapdc@dc.gov](mailto:liweapdc@dc.gov). All comments will be treated as public documents and will be made available for public viewing on the Department's website at [www.doe.dc.gov](http://www.doe.dc.gov). When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. If a comment is sent by e-mail, the e-mail address will automatically be captured and included as part of the comment that is placed in the public record and made available on the Department's website.

**DEPARTMENT OF ENERGY AND ENVIRONMENT**

**NOTICE OF SECOND PROPOSED RULEMAKING**

**Wells and Borings**

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to 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 Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.* (2013 Repl. & 2015 Supp.)) (the Water Pollution Control Act); and Mayor’s Order 2006-61, dated June 14, 2006, hereby gives notice of intent to adopt a new Chapter 18 (Well Construction, Maintenance, and Abandonment Standards) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

The new Chapter 18 will establish standards and procedures for the construction, maintenance, and abandonment of wells in the District of Columbia.

These rules describe the process for the responsible party or owner to apply for a well construction permit in the District. The regulations detail the standards and procedures of proper well construction, including the specific components of a well such as the well casing, the well screen, the filter pack, and grout. The rules also outline the proper procedures for handling derived waste and drilling fluid in addition to proper well abandonment.

The Department published a Notice of Proposed Rulemaking on May 15, 2015, at 62 DCR 6015. The comment period closed on July 13, 2015, and the Department considered all the comments received. A summary of comments and responses is available online at <http://doee.dc.gov>. In response to comments, the Department has made substantive changes to the proposed rulemaking, which are summarized in the comment response document, and non-substantive revisions that clarify the original intent of the rules. This Notice of Second Proposed Rulemaking supersedes the Notice of Proposed Rulemaking.

**Title 21 DCMR, WATER AND SANITATION, is amended by adding a new Chapter 18 as follows:**

**CHAPTER 18 WELL CONSTRUCTION, MAINTENANCE, AND ABANDONMENT STANDARDS**

- 1800 PURPOSE AND SCOPE**
- 1801 APPLICABILITY**
- 1802 WELL CONSTRUCTION BUILDING PERMIT EXEMPTIONS**
- 1803 WELL CONSTRUCTION PERMIT APPLICATION PROCEDURE**
- 1804 DEPARTMENT REVIEW**
- 1805 FEE SCHEDULE**
- 1806 WELL REGISTRATION**
- 1807 CHANGE OF WELL USE OR OWNER**

- 1808 WELL DRILLERS IN THE DISTRICT
- 1809 WELL CONSTRUCTION REQUIREMENTS: GENERAL
- 1810 WELL CONSTRUCTION REQUIREMENTS: SITING
- 1811 WELL CONSTRUCTION REQUIREMENTS: RELOCATION DURING CONSTRUCTION
- 1812 WELL CONSTRUCTION REQUIREMENTS: SANITARY PROTECTION
- 1813 WELL CONSTRUCTION REQUIREMENTS: DERIVED MATERIAL FROM WELL CONSTRUCTION, MAINTENANCE, AND ABANDONMENT
- 1814 WELL CONSTRUCTION REQUIREMENTS: DRILLING FLUIDS
- 1815 WELL CONSTRUCTION REQUIREMENTS: WELL CASING
- 1816 WELL CONSTRUCTION REQUIREMENTS: WELL SCREENS
- 1817 WELL CONSTRUCTION REQUIREMENTS: FILTER PACK IN WELL
- 1818 WELL CONSTRUCTION REQUIREMENTS: WELL GROUTING
- 1819 WELL CONSTRUCTION REQUIREMENTS: WELL DEVELOPMENT
- 1820 WELL CONSTRUCTION REQUIREMENTS: WELL CAPS AND UPPER TERMINUS OF WELL
- 1821 WELL CONSTRUCTION REQUIREMENTS: WELL LABELING
- 1822 WELL CONSTRUCTION REQUIREMENTS: MONITORING WELL, OBSERVATION WELL, AND PIEZOMETER
- 1823 WELL CONSTRUCTION REQUIREMENTS: CLOSED-LOOP GROUND SOURCE HEAT PUMP WELL
- 1824 WELL CONSTRUCTION REQUIREMENTS: GROUND FREEZE WELL
- 1825 WELL CONSTRUCTION REQUIREMENTS: RECOVERY WELL
- 1826 WELL CONSTRUCTION REQUIREMENTS: REPORTING
- 1827 WELL USE AND MAINTENANCE: GENERAL
- 1828 WELL USE AND MAINTENANCE: MONITORING OR OBSERVATION WELL
- 1829 WELL USE AND MAINTENANCE: INJECTION WELL
- 1830 WELL ABANDONMENT REQUIREMENTS: GENERAL
- 1831 WELL ABANDONMENT PROCEDURES
- 1832 INSPECTION
- 1833 ENFORCEMENT AND PENALTIES
- 1834 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW
- 1899 DEFINITIONS

**1800 PURPOSE AND SCOPE**

**1800.1** The provisions of this chapter shall be applicable to the construction, maintenance, and abandonment of wells in the District of Columbia, pursuant to the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.*).



**1800.2** The purpose of this chapter is to ensure that the construction, maintenance, and abandonment of a well is undertaken in a manner that protects public health and safety and the environment.

**1801 APPLICABILITY**

**1801.1** A person engaged in the construction, maintenance, and abandonment of a well in the District shall comply with the requirements set forth in this chapter.

**1801.2** A person shall not construct, maintain, or abandon a well in a manner that may create a point source or non-point source of pollutants to waters of the District, impair the beneficial uses of waters of the District, or pose a hazard to public health and safety or the environment.

**1801.3** A well owner shall ensure that, as applicable:

- (a) The construction of the well is conducted in accordance with §§ 1809 through 1826;
- (b) The use and maintenance is conducted in accordance with §§ 1827 through 1829; and
- (c) The abandonment of the well is conducted in accordance with §§ 1830 and 1831.

**1801.4** If a well was constructed prior to March 31, 2016, the well owner shall ensure that:

- (a) The well does not pose a hazard to public health and safety or the environment and does not impair the beneficial uses of waters of the District;
- (b) The well, well cap, upper terminus, and well labeling meet the requirements in §§ 1820 and 1821; and
- (c) By January 1, 2019, the well is registered with the Department in accordance with the requirements of § 1806; or
- (d) By January 1, 2019, the well is abandoned in accordance with the requirements of §§ 1830 and 1831.

**1802 WELL CONSTRUCTION BUILDING PERMIT EXEMPTIONS**

**1802.1** An infiltration test well constructed and used in accordance with Chapter 5 of Title 21 of the District of Columbia Municipal Regulations (DCMR) and the Stormwater Management Guidebook shall be exempt from the requirements of this chapter.

- 1802.2** A well constructed for use in a best management practice in accordance with Chapter 5 of Title 21 DCMR and the Stormwater Management Guidebook shall be exempt from the requirements of this chapter.
- 1802.3** A well construction building permit shall not be required for a well which meets all of the following conditions:
- (a) The well is constructed to a depth of ten feet (10 ft.) or less;
  - (b) The lower terminus of the well does not intersect the seasonal water table;
  - (c) The well is not sited within twenty-five feet (25 ft.) of the mean high watermark of District surface waters;
  - (d) The well is not sited within twenty-five feet (25 ft.) of wetland;
  - (e) The construction and maintenance of the well is performed in accordance with the requirements of this chapter; and
  - (f) The well is abandoned within five (5) business days of completion of construction in accordance with § 1830.1.
- 1802.4** If during the construction of a well for which no building permit was required, field conditions or new information indicate that any condition in § 1802.3 will not be met, the well owner shall:
- (a) Stop all well construction work and related activities;
  - (b) Notify the Department within twenty-four (24) hours of the discovery;
  - (c) Propose immediate corrective actions;
  - (d) Implement Department-ordered corrective actions to prevent an imminent hazard to public health and safety or the environment; and
  - (e) If additional action is necessary to meet the requirements of this chapter, or if requested by the Department, submit a well construction building permit application in accordance with § 1803.
- 1802.5** A well construction building permit shall not be required for the maintenance of a registered well, provided that the maintenance does not include a modification or material change in the original permitted design, specifications, or construction of the well.
- 1802.6** The Department may allow a well owner to delay submitting a well construction building permit application if:
- (a) The well owner immediately notifies the Department of an emergency circumstance that may impact a well, the environment, or public health and safety, which requires immediate corrective action;

- (b) The Department deems an emergency circumstance to exist, where obtaining a work plan approved by the Department for the maintenance or abandonment of a well would result in a delay that could pose an immediate hazard to public health and safety or the environment;
- (c) The well owner complies with the application procedures in § 1803 within seventy-two (72) hours after the emergency is identified; and
- (d) All work is conducted in accordance with applicable construction, maintenance, and abandonment requirements.

**1802.7** A well abandonment permit shall not be required if:

- (a) The well is abandoned within thirty (30) days following the completion of construction of the well; and
- (b) A well abandonment work plan developed in accordance with §§ 1830 and 1831 is submitted with the initial well construction building permit application.

### **1803 WELL CONSTRUCTION PERMIT APPLICATION PROCEDURE**

**1803.1** Except as provided in § 1802, no person shall construct a well in the District without a well construction work plan conforming to the requirements of § 1803.3 approved by the Department, and a well construction building permit approved by the Department and issued by the Department of Consumer and Regulatory Affairs (DCRA).

**1803.2** The well owner shall apply to the DCRA for a well construction building permit, which shall be issued by DCRA subject to the requirements of this chapter.

**1803.3** Beginning on March 31, 2016, a well construction building permit application shall include a well construction work plan containing the following information, which shall be submitted to the Department for review and approval:

- (a) The well owner's name, mailing address, telephone number, and electronic mailing address;
- (b) The property owner's name, mailing address, telephone number, and electronic mailing address, if different from the well owner information provided pursuant to § 1803.3(a);
- (c) The well driller's name, address, telephone number, and electronic mailing address, a copy of the pertinent DCRA license(s), and a copy of the well driller's current driller's license;
- (d) The physical location of the property on which the well is sited, including the physical address, a square, suffix, and lot, or closest physical location identifier;

- (e) The intended use of the well;
- (f) A description of the well construction details;
- (g) A well design diagram or schematic detailing how the well will be constructed;
- (h) The topographic description of the site;
- (i) The geology underlying the property where the well is sited;
- (j) The proximity to the one hundred (100)-year floodplain;
- (k) The name of the aquifer or aquifers that will be penetrated;
- (l) The name of the aquifer or aquifers that will be screened, if applicable;
- (m) The proximity to and details of recognized environmental conditions identified on or adjacent to the property where the well will be sited;
- (n) Methods to prevent aquifer cross-contamination where a recognized environmental condition has been identified on or adjacent to the property where the well will be sited;
- (o) A site map, plat, or plan depicting:
  - (1) The lot and square;
  - (2) The geographical location of the well within the property boundaries;
  - (3) The geographical location of the well in relation to the nearest street intersection;
  - (4) The setback distances from property lines;
  - (5) The setback distances from recognized environmental conditions identified on the property where the well is sited;
  - (6) The identification of public spaces;
  - (7) The identification of structures and driveways;
  - (8) The extents of the land disturbing activities including any construction entrance and stockpile area(s);
  - (9) The identification of waters of the District of Columbia on or adjacent to the property where the well will be sited;
  - (10) Compass directions;

- (11) A scale bar; and
- (12) A key or legend;
- (p) A description of the well construction activity including:
  - (1) The well construction materials and well installation equipment to be used;
  - (2) The well construction methods including drilling methods and procedures, and drilling fluids to be used; and
  - (3) Details of decontamination procedures, if applicable;
- (q) The plan for handling, analyzing, and disposal of derived waste; and
- (r) A description of any equipment or materials that shall or may be placed in the well such as:
  - (1) Pumps;
  - (2) Pipes;
  - (3) Loops;
  - (4) Packers; or
  - (5) Liners.

**1803.4**

In addition to the requirements of § 1803.3, the well construction work plan for the construction of a closed-loop ground source heat pump well shall include:

- (a) The type of closed-loop ground source heat pump system;
- (b) The design capacity of the proposed closed-loop ground source heat pump system;
- (c) The total number of loops in the well, loop configuration, the total number of loops in the system, the angles of the loops to the vertical plane and the depth to which they will be placed in the subsurface;
- (d) The pipe dimensions, type of pipe, and pipe material;
- (e) Details of the proposed circulation fluid, including:
  - (1) The type of circulation fluid;
  - (2) The concentration of the circulation fluid;

- (3) The manufacturer's specifications and product details including any additives or anti-corrosive agents;
  - (4) The applicable Safety Data Sheets for the chemicals used in the circulation fluid;
  - (5) Any known or potential environmental or public health and safety concerns or issues related to the use of the material as a circulation fluid for a closed-loop ground source heat pump system; and
  - (6) A pollution prevention plan and spill response plan to address the storage, handling, and management of the circulation fluid.
- (f) The type, mix ratios, and permeability of the grout, including how the grout will be inserted and the grout manufacturer's specifications for using the grout;
  - (g) The type, length, placement, and reason for using any outer casing material;
  - (h) The types of fittings and joints, and the procedures for sealing fittings and joints;
  - (i) The footprint of a proposed structure that shall be placed on top of a closed-loop ground source heat pump system must be clearly shown on the site plan; and
  - (j) Identification of any structure or operation that may impact or be impacted by the closed-loop ground source heat pump system.

**1803.5**

In addition to the requirements of § 1803.3, the well construction work plan for construction of a dewatering well shall include:

- (a) The proposed volume of water to be pumped and the estimated flow rate;
- (b) The proposed or anticipated radius of influence;
- (c) The quality of water to be pumped and supporting analytical data;
- (d) The details of any proposed treatment of recovered water containing known or suspected contaminants;
- (e) A copy of any required District or federal permit(s) issued or the status of a pending application for the required District or federal permit(s);
- (f) The purpose of dewatering;
- (g) The type, make, and model of pump used, including the horsepower;
- (h) The type and placement of the well screen;

- (i) The depth of pump intake;
- (j) The location of effluent discharge;
- (k) A description of discharge location such as, combined sewer system, public or private storm sewer system, water body, or licensed offsite facility;
- (l) The available analytical data for the property where the well will be sited, if a recognized environmental condition has been identified;
- (m) The proximity of the dewatering well to known sensitive receptors including, surface water bodies, wetlands, groundwater recharge areas, wellhead protection areas, and recognized environmental conditions located on the property and on properties adjacent to where the well will be sited;
- (n) A pollution prevention plan and spill response plan for a site where a system is anticipated or proposed for the treatment of dewatering well effluent;
- (o) The name of the aquifer(s) to be dewatered;
- (p) The proposed or anticipated decrease in potentiometric surface; and
- (q) The duration of dewatering expressed as start and end dates and the total dewatering period.

**1803.6**

In addition to the requirements of § 1803.3, the well construction work plan for construction of a ground freeze well shall include:

- (a) The purpose or application of the ground freeze well and ground freeze well system;
- (b) The proposed or anticipated radius and depth of influence of each ground freeze well;
- (c) The configuration or geometry of the ground freeze well system;
- (d) Proximity of ground freeze well system to underground utilities and means of protecting potentially affected utilities;
- (e) The type of refrigerant system to be used;
- (f) The type of refrigerant or coolant fluid to be circulated or used;
  - (1) The type of circulation fluid;
  - (2) The concentration of the circulation fluid;

- (3) The manufacturer's specifications and product details including any additives or anti-corrosive agents;
  - (4) The applicable Safety Data Sheets for the chemicals used in the circulation fluid; and
  - (5) Any known or potential environmental or public health and safety concerns or issues related to the use of the material as a circulation fluid for a ground freeze well system;
- (g) The loop or circulation configuration within the well;
  - (h) The circulation pipe dimensions, type of pipe, and pipe material;
  - (i) The type, mix ratios, and permeability of the grout, including how the grout will be inserted and the grout manufacturer's specifications for using the grout;
  - (j) The distribution manifold configuration and materials to be used;
  - (k) The proposed or anticipated flow of refrigerant or circulating fluid;
  - (l) The type, length, placement, and reason for using any outer casing material;
  - (m) A pollution prevention plan and spill response plan to address the storage, handling, and management of the refrigerant or coolant fluid; and
  - (n) If additional water will be introduced to supplement the ground freeze system, the method the water will be introduced into the formation.

**1803.7**

In addition to the requirements of § 1803.3, the well construction work plan for construction of an injection well shall include;

- (a) A copy of the EPA Underground Injection Control Permit or identification of an applicable exemption of this permit;
- (b) The volume of fluid to be injected;
- (c) The chemical, biological, physical, and radiological quality of the fluid to be injected;
- (d) The Technical Information Sheet and Safety Data Sheet for each treatment material to be used;
- (e) The proposed injection rate or feasible range;
- (f) The proposed or anticipated radius and depth of influence;
- (g) The injection method;



- (h) The location and maximum number of injection points;
- (i) The details of any proposed pilot testing;
- (j) The location and number of observation wells;
- (k) The proposed monitoring plans and monitoring protocols;
- (l) The duration of injection;
- (m) The identification of receiving aquifer(s);
- (n) Any expected impact to the subsurface;
- (o) Any expected impact to adjoining properties;
- (p) The proximity to surface water and potential ecological receptors;
- (q) Any expected impact to the closest surface water and potential ecological receptors;
- (r) The volume of the water to be treated;
- (s) The quality of the water to be treated;
- (t) The source of the contaminants;
- (u) The proposed implementation schedule;
- (v) The compliance schedule;
- (w) The compliance monitoring program;
- (x) A copy of any previous report or data related to the investigation and feasibility of the proposed action;
- (y) A map or series of maps showing the following:
  - (1) The topography;
  - (2) The geology;
  - (3) The location of on-site and nearby utility lines;
  - (4) The type and extent of the contaminants;
  - (5) The location of the proposed treatment system;
  - (6) The location of any existing contaminant treatment system; and

(7) The location of compliance monitoring wells;

(z) The expected short-term and long-term effects on the environment and public health; and

(aa) Any other relevant information.

**1803.8** In addition to the requirements of § 1803.3, the well construction work plan for construction of a water supply well shall include:

(a) The intended use of the water supply well;

(b) The proposed withdrawal method;

(c) The make and model of the pump;

(d) The proposed drawdown on the aquifer(s);

(e) The proposed groundwater withdrawal rates;

(f) The proposed aquifer pump test;

(g) The aquifer pump test data from a nearby test well or existing supply well;

(h) The aquifer water quality data;

(i) The size of the population that will be served by the withdrawal; and

(j) The operation and maintenance details of the well.

**1803.9** In addition to the requirements of §§ 1803.3 through 1803.8, the Department may require supplemental information related to the construction, maintenance, or intended use of a soil boring, recovery well, monitoring well, observation well, piezometer, industrial supply well, irrigation supply well, domestic supply well, or any other type of well.

**1803.10** A well owner may request a special compliance standard or the modification of a requirement of this chapter, if conditions or circumstances exist such that compliance will result in poor construction, maintenance, or abandonment of a well or will preclude the construction of the well.

**1803.11** A request for a special compliance standard or modification under § 1803.10 shall be submitted in writing to the Department for review and approval, and shall include:

(a) A description of the circumstances or site conditions that warrant special consideration;

(b) The proposed special compliance standard or modification request;

- (c) Documentation establishing that the proposed special compliance standard or modification is adequate and protective of public health and safety and the environment; and
- (d) The signature of the well owner certifying that the information in the request for the special standard is accurate and complete to the best of the owner's knowledge.

**1803.12** Prior to construction of a well, a Department-approved well construction building permit application and well construction work plan may be modified provided the proposed modification is submitted to the Department and to the DCRA for review and approval in accordance with the requirements of §§ 1803.10 and 1803.11.

**1803.13** During the construction of a well, a Department-approved well construction building permit application and well construction work plan may only be modified if:

- (a) The well owner immediately notifies the Department and the DCRA in writing; and
- (b) The modification of the well construction building permit and well construction work plan does not violate District or federal laws or regulations.

#### **1804 DEPARTMENT REVIEW**

**1804.1** The Department shall review each well construction building permit application submitted to the Department of Consumer and Regulatory Affairs (DCRA) and each well construction work plan to ensure that it meets the standards and requirements of this chapter.

**1804.2** The Department may conduct the review and approval of a complete well construction building permit application and well construction work plan as part of the following remedial or removal actions or programs:

- (a) The Voluntary Remedial Action Program, pursuant to Section 6213 of Title 20 of the District of Columbia Municipal Regulations (DCMR);
- (b) An enforcement corrective action taken pursuant to the District of Columbia Underground Storage Tank Management Act of 1990, as amended, D.C. Official Code §§ 8-113.01 *et seq.*, and its implementing regulations in Chapters 55-70 of Title 20 DCMR;
- (c) The Voluntary Cleanup Program, pursuant to D.C. Official Code §§ 8-633.01 *et seq.*; or

- (d) An enforcement action taken pursuant to the District of Columbia Brownfield Revitalization Amendment Act of 2000, as amended; D.C. Official Code §§ 8-631.01 *et seq.*

**1804.3** The Department may reject an incomplete well construction building permit application or well construction work plan.

**1804.4** If the Department rejects an incomplete well construction building permit application and well construction work plan, the Department shall notify the well owner in writing of the reason for the rejection.

**1804.5** The Department shall reject the well construction building permit application and well construction work plan if the proposed well violates any District or federal laws or regulations, or poses a hazard to the environment, public health and safety, or otherwise interferes with the designated or beneficial uses of the waters of the District.

**1804.6** The Department may consider the following when reviewing the well construction building permit application and well construction work plan:

- (a) The effects of the geology, topography, hydrology, hydrogeology, and hydraulics of the area of interest;
- (b) The population density and water use;
- (c) The potential to impact or be impacted by nearby properties;
- (d) The conditions of the surface and subsurface;
- (e) The current and future water quality;
- (f) The designated and beneficial uses of the waters of the District;
- (g) The depletion rate of the water resources;
- (h) The on-site and nearby recognized environmental conditions; and
- (i) Public health and safety and the environment.

**1804.7** The Department's approval of a well construction building permit application and well construction work plan may be subject to additional conditions to ensure compliance with District or federal laws or regulations and the protection of the public health and safety, and the environment, including:

- (a) Requirements for the use of outer-casing during the construction of a soil boring;
- (b) Requirements for the construction of a double-cased well;
- (c) Limits on pumping rates and pumping duration;

- (d) Special grouting requirements;
- (e) Special use restrictions;
- (f) Restrictions on well dimensions;
- (g) Restrictions on well locations within the property boundary;
- (h) Restrictions on well construction methods;
- (i) Special drilling requirements;
- (j) Special requirements for construction in various geologic formations;
- (k) Special requirements for construction in various ecological environments;
- (l) Special well construction material requirements;
- (m) Special monitoring requirements;
- (n) Special maintenance requirements;
- (o) Restrictions on well operation; and
- (p) Special abandonment requirements.

**1804.8**

The Department may require that a well owner submitting a well construction building permit application collect data or conduct analyses to determine if the proposed well impacts the District's water resources, including the following information:

- (a) Lithological and geophysical boring logs;
- (b) Grain size analysis;
- (c) Land survey data;
- (d) Groundwater elevation data;
- (e) Groundwater quality data including field parameters;
- (f) Hydrogeological tests such as, pump or slug tests;
- (g) Modeling of groundwater, heat or contaminant flow; and
- (h) Leachability testing and modeling.

**1805 FEE SCHEDULE**

**1805.1** Fees shall be paid in full at the time an application for well construction or well registration is made, as specified in Table 1.

**Table 1: Well Fee Schedule**

<b>ITEM</b>	<b>FEE</b>
<b>Well Permit Review and Registration Origination</b>	
a. Closed-Loop Ground Source Heat Pump Well	\$15.00 per well or \$150.00 per lot
b. Temporary Construction Dewatering Well and Ground Freeze Well	\$5.00 per well or \$125.00 per lot
c. Monitoring Well, Observation Well, Piezometer/Soil Boring, Injection Well, and Recovery Well	\$10.00 per well or \$100.00 per lot
d. Water Supply Well	\$75.00 per well
<b>Well Registration Renewal</b>	
a. Biennial well(s) registration renewal	\$25.00 per lot
b. Five-Year Closed-Loop Ground Source Heat Pump Well(s) registration renewal	\$25.00 per lot
<b>Changes to Well Registration</b>	
a. Change-in-Ownership	\$25.00 per lot
b. Change-in-Well-Use	\$25.00 per lot

**1805.2** The Department may adjust the fees for inflation once every calendar year beginning on March 31, 2016, using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics.

**1806 WELL REGISTRATION**

**1806.1** The Department shall issue a unique well registration number for each well included in an approved well construction building permit application and well construction work plan or registered with the Department.

**1806.2** By January 1, 2019, a well owner of any well constructed prior to March 31, 2016, shall:

- (a) If the well was permitted by the Department, submit a well completion report in accordance with § 1826;
- (b) If the well was not permitted by the Department, submit a registration application in accordance with § 1806.3; or
- (c) Abandon the well in accordance with the procedures in §§ 1830 and 1831 of this chapter.

**1806.3**

The well registration application required by § 1806.2 shall include:

- (a) The well owner's name, mailing address, telephone number, and electronic mailing address;
- (b) The property owner's name, mailing address, telephone number and electronic mailing address, if different from the information provided pursuant to § 1806.3(a);
- (c) The well driller's name, address, telephone number, electronic mailing address, and a copy of the pertinent Department of Consumer and Regulatory Affairs (DCRA) license(s);
- (d) The physical location of the property on which the well is sited, including the physical address, the square, suffix, and lot number, or the closest physical location identifier;
- (e) The specifications of the well such as the well diameter, depth, and construction materials, if known;
- (f) The well construction as-built schematic detailing the well construction, if available;
- (g) The well boring logs, if available;
- (h) The well construction method and procedures, if known;
- (i) The well construction completion date, if known;
- (j) The well use and corresponding application information for the following types of wells:
  - (1) Ground source heat pump, including well information required in § 1803.4;
  - (2) Dewatering well, including information required in § 1803.5;
  - (3) Ground freeze well, including information required in § 1803.6; and
  - (4) Injection well, including information required in § 1803.7.

- (k) If the well is in the public right of way or public space, a copy of the Public Space Permit;
- (l) The horizontal location of the well using either the Maryland State Plane Coordinate System or latitude and longitude;
- (m) The vertical elevation of the top of the well casing based upon North American Datum 1988 (NAVD88);
- (n) A site map, plat, or plan depicting:
  - (1) The lot and square;
  - (2) The geographical location of the well within the property boundaries;
  - (3) The geographical location of the well in relation to the nearest street intersection;
  - (4) The setback distances from property lines;
  - (5) The setback distances from recognized environmental conditions identified on the property where the well is sited;
  - (6) The identification of public spaces;
  - (7) The identification of structures and driveways;
  - (8) The identification of waters of the District of Columbia on or adjacent to the property;
  - (9) Compass directions; and
  - (10) A scale bar;
- (o) A key or legend;
- (p) The last measured depth to water and the recording date;
- (q) The well yield for supply wells;
- (r) The well development log, if available;
- (s) Any information that suggests or indicates that there is or may be negative impacts to the waters of the District due to the construction, operation, or maintenance of the well;
- (t) The structural integrity of the well;
- (u) The condition of the well surface completion;



- (v) The presence and condition of the well cap, lock, and cover, and whether or not they meet the requirements of § 1820;
- (w) An attestation signed by the well owner that the information provided is accurate and complete to the best of the owner's knowledge; and
- (x) Any other relevant information.

**1806.4** The Department may require submission of additional information as part of the well registration application as it relates to the intended use of the well, including the use of a recovery well, monitoring well, observation well, piezometer, industrial supply well, irrigation supply well, or domestic supply well.

**1806.5** The Department shall cancel the registration of a well that has not been constructed or is not in the process of being constructed within the period covered by the well construction building permit.

**1806.6** Except for a well constructed under a Department regulatory action and a closed-loop ground source heat pump well, the owner of an existing and permitted well shall renew the well registration every two (2) years.

**1806.7** The owner of a closed-loop ground source heat pump well shall renew the well registration every five (5) years.

**1806.8** The well registration renewal required by §§ 1806.6 and 1806.7 shall include the unique well registration number provided by the Department for each well and any changes to the information specified in § 1806.3.

**1806.9** A well owner who fails to submit a well registration or well registration renewal request by the required deadline shall abandon the well in accordance with §§ 1830 and 1831 within sixty (60) days.

## **1807 CHANGE OF WELL USE OR OWNER**

**1807.1** Upon the transfer of ownership of a well, the new well owner shall register the well with the Department by March 31<sup>st</sup> of the calendar year following the transfer of the well ownership.

**1807.2** The use of a well as specified and approved by the Department in a well construction building permit application, well construction work plan, or well registration shall not be changed, except in accordance with § 1807.3.

**1807.3** A well owner who proposes to change the use of a well shall submit an application with the following information:

- (a) The well owner's name, mailing address, telephone number, and electronic mailing address;

- (b) The property owner's name, mailing address, telephone number, and electronic mailing address, if different from the information provided pursuant to § 1807.3(a);
- (c) The physical location of the property on which the well is sited, in the form of a physical address, a square, suffix, and lot, or closest physical location identifier;
- (d) The well construction building permit number for the well;
- (e) A description of the specific proposed change(s) in use;
- (f) A statement of how the change(s) will be achieved;
- (g) If a licensed well driller is required as part of the change(s) in use, the licensed well driller's name, address, telephone number, electronic mailing address, a copy of the pertinent Department of Consumer and Regulatory Affairs (DCRA) license(s), and a copy of the well driller's current driller's license; and
- (h) A description of any potential impacts to the waters of the District as a result of the proposed change(s) in use.

## **1808 WELL DRILLERS IN THE DISTRICT**

**1808.1** Except in accordance with §§ 1808.3 and 1808.4, no person shall construct, maintain, or abandon a well within the District unless that person is a licensed well driller and possesses a current Department of Consumer and Regulatory Affairs business license.

**1808.2** A well owner shall ensure the construction, maintenance, and abandonment of a well is performed under the direct supervision of a licensed well driller.

**1808.3** A licensed well driller shall not be required for the construction of a well using hand operated or hand driven tools, including hand-augers, soil probes, and hand shovels.

**1808.4** A licensed well driller shall not be required for the maintenance of a well, provided that the maintenance does not require the application of chemical treatment, the maintenance of an installed pump, or a material change in the original permitted design, specification, or construction of the well.

## **1809 WELL CONSTRUCTION REQUIREMENTS: GENERAL**

**1809.1** A well shall be constructed in accordance with a well construction work plan approved by the Department and a well construction building permit issued by the Department of Consumer and Regulatory Affairs (DCRA).

**1809.2** A well owner shall provide a minimum of two (2) full business days' notice to the Department prior to commencing the construction of a well.

- 1809.3** A well owner shall obtain public utility clearance pursuant to the Underground Facilities Protection Act of 1980, effective March 4, 1981 (D.C. Law 3-129; D.C. Official Code §§ 34-2701 *et seq.*), as amended.
- 1809.4** A well owner shall obtain clearance of underground facilities with non-utility operators, including the Washington Metropolitan Area Transit Authority (WMATA).
- 1809.5** A soil boring shall not be subject to the construction standards of § 1809.6, and §§ 1815 through 1826, provided that all the following conditions are met:
- (a) The intended use of the well as a soil boring is identified in the Department-approved well construction permit application and well construction work plan; and
  - (b) The soil boring is abandoned in accordance with §§ 1830 and 1831 within twenty-four (24) hours of starting construction of the borings.
- 1809.6** A well shall be constructed from the bottom of the boring to the top of the well using materials free of contaminants and compatible with the intended well use and the surrounding surface and subsurface conditions and shall include the following components:
- (a) A well casing;
  - (b) A well point or plug;
  - (c) A well screen;
  - (d) A filter pack;
  - (e) A low-permeability seal; and
  - (f) Grout within the annulus between the borehole wall and well casing.
- 1809.7** A well shall not hydraulically connect otherwise confined aquifers, causing aquifer cross-contamination, or hydraulically connect those portions of a single aquifer where contaminants exist in separate and definable layers within the aquifer.
- 1810 WELL CONSTRUCTION REQUIREMENTS: SITING**
- 1810.1** A well shall be constructed so that it is accessible for cleaning, treatment, repair, testing, inspection, abandonment, and any other work that may be necessary.
- 1810.2** A well shall not be constructed within or under any building other than a separate structure constructed specifically for the housing of pumping equipment, unless otherwise approved in writing by the Department and specifically noted in the approved well construction work plan.

- 1810.3** A well housed in a separate structure in accordance with § 1810.2 shall be properly marked to indicate the category of the well and the well registration number.
- 1810.4** Except as provided by § 1810.5, buildings or other structures shall not be constructed on top of a registered and permitted well, unless the well has been abandoned in accordance with §§ 1830 and 1831, or unless otherwise approved by the Department.
- 1810.5** Buildings or other structures may be constructed on top of ground source heat pump wells, provided that adequate access is available to the loops to allow attachment to the building headers and for well operation, repair, maintenance, and abandonment.
- 1810.6** A well shall not be constructed or maintained in a manner that interferes with or damages any pre-existing subsurface structures, including utility lines, long-term combined sewer control shafts, diversion structures, diversion sewers, diversion tunnels, and Washington Metropolitan Area Transit Authority (WMATA) transit tunnels.
- 1810.7** A well sited within the one hundred (100)-year floodplain or a low-lying area prone to flooding shall be constructed in accordance with § 1820.2.
- 1810.8** A well shall be located a minimum of twenty-five feet (25 ft.) from the mean high watermark of waters of the District or waters of the United States of America and a minimum of twenty-five feet (25 ft.) from a wetland, unless authorized in writing by the Department.
- 1810.9** A domestic supply well shall be sited a minimum of one hundred feet (100 ft.) from a recognized environmental condition.
- 1810.10** A closed-loop ground source heat pump well shall be sited in accordance with the following standards:
- (a) A closed-loop ground source heat pump well shall not be constructed within five hundred feet (500 ft.) of a recognized environmental condition without prior written approval of the Department;
  - (b) A closed-loop ground source heat pump well shall be located at least twenty-five feet (25 ft.) away from a water supply well;
  - (c) A closed-loop ground source heat pump well with a capacity of two (2) tons or less shall be sited a minimum of eight feet (8 ft.) from the property boundary;
  - (d) A closed-loop ground source heat pump well with a capacity greater than two (2) tons, but less than or equal to four (4), tons shall be sited a minimum of ten feet (10 ft.) from the property boundary; and

- (e) A closed-loop ground source heat pump well with a capacity greater than four (4) tons or a commercial closed-loop ground source heat pump system shall be sited a minimum of ten feet (10 ft.) from the property boundary, and the permissible distance from the boundary shall be definitively determined based on the following criteria:
- (1) The geology, topography, hydrology, hydrogeology, and hydraulics of the area of interest;
  - (2) The design of the closed-loop ground source heat pump system;
  - (3) The closed-loop ground source heat pump system's heating and cooling capacity;
  - (4) The closed-loop ground source heat pump system's proximity to other ground source heat pump wells; and
  - (5) The closed-loop ground source heat pump system's proximity to property boundaries.

**1810.11** If a proposed closed-loop ground source heat pump well does not meet the siting criteria outlined in § 1810.10, the well owner may submit a request to the Department for a special compliance standard in accordance with the requirements of §§ 1803.10 and 1803.11.

**1811 WELL CONSTRUCTION REQUIREMENTS: RELOCATION DURING CONSTRUCTION**

**1811.1** Except as set forth in § 1811.2, a well may be relocated during construction for the avoidance of utility lines, building footings, or other sub-surface obstructions provided that:

- (a) The well is not relocated more than ten feet (10 ft.) from the approved and permitted location identified in the well construction building permit application;
- (b) The new well location meets the requirements of this chapter;
- (c) The new well location is situated on the same lot and square number listed on the well construction building permit application;
- (d) The unsuccessful well, cased or uncased, is abandoned in accordance with the requirements of §§ 1830 and 1831 of this chapter; and
- (e) The Department has not prohibited well relocation in the approved well construction work plan.

- 1811.2** A closed-loop ground source heat pump well shall not be relocated from the position shown on the well construction building permit and the Department-approved well construction work plan, without written approval by the Department.
- 1812 WELL CONSTRUCTION REQUIREMENTS: SANITARY PROTECTION**
- 1812.1** A well owner is responsible for sanitary protection of the well during construction, maintenance, and abandonment.
- 1812.2** During well construction, the well and any water-bearing formation shall be protected against contaminants from any source, including surface water drainage.
- 1812.3** If construction of a well is suspended for any period of time prior to the completion of the well, the well annulus or open borehole shall be covered and protected from surface water drainage and the vertical migration of contaminants and other materials through the well casing and well annulus, and the well casing capped in accordance with the requirements of § 1820.1.
- 1812.4** A soil boring or well meeting the requirements of § 1818.2 shall be covered and protected from surface water drainage and the vertical migration of contaminants and other materials when not in use.
- 1812.5** In the event that contaminants not addressed in the well construction building permit are encountered during the construction, maintenance, or abandonment of a well, the well owner shall:
- (a) Stop all well construction work and related activities;
  - (b) Immediately notify the Department and other applicable emergency personnel;
  - (c) Propose immediate corrective action;
  - (d) Implement Department-approved corrective actions to prevent an imminent hazard to the public health and safety, or the environment; and
  - (e) If additional action is necessary to investigate or remediate the contaminants, or is required by this chapter or requested by the Department, develop and submit a well construction work plan to the Department for review and approval.
- 1812.6** In the event that contaminants not addressed in the well construction building permit are encountered during the construction, maintenance, or abandonment of a well under a Department regulatory action, the well owner shall notify the Department and other applicable emergency personnel and take necessary measures to contain and minimize the spread of contaminants.

- 1812.7** All materials, including drilling fluids or muds, used in the construction of a well shall be free of contaminants and shall not cause the groundwater to become polluted in violation of District or federal laws and regulations.
- 1813** **WELL CONSTRUCTION REQUIREMENTS: DERIVED MATERIAL FROM WELL CONSTRUCTION, MAINTENANCE, AND ABANDONMENT**
- 1813.1** A well owner shall ensure all derived waste from the construction, maintenance, or abandonment of a well is managed and handled in accordance with this chapter and all District and federal laws and regulations.
- 1813.2** A well owner shall containerize all derived waste from the construction, maintenance, or abandonment of a well sited on a property where a recognized environmental condition has been identified and take the following measures:
- (a) Representative sample(s) of the derived waste shall be collected and analyzed for known or suspected contaminants by a National Environmental Laboratory Accreditation Conference-certified laboratory using appropriate EPA-approved procedures;
  - (b) All derived waste shall be stored and transported in United States Department of Transportation-approved containers; and
  - (c) All derived waste shall be permanently removed from the site for disposal in accordance with all District and federal laws and regulations.
- 1813.3** No person shall place, use, store, or dispose of derived waste from the construction, maintenance, or abandonment of a well in a manner that the derived waste may come into contact with or leach into the waters of the District, thereby violating the District Water Quality Standards in Chapter 11 of Title 21 of the District of Columbia Municipal Regulations (DCMR), or resulting in acute or chronic exposure to aquatic biota or otherwise posing a hazard to public health and safety or the environment.
- 1813.4** Soil or sediment derived from the construction, maintenance, or abandonment of a well may be placed on the site or stockpiled, provided it meets the following requirements:
- (a) The soil or sediment is characterized as non-hazardous waste in accordance with § 1813.2(a) and does not pose a hazard to public health and safety and the environment;
  - (b) The soil or sediment contains a concentration of total petroleum hydrocarbons (TPH) of less than one hundred parts per million (100 ppm); and

- (c) The soil and sediment stockpile or placement complies with the District's erosion and sediment control requirements in Chapter 5 of Title 21 DCMR.

**1813.5** No person shall discharge the following into a separate stormwater sewer or waters of the District without obtaining applicable District and federal permits:

- (a) Dewatering effluent;
- (b) Groundwater treatment system effluent;
- (c) Process water; or
- (d) Derived waste.

**1813.6** A person may include in a well construction work plan request for approval of the placement of fluid waste derived from the construction, maintenance, or abandonment of a well, on the ground surface or in an unlined pit provided:

- (a) Representative analytical data indicates compliance with the District Water Quality Standards in Chapter 11 of Title 21 DCMR and all other applicable federal standards or regulations;
- (b) The fluid waste is free of solids;
- (c) The fluid waste does not have an observable sheen or free product;
- (d) The fluid waste is characterized in accordance with § 1813.2(a) and has a total petroleum hydrocarbons (TPH) concentration of less than one part per million (1 ppm); and
- (e) The fluid waste meets the following infiltration requirements:
  - (1) Erosion and sediment control requirements in Chapter 5 of Title 21 DCMR;
  - (2) Does not create surface ponding;
  - (3) Does not discharge onto an adjacent property, a nearby surface water body, or stormwater sewer; and
  - (4) Does not create or constitute a public nuisance or a hazard to the public health and safety, and the environment.

**1814 WELL CONSTRUCTION REQUIREMENTS: DRILLING FLUIDS**

**1814.1** Only potable water shall be used to create a water-based drilling fluid.

**1814.2** The use of a drilling fluid containing additives shall only be permitted if:



- (a) Use of the additive is approved by the Department in the well construction building permit application;
- (b) The additive is used in accordance with manufacture's recommendations; and
- (c) The additive does not pose a hazard to public health and safety or the environment.

## **1815 WELL CONSTRUCTION REQUIREMENTS: WELL CASING**

- 1815.1** No person shall use well casing materials, well fittings, or well equipment that creates a condition which poses a hazard to public health and safety or the environment or results in violations of District or federal laws or regulations.
- 1815.2** Materials to be used for well casing must be appropriate for on-site application and approved by the American Society for Testing and Materials (ASTM), the American Water Works Association, or the NSF International.
- 1815.3** A well casing shall be strong enough to withstand the structural load and stresses imposed by conditions inside and outside the well during and after construction.
- 1815.4** A well casing shall be in good condition, free of pits, breaks, or cracks that may compromise the structural integrity or water-tightness of the well casing.
- 1815.5** Except for pre-packed wells installed using direct push technology, the diameter of the borehole shall be sized to accommodate the well casing and the well annulus requirements specified in § 1818.4.
- 1815.6** A plastic well casing shall be manufactured of polyvinylchloride (PVC) material and shall be at a minimum Schedule 40 or have a minimum standard dimension ratio of twenty-one (21).
- 1815.7** A well constructed with plastic PVC material shall not exceed a depth greater than one hundred and fifty feet (150 ft.).
- 1815.8** If steel casing is used:
- (a) The casing shall be new, seamless or electric-resistance welded, galvanized, or black steel. Galvanizing shall be done in accordance with the requirements of ASTM A53/A53M-07, as amended;
  - (b) The casing, threads, and couplings shall meet or exceed the specifications of ASTM A53/A53M-07 or A589/589M-06, as amended; and
  - (c) The casing thickness shall meet or exceed the following specifications, unless an alternative thickness is approved in the well construction work plan:

- (1) Steel well casing up to and including a nominal size of six inches (6 in.) in diameter shall be at minimum Schedule 40; or
- (2) Steel well casing larger than six inches (6 in.) in diameter shall be at the minimum 0.280 inches.

**1815.9** If thermoplastic casing is used:

- (a) The casing shall be new; and
- (b) The casing and joints shall meet or exceed all the specifications of ASTM F480-06b, except that the outside diameters shall not be restricted to those listed in ASTM F480-06b.

**1815.10** A steel casing shall be used for a well constructed in crystalline rocks, unless an alternative casing is approved in the well construction work plan.

**1815.11** Joints for a well casing shall meet the following requirements:

- (a) All joints shall be water tight;
- (b) All joints shall be joined in accordance with the manufacturer's recommendations;
- (c) Joints for steel well casing shall be electrically welded or threaded; and
- (d) Joints for plastic well casing shall be threaded and not glued.

**1815.12** A temporary well casing and liner shall be of such minimum thickness as required to withstand the structural load imposed by conditions inside and outside the well.

## **1816 WELL CONSTRUCTION REQUIREMENTS: WELL SCREENS**

**1816.1** No person shall construct a well in which the well screen extends across more than one aquifer, unless:

- (a) A special compliance standard request was submitted in accordance with §§ 1803.10 and 1803.11;
- (b) Adequate justification is provided to support the request;
- (c) The cross-contamination of aquifers is prevented; and
- (d) The request is approved by the Department in the well construction work plan.

**1816.2** A well that derives water from an unconsolidated aquifer shall be equipped with a well screen that limits the entrance of sediment material into the well following well development.

- 1816.3** Only a machine-manufactured well screen shall be used in the construction of a well, unless otherwise approved by the Department.
- 1816.4** A well screen shall have sufficient structural strength to support the intended use of the well.
- 1816.5** A well screen shall be installed with fittings necessary to seal the well screen to the well casing.
- 1816.6** A lead packer and lead swedge shall not be used to seal a well screen to the well casing.
- 1816.7** A fitting shall be provided to close the bottom of the well screen and to cap, plug, or otherwise close the bottom of the well.
- 1816.8** A well screen of a well sited on a property where a recognized environmental condition has been identified shall be constructed to prevent structural degradation.
- 1817** **WELL CONSTRUCTION REQUIREMENTS: FILTER PACK IN WELL**
- 1817.1** Except for a pre-packed well, a filter pack shall be placed in the well annulus surrounding the well screen.
- 1817.2** A filter pack shall extend a minimum of two feet (2 ft.), but no further than three feet (3 ft.) above the well screen.
- 1817.3** A filter pack shall be comprised of sand or gravel that has been washed with water and is free of clay, silt, and organic material.
- 1817.4** A filter pack shall not contain iron or manganese in concentrations greater than that in the ground when the well is installed or adversely affect the quality of water withdrawn from the well or the groundwater that comes into contact with the filter pack.
- 1817.5** A filter pack material stored at the drilling site shall be stored on a clean surface or in a clean container to prevent any on-site contaminants from mixing with the filter pack materials.
- 1817.6** A filter pack shall be inserted by one of the following methods:
- (a) By placing the filter pack down the annulus;
  - (b) By placing a water-filter pack mix down the annulus; or
  - (c) By using a tremie pipe to insert a water-filter pack mix at the bottom of the annulus and slowly raising the tremie pipe.
- 1817.7** A pre-packed well screen shall:

- (a) Be used in accordance with the manufacturer's specifications and recommendations;
- (b) Not contain materials that may alter groundwater chemistry or pose a hazard to the environment or public health and safety; and
- (c) Be pre-approved in writing by the Department prior to installation.

**1817.8** The well filter pack material shall not hydraulically connect otherwise confined aquifers, without prior written approval from the Department.

**1818 WELL CONSTRUCTION REQUIREMENTS: WELL GROUTING**

**1818.1** Except as provided in §§ 1818.2 and 1818.3, a person constructing a well with an annulus shall pressure grout the well in accordance with the grouting standards of this chapter.

**1818.2** The grouting of a monitoring well, observation well, piezometer, injection well, or recovery well shall not be required if all the following conditions are met:

- (a) The un-grouted annulus exists above the anticipated water table;
- (b) A low-permeable seal a minimum of two feet (2 ft.) thick is installed atop the filter pack;
- (c) The upper terminus of the well is protected in accordance with § 1812.3;
- (d) The well is not constructed or maintained in a manner that allows the vertical migration of contaminants in the aquifer;
- (e) The well penetrates a single aquifer; and
- (f) The well is abandoned within thirty (30) days of well completion in accordance with §§ 1830 and 1831.

**1818.3** The grouting of a dewatering well shall not be required if all the following conditions are met:

- (a) The well is constructed to a maximum depth of twenty feet (20 ft.) below ground surface;
- (b) The well penetrates a single aquifer;
- (c) The well is constructed and maintained in a manner that does not allow the vertical migration of contaminants in the aquifer; and
- (d) The well is abandoned within one-hundred and eighty (180) days of well completion in accordance with §§ 1830 and 1831.

- 1818.4** The annulus of a well to be grouted shall be a minimum of one and one-half inches (1.5 in.) wide, or the diameter of the annulus shall be a minimum of three inches (3 in.) greater than the outside diameter of a well casing.
- 1818.5** A low-permeability seal a minimum of two feet (2 ft.), but no greater than three feet (3 ft.) thick, shall be placed atop the filter pack to prevent surface water from entering the screened interval.
- 1818.6** A sodium-based bentonite slurry grout shall be placed on top of the low-permeability seal and extend towards the ground surface with sufficient space to install the upper well terminus.
- 1818.7** A request may be made to the Department in accordance with §§ 1803.10 and 1803.11 to deviate from the grouting standards of this chapter, provided the deviation does not result in a less protective standards than those set forth in this chapter.
- 1818.8** A well shall be grouted as soon as feasible, but not later than twenty-four (24) hours after the well casing has been set in place, unless otherwise specified in the well construction building permit or well construction work plan authorized in accordance with the requirements of §§ 1803.10 and 1803.11.
- 1818.9** If pressure grouting the annulus is not feasible during the construction of a monitoring well, observation well, or a piezometer, the well shall be grouted by pouring medium-size, sodium-based bentonite chips or pellets down the well annulus in a manner that prevents the bridging of the bentonite chips or pellets.
- 1818.10** A well in which a permanent outer casing is installed shall be grouted in a manner that will allow the grout to set prior to the top of the inner casing being terminated below ground surface.
- 1818.11** The material of a low-permeability seal shall sustain a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  centimeters per second ( $1 \times 10^{-7}$  cm/s) and be comprised of:
- (a) Sodium-based bentonite slurry:
    - (1) At a ratio of two (2) pounds of sodium-based bentonite powder to one (1) gallon of potable water; or
    - (2) At a mix ratio according to the manufacturer's specifications, provided that the grout results in a low-permeability seal with a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  cm/s;
  - (b) Sodium-based bentonite-cement at a ratio of one hundred fifty pounds (150 lbs) of bentonite powder to ninety-four pounds (94 lbs) of portland cement hydrated with eighty-two gallons (82 gal) of potable water;

- (c) Hydrated, medium-size bentonite chips at a ratio of one (1) gallon of potable water to twelve and one-half pounds (12.5 lbs.) of medium-size, sodium-based bentonite chips or pellets; or
- (d) Hydrated, specially-coated, medium-size bentonite pellets which allow a time-delayed reaction at a ratio of one (1) gallon of potable water to twelve and one-half pounds (12.5 lbs.) of medium-size, sodium-based bentonite chips or pellets.

**1818.12** Standards for grouting shall be as follows:

- (a) Well grouting shall be performed to provide a water-tight seal against downward fluid migration along the well annulus into the filter pack, well screen, and surrounding aquifer;
- (b) A sodium-based bentonite slurry mixture shall be installed by pumping the slurry mixture through a tremie pipe at least one inch (1 in.) in diameter using a positive placement technique;
- (c) If a borehole diameter is not wide enough for a slurry mixture to be emplaced using a tremie pipe, the following sodium-based bentonite chips shall be used:
  - (1) Uncoated, sodium-based bentonite chips shall be used above the potentiometric surface, with a sufficient amount of potable water added to fully hydrate the chips; or
  - (2) Specially coated, time-release sodium-based bentonite pellets shall be used when several layers of pellets must be emplaced below the potentiometric surface of the well, with a sufficient amount of potable water shall be added to fully hydrate the pellets if there is insufficient groundwater entering the well;
- (d) Sodium-based bentonite chips and pellets shall be sized according to the well diameter to be filled, and the chips or pellets shall be less than one fifth (1/5) the radial thickness of the annulus into which they are to be placed, except that medium or coarse sized chips may be used in well diameters from four inches (4 in.) to ten inches (10 in.);
- (e) Sodium-based bentonite chips and pellets shall be placed within the borehole in a manner that prevents the bridging of the bentonite chips or pellets;
- (f) Medium-size, sodium-based bentonite chips or pellets shall be used at a ratio of one (1) gallon of potable water to twelve and one-half pounds (12.5 lbs.) of medium-size, sodium-based bentonite chips or pellets as follows:

- (1) The chips or pellets shall be pre-screened to remove fragments; and
  - (2) The chips or pellets shall be hydrated in accordance with the manufacturer's specifications to ensure that the chips or pellets achieve a low-permeability seal with a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  cm/s;
- (g) If an outer casing is required for a well penetrating a confined or multi-layer aquifer with the potential for aquifer cross-contamination, the space between the open borehole wall and the outer casing shall be pressure grouted, and the following shall be required:
- (1) The annulus between the open borehole wall and the outer casing shall be pressure grouted;
  - (2) The outer casing shall be installed and pressure grouted a minimum of ten feet into the uppermost confining layer; and
  - (3) In the event the confining layer is less than ten feet (10 ft.) in thickness, the outer casing shall be pressure grouted entirely through the uppermost confining layer;
- (h) All grout materials placed in the borehole shall be free of contaminants;
- (i) All sand and gravel placed in the borehole shall be silica based and inert, unless a material other than silica is used in a commercially available product that is inert and meets all other grouting requirements;
- (j) Drill cuttings or muds shall not be left in boreholes, or placed in the borehole as fill material and shall not be used as a grouting material; and
- (k) All grout inserted into a well annulus for sealing purposes shall not be disturbed until the grout has fully set.

**1818.13** Grouting materials for unconsolidated formations shall meet the following requirements:

- (a) Grout shall be fully hydrated and comprised of sodium-based bentonite, or a sodium-based bentonite-cement mixture comprised of a minimum of five percent (5%) and a maximum of ten percent (10%) sodium-based bentonite, and a minimum of ninety percent (90%) and a maximum of ninety-five percent (95%) cement;
- (b) Cement shall be hydrated consistent with § 1818.14(a) of this chapter; and
- (c) A sodium-based bentonite clay shall not be used if it may come into contact with groundwater with a known pH below five (5.0) or groundwater having a total dissolved solids content greater than one thousand milligrams per liter (1,000 mg/L).

**1818.14** Grouting materials for consolidated formations shall consist of the following:

- (a) Portland cement or quick-setting cement in a ratio of no greater than six (6) gallons of water per ninety-four pound (94 lb.) sack of cement or as otherwise authorized by the Department in the well construction work plan;
- (b) Sodium-based bentonite powder may be added to the cement grout in an amount of five pounds (5 lbs.) for each ninety-four pound (94 lb.) sack of cement; and
- (c) When adding sodium-based bentonite clay to neat Portland cement grout, additional water shall be allowed at a rate of one (1) gallon of water to two pounds (2 lb.) of sodium-based bentonite powder.

**1818.15** The grouting of a closed-loop ground source heat pump well shall meet the following requirements:

- (a) Approved sealing and filling materials shall include fully hydrated high solids sodium-based bentonite grout comprised of a minimum twenty percent (20%), but no greater than thirty percent (30%) of solids by weight, or approved high efficiency, thermally-enhanced grouts comprised of a maximum twenty percent (20%) by weight silica sand to powdered sodium-based bentonite;
- (b) All grout shall meet the manufacturer's specifications and the hydraulic conductivity of the low-permeability seal shall be equal to or less than  $1 \times 10^{-7}$  cm/s;
- (c) The hydraulic conductivity value shall be derived by using American Society for Testing and Materials (ASTM) D-5084 and verified by an independent testing facility certified by American Association of State Highway & Transportation Officials, Materials Reference Laboratory to perform ASTM D5084 at the time of verification;
- (d) The entire length of the borehole shall be grouted from bottom to top with sodium-based bentonite or thermally enhanced grout specifically designed to facilitate heat transfer and provide a low-permeability seal;
- (e) Grouting shall be completed immediately after installing the geothermal loop or in case of extenuating field conditions, no later than twenty-four (24) hours after installing the geothermal loop;
- (f) Open boreholes shall be protected as necessary to prevent the entry of surface water or pollutants;
- (g) Boreholes with temporary casing shall be grouted during or before removal of casing depending on borehole stability;



- (h) Boreholes with permanent outer casing shall be grouted and the grout shall be allowed to set before the top of the casing is terminated below ground level;
- (i) Boreholes with no casing shall be looped and grouted immediately after drilling;
- (j) When voids are encountered, including fractures in bedrock and degraded bedrock, the borehole shall be cased from below the void to the surface; and
- (k) Boreholes drilled with a mud rotary drilling system in unconsolidated formations shall be looped and grouted immediately after drilling.

**1818.16** If the annulus cannot be grouted in accordance with this chapter, the well shall be abandoned in accordance with §§ 1830 and 1831.

**1818.17** The Department may impose additional requirements pertaining to the grouting of a well in the well construction building permit to ensure the protection of public health and safety and the environment.

**1819 WELL CONSTRUCTION REQUIREMENTS: WELL DEVELOPMENT**

**1819.1** A well constructed for the purpose of determining the physical or chemical characteristics of groundwater shall be developed in accordance with the requirements of this section.

**1819.2** Well development shall consist of cyclic or intermittent pumping, surging, or both, either mechanically or by using potable water or air under pressure.

**1819.3** Well development shall continue until formation cuttings, mud, drilling fluids and additives are removed from the well.

**1819.4** Well development shall occur as soon as feasible following installation and after grout is firmly set, but no sooner than twenty-four (24) hours.

**1819.5** A well shall be developed to remove the fine sands, silts, clays, and rock particles from the aquifer surrounding the well screen or intake interval, to meet the following requirements:

- (a) The water recovered from the well shall contain less than five milligrams (5 mg) of sand or larger particles per liter of water. Particles with a diameter between 0.0625 and 2.0 millimeters shall be considered sands;
- (b) The water recovered from the well shall have a turbidity of less than twenty (20) NTU (Nephelometric Turbidity Units), except when the turbidity is due to the oxidation of dissolved iron or manganese naturally occurring in the water; and

- (c) The pH, specific conductivity, temperature, and turbidity of the water recovered from the well are determined to be within a ten percent (10%) range and considered at equilibrium.

**1820 WELL CONSTRUCTION REQUIREMENTS: WELL CAPS AND UPPER TERMINUS OF WELL**

**1820.1** Except as provided in §§ 1820.3 and 1820.4, the upper terminus of a well shall meet the following requirements, unless otherwise approved in writing by the Department in accordance with §§ 1803.10 and 1803.11;

- (a) A well shall be covered with a secure and locking well cap, meeting the following requirements:
  - (1) A well cap shall be constructed to prevent the introduction of contaminants, or any other foreign material including surface runoff;
  - (2) A vented capping device shall be screened so as to prevent the entry of insect and animals; and
  - (3) The well cap shall be locked or incapable of removal without the use of tools;
- (b) The surface completion shall be set in a cement well pad with minimum dimensions of two feet (2 ft.) by two feet (2 ft.) and domed to prevent water from entering the well;
- (c) A protective metal casing with a locking cap shall be installed around a well completed at or above ground surface, extending at least six inches (6 in.) above the top of the well and cemented into place at least one foot (1 ft.) below ground surface; and
- (d) A metal housing shall be installed on top of the well completed below ground surface and a limited-access water tight protective cover shall be installed to prevent the inflow of surface water, or the metal housing shall be provided with drains to keep water out of the well and below the well cap.

**1820.2** For a well sited within the 100-year floodplain or low lying areas prone to flooding, the top of the well head shall not terminate less than twenty-four inches (24 in.) above the finished ground surface and shall be fully protected from surface water intrusion, unless otherwise approved in accordance with §§ 1803.10 and 1803.11.

**1820.3** A dewatering well or ground freeze well constructed for temporary construction applications shall be exempt from § 1820.1, provided all the following conditions are met:

- (a) The well is sited within a secured perimeter not accessible to the public;
- (b) The well meets the requirements of §§ 1812.1 through 1812.4; and
- (c) The well is abandoned within one-hundred and eighty (180) days of well completion in accordance with §§ 1830 and 1831.

**1820.4** A monitoring well, observation well, piezometer, injection well or recovery well shall be exempt from §§ 1820.1(b) through 1820.1(d) provided all the following conditions are met:

- (a) The well meets the requirements of §§ 1812.1 through 1812.4; and
- (b) The well is abandoned within thirty (30) days of well completion in accordance with §§ 1830 and 1831.

**1820.5** The upper terminus of an industrial supply well, irrigation supply well, and a domestic supply well shall be required to meet the following standards:

- (a) The well shall be constructed with an access port with a minimum inside diameter of one-half inch (0.5 in.), allowing for a water level measurement by a steel or electric tape;
- (b) The access port shall be constructed with a removable cap and seal to protect from entry of water, dust, insects, animals, or other foreign material, but allows access for water level measurements;
- (c) If a pump motor is not installed directly over the well, an access port shall be constructed atop the well; and
- (d) If a pump motor is installed directly over the well, an access port shall be installed through the pump base or outside the well casing at some accessible point below the base of the pump.

**1820.6** A closed-loop ground source heat pump well shall not require a secure and locking well cap provided the closed-loop ground source heat pump well is constructed in accordance with § 1823.

**1820.7** The cover of a well completed below ground surface shall be designed to withstand the maximum expected loadings.

**1820.8** The construction and use of a well pit, pump pit, or other facility installed or constructed below ground surface are prohibited, unless prior written approval has been granted by the Department in accordance with §§ 1803.10 and 1803.11.

**1821 WELL CONSTRUCTION REQUIREMENTS: WELL LABELING**

**1821.1** A well registration number issued by the Department in accordance with § 1806 shall be attached or labeled at a visible location to the terminal surface of a well.

- 1821.2** For closed-loop ground source heat pump wells, the well registration number shall be attached to a visible location along the supply and return line entering the building or vault.
- 1821.3** A well registration label shall not be required for a soil boring, monitoring well, observation well, piezometer, injection well, or recovery well provided the well is abandoned within thirty (30) days of well completion in accordance with §§ 1830 and 1831.
- 1821.4** A dewatering well or ground freeze well constructed for temporary construction applications shall not require a well registration label, provided all the following conditions are met:
- (a) The well is sited within a secured perimeter not accessible to the public;
  - (b) The well construction building permit and well completion details are maintained at the property where the well is sited; and
  - (c) The well is abandoned within one-hundred and eighty (180) days of well completion in accordance with §§ 1830 and 1831.
- 1821.5** Well registration labels shall be unique to each well registered in accordance with § 1806 and shall not be reused or duplicated for use by other registered or unregistered wells.
- 1822** **WELL CONSTRUCTION REQUIREMENTS: MONITORING WELL, OBSERVATION WELL, AND PIEZOMETER**
- 1822.1** The construction of a monitoring well, observation well, or piezometer shall be conducted by a method that allows for the determination of characteristics of the geologic materials under the site, unless otherwise approved by the Department in the well construction work plan.
- 1822.2** A monitoring well, observation well, or piezometer's uncompleted borehole shall not penetrate to a depth greater than the depth to be monitored, and any portion of the borehole that extends to a depth greater than the depth to be monitored shall be grouted completely to prevent vertical migration of contaminants.
- 1823** **WELL CONSTRUCTION REQUIREMENTS: CLOSED-LOOP GROUND SOURCE HEAT PUMP WELL**
- 1823.1** A closed-loop ground source heat pump system shall contain pipes, loops, or loop configurations that meet the requirements of this chapter.

- 1823.2** Unless otherwise specified in this chapter, closed-loop ground source heat pump well exchanger pipe and fitting materials shall meet the standards and specifications in the document *Closed-Loop/Geothermal Heat Pump Systems Design and Installation Standards*, Revised Edition 2008, published by the International Ground Source Heat Pump Association, Oklahoma State University, which is adopted and incorporated by reference.
- 1823.3** All closed-loop ground source heat pump well exchanger pipe and fitting materials shall be stenciled with the applicable American Society for Testing and Materials (ASTM) standard.
- 1823.4** If a closed-loop ground source heat pump well exchanger pipe and fitting materials do not meet the requirements of § 1823.2, the proper documentation of manufacturer specifications shall be supplied to the Department in the well construction work plan for approval.
- 1823.5** A closed-loop ground source heat pump system installer and licensed well driller shall be experienced, trained, certified, or accredited by a recognized professional organization specializing in the installation of ground source heat pump systems.
- 1823.6** A closed-loop ground source heat pump well and system shall not be designed or operated in a manner to allow system heating or cooling of soil, rock, or water beyond the property line where the well is sited.
- 1823.7** Permanent casing shall be used for a closed-loop ground source heat pump well sited on a property where a recognized environmental condition has been identified.
- 1823.8** Permanent casing for closed-loop ground source heat pump wells shall be constructed of new steel where organic contaminants are present.
- 1823.9** A closed-loop ground source heat pump well shall be constructed with a high density polyethylene (HDPE) factory manufactured pipe forming a loop, and shall be grouted in accordance with § 1818.15.
- 1823.10** Pipe joints and fittings installed and buried shall be socket or butt thermally fused or electro-fused according to the pipe manufacturer's specifications.
- 1823.11** Glued or clamped pipe joints shall not be used below ground.
- 1823.12** Dimensions for closed-loop ground source heat pump systems shall meet the following requirements:
- (a) A pipe with a diameter of less than one and one quarter inch (1.25 in.) (3.175 cm) (nominal) shall be manufactured in accordance with ASTM D-3035 with a minimum (based on pressure rating) dimension ratio of 11;
  - (b) A pipe with a diameter from one and one quarter inch (1.25 in.) (3.175 cm) (nominal) up to three inches (3 in.) (7.62 cm) in diameter shall be

manufactured in accordance with ASTM D-3035 with a minimum (based on pressure rating) dimension ratio of 11; and

- (c) A pipe with a diameter of three inches (3 in.) (7.62 cm) (nominal) and larger shall be manufactured in accordance with ASTM D-3035, with a minimum (based on pressure rating) dimension ratio of 17 or D-2447 (Schedule 40).

**1823.13** The closed-loop ground source heat pump boring diameter shall be a minimum of four inches (4 in.) to sufficiently allow the placement of grout using a tremie pipe and the heat exchanger loop piping.

**1823.14** Flushing, purging, pressure, and flow testing of closed-loop ground source well and system components shall meet the following requirements:

- (a) The loops shall be pressure tested before installation;
- (b) All horizontal components of the ground heat exchanger shall be flushed, pressure tested, and flow tested prior to backfilling;
- (c) The heat exchangers shall be tested hydrostatically at one hundred and fifty percent (150%) of the pipe design rating or three hundred percent (300%) of the system operating pressure, if this value is the smaller of the two; and
- (d) No visible leaks shall occur within a thirty (30) minute period.

**1823.15** All buried pipes and plumbing shall be marked with underground warning tape at a depth of twenty-four inches (24 in.).

**1823.16** All closed-loop ground source heat pump system piping shall be capped and protected until the manifold piping is ready to be connected.

**1823.17** All closed-loop ground source heat pump system piping shall be connected to the building in accordance with the manufacturer's recommendations and all local building and plumbing codes.

**1823.18** The solution contained in a closed-loop ground source heat pump well piping system shall not contain any substances that pose a hazard to the public health and safety or the environment and shall be:

- (a) Potable water; or
- (b) A food-grade quality antifreeze solution that is non-toxic, non-corrosive, long-lasting, and that does not exceed twenty percent (20%) antifreeze in solution.

**1823.19** Pressure testing of the closed-loop ground source heat pump system network shall be conducted prior to putting the system into operation.

**1823.20** No person shall install any other type of ground source heat pump system not specified in this chapter unless approved by the Department in the well construction work plan.

**1823.21** A person requesting the use of materials or procedures that differ from those provided in this section shall provide documentation demonstrating that the substitute materials or procedures are in compliance with relevant District construction codes and International Ground Source Heat Pump Association standards, and that such use would provide an equivalent material strength and durability.

**1823.22** The construction of an open-loop ground source heat pump system shall be prohibited.

**1824 WELL CONSTRUCTION REQUIREMENTS: GROUND FREEZE WELL**

**1824.1** The American Society for Testing and Materials (ASTM) standard A-120/A-53 steel shall be used for subsurface freeze pipes, unless otherwise approved in a well construction work plan by the Department in accordance with §§ 1803.10 and 1803.11.

**1824.2** The subsurface connections of steel freeze pipes installed in a ground freeze well shall be welded.

**1824.3** A ground freeze well system shall be installed by a licensed well driller experienced in installing ground freeze well systems or trained, certified, or accredited by a recognized professional organization specializing in the installation of ground freeze well systems.

**1824.4** Flushing, purging, pressure, and flow testing of a ground freeze well and system components shall meet the following requirements:

- (a) The loops shall be pressure tested before installation; and
- (b) All horizontal components of the ground freeze distribution manifold shall be flushed, pressure tested, and flow tested prior to backfilling.

**1824.5** No coolant fluid or refrigerant used in a ground freeze well system shall contain any substances that pose a hazard to public health and safety or the environment.

**1824.6** Pressure testing of the ground freeze well system shall be conducted and operating pressures shall be maintained in accordance with the manufacturer's specifications prior to putting the system into operation.

**1825 WELL CONSTRUCTION REQUIREMENTS: RECOVERY WELL**

**1825.1** The materials and the methods used to construct, maintain, and abandon a recovery well shall be compatible with the chemical and physical properties of the pollutants known to exist or potentially exist where a well will be sited.

**1825.2** A recovery well borehole shall not penetrate to a depth greater than the depth from which contaminants are to be recovered.

**1825.3** If a well or borehole extends to a depth greater than the depth from which contaminants are to be recovered, the well or borehole shall be grouted in accordance with § 1818 to prevent vertical migration of contaminants.

**1825.4** No person shall discharge the effluent of a recovery well to the waters of the District prior to obtaining all applicable District and federal permits.

**1826 WELL CONSTRUCTION REQUIREMENTS: REPORTING**

**1826.1** Within sixty (60) calendar days of construction of a new well, a well owner shall provide a well completion report to the Department in accordance with the reporting requirements of § 1826.3.

**1826.2** A well completion report shall not be required for a well currently under a Department regulatory action, or for a well that is exempt from the well construction building permit requirement pursuant to § 1802.

**1826.3** A well completion report submitted to the Department shall include the following details:

- (a) The well owner's name, mailing address, telephone number, and electronic mailing address;
- (b) The property owner's name, mailing address, telephone number, and electronic mailing address, if different from the information provided pursuant to § 1826.3(a);
- (c) The physical location of the property on which the well is sited, in the form of a physical address, a square, suffix, and lot, or closest physical location identifier;
- (d) The well construction as-built schematic detailing the well construction;
- (e) The intended use of the well;
- (f) The building permit number;
- (g) The well registration number;
- (h) The well construction completion date;
- (i) The horizontal location of the well using either the Maryland State Plane Coordinate System or latitude and longitude;
- (j) The vertical elevation of the well casing based upon the North American Datum 1988 (NAVD88), if required;



- (k) The placement and description of any equipment or materials that were or could be placed in the well such as, pumps or liners, or any water-impacting activities;
- (l) The geological boring logs;
- (m) The well development logs;
- (n) A statement signed by the well owner that the well was constructed in accordance with well construction building permit issued by DCRA, the well construction work plan, the well registration, and in accordance with the well construction procedures of this chapter; and
- (o) Any other relevant information not included in the well construction building permit application or the well registration application.

**1827 WELL USE AND MAINTENANCE: GENERAL**

- 1827.1** A well owner shall maintain a well in a manner that does not pose a hazard to public health and safety or the environment.
- 1827.2** The well owner shall ensure that the use and maintenance of a well is conducted in accordance with the well construction building permit, the well construction work plan, the well registration conditions, and all District and federal laws and regulations.
- 1827.3** If a well owner is unable or unwilling to use or maintain a well in accordance with § 1827.2, the well owner shall:
- (a) Submit a request to the Department for special standards in accordance with the requirements of §§ 1803.10 and 1803.11; or
  - (b) Abandon the well in accordance with §§ 1830 and 1831.
- 1827.4** If the maintenance of a well requires a modification or material change to the original permitted design, specifications, use, or construction of the well, a well owner shall submit a well construction work plan for review and approval by the Department.
- 1827.5** Within sixty (60) days of work completed in accordance with § 1827.4, the well owner shall submit to the Department a report detailing the work that was performed with supporting documentation.
- 1827.6** No person shall use or maintain a well that may significantly deplete or degrade groundwater resources or significantly interfere with groundwater recharge.

- 1827.7** No person shall discharge fluids withdrawn from a well to a separate stormwater sewer or waters of the District that may cause a violation of the District Water Quality Standards in Chapter 11 of Title 21 of the District of Columbia Municipal Regulations (DCMR), result in acute or chronic exposure to aquatic biota, or pose a hazard to the public health and safety or the environment, without obtaining applicable District and federal permits.
- 1827.8** A well owner shall ensure that sampling equipment used in a well is free of contaminants and that decontamination procedures are performed in accordance with EPA-approved procedures.
- 1827.9** A well owner shall ensure that dedicated sampling equipment used in a well is maintained in accordance with the manufacturer's specifications and does not pose a hazard to public health and safety or the environment.
- 1827.10** A well owner shall use materials for the maintenance of a well that meets the requirements for new construction, in accordance with §§ 1815 through 1826.
- 1827.11** A well owner shall notify the Department within twenty-four (24) hours of discovery of damage to a well or a well not operating in accordance with its approved use.
- 1827.12** No person shall maintain a well through the application of chemical treatment except in accordance with a well maintenance work plan reviewed and approved by the Department.
- 1827.13** A well owner shall repair or replace broken, punctured, or otherwise defective or unserviceable well casing, well screen, fixtures, seals, or any part of the well head, or the well owner shall properly abandon and seal the well as specified in §§ 1830 and 1831.
- 1828** **WELL USE AND MAINTENANCE: MONITORING OR OBSERVATION WELL**
- 1828.1** When conducting the well development of a monitoring or observation well, a well owner shall allow groundwater flow conditions to equilibrate prior to purging the well.
- 1828.2** If the well construction or well development methods introduced fluids, following the development of the well, a well owner shall allow the well to rest at least seven (7) days prior to purging and sampling.
- 1828.3** Prior to sampling a monitoring or observation well, a person shall purge the well to facilitate collection of an accurate, reproducible, and representative groundwater sample, in accordance with appropriate EPA-approved sampling procedures.

**1828.4** An owner of a monitoring or observation well shall maintain the well to ensure that any testing procedures are appropriate for the intended use as stated on the well construction building permit and in the well construction work plan.

**1828.5** An owner of a monitoring or observation well shall comply with the data collection requirements of the District's Water Quality Monitoring Regulations in Chapter 19 of Title 21 DCMR if the results are to be submitted to the Department for regulatory and applicable decision-making purposes.

**1829 WELL USE AND MAINTENANCE: INJECTION WELL**

**1829.1** A well owner shall obtain written approval from the Department in accordance with the requirements of this chapter for the injection of a substance into a well or an injection system within the District.

**1829.2** A well owner shall obtain an EPA Underground Injection Control Permit or an exemption from such permit for the injection of a substance into a well or an injection system within the District.

**1829.3** A well owner or a person responsible for injecting a fluid into a well by active or passive means shall prevent, to the maximum extent possible, the migration of a hazardous substance, a hazardous waste, or a pollutant beyond the boundary of the property where the well is sited, to a human or ecological receptor, or to the waters of the District.

**1829.4** A well owner or a person responsible for injecting a fluid into a well shall minimize any negative impact to the natural degradation of a contaminant not targeted for treatment by the injection system.

**1829.5** A person responsible for injecting water into a well for testing purposes, including determining soil hydraulic conductivity, shall ensure that the water is clean, potable, and meets the District Water Quality Standards in Chapter 11 of Title 21 of the District of Columbia Municipal Regulations.

**1830 WELL ABANDONMENT REQUIREMENTS: GENERAL**

**1830.1** Except in accordance with §§ 1802.3 and 1802.7, at least thirty (30) days prior to abandoning a well, a well owner shall submit to the Department a well abandonment work plan for review and approval by the Department.

**1830.2** A well abandonment work plan submitted to the Department shall include the following details, in addition to the information provided in § 1826.3:

- (a) The reason(s) for abandonment;
- (b) The depth and diameter of the well;
- (c) The well abandonment details, including the procedures and materials used;

- (d) The details describing how any waste materials from the abandoned well or derived from well abandonment will be collected and disposed of in accordance with District and federal laws and regulations;
- (e) The details regarding the well's condition and whether or not any obstructions exist that may potentially interfere with the abandonment processes;
- (f) The well driller's name, address, telephone number, electronic mailing address, a copy of the pertinent Department of Consumer and Regulatory Affairs licenses, and a copy of the well driller's license;
- (g) A statement signed by the well owner that the well will be abandoned in accordance with the well abandonment requirements of this chapter; and
- (h) Any other relevant details.

**1830.3** A well shall be abandoned in accordance with the approved well abandonment work plan within sixty (60) days of Department approval of the plan.

**1830.4** During the abandonment of a well, a Department-approved well abandonment work plan may be modified only if:

- (a) The well owner immediately notifies the Department;
- (b) The modification of the well construction building permit, and well construction work plan, or well abandonment work plan does not violate District or federal laws or regulations; and
- (c) A well abandonment report is submitted to the Department detailing the modifications or revisions to the well abandonment work plan.

**1830.5** If additional time is required to abandon a well a request may be submitted to the Department in accordance with §§ 1803.10 and 1803.11.

**1830.6** A dewatering well shall be permanently abandoned in accordance with the requirements of this chapter as soon as the dewatering period ends, but no later than seven (7) calendar days following the termination of pumping.

## **1831 WELL ABANDONMENT PROCEDURES**

**1831.1** A person abandoning a well shall, if feasible, remove all obstructions that may interfere with the effective sealing operations by cleaning out the borehole or re-drilling.

**1831.2** A person abandoning a well shall remove all well upper terminus completion structures and well casing.

- 1831.3** If the removal of the well casing or obstructions is not feasible, the following shall be performed to ensure that the well casing and annulus or voids are filled with sealing or fill materials:
- (a) Rip or perforate the well casing below ground surface;
  - (b) Over-drill the well casing for removal; or
  - (c) Submit an alternate abandonment procedure to the Department for approval in accordance with §§ 1803.10 and 1803.11.
- 1831.4** The abandoned well shall be completely filled and sealed in such a manner that vertical fluid migration within the well, including the annulus surrounding the well casing, is effectively and permanently prevented.
- 1831.5** The following materials shall be used for filling and sealing a well for abandonment:
- (a) A sodium-based bentonite slurry; or
  - (b) Hydrated, medium size, sodium-based bentonite chips or pellets, if:
    - (1) The diameter of the well casing is less than one and one-quarter inches (1.25 in.) and the well is not over-drilled for abandonment; or
    - (2) The well is no more than ten (10) feet below ground surface; and
      - (i) The terminus of the well does not intersect the water table; and
      - (ii) The well is sited greater than twenty-five feet (25 ft.) from the mean high watermark of a waters of the District or waters of the United States of America and twenty-five feet (25 ft.) from a wetland.
- 1831.6** In the event the diameter of a well does not allow for a slurry mixture to be emplaced using a tremie pipe, sodium-based chips or pellets shall be used in accordance with § 1818.
- 1831.7** Clay, silt, sand, gravel, crushed stone, and mixtures of these materials are considered fill material, and shall only be used under the following conditions:
- (a) In soil borings in areas where no known or suspected, historic or current, groundwater or soil contamination exists;
  - (b) In a manner that shall mimic the original, stratigraphic layering of geologic units;
  - (c) In a manner that shall not create a conduit between aquifers;

- (d) In a manner that shall not cause negative impacts to groundwater quantity or quality; and
- (e) With prior written approval of the Department in accordance with §§ 1803.10 and 1803.11 or 1830.1.

**1831.8** A well shall be abandoned by filling it with the appropriate sealing materials introduced at the bottom of the well by using a tremie pipe and placed progressively upward to at least two feet (2 ft.) below ground surface.

**1831.9** The abandoned well shall be furnished with suitable materials to create a final cover similar to that of the surrounding area, such as a cold patch, or a non-coal tar based hot patch, or native soils or a combination of these materials.

**1831.10** All abandonment sealing material shall be placed in one continuous operation using methods that prevent free fall, bridging, dilution, or separation of aggregates from cementing materials, unless otherwise approved by the Department.

**1831.11** A well in a consolidated formation shall be filled by placing gravel in the water producing zones, and cement or cement-grout in accordance with § 1818.14 in the non-water producing zones to the ground surface. A suitable packer shall be placed between the gravel and the sealing material.

**1831.12** A well penetrating a confined and multiple aquifer formation shall be abandoned by placing sealing materials throughout the confining horizon and water producing zone(s).

**1831.13** In a well penetrating a consolidated formation where known contaminants exist, only cement or cement-grout in accordance with § 1818.14 shall be used to seal and abandon a well.

**1831.14** In a multiple aquifer well, the well shall be filled and sealed in such a way that exchange of water from one aquifer to another is prevented and all fluids are permanently confined to the specific strata in which they were first encountered.

**1831.15** A person abandoning a closed-loop ground source heat pump well or ground freeze well shall comply with the following procedure:

- (a) Pressure test the closed-loop system including the well and header piping, to identify any leaks and isolate and seal them with high solids, low-permeability grout equal to or less than  $1 \times 10^{-7}$  cm/s;
- (b) Capture any circulation fluids and flush the loop piping with potable water to remove all contaminants in non-leaky piping systems;
- (c) Conduct a laboratory analysis of the final flush (abandonment solution) and submit the results to the Department;
- (d) After pressure testing and flushing the system, fill the loops with potable water;

- (e) Cut off the piping in the well at least five feet (5 ft.) below the ground surface and seal it with a permanent fusion cap;
- (f) If gaps are found in the annulus grout seal during the decommissioning process, pump grout into the deficient borehole annulus in a continuous operation until undiluted grout returns to the surface;
- (g) If there is visual evidence of subsidence greater than one foot (1 ft.) at a well, excavate the ground to the top of the well, and grout the open well using a tremie pipe or by surface methods consistent with the requirements of § 1818;
- (h) If a previously decommissioned closed-loop ground source heat pump system is breached and no known contaminant is present, reseal the system using a permanent fusion cap; and
- (i) If contaminants are known or suspected to have entered a damaged pipe, purge the pipe again, fill it with potable water, and reseal.

## **1832 INSPECTION**

**1832.1** Upon the presentation of appropriate credentials to the well owner and the property owner where a well is sited, the Department may:

- (a) Access the property where a well is sited;
- (b) Inspect and copy any records kept in accordance with this chapter, including any reports, information, or analytical data; and
- (c) Inspect and collect a sample of any soil or water to assist in regulating the quality of waters of the District and ensuring compliance with this chapter, or with conditions stated in the well construction building permit or well registration.

**1832.2** If the construction, maintenance, or abandonment of a well is conducted contrary to the approved well construction building permit or work plan or in a manner that poses or causes a hazard to the public health and safety or the environment, the well owner shall immediately stop all work and immediately notify the Department.

**1832.3** A well owner shall ensure that the Department-approved well construction building permit and work plan are present at the site during well construction activities and available to the Department's site inspector upon request.

## **1833 ENFORCEMENT AND PENALTIES**

**1833.1** The Department may issue an order requiring compliance with this chapter or elimination of any violation.

- 1833.2** The Department may order a well owner to abandon a well in accordance with §§ 1830 and 1831 if the Department determines that any of the following conditions apply:
- (a) The well poses a hazard to public health and safety or the environment; or
  - (b) The well is not constructed in accordance with the standards of this chapter.
- 1833.3** No person shall continue any work related to the construction, maintenance, or abandonment of a well for which a stop work order has been served, except such work as the person has been directed by the Department to perform to correct a violation.
- 1833.4** Each instance or day of a violation of each provision of this chapter shall be a separate violation.
- 1833.5** The Department may seek criminal prosecution if a person violates a provision of this chapter, pursuant to the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code § 8-103.16).
- 1833.6** The Department may bring a civil action in the Superior Court of the District of Columbia, or any other court of competent jurisdiction, for civil penalties, damages, and injunctive or other appropriate relief, pursuant to the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.17 and 8-103.18).
- 1833.7** As an alternative to a civil action, the Department may impose an administrative civil fine, penalty, and order for costs and expenses 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.*)
- 1833.8** When civil infraction fines are the only penalties pursued in a particular case, 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 §§ 2-1801.01 *et seq.*) and the regulations adopted thereunder shall govern the proceedings in lieu of this chapter, and where there is a violation, a notice of infraction may be issued without first issuing a notice of violation or threatened violation.
- 1833.9** Except when otherwise provided by statute, a person violating a provision of this chapter shall be fined according to the schedule set forth in Title 16 of the District of Columbia Municipal Regulations.



**1833.10** Neither a criminal prosecution nor the imposition of a civil fine or penalty shall preclude an administrative or judicial civil action for injunctive relief or damages, including an action to prevent unlawful construction or to restrain, correct, or abate a violation on or about any premises, or to recover costs, fees, or money damages, except that a person shall not, for the same violation of this chapter, be assessed a civil fine and penalty through both the judicial and the administrative processes.

**1834 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW**

**1834.1** With respect to a matter governed by this chapter, a person adversely affected or aggrieved by an 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.

**1834.2** For the purposes of this chapter, an action of the Department taken with respect to a person includes:

- (a) An approval;
- (b) A denial;
- (c) A modification;
- (d) An order;
- (e) A notice of infraction;
- (f) A determination; or
- (g) Any other action of the Department which constitutes the consummation of the Department's decision-making process and is determinative of a person's rights or obligations.

**1834.3** A person aggrieved by an action of the Department shall file a written appeal with OAH within the following time period:

- (a) Within fifteen (15) calendar days of service of the notice of the action; or
- (b) Within another period of time, if expressly provided in a section of this chapter governing a particular Department action.

**1834.4** Notwithstanding another provision of this section, the Department may toll a period for filing an administrative appeal with OAH if it does so explicitly in writing before the period expires.

**1834.5** OAH shall:

- (a) Resolve an appeal or 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) By its final decision render a final agency action which will be subject to judicial review.

**1834.6** 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.

**1834.7** The burden of proof in an appeal of an action of the Department shall be allocated to the person who appeals the action, except the Department shall bear the ultimate burden of proof when it denies a right.

**1834.8** The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:

- (a) To the Department when a party challenges the Department's suspension, revocation, or termination of a:
  - (1) Permit; or
  - (2) Other right;
- (b) To the party who asserts an affirmative defense; and
- (c) To the party who asserts an exception to the requirements or prohibitions of a statute or rule.

**1834.9** 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.

**1834.10** 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 according to the rules of the court.

**1899**            **DEFINITIONS**

1899.1            When used in this chapter, the following terms shall have the meanings ascribed (definitions that are codified in the relevant Acts are indicated as [Statutory], and are reprinted below for regulatory efficiency):

**Abandonment** - the act of properly sealing a well.

**Annulus** - the space between two cylindrical objects one of which surrounds the other, such as the space between a drill hole and a well casing pipe or between two well casings.

**Aquifer** - a geologic unit or formation that is water bearing and yields water.

**Aquifer cross-contamination** - a hydraulic connection between two aquifers that allows contamination to move from one aquifer to another.

**ASTM** – the American Society for Testing Materials.

**Casing** - the pipe or tubing, constructed of specific materials with specified dimensions and weights, which is installed in a borehole during or after completion of a well, to prevent formation material from entering the well, and to prevent entry of undesirable substances into the well.

**Closed-loop ground source heat pump system** - a ground source heat pump system that utilizes closed-loop ground source heat pump wells.

**Closed-loop ground source heat pump well** - a well in which fluid is circulated in a continuous closed-loop fluid system, installed beneath the surface of the earth or in a medium where the system can obtain sufficient cooling or heat exchange.

**Confined aquifer** - an aquifer bounded above and below by confining units.

**Confining unit** - a body of impermeable or distinctly less permeable material above or below an aquifer.

**Consolidated formation** - any geologic formation in which the earth materials have become firm and coherent through natural rock forming processes.

**Contaminant** - a biological, chemical, physical, or radiological material that poses a hazard to public health and safety or the environment, or interferes with a designated or beneficial use of the District of Columbia's waters.

**DCRA** – the District of Columbia Department of Consumer and Regulatory Affairs.

**Department** – the Department of Energy and Environment.

**Department regulatory action** - a Department action(s), including remedial or removal actions, performed under the Voluntary Remedial Action Program, pursuant to Section 6213 of Title 20 of the District of Columbia Municipal Regulations (DCMR); the District of Columbia Underground Storage Tank Management Act of 1990, as amended, D.C. Official Code §§ 8-113.01 *et seq.*, and its implementing regulations in Chapters 55-70 of Title 20 DCMR; the Voluntary Cleanup Program, pursuant to D.C. Official Code §§ 8-633.01 *et seq.*; or the District of Columbia Brownfield Revitalization Amendment Act of 2000, as amended; D.C. Official Code §§ 8-631 *et seq.*

**Derived waste** - any unwanted, or discarded material, solid, liquid, or gas, that is derived from well construction, operations, maintenance, and abandonment activities including drill cuttings, drilling fluids, mud slurries, or well decontamination, development or purge waters.

**Dewatering well** - a well used to lower groundwater levels for construction such as for footings, sewer lines, building foundations, elevator shafts, or parking garages.

**Discharge** - spilling, leaking, releasing, pumping, pouring, emitting, emptying, or dumping of any pollutant or hazardous substance, including a discharge from a storm sewer, into or so that it may enter District of Columbia waters. [Statutory]

**District** - the District of Columbia. [Statutory]

**Domestic supply well** - a water supply well used for potable water supply purposes, including drinking, bathing, showering, cooking, dishwashing, and maintaining oral hygiene.

**Drill cuttings** - any material, typically solids, removed from a borehole during drilling activities.

**Drilling fluid** - water or air-based fluid used in a well drilling operation.

**EPA** – the United States Environmental Protection Agency.

**Filter pack** - clean, well-rounded, smooth, uniform sand or gravel, which is placed in the annulus of the well between the borehole wall and the well screen to prevent formation material from entering the well.

**Floodplain** - a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river, or watercourse; or any area subject to the usual and rapid accumulation of surface waters from any source; as depicted in the Flood Insurance Rate Map and Flood Insurance Study for the District prepared by the Federal Emergency Management Agency.

**Formation** - a distinct assemblage of earth materials, consolidated or unconsolidated, grouped together into a unit that is convenient for description or mapping.

**Gravel** - any loose rock that is larger than two millimeters (2 mm).

**Ground freeze well** – a well constructed for the installation of subsurface freeze pipes designed to freeze the surrounding soil and groundwater to increase their combined strength and create an impervious strata; ground freezing is typically used for construction of shafts, deep excavations, tunnels, groundwater control, structural underpinning, and containment of hazardous waste.

**Ground source heat pump system** - a mechanical system for heating and cooling that utilizes the naturally occurring, ambient ground temperature and the transfer of thermal energy to or from the earth.

**Groundwater** - underground water, except for water in pipes, tanks, and other containers created or set up by people.

**Grout** - any stable, impervious, bonding material reasonably free of shrinkage which is capable of providing a water-tight seal in the annular spaces of a well.

**Hazardous Substance** - any toxic pollutant referenced in or designated in or pursuant to § 307(a) of the Federal Water Pollution Control Act; any substance designated pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act; or any hazardous waste having the characteristics of those identified under or listed pursuant to the District of Columbia Hazardous Waste Management Act of 1977, as amended.

**Hazardous waste** - any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes include, but are not limited to, those which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste.

**Industrial supply well** - a non-potable water supply well used to supply water to an industrial or commercial facility for use in the production of goods and services.

**Infiltration test** - any method used to measure the rate of stormwater as it moves vertically through the soil profile.

**Infiltration/Exfiltration well** - below ground surface device primarily used to detain stormwater runoff before allowing it to infiltrate the device's sidewalls and bottom prior to treatment and release to the surrounding soil.

**Injection well** - a well through which liquid or gas is injected, under pressure or gravity flow, into the subsurface for the purpose of maintaining formation pressure, recharging the aquifer, or the treatment of contaminants.

**Installation** - any structure, equipment, facility, or appurtenances thereto, operation, or activity which may be a source of pollution.

**Irrigation supply well** - a non-potable water supply well used for irrigating land, crops, or other plants other than household lawns and gardens.

**Licensed well driller** - a person licensed by a state or federal district to be responsible for on-site work relating to the drilling, construction, development, testing, maintenance or abandonment of a well; well rehabilitation and repair; and the installation, modification, or repair of a well pump or related equipment.

**Lot** - a lot recorded on the records of the Surveyor of the District of Columbia.

**Maintenance** - any action undertaken to prevent the deterioration of a well from its original permitted and registered specifications or any action undertaken to restore a well to its original permitted and registered specifications, enabling a well to operate according to its intended use.

**Modification** - the alteration or rework of a well involving a material change in the original permitted design or construction, including but not limited to deepening, increasing the diameter, casing, perforating, and screen removal.

**Monitoring well** - a well installed for the sole purpose of assessing subsurface conditions and collecting groundwater samples.

**Multi-layer aquifer** – an aquifer containing unconsolidated units of varying permeability or zones bound by confining units.

**Non-point source** - any source from which pollutants are or may be discharged other than a point source.

**Observation well** - a well used for the sole purpose of determining groundwater levels.

**Open-loop ground source heat pump system** - a ground source heat pump system that withdraws groundwater from a well for use in the heat

exchange unit of the system and then discharges the groundwater to the aquifer via a return well or standing column well or to a surface water body.

**Person** - any individual, including any owner or operator as defined in this chapter; partnership; corporation, including a government corporation; trust association; firm; joint stock company; organization; commission; the District or federal government; or any other entity. [Statutory]

**Piezometer** - a non-pumping, non-potable well used for measuring ground water levels or potentiometric surface.

**Point source** - any discrete source of quantifiable pollutants, including but not limited to a municipal treatment facility discharge, residential, commercial or industrial waste discharge or a combined sewer overflow; or any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. [Statutory]

**Pollutant** - any substance which may alter or interfere with the restoration or maintenance of the chemical, physical, radiological, and biological integrity of the waters of the District; or any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemicals, chemical wastes, hazardous wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, oil, gasoline and related petroleum products, and industrial, municipal, and agricultural wastes. [Statutory]

**Potable** - water that is free from impurities in amounts sufficient to cause disease or harmful physiological effects and that conforms with the National Primary Drinking Water Standards as listed in 40 C.F.R. § Part 141.

**Potentiometric surface** - a surface representing the hydraulic head of ground water, represented by the water-table altitude in an unconfined aquifer or by the altitude to which water will rise in a properly constructed well in a confined aquifer.

**Pressure grouting** - a process by which grout is confined within the borehole or casing and by which sufficient pressure is applied to drive the grout into and within the annular space or zone to be grouted.

**Property owner** - a person listed as the legal titleholder of record of real property.

**Purge** - the act of removing groundwater from a well to collect groundwater samples that are representative of aquifer conditions, commonly accomplished by using a pump, prior to collecting accurate, reproducible,

and representative groundwater samples for field and/or laboratory analysis.

**Recognized environmental condition** - the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property due to any release to the environment, under conditions indicative of a release to the environment or, under conditions that pose a material threat of future release to the environment. The term includes hazardous substances or petroleum products even under conditions in compliance with laws and regulations.

**Recovery well** - a well used to withdraw groundwater for disposal or treatment of contaminants contained within the groundwater.

**Remediation** - an activity performed with the intent to recover, dispose of, clean up, or treat pollutants or contaminants.

**Sanitary protection** - any means of protecting groundwater from contaminants from entering a well.

**Separate stormwater sewer** - a system of pipes or other conduits, including road drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains, used to convey untreated stormwater directly to waters of the District and not part of a combined or sanitary sewer systems.

**Site** - a tract, lot, or parcel of land, or a combination of tracts, lots, or parcels of land for which development is undertaken as part of a unit, sub-division, or project.

**Sodium-based bentonite** - a plastic, colloidal clay derived from volcanic ash consisting of at least eighty-five percent (85%) montmorillonite, with an ability to absorb fresh water and swell in volume.

**Soil Boring** - a well constructed without the installation of a well casing, well screen, or the placement of other construction materials down hole, for the purpose of determining the physical or chemical characteristics of soil or groundwater.

**Standard Dimension Ratio (SDR)** - the quotient obtained when the outside diameter of thermoplastic well casing is divided by the wall thickness.

**Stormwater Management Guidebook** - the current manual published by the Department containing design criteria, specifications, and equations to be used for planning, design, and construction, operations, and maintenance of stormwater and best management practices.



**Surface water** - all of the rivers, lakes, ponds, wetlands, inland waters, streams, and all other water and water courses within the jurisdiction of the District of Columbia.

**Temporary well casing** - a durable pipe placed or driven into a borehole to maintain an open annular space around the permanent casing during construction of a well.

**Unconfined aquifer** - an aquifer in which no relatively impermeable layer exists between the water table and the ground surface and an aquifer in which the water surface is at atmospheric pressure.

**Unconsolidated formation or aquifer** - any loosely cemented or poorly indurated earth material including such materials as uncompacted gravel, sand, silt and clay. Alluvium, soil, and overburden are terms frequently used to describe such formations.

**Waters of the District** - flowing and still bodies of water, whether artificial or natural, whether underground or on land, so long as in the District of Columbia, but excludes water on private property prevented from reaching underground or land watercourses, and also excludes water in closed collection or distribution systems. [Statutory]

**Water Quality or Quality of Water** – refers to the chemical, physical, biological, and radiological characteristics of water.

**Water supply well** - a potable or non-potable well used to supply water for industrial, irrigation, or domestic purposes.

**Well** - any test hole, shaft, or soil excavation created by any means including, but not limited to, drilling, coring, boring, washing, driving, digging, or jetting, for purposes including, but not limited to, locating, testing, diverting, artificially recharging, or withdrawing fluids, or for the purpose of underground injection. [Statutory]

**Well casing** - a pipe placed in a borehole to provide unobstructed access to the subsurface or to provide protection of groundwater during and after well installation, or both. Inner well casing (also known as riser pipe) which extends from the well screen to or above the ground surface provides access to groundwater from the surface and outer well casing is used to prevent migration of contaminants from one aquifer to another.

**Well construction building permit** - a building permit issued by DCRA with a well construction work plan approved by the Department.

**Well development** - the act of removing fine particulate matter or fluids used during the construction of a well to clear the well and establish a good hydraulic connection with the surrounding aquifer by any means, including surging, jetting, overpumping, and bailing.

**Well owner** - a person who has the legal right to construct a well for personal use or for the use of another person. [Statutory]

**Well screen** - a structural device which supports the well excavation, allows entrance of sub-surface fluids into a well or exit from a recharge well, and which acts as a filter to keep sediment from entering a well.

**Wetland** - a marsh, swamp or other area periodically inundated by tides or having saturated soil conditions for prolonged periods of time and capable of supporting aquatic vegetation. [Statutory]

The proposed regulations are available for viewing at <http://doee.dc.gov>. Additionally, a copy of these proposed regulations will be on file for viewing at the Martin Luther King, Jr. Library, 901 G St., NW, Washington, D.C. 20001 during normal business hours.

All persons desiring to comment on the proposed regulations should file comments in writing not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Comments should identify the commenter and be clearly marked "DOEE Well Regulations, Proposed Rule Comments." Comments may be (1) mailed or hand-delivered to DOEE, Water Quality Division, 1200 First Street NE, 5<sup>th</sup> Floor, Washington, D.C. 20001, Attention: DDOE Well Regulations, or (2) sent by e-mail to [DOEE.WellRegulations@dc.gov](mailto:DOEE.WellRegulations@dc.gov), with the subject indicated as "DOEE Well Regulations, Proposed Rule Comments."

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of an amendment to repeal Section 930, entitled “Nutrition Evaluation and Consultation Services,” of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Register (DCMR).

The repealed section established standards governing reimbursement of nutrition evaluation and consultation services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers for the period from November 2007 to November 2012. The renewal of the ID/DD Waiver, which was approved by the Council of the District of Columbia (Council) and by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012, no longer includes nutrition evaluation and consultation services as a separate service, but includes these services along with bereavement counseling, fitness training, massage therapy, and sexuality education in what are known as Wellness Services, 29 DCMR § 1936. The recent amendments to the ID/DD Waiver, which were approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2014 Repl. & 2015 Supp.)), and by CMS effective September 24, 2015, continue to include the former nutrition evaluation and consultation services as part of Wellness Services.

The Director of DHCF gives notice of the intent to take final rulemaking action to adopt the repeal of these rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 930, NUTRITION EVALUATION AND CONSULTATION SERVICES, is deleted in its entirety and amended to read as follows:**

**930 [REPEALED]**

Comments on these proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900, Washington, D.C. 20001, by telephone on

(202) 442-8742, by email at [DHCFPublicComments@dc.gov](mailto:DHCFPublicComments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF PROPOSED RULEMAKING**

**Z.C. Case No. 14-13B**

**(Text Amendment – 11 DCMR)**

**Minor Modification to Z.C. Order No. 14-13B (Penthouse Regulations)**

The Zoning Commission for the District of Columbia, (Commission) pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938, as amended (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its intent to amend the current and newly adopted versions of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (DCMR)) to make minor modifications to Z.C. Order No. 14-13 (Order). The Order, which took the form of a Notice of Final Rulemaking, adopted amendments to the currently effective version of the Zoning Regulations (Current Regulations) governing rooftop penthouses as well as conforming amendments to other provisions, including the provisions of Chapter 32, ADMINISTRATION AND ENFORCEMENT. The substance of the amendments was later included by the Commission in the version of Title 11 DCMR that will become effective on September 6, 2016 (2016 Regulations), which was adopted by the Commission through a Notice of Final Rulemaking published in Part II of the March 4, 2016 edition of the *District of Columbia Register*.

The Current Regulations provide that construction rights do not vest until a building permit is issued. (11 DCMR § 3202.4.) The 2016 Regulations contain a similar provision in Subtitle A § 304.4. The Commission proposes to add a new § 3202.12 to the Current Regulations and new Subtitle A § 304.13 to the 2016 Regulations to provide a limited exception to that rule if: (1) a building permit application for penthouse construction not involving a detached dwelling, semi-detached dwelling, rowhouse, or flat was filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs on or before November 19, 2015; and (2) the applicant had received a Letter of Zoning Compliance from the Zoning Administrator prior to that date. When those circumstances exist, the building permit may be processed, and any work authorized by the building permit may be carried to completion, pursuant to the provisions of the roof structure regulations in place as of November 19, 2015. The Commission is also proposing conforming amendments to § 3202.4 of the Current Regulations and Subtitle A § 301.4 of the 2016 Regulations.

The amendments are intended to address a circumstance brought to the attention of the Commission by the Office of Planning involving a building permit applicant that is unlikely to involve any other pending building permit application. As such, the Commission considered the amendments as being modifications of little or no importance or consequence and therefore properly proposed pursuant to 11 DCMR § 3030, which permits such modifications to be adopted without a hearing or referral to the National Capital Planning Commission.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**The following amendments to the Current Regulations are proposed:**

**Chapter 32, ADMINISTRATION AND ENFORCEMENT, of Title 11 DCMR, ZONING, is amended as follows:**

**§ 3202, BUILDING PERMITS, § 3202.4, is amended by striking the phrase “§§ 3202.8, 3202.9, and 3202.10” in the introductory text and replacing it with the phrase “3202.8 through 3202.12” so that the entire provision reads as follows:**

- 3202.4 Except as provided in §§ 3202.8 through 3202.12, any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:
- (a) The permit holder shall begin construction work within two (2) years of the date on which the permit is issued; and
  - (b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.

**A new § 3202.12 is added to read as follows:**

- 3202.12 Notwithstanding § 3202.4, a building permit application (including a foundation-to-grade permit application) (the Application) for construction involving any penthouse other than as restricted in § 411.5 may be processed, and any work authorized by the building permit may be carried to completion, pursuant to the provisions of the roof structure regulations in place as of November 19, 2015, if the Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs, and had received a Letter of Zoning Compliance from the Zoning Administrator prior to that date.

**The following amendments to the 2016 Regulations are proposed:**

**Chapter 3, ADMINISTRATION AND ENFORCEMENT, of Subtitle A of Title 11 DCMR, ZONING REGULATIONS OF 2016, is amended as follows:**

**§ 301, BUILDING PERMITS, § 301.4, is amended by striking the reference to § 301.11 in the introductory text and replacing it with a reference to new § 301.13 so that the entire provision reads as follows:**

- 301.4 Except as provided in §§ 301.9 through 301.13, any construction authorized by a permit may be carried to completion pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:

- (a) The permit holder shall begin construction work within two (2) years of the date on which the permit is issued; and
- (b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.

**New § 301.13 is added to read as follows:**

301.13 Notwithstanding Subtitle A § 301.4, a building permit application (including a foundation-to-grade permit application) (the Application) for construction involving any penthouse other than as restricted in Subtitle C § 1500.4 may be processed, and any work authorized by the building permit may be carried to completion, pursuant to the provisions of the roof structure regulations in place as of November 19, 2015, if the Application was legally filed with, and accepted as complete by, the Department of Consumer and Regulatory Affairs, and had received a Letter of Zoning Compliance from the Zoning Administrator prior to that date.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001, or electronic submissions may be submitted in PDF format through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx> or to [zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov). Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at [Sharon.Schellin@dc.gov](mailto:Sharon.Schellin@dc.gov). Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

**OFFICE OF CONTRACTING AND PROCUREMENT****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Chief Procurement Officer of the District of Columbia, pursuant to the authority set forth in Sections 204 and 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-352.04 and 2-361.06 (2012 Repl.)) (the “Act”), hereby gives notice of the adoption of the following emergency rules and of the intent to adopt a new Section 1617 and to amend Section 1699, of Chapter 16 (Procurement by Competitive Sealed Proposals), of Title 27 (Contracts and Procurement), of the District of Columbia Municipal Regulations (DCMR).

This rulemaking updates the regulations and outlines the procedures applicable to procurement by competitive proposals. This rulemaking establishes standards for the use of visual quality concepts (VQCs) and provides a definition of VQCs. The District Department of Transportation intends to use this method in the request for proposals process for the South Capitol Street Corridor project.

The emergency rulemaking is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, as it will facilitate a major infrastructure project that will include replacing the Frederick Douglass Memorial Bridge and transforming related sections of urban freeway into a scenic boulevard in order to increase pedestrian and vehicular safety, improve multi-modal transportation options, increase community accessibility and support economic development.

The emergency rules will remain in effect for up to one hundred twenty (120) days from March 3, 2016, the date of their adoption; thus, expiring on July 1, 2016, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

**Chapter 16, PROCUREMENT BY COMPETITIVE SEALED PROPOSALS, of Title 27 DCMR, CONTRACTS AND PROCUREMENT, is amended as follows:**

**A new Section 1617 is added to read as follows:**

**1617 VISUAL QUALITY CONCEPTS**

- 1617.1 An RFP for the construction of a road, bridge, or other transportation system, or a facility or structure appurtenant to a road, bridge, or other transportation system, may require offerors to submit visual quality concepts (VQCs) prior to the submission of their final technical proposals, for review and comment by the date specified in the RFP.
- 1617.2 A VQC shall represent the offeror’s approach to meeting the project design appearance goals set forth in the RFP.



- 1617.3 An RFP requiring offerors to submit VQCs must specifically state the requirements for the content of a VQC; procedures for submission and resubmission of VQCs, including the date by which the VQCs must be submitted; procedures for review of and comment on VQCs; procedures for confidential meetings related to the VQCs; and methods for evaluating VQCs.
- 1617.4 Before an offeror's submission of its technical proposal, the contracting officer shall meet with the offeror and discuss, on a confidential basis, whether the offeror's VQC meets the project design appearance goals set forth in the RFP. The contracting officer may invite to confidential meetings other attendees that the contracting officer deems useful for the purpose of assisting in the review of the VQC submitted by an offeror.
- 1617.5 The contracting officer may also seek confidential review of a VQC by anyone deemed useful by the contracting officer, including independent technical advisors, for the purpose of assisting in the evaluation of the VQC. Any such confidential review shall be subject to the requirements contained in § 1629.4 of this chapter.
- 1617.6 Following the confidential meeting and any confidential review, the contracting officer shall provide written comments to the offeror regarding whether the offeror's VQC meets the project design appearance goals set forth in the RFP. The contracting officer shall provide an offeror a reasonable opportunity to submit revisions to its VQC in response to the results of the confidential meeting or written comments issued to the offeror after the meeting. The written comments of the contracting officer shall set the date by which revisions to the VQC must be submitted by the offeror in order to be considered by the contracting officer.
- 1617.7 If the offeror submits, by the date set by the contracting officer in his or her written comments, a revised VQC in response to the results of the initial confidential meeting or written comments issued after the meeting, the contracting officer shall hold a second confidential meeting with the offeror and may seek confidential review of the revised VQC. Following the second confidential meeting and any confidential review, the contracting officer shall provide written comments to the offeror regarding whether the offeror's revised VQC meets the project design appearance goals set forth in the RFP.
- 1617.8 The contracting officer may allow the submission of an additional revised VQC in response to the results of the second confidential meeting or written comments issued after the second confidential meeting, if the contracting officer determines that allowing the submission of an additional revised VQC is in the best interests of the District. If the offeror is allowed to submit an additional revised VQC, the contracting officer may hold a third confidential meeting with the offeror and may seek confidential review of the revised VQC. Following any third confidential meeting and any confidential review, the contracting officer shall provide written

comments to the offeror regarding whether the offeror's additional revised VQC meets the project design appearance goals set forth in the RFP.

- 1617.9 The contracting officer shall not discuss any offeror's VQC at a confidential meeting other than the VQC of the offeror with whom the contracting officer is meeting.
- 1617.10 Nothing stated in a confidential meeting or included in a written record or summary of a meeting will modify the RFP unless it is incorporated into an amendment to the RFP.
- 1617.11 The offeror shall be solely responsible for ensuring that the final technical proposal complies with the requirements of the RFP.
- 1617.12 If an amendment to the RFP causes previously approved VQCs to become non-compliant with the project design appearance goals set forth in the RFP, then the offeror shall revise and resubmit its VQC for review and comment, in compliance with the terms of the amendment.

**Section 1699.1 is amended by adding the following definition:**

**1699 DEFINITIONS**

- 1699.1 When used in this chapter, the following words have the meanings ascribed:

**Visual quality concept** - an offeror's description of its approach to meeting the project design appearance goals set forth in the RFP.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Chief Procurement Officer, 441 4<sup>th</sup> Street, 700 South, Washington, D.C. 20001. Comments may be sent by email to [OCPRulemaking@dc.gov](mailto:OCPRulemaking@dc.gov) or may be submitted by postal mail or hand delivery to the address above. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

**Biosolids Distribution**

The Director of the Department of Energy and Environment (DOEE), pursuant to 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. & 2015 Supp.)); the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.* (2012 Repl. & 2015 Supp.)), and Mayor’s Order 2006-61, dated June 14, 2006, hereby gives notice of adoption on an emergency basis of amendments to Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR) by adding a new Chapter 17 (Biosolids Management) to authorize the distribution of exceptional quality biosolids in the District.

This emergency rulemaking establishes the conditions under which exceptional quality biosolids, blended exceptional quality biosolids, and composted exceptional quality biosolids may be distributed in the District. There is an immediate need to protect the health, safety, and welfare of District residents by establishing the conditions under which distributors may provide exceptional quality biosolids, composted exceptional quality biosolids, or blended exceptional quality biosolids as a source of plant nutrients and soil amendments. This rulemaking ensures that only the highest quality biosolids are permitted for distribution in the District, thereby furthering water quality and public welfare.

This emergency rule was adopted on March 28, 2016, and became effective immediately. This emergency rule will remain in effect for up to one hundred twenty (120) days, unless earlier superseded by a notice of final rulemaking.

DOEE also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice of proposed rulemaking in the *D.C. Register*. Directions for submitting comments may be found at the end of this notice.

**Title 21 DCMR, WATER AND SANITATION, is amended by adding a new Chapter 17, BIOSOLIDS MANAGEMENT, as follows:**

**CHAPTER 17 BIOSOLIDS MANAGEMENT**

- 1700**            **EXCEPTIONAL QUALITY BIOSOLIDS DISTRIBUTION**
- 1701**            **ENFORCEMENT**
- 1702-1705**    **[RESERVED]**
- 1799**            **DEFINITIONS**

**1700 EXCEPTIONAL QUALITY BIOSOLIDS DISTRIBUTION**

- 1700.1 The purpose of this chapter is to permit the sustainable and beneficial distribution of exceptional quality biosolids, composted exceptional quality biosolids, or blended exceptional quality biosolids for use in the District.
- 1700.2 Only exceptional quality biosolids, composted exceptional quality biosolids, or blended exceptional quality biosolids shall be distributed to the public in the District.
- 1700.4 A person shall be deemed to have an exceptional quality biosolids distribution permit-by-rule if the person meets the following requirements:
- (a) Distributes only exceptional quality biosolids, blended exceptional quality biosolids, and composted exceptional quality biosolids;
  - (b) Submits a written notice to the Department that includes the name, address, and telephone number of the permittee;
  - (c) Pursuant to the Anacostia River Clean Up and Protection Fertilizer Act of 2012, effective April 20, 2013 (D.C. Law 19-262; D.C. Official Code §§ 8-104.01 *et seq.*), provides a legible label with sufficient information to allow the person who receives and uses the exceptional quality biosolids, composted exceptional quality biosolids, or blended exceptional quality biosolids to determine an agronomic rate of application and application requirements;
  - (d) Maintains the following information that shall be available to the Department upon request:
    - (1) The quantity of exceptional quality biosolids distributed in the District; and
    - (2) Information demonstrating that the biosolids being distributed meet the ceiling concentrations in Table 1 of 40 C.F.R. § 503.13 and the pollutant concentrations in Table 3 of 40 C.F.R. § 503.13; the Class A pathogen requirements in 40 C.F.R. § 503.32(a); and one of the vector attraction reduction requirements in 40 C.F.R. § 503.33(b)(1) through (b)(8);
  - (e) Complies with the monitoring and reporting requirements for exceptional quality biosolids in 40 C.F.R. Part 503; and
  - (f) Complies with all other applicable District and federal laws and regulations.

1700.5 Distribution within the District of biosolids, blended biosolids, or composted biosolids that do not meet the requirements for a permit-by-rule under this chapter is prohibited, and will be subject to enforcement pursuant to Section 1701.

## 1701 ENFORCEMENT

1701.1 This chapter shall be enforced pursuant to the Water Pollution Control Act of 1984, as amended, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.15, 8-103.16, and 8-103.17), and the Water Pollution Enforcement Regulations, (21 DCMR Chapter 22 ).

1701.2 In any instance where a civil fine, penalty or fee has been established pursuant to the "Civil Infractions Act" (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq.*) and the "Civil Infractions Regulations" (Title 16 DCMR, Chapter 40), the civil fine, penalty or fee may be imposed as an alternative sanction to the penalties set forth in Subsection 1701.1.

## 1702- 1705 [RESERVED]

## 1799 DEFINITIONS

1799.1 When used in this chapter, the following terms shall have the meanings ascribed (some of the definitions were codified in the Act, indicated as [Statutory], and are reprinted below for regulatory efficiency):

**Act** - the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.*)

**Biosolids or Sludge** - the solid or semi-solid material removed from wastewater during treatment, including but not limited to grit, screenings, grease, oil, settleable solids, and chemicals added to the treatment processes.  
[Statutory]

**Blended Exceptional Quality Biosolids** - exceptional quality biosolids that are mixed with other materials, such as leaves, saw dust, and soil, and that meet the ceiling concentrations, pollutant concentrations, pathogen requirements, and vector attraction reduction requirements of exceptional quality biosolids.

**Clean Water Act** - the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

**Composted Exceptional Quality Biosolids** - exceptional quality biosolids treated by a biological process so as to achieve oxidation of the organic matter, dissipation of phytotoxic gases and offensive odors, and destruction of pathogens, and that meet the ceiling concentrations, pollutant concentrations, pathogen requirements, and vector attraction reduction requirements of exceptional quality biosolids.

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

**Distribution** - the physical removal of exceptional quality biosolids, composted exceptional quality biosolids, or blended exceptional quality biosolids from a generating, composting, blending, storage or distribution facility to barter, sell, offer to sell, consign, furnish, provide, or supply to wholesalers, dealers, retailers, or individuals as part of a commercial enterprise or giveaway program.

**Exceptional Quality Biosolids** - biosolids that meet the ceiling concentrations in Table 1 of 40 C.F.R. § 503.13 and the pollutant concentrations in Table 3 of 40 C.F.R. § 503.13; the Class A pathogen requirements in 40 C.F.R. § 503.32(a); and one of the vector attraction reduction requirements in 40 C.F.R. § 503.33(b)(1) through (b)(8).

**Permittee** – a person who distributes exceptional quality biosolids, blended exceptional quality biosolids or composted exceptional quality biosolids under the terms of this permit-by-rule.

**Person** - any individual, including any owner or operator as defined in this chapter or the Act; partnership; corporation, including a government corporation; trust association; firm; joint stock company; organization; commission; the District or federal government; or any other entity.  
[Statutory]

All persons desiring to comment on the proposed Biosolids Management regulations should file comments in writing not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Comments should be labeled “Review of the Biosolids Management Regulations” and filed with the Department of Energy and Environment, Water Quality Division, 1200 First Street, N.E., 5<sup>th</sup> Floor, Washington D.C. 20002, Attention: Collin R. Burrell, or by e-mail to [collin.burrell@dc.gov](mailto:collin.burrell@dc.gov).

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Section 1933, entitled “Supported Employment Services - Individual And Small Group Services,” of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These second emergency rules establish standards governing the reimbursement of supported employment services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and to establish conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Emergency Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2015 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

The most recent Notice of Final Rulemaking for 29 DCMR § 1933 (Supported Employment Services – Individual and Small Group Services) was published in the *D.C. Register* on April 4, 2014, at 61 DCR 003563. A Notice of Emergency and Proposed Rulemaking, published in the *D.C. Register* on January 8, 2016, at 63 DCR 000441, was adopted on December 29, 2015, became effective on that date, and will remain in effect until April 27, 2016, or until superseded by adoption of this rulemaking. The first emergency and proposed rules amended the previously published final rules by: (1) modifying rates based on the approved methodology; (2) barring the payment of stipends to attendees of Supported Employment services by the provider; (3) barring the Supported Employment provider from concurrently being the person’s employer and provider of Supported Employment services; (4) requiring that the purpose of small group supported employment is for the person to attain integrated employment; (5) clarifying which Medicaid reimbursable services occur in individual supported employment and which occur in small group supported employment; (6) requiring the use of Person-Centered Thinking and Discovery tools; (7) adding community mapping for the purposes of networking and job development, placement and mentoring to the list of Medicaid reimbursable intake and assessment activities; (8) including employment counseling on a person’s employment rights as an employees with a disability to the list of Medicaid reimbursable intake and assessment

activities; (9) clarifying the time that the assessment is due; (10) requiring that the assessment include information on natural supports; (11) adding to the list of Medicaid reimbursable job placement and development activities, including the addition of benefits counseling; (12) using people first respectful language; (13) adding to the list of Medicaid reimbursable job training and support activities including training on the use of assistive technology; (14) clarifying when benefits counseling should occur; (15) requiring the provider to participate in a person's support team at the person's preference; (16) requiring that providers of Medicaid reimbursable supported employment services must also be enrolled as a provider for the Rehabilitation Services Administration by September 23, 2016, for current providers, or within one year of becoming a supported employment provider; and (17) adding sanctions for delays in providing required documents. DHCF did not receive comments to the first emergency and proposed rulemaking. DHCF is promulgating this Notice of Second Emergency and Proposed Rulemaking to (a) continue the changes reflected in the first notice of emergency and proposed rulemaking described above; (b) clarify that intake and assessment activities are limited to individual supported employment services; (c) fix a mathematical error in the computation of the hourly rate for paraprofessional services in Subsections 1933.42 to 1933.44; (d) modify the reimbursement rates in Subsections 1933.42 to 1933.45 to correspond with ID/DD Waiver Year 4 rates; and (e) clarify through the reimbursement rates in Subsections 1933.42 to 1933.45 that small group supported employment services are provided with a staffing ratio of one paraprofessional to not more than four persons.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of supported employment services. The new requirements will enhance the quality of services and the rate modifications will correspond with ID/DD Waiver Year 4. Therefore, in order to ensure that the residents' health, safety, and welfare are not threatened by lack of access to supported employment provided pursuant to the updated delivery guidelines, it is necessary that these rules be published on an emergency basis.

The second emergency rulemaking was adopted on April 6, 2016, and became effective on that date. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until August 4, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 1933, SUPPORTED EMPLOYMENT SERVICES - INDIVIDUAL AND SMALL GROUP SERVICES, is deleted in its entirety and amended to read as follows:**

**1933 SUPPORTED EMPLOYMENT SERVICES - INDIVIDUAL AND SMALL GROUP SERVICES**



- 1933.1 This section shall establish standards governing Medicaid eligibility for supported employment services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and shall establish conditions of participation for providers of supported employment services.
- 1933.2 Medicaid reimbursable supported employment services are designed to provide opportunities for persons with disabilities to obtain competitive work in integrated work settings, at minimum wage or higher and at a rate comparable to workers without disabilities performing the same tasks.
- 1933.3 Medicaid reimbursable supported employment services may be delivered individually or in a small group.
- 1933.4 Medicaid reimbursable small group supported employment services are services and training activities that are provided in regular business, industry, or community setting for groups of two (2) to eight (8) workers.
- 1933.5 Small group supported employment services is intended to enable the person to become part of a competitive, integrated work setting.
- 1933.6 In order to receive Medicaid reimbursement for supported employment services, the person receiving services shall:
- (a) Be interested in obtaining full-time or part-time employment in an integrated work setting; and
  - (b) Demonstrate that a previous application for the District of Columbia Rehabilitation Services Administration (RSA) funded supported employment services was made, by the submission of a letter documenting either ineligibility for RSA services or the completion of RSA services with the recommendation for long-term employment support.
- 1933.7 Medicaid reimbursable supported employment services shall:
- (a) Provide opportunities for persons with disabilities to achieve successful integrated employment consistent with the person's goals;
  - (b) Be recommended by the person's Support Team; and
  - (c) Be identified in the person's Individual Support Plan (ISP), Plan of Care, and Summary of Supports.
- 1933.8 The three (3) models of supported employment services eligible for Medicaid reimbursement are as follows:

- (a) An Individual Job Support Model, which evaluates the needs of the person and places the person into an integrated competitive or customized work environment through a job discovery process;
- (b) A Small Group Supported Employment Model, which utilizes training activities for groups of two (2) to eight (8) workers with disabilities to place persons in an integrated community based work setting; and
- (c) An Entrepreneurial Model, which utilizes training techniques to develop on-going support for a small business that is owned and operated by the person.

1933.9 Medicaid reimbursable supported employment services for the entrepreneurial model shall include the following activities:

- (a) Assisting the person to identify potential business opportunities;
- (b) Assisting the person in the development of a business and launching a business;
- (c) Identification of the supports that are necessary in order for the person to operate the business; and
- (d) Ongoing assistance, counseling and guidance once the business has been launched.

1933.10 Medicaid reimbursable supported employment individual services shall consist of the following activities:

- (a) Intake and assessment;
- (b) Job placement and development;
- (c) Job training and support; and
- (d) Long-term follow-along services.

1933.11 Medicaid reimbursable supported employment small group services shall consist of the following activities:

- (a) Job placement and development;
- (b) Job training and support; and
- (c) Long-term follow-along services.

- 1933.12 Intake and assessment services determine the interests, strengths, preferences, and skills of the person in order to ultimately obtain competitive employment and to further identify the necessary conditions for the person's successful participation in employment. The purpose of the intake and assessment is to facilitate and ensure a person's success in integrated competitive employment.
- 1933.13 Medicaid reimbursable intake and assessment activities include, but are not limited to, the following:
- (a) Conducting a person-centered vocational and situational assessment based upon what is important to and for the person as reflected in his or her Person-Centered Thinking and Discovery tools and related ISP goals;
  - (b) Developing a person-centered employment plan that includes the person's job preferences and desires, through a discovery process and the development of a Positive Personal Profile and Job Search and Community Participation Plan;
  - (c) Assessing person-centered employment information, including the person's interest in doing different jobs, transportation to and from work, family support, and financial issues;
  - (d) Engaging in community mapping to identify available community supports and assisting the person to establish a network for job development, placement and mentoring;
  - (e) Counseling an interested person on the tasks necessary to start a business, including referral to resources and nonprofit associations that provide information specific to owning and operating a business; and
  - (f) Providing employment counseling, which includes, but is not limited to, the person's rights as an employee with a disability.
- 1933.14 After intake and completion of the assessments, each provider of Medicaid reimbursable supported employment services shall complete and deliver a comprehensive vocational assessment report prior to the end of the intake and assessment service authorization period, to the Department on Disability Services (DDS) Service Coordinator that includes the following information:
- (a) Employment-related strengths and weaknesses of the person;
  - (b) Availability of family and community supports for the person;
  - (c) The assessor's concerns about the health, safety, and wellbeing of the person;

- (d) Accommodations and supports that may be required for the person on the job; and
- (e) If a specific job or entrepreneurial effort has been targeted:
  - (1) Individualized training needed by the person to acquire and maintain skills that are commensurate with the skills of other employees;
  - (2) Anticipated level of interventions that will be required for the person by the job coach;
  - (3) Type of integrated work environment in which the person can potentially succeed; and
  - (4) Activities and supports that are needed to improve the person's potential for employment, including whether the person has natural supports that may help him or her to be successful in the specific job or entrepreneurial effort.

1933.15 Medicaid reimbursable job placement and development includes activities to facilitate the person's ability to work in a setting that is consistent with their strengths, abilities, priorities, and interests, as well as the identification of potential employment options, as determined through the supported employment intake and assessment process.

1933.16 Job placement and development activities eligible for Medicaid reimbursement include, but are not limited to, the following:

- (a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;
- (b) Conducting workshops or other activities to instruct the person on appropriate work attire, work ethic, attitude, and expectations;
- (c) Assisting the person with the completion of job applications;
- (d) Assisting the person with job exploration and placement, including assessing opportunities for the person's advancement and growth, with a consideration for customized employment, as needed;
- (e) Visiting employment sites, participating in informational interviews, attending employment networking events, and job shadowing;
- (f) Making telephone calls and conducting face-to-face informational interviews with prospective employers, individuals in the person's

network, utilizing the internet, social media, magazines, newspapers, and other publications as prospective employment leads;

- (g) Collecting descriptive data regarding various types of employment opportunities, for purposes of job matching and customized employment;
- (h) Negotiating employment terms with or on behalf of the person;
- (i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start-up capital, and other tasks necessary to starting a small business;
- (j) Benefits counseling; and
- (k) Working with the person and employer to develop group placements.

1933.17 Job training and support activities are those activities designed to assist and support the person after he or she has obtained employment. The expectation is that the person's reliance upon job training and support activities will decline as a result of job skills training and support from supervisors and co-workers in the existing work setting to maintain employment.

1933.18 Medicaid reimbursable job training and support activities include, but are not limited to, the following:

- (a) On-the-job training in work and work-related skills required to perform the job;
- (b) Work site support that is intervention-oriented and designed to enhance work performance and support the development of appropriate workplace etiquette
- (c) Supervision and monitoring of the person in the workplace;
- (d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, attendance and punctuality, mobility training, re-training as job responsibilities change, and attaining new jobs; including, where appropriate, the use of assistive technology, *i.e.* calendar alerts, timers, alarm clocks and other devices that assist a person with meeting employment requirements;
- (e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of job placement, integration into the work environment, and need for functional adaptation modifications at the job site;

- (f) Ongoing benefits counseling, including but not limited to prior to the person reaching the end of his or her Trial Work period and/or attaining Substantive Gainful Activity (SGA);
- (g) Consulting with other professionals and the person's family, as necessary;
- (h) Providing support and training to the person's employer, co-workers, or supervisors so that they can provide workplace support, as necessary; and
- (i) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and confidence so that the person is less reliant upon job training and support activities.

1933.19 Medicaid reimbursable long-term follow-along activities are stabilization services needed to support and maintain a person in an integrated competitive employment site or in their own business.

1933.20 Medicaid reimbursable long-term follow-along activities include, but are not limited to, the following:

- (a) Periodic monitoring of job stability with a minimum of two (2) visits per month;
- (b) Intervening to address issues that threaten job stability;
- (c) Providing re-training, cross-training, and additional supports as needed, when job duties change;
- (d) Facilitating integration and natural supports at the job site;
- (e) Benefits counseling prior to and after the person reaching the end of his or her Trial Work period and/or attaining SGA, and to ensure a person maintains eligibility for benefits and that earnings are being properly reported;
- (f) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and confidence so that the person is less reliant upon job training and support activities; and
- (g) Facilitating job advancement, professional growth, and job mobility.

1933.21 Each provider of Medicaid reimbursable supported employment services shall be responsible for delivering ongoing supports to the person to promote job stability

after they become employed. Once the person exhibits confidence to perform the job without a job coach present, the provider shall make a minimum of two (2) visits to the job site per month for the purpose of monitoring job stability.

- 1933.22 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with DDS and the employer to provide functional adaptive modifications for each person to accomplish basic work related tasks at the work site.
- 1933.23 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with the employer to ensure that each person has an emergency back-up plan for job training and support.
- 1933.24 Each provider of Medicaid reimbursable supported employment services shall be a Waiver provider agency and shall comply with the following requirements:
- (a) Participate in the person's support team meetings, at the person's preference;
  - (b) Be certified by the U.S. Department of Labor, if applicable;
  - (c) Comply with the requirements described under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR; and
  - (d) Enroll as a supported employment provider for the District of Columbia Rehabilitation Services Administration by September 23, 2016, for current providers, or, for new Medicaid waiver supported employment provider agencies, within one year after enrollment as a waiver provider.
- 1933.25 Each professional or paraprofessional providing Medicaid reimbursable supported employment services for a Waiver provider shall meet the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.
- 1933.26 Professionals authorized to provide Medicaid reimbursable supported employment activities without supervision shall include the following:
- (a) A Vocational Rehabilitation Counselor;
  - (b) An individual with a Master's degree and a minimum of one (1) year of experience working with persons with intellectual and developmental disabilities in supported employment;

- (c) An individual with a bachelor's degree and two years of experience working with persons with intellectual and developmental disabilities in supported employment; or
  - (d) A Rehabilitation Specialist.
- 1933.27 Paraprofessionals shall be authorized to perform Medicaid reimbursable supported employment activities under the supervision of a professional. Supervision is not intended to mean that the paraprofessional performs supported employment activities in the presence of the professional, but rather that the paraprofessional has a supervisor who meets the qualifications of a professional as set forth in § 1933.26.
- 1933.28 Paraprofessionals authorized to perform Medicaid reimbursable supported employment activities are as follows:
  - (a) A Job Coach; or
  - (b) An Employment Specialist.
- 1933.29 Services shall be authorized for Medicaid reimbursement in accordance with the following Waiver provider requirements:
  - (a) DDS provides a written service authorization before the commencement of services;
  - (b) The provider conducts a comprehensive vocational assessment, at minimum consisting of a Positive Personal Profile and Job Search and Community Participation Plan, if the person does not already have a comprehensive assessment. If the person does have a comprehensive vocational assessment, this must be reviewed to ensure that it is current and reflects what is important to and for the person, and updated as needed.
  - (c) The provider develops an individualized employment plan with training goals and techniques within the first two (2) hours of service delivery;
  - (d) The service name and provider delivering services are identified in the ISP and Plan of Care;
  - (e) The ISP, Plan of Care, and Summary of Supports and Services document the amount and frequency of services to be received; and
  - (f) Services shall not conflict with the service limitations described under Subsections 1933.31-1933.42; and
- 1933.30 If extended services are required, the provider shall submit a supported employment extension request. The request is a written justification that must be submitted to the Service Coordinator at least fifteen (15) calendar days before the



exhaustion of Supported Employment hours. Failure to submit all required documents may result in a delay of the approval of services. Any failure on the part of the provider to submit required documents to approve service authorizations will result in sanctions by DDS up to and including a ban on authorizations for new service recipients. Service interruptions to the waiver participant due to the service provider's failure to submit required documentation will initiate referrals to a choice of a new service provider to ensure a continuation of services for the waiver participant.

- 1933.31 Supported employment services shall not qualify for Medicaid reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973, Section 110, enacted September 26, 1973 (Pub. L. 93-112; 29 U.S.C. §§ 720 *et seq.*), or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1401 (16) and (71), enacted October 30, 1990 (Pub. L. 91-230; 20 U.S.C. §§ 1400 *et seq.*), hereinafter referred to as the "Acts".
- 1933.32 Court-ordered vocational assessments authorizing intake and assessment services qualify for Medicaid reimbursement under the Waiver if services provided through programs funded under the Acts referenced in Subsection 1933.31 cannot be provided in the timeframe set forth in the Court's Order.
- 1933.33 Medicaid reimbursement is available for supported employment services that are provided either exclusively as a vocational service or in combination with individualized day supports, employment readiness, or day habilitation services if provided during different periods of time, including during the same day.
- 1933.34 Medicaid reimbursement is not available if supported employment services are provided in specialized facilities that are not part of the general workforce. Medicaid reimbursement is not available for volunteer work.
- 1933.35 Medicaid reimbursable supported employment services shall not include payment for supervision, training, support, adaptations, or equipment typically available to other workers without disabilities in similar positions.
- 1933.36 Medicaid reimbursable supported employment services shall be provided for a maximum of eight (8) hours per day, five (5) days per week.
- 1933.37 Medicaid reimbursement is not available for incentive payments, subsidies, or unrelated vocational training expenses such as the following:
- (a) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment services program;
  - (b) Payments that are processed and paid to users of supported employment service programs; and

- (c) Payment for vocational training that is not directly related to the person's success in the supported employment services program.
- 1933.38 Supported employment providers may not pay a stipend to a person for attendance or participation in activities at the day habilitation program.
- 1933.39 A supported employment provider may not concurrently employ a person and be his or her provider of Medicaid supported employment services.
- 1933.40 Medicaid reimbursement is not available for time spent in transportation to and from the employment program and shall not be included in the total amount of services provided per day. Time spent in transportation to and from the program for the purpose of training the person on the use of transportation services is Medicaid reimbursable and may be included in the number of hours of services provided per day for a period of time specified in the person's ISP and Plan of Care.
- 1933.41 Medicaid reimbursement shall only be available for adaptations, supervision and training for supported employment services provided at the work site in which persons without disabilities are employed. Medicaid reimbursement shall not be available for supervisory activities, which are rendered as a normal part of the business setting.
- 1933.42 Medicaid reimbursable intake and assessment activities shall be billed at the unit rate. This service shall not exceed three-hundred and twenty (320) units or eighty (80) hours annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for individual supported employment intake and assessment activities (a) shall be eleven dollars and ninety cents (\$11.90) per unit or forty-seven dollars and sixty cents (\$47.60) per hour if performed by a professional listed in Subsection 1933.26; and (b) shall be seven dollars and sixteen cents (\$7.16) per unit or twenty-eight dollars and sixty-four cents (\$28.64) per hour if performed by a paraprofessional listed in Section 1933.28 under the supervision of a professional.
- 1933.43 Medicaid reimbursable job preparation, developmental and placement activities shall be billed at the unit rate. This service shall not exceed nine hundred and sixty (960) units or two-hundred and forty (240) hours annually for both individual and group services, combined. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill for one (1) unit of service. The Medicaid reimbursement rate for individual supported employment job preparation, developmental and placement activities (a) shall be eleven dollars and ninety cents (\$11.90) per unit, or forty-seven dollars and sixty cents (\$47.60) per hour if performed by a professional listed in Section 1933.26; and (b) shall be seven dollars and sixteen cents (\$7.16) per unit or twenty-eight dollars and sixty-four cents (\$28.64) per hour if

performed by a paraprofessional listed in Subsection 1933.28 under the supervision of a professional. For small group supported employment job preparation, developmental and placement activities, the Medicaid reimbursement rate shall be two dollars and eighty-six cents (\$2.86) per unit or eleven dollars and forty-four cents (\$11.44) per hour for each person in a group of two (2) to four (4) people enrolled in the Waiver.

1933.44 Medicaid reimbursable on the job training and support activities shall not exceed three hundred and sixty hours (360) or one thousand, four hundred and forty (1,440) units per ISP year, unless additional hours are prior authorized by DDS. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for individual supported employment job training and support activities (a) shall be eleven dollars and ninety cents (\$11.90) per unit, or forty-seven dollars and sixty cents (\$47.60) per hour if performed by a professional listed in Subsection 1933.26; and (b) shall be seven dollars and sixteen cents per unit or twenty-eight dollars and sixty-four cents (\$28.64) per hour if performed by a paraprofessional listed in Subsection 1933.28 under the supervision of a professional. For small group supported employment on the job training and support activities, the Medicaid reimbursement rate shall be two dollars and eighty-six cents (\$2.86) per unit or eleven dollars and forty-four cents (\$11.44) per hour for each person in a group of two (2) to four (4) people enrolled in the Waiver.

1933.45 Medicaid reimbursable long-term follow-along activities shall not exceed one thousand four hundred eight (1,408) units per ISP year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for both professionals and paraprofessionals for individual supported employment long-term follow-along activities shall be five dollars and seventy-eight cents (\$5.78) per unit and twenty-three dollars and twelve cents (\$23.12) per hour. For small group supported employment long-term follow-along activities, the Medicaid reimbursement rate shall be two dollars and eighty-six cents (\$2.86) per unit or eleven dollars and forty-four cents (\$11.44) per hour for each person in a group of two (2) to four (4) people enrolled in the Waiver.

**Section 1999, DEFINITIONS, is amended by adding the following:**

**Benefits Counseling** – Analysis and advice provided to a person to help him/her understand the potential impact of employment on his/her public benefits, including but not limited to Supplemental Security Income, Medicaid, Social Security Disability Insurance, Medicare, and Food Stamps.

**Competitive Integrated Employment** - Full or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities

performing the same work, and fully integrated with co-workers without disabilities.

**Employment Specialist** - An individual with a four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent; an individual with a four-year college degree and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or a high school graduate with three (3) years of experience in a supported employment program or equivalent.

**Group Supported Employment** - An integrated setting in competitive employment in which a group of two to four individuals or four to eight individuals are working at a particular work setting. The individuals may be disbursed throughout the company or among workers without disabilities.

**Individual Supported Employment** - A supported employment strategy in which a job coach places a person into competitive or customized employment through a job discovery process, provides training and support, and then gradually reduces time and assistance at the work site.

**Integrated Work Setting** - A work setting that provides a person enrolled in the Waiver with daily interactions with other employees without disabilities and/or the general public.

**Job Coach** – An individual with a four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent; an individual with a college degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or an individual with a high school degree and three (3) years of experience in a supported employment program, or equivalent.

**Long-term follow along activities** - Ongoing support services considered necessary to assure job retention.

**Person centered** – An approach that focuses on what is important to the individual based on his or her needs, goals, and abilities rather than using a general standard applicable to all people.

**Rehabilitation Specialist** - An individual with a Master's degree in Rehabilitation Counseling or a similar degree from an accredited university; an individual with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program or equivalent; or an individual with a Master's degree in a social

services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

**Situational Assessment** - A type of assessment that provides the person an opportunity to explore job tasks in work environments in the community to identify the type of employment that may be beneficial to the person and the support required by each person to succeed in his/her work environment. This assessment shall include observation of the person at the work site, identification of work site characteristics, training procedures, identification of supports needed for the person, and recommendations and plans for future services, including the appropriateness of continuing supported employment.

**Stipend** – Nominal fee paid to a person for attendance and/ or participation in activities designed to achieve his or her employment goal, as identified in the person’s ISP.

**Substantial Gainful Activity (SGA)** - Activities that the person is engaged in that result in a sum earnings greater than a fixed monthly amount, set by federal standards and determined by the nature of one’s disability and the national wage index.

**Vocational Assessment** - An assessment designed to assist a person, their family and service providers with specific employment related data that will generate positive employment outcomes. The assessment should address the person’s life, relationships, challenges, and perceptions as they relate to potential sources of community support and mentorship.

**Vocational Rehabilitation Counselor** - An individual with a Master's degree in Vocational Counseling, Vocational Rehabilitation Counseling or a similar degree from an accredited university; an individual with a Master’s degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program or equivalent; or an individual with a Master’s degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Comments on the emergency and proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D., Senior Deputy Director/State Medicaid Director, District of Columbia Department of Health Care Finance, 441 Fourth Street, N.W., Suite 900 South, Washington, D.C. 20001, by telephone on (202) 442-8742, by email at [DHCFPublicComments@dc.gov](mailto:DHCFPublicComments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rules may be obtained from the above address.

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.774; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 50 (Medicaid Reimbursement for Personal Care Services), of Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR).

Personal Care Aide (PCA) services are health-related services that are provided to individuals because they are unable to perform one or more activities of daily living such as bathing, dressing, toileting, ambulation, or feeding oneself, as a result of a medical condition or cognitive impairment causing a substantial disability. These amendments provide DHCF with the tools to increase oversight and closely monitor the quality and appropriateness of services being delivered to beneficiaries. Emergency action is necessary to preserve the safety, health, and wellness of existing recipients of PCA services by ensuring that beneficiaries have continued and uninterrupted access to quality services.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 13<sup>th</sup>, 2015 at 62 DCMR 014911. Comments were received and this Notice of Second Emergency and Proposed Rulemaking responds to the comments by: (1) specifying the contents of the beneficiary denial letter issued upon a finding of ineligibility based upon the assessment tool; (2) supplementing the notice requirements with legal citations; (3) updating legal citations; (4) clarifying that additional PCA hours shall be obtained if a person is deemed eligible under the Long Term Care Waivers; (5) amending the PCA service tasks by combining similar tasks and eliminating any redundant PCA services; (6) establishing a process for providers to address instances when the PCA or PCA provider staff poses an immediate threat to the safety and well-being of beneficiaries; (7) clarifying that the communicable disease test or vaccine requirements for PCAs need only be obtained initially; (8) clarifying that the policy manual required to be distributed by providers can be shared in an electronic or hard-copy form; (9) eliminating the requirements for provider policy manuals to contain an updated listing of professional staff licensure information and PCA certifications and mandating that the requested information be maintained in the provider offices and available upon audit; (10) clarifying phrases; (11) amending the previously published standards governing reimbursement of providers of personal care services under the District of Columbia State Plan for Medical Assistance by increasing the rates for services rendered by a personal care aide (“PCA”) to comply with the Living Wage Act of 2006 (“Living Wage Act”), effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)); and (12) updating the definitions section.

The corresponding amendment to the District of Columbia State Plan for Medicaid Assistance (State Plan) requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). Except for Section 5015 governing reimbursement, implementation of these emergency and proposed rules is contingent upon approval of the corresponding State Plan amendment by CMS.

This second emergency and proposed rulemaking incorporates language set forth in the recently published rule on reimbursement (Section 5015), published on January 15<sup>th</sup>, 2016 at 63 DCR 000589. Section 5015 governing reimbursement was adopted on December 31, 2015 and became effective for services rendered beginning January 1, 2016. The remaining sections will become effective, subject to approval by CMS of the corresponding State Plan Amendment.

The Director adopted these rules on April 12, 2016 and they became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until August 10, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Chapter 50, MEDICAID REIMBURSEMENT FOR PERSONAL CARE SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**CHAPTER 50 MEDICAID REIMBURSEMENTS FOR PERSONAL CARE  
AIDE SERVICES**

**5000 GENERAL PROVISIONS**

5000.1 These rules establish the standards and conditions of participation for home care agencies providing Medicaid reimbursable personal care aide (PCA) services under the District of Columbia Medicaid Program's State Plan for Medical Assistance (Medicaid State Plan).

5000.2 Medicaid reimbursable PCA services support and promote the following goals:

- (a) To provide cueing or necessary hands-on assistance with the activities of daily living to beneficiaries who are unable to perform one or more activities of daily living; and
- (b) To encourage home and community-based care as a preferred and cost-effective alternative to institutional care.

**5001 PROVIDER QUALIFICATIONS**

- 5001.1 A Provider receiving Medicaid reimbursement for PCA services shall:
- (a) Be a home care agency licensed pursuant to the requirements for home care agencies as set forth in the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code, §§ 44-501 *et seq.* (2012 Repl.)), and implementing rules; and
  - (b) Be enrolled as a Medicare home health agency qualified to offer skilled services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act (42 U.S.C. §§ 1395x and 1395bbb), and 42 C.F.R. § 484.
- 5001.2 An applicant seeking Medicaid reimbursement as a Provider under the Medicaid Program shall submit a Medicaid Provider Enrollment Application to the Department of Health Care Finance (DHCF), execute a Provider Agreement and be enrolled as a Provider, in accordance with Chapter 94 of Title 29 of the District of Columbia Municipal Regulations.
- 5001.3 A Provider seeking Medicaid reimbursement under an executed Medicaid Provider Agreement shall comply with all legal obligations under Federal and District laws, including the provider's obligations to take reasonable steps to provide beneficiaries who are Limited English Proficient (LEP) with meaningful access to their services pursuant to the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 20-39; D.C. Official Code §§ 2-1401.01 *et seq.*) and Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. §§ 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (Pub. L. No. 93-112; 29 U.S.C. §§ 701 *et seq.*), 42 C.F.R. Parts 80, 84, and 90, and the Americans with Disabilities Act of 1990, effective January 1, 2009 (Pub. L. No. 101-336; 42 U.S.C. §§ 12101 *et seq.*).
- 5001.4 Each Provider application shall contain, but not be limited to, the following:
- (a) Name, address, and business email of the applicant's organization and location of the applicant's place of business. An applicant shall submit a separate application for each place of business from which the applicant intends to offer District of Columbia Medicaid program services;



- (b) Answers sufficient to meet requirements as set forth in 42 C.F.R. § 455, subpart B: Disclosure of Information by Providers and Fiscal Agents;
- (c) Names, license numbers, and National Provider Identifier (NPI) numbers of all individuals providing PCA services or nursing services from the National Plan and Provider Enumeration System (NPPES) as of the date of the application to become a District of Columbia Medicaid Provider;
- (d) The applicant's U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) Medicare Supplier Letter issued pursuant to 42 C.F.R. § 424.510 to evidence enrollment of the applicant in the Medicare program;
- (e) A copy or copies of all contracts held between the applicant and any staffing agency pertaining to the delivery of PCA services;
- (f) A copy or copies of license(s) held by the employees of any staffing agency or agencies used by the Provider for the delivery of PCA services;
- (g) The applicant's NPI number as required by the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub.L. No 104-191; 110 Stat. 1936);
- (h) A copy of the applicant's surety bond, pursuant to requirements set forth in § 5011 of this chapter; and
- (i) A copy of a Certificate of Registration or Certificate of Authority, if required by District law or rules.

5001.5 A Provider shall submit a new Medicaid Provider Enrollment Application within thirty (30) days after any change in business ownership. Re-enrollment or continued enrollment in the Medicaid program after any change in business ownership shall be conditioned upon the Provider's compliance with all applicable Federal and District requirements.

5001.6 A Provider shall submit a new Medicaid Provider Enrollment Application and successfully re-enroll in the D.C. Medicaid program at least every five (5) years starting from the date of execution of its most recent Provider Agreement.

5001.7 A Provider shall accept referrals for admission from DHCF, and provide requested information to DHCF or its designated agent. A provider who fails to accept referrals, shall provide written explanation to DHCF.

## **5002 ELIGIBILITY REQUIREMENTS**

5002.1 To be eligible to receive PCA services, a Medicaid beneficiary must meet all of the following qualifications:

- (a) Be unable to independently perform one or more activities of daily living for which PCA services are needed;
- (b) Be in receipt of a written order for PCA services in accordance with Subsections 5006.1 and 5006.2; and
- (c) Be in receipt of a PCA Service Authorization in accordance with Section 5003.

## **5003 PCA SERVICE AUTHORIZATION REQUEST AND SUBMISSION**

5003.1 Except as provided in Subsection 5003.8, in order to be reimbursed by Medicaid, PCA services shall not be initiated or provided on a continuing basis by a Provider without a PCA Service Authorization from DHCF or its designated agent that, for each beneficiary, identifies the amount, duration and scope of PCA services authorized and the number of hours authorized.

5003.2 A Medicaid beneficiary who is seeking PCA services for the first time shall submit a request for a PCA Service Authorization to DHCF or its designated agent in writing, accompanied by a copy of the physician's or Advanced Practice Registered Nurse's (APRN) written order for PCA services that complies with the requirements set forth under this chapter.

5003.3 DHCF or its designated agent shall be responsible for conducting a face-to-face assessment of each beneficiary using a standardized assessment tool to determine each beneficiary's need for assistance with activities of daily living that the beneficiary is unable to perform. The assessment shall:

- (a) Confirm and document the beneficiary's functional limitations and personal goals with respect to long-term care services and supports;
- (b) Be conducted in consultation with the beneficiary or the beneficiary's representative;

- (c) Document the beneficiary's unmet need for services, taking into account the contribution of informal supports and other resources in meeting the beneficiary's needs for assistance; and
  - (d) Document the amount, frequency, duration, and scope of PCA services needed.
- 5003.4 Based upon the results of the face-to-face assessment conducted in accordance with Subsection 5003.3, DHCF or its authorized agent shall issue to the beneficiary a PCA Service Authorization that specifies the amount, frequency, duration, and scope of PCA services authorized to be provided to the beneficiary.
- 5003.5 Payment shall not exceed the maximum authorized units specified in the PCA Service Authorization and must be consistent with the plan of care in accordance with Section 5015.
- 5003.6 If authorized, PCA services may be provided up to eight (8) hours per day seven (7) days per week. Additional hours may be authorized if a person is deemed eligible under the Elderly or Persons with Physical Disabilities (EPD Waiver) or Individuals with Intellectual and Developmental and Disabilities Waiver (ID/DD Waiver).
- 5003.7 A Registered Nurse (R.N.) employed by DHCF or its designated agent shall conduct the initial face-to-face assessment following the receipt of a request for service authorization and shall conduct a face-to-face reassessment at least every twelve (12) months, or upon significant change in the beneficiary's condition. A request for service authorization may be made by a Medicaid beneficiary, family member, the beneficiary's representative or a health care professional.
- 5003.8 DHCF may authorize the face-to-face reassessment for a period not to exceed eighteen (18) months, if necessary, to align the assessment date with the Medicaid renewal date.
- 5003.9 If, based upon the assessment conducted pursuant to this section, a beneficiary is found to be ineligible for PCA services, or the amount, duration or scope of PCA services is reduced, DHCF or its agent shall issue a Beneficiary Denial, Termination or Reduction of Services Letter informing the beneficiary of the reasons for the intended action, the specific law and regulations supporting the action, his or her right to appeal the denial, termination, or reduction of services in accordance with federal and District law and regulations, and the circumstances under which PCA services will be continued if a hearing is requested (See 42 C.F.R. §§ 431.200 *et seq.*, D.C. Official Code § 4-205.55).

**5004 REFERRALS**

5004.1 Upon completion of the PCA Service Authorization, DHCF or its designated agent shall make a referral to the beneficiary's choice of a qualified Provider.

5004.2 A referral to a qualified Provider shall not be considered complete unless it includes all of the following:

- (a) A copy of the physician or APRN's order for PCA services issued in accordance with Section 5006;
- (b) A copy of the completed written face-to-face assessment of the beneficiary undertaken in accordance with Subsection 5003.3; and
- (c) A copy of the completed PCA Service Authorization issued in accordance with Subsection 5003.4.

**5005 PLAN OF CARE**

5005.1 An R.N. employed by the Provider shall conduct an initial face-to-face visit with the beneficiary to develop a plan of care for delivering PCA services no later than seventy-two (72) hours after receiving the referral for services from DHCF or its designated agent.

5005.2 The plan of care shall:

- (a) Be developed by an R.N. in consultation with the beneficiary or the beneficiary's representative based upon the initial face-to-face visit with the beneficiary;
- (b) Specify how the beneficiary's need, as identified in the assessment conducted in accordance with Subsection 5003.3, will be met within the amount, duration, scope, and hours of services authorized by the PCA Service Authorization as set forth in Subsection 5003.4;
- (c) Consider the beneficiary's preferences regarding the scheduling of PCA services;
- (d) Specify the detailed services to be provided, their frequency, and duration, and expected outcome(s) of the services rendered consistent with the PCA Service Authorization;

- (e) Be approved and signed by the beneficiary's physician or an APRN within thirty (30) days of the start of care, provided that the physician or APRN has had a prior professional relationship with the beneficiary that included an examination(s) provided in a hospital, primary care physician's office, nursing facility, or at the beneficiary's home prior to the prescription of the PCA services; and
- (f) Incorporate person-centered planning principles that include:
  - (1) Ensuring that the planning process includes individuals chosen by the beneficiary;
  - (2) Ensuring that the planning process incorporates the beneficiary's needs, strengths, preferences, and goals for receiving PCA services;
  - (3) Providing sufficient information to the beneficiary to ensure that he/she can direct the process to the maximum extent possible;
  - (4) Reflecting the beneficiary's cultural considerations and is reflected by providing all information in plain language or consistent with any LEP considerations in accordance with Subsection 5001.3;
  - (5) Strategies for solving conflicts or disagreements; and
  - (6) A method for the beneficiary to request updates to the plan.

5005.3 After an initial plan of care is developed, all subsequent annual updates and modifications to plans of care based on a change in service needs shall be submitted to DHCF or its agent for approval in accordance with Subsection 5005.2, with the exception of the signature requirements prescribed under Subsection 5005.2(e).

5005.4 An R.N. who is employed by the Provider shall review the beneficiary's plan of care at least once every sixty (60) days, and shall update or modify the plan of care as needed. The R.N. shall notify the beneficiary's physician of any significant change in the beneficiary's condition.

5005.5 If an update or modification to a beneficiary's plan of care requires an increase or decrease in the number of hours of PCA services provided to the beneficiary, the Provider must obtain an updated PCA Service Authorization from DHCF or its designated agent after the reassessment for services.

5005.6 Each Provider shall coordinate a beneficiary's care by sharing information with all other health care and service providers, as applicable, to ensure that the beneficiary's care is organized and to achieve safer and more effective health outcomes.

5005.7 If a beneficiary is receiving Adult Day Health Program (ADHP) services under the § 1915(i) State Plan Option and PCA services, a provider shall coordinate the delivery of PCA services to promote continuity and avoid the duplication of care.

## **5006 PROGRAM REQUIREMENTS**

5006.1 PCA services shall be ordered, in writing, by a physician or APRN who is enrolled in the D.C. Medicaid program and has had a prior professional relationship with the beneficiary that included an examination(s) provided in a hospital, primary care physician's office, nursing facility, or at the beneficiary's home prior to the order for the PCA services. A written order for PCA services constitutes a certification that the beneficiary is unable to perform one (1) or more activities of daily living for which PCA services are needed.

5006.2 A written order for PCA services issued in accordance with § 5006.1 shall be renewed every twelve (12) months.

5006.3 Each written order for PCA services under this section shall include the prescriber's NPI number obtained from NPPES.

5006.4 A Provider has an on-going responsibility to verify that each beneficiary that receives PCA services from the Provider has current eligibility for the District of Columbia Medicaid program and is eligible for and authorized to receive PCA services.

5006.5 An individual or family member other than a spouse, parent of a minor child, any other legally responsible relative, or court-appointed guardian may provide PCA services. Legally responsible relatives shall not include parents of adult children. Each family member providing PCA services shall comply with the requirements set forth in these rules.

5006.6 The Provider shall initiate services no later than twenty-four (24) hours after completing the plan of care unless the beneficiary's health or safety warrants the need for more immediate service initiation or the beneficiary or beneficiary's representatives agree to begin the services at a later date.

5006.7 PCA services shall include the following:

- (a) Cueing or hands-on assistance with performance of routine activities of daily living (such as, bathing, transferring, toileting, dressing, feeding, and maintaining bowel and bladder control);
- (b) Assisting with incontinence, including bed pan use, changing urinary drainage bags, changing protective underwear, and monitoring urine input and output;
- (c) Assisting beneficiaries with transfer, ambulation and range of motion exercises;
- (d) Assisting beneficiaries with self-administered medications;
- (e) Reading and recording temperature, pulse, blood pressure and respiration;
- (f) Measuring and recording height and weight;
- (g) Observing, documenting and reporting to the supervisory health professional, changes in the beneficiary's physical condition, behavior, and appearance and reporting all services provided on a daily basis;
- (h) Preparing meals in accordance with dietary guidelines and assistance with eating;
- (i) Performing tasks related to keeping areas occupied by the beneficiary in a condition that promotes the beneficiary's safety;
- (j) Implementing universal precautions to ensure infection control;
- (k) Accompanying the beneficiary to medical or dental appointments or place of employment and recreational activities if approved in the beneficiary's plan of care;
- (l) Shopping for items that are related to promoting a beneficiary's nutritional status in accordance with dietary guidelines and other health needs; and
- (m) Assistance with telephone use.

5006.8 PCA services shall not include:

- (a) Services that require the skills of a licensed professional as defined by the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*);
  - (b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the beneficiary, shopping for items not related to promoting the beneficiary's nutritional status and other health needs, and shopping for items not used by the beneficiary; and
  - (c) Money management.
- 5006.9 PCA services shall not be provided in a hospital, nursing facility, intermediate care facility, or other living arrangement which includes personal care as part of the reimbursed service. However, persons residing in assisted living may receive PCA services upon prior authorization by DHCF or its agent.
- 5006.10 PCA services may be provided at the beneficiary's place of employment.
- 5006.11 A PCA is not authorized to make decisions on behalf of a beneficiary.
- 5006.12 In accordance with Subsection 5006.7(g), a PCA shall immediately report to the R.N. any significant change in the beneficiary's health status in the case of emergency, or within four (4) hours for other situations, unless indicated otherwise in the beneficiary's plan of care.
- 5006.13 If the beneficiary seeks to change his or her Provider, the Provider shall assist the beneficiary in transferring to the new Provider. Until the beneficiary is transferred to a new PCA services Provider, the Provider shall continue providing PCA services to the beneficiary until the transfer has been completed successfully and the beneficiary is receiving PCA services from the new Provider.
- 5006.14 Each Provider shall immediately terminate the services of a PCA and instruct the PCA to discontinue all services to the beneficiary, in any case where the Provider believes that the beneficiary's physical or mental well-being is endangered by the care or lack of care provided by the PCA, or that the beneficiary's property is at risk. The Provider is responsible for assigning a new PCA and ensuring that the beneficiary's needs continue to be met.
- 5006.15 Each Provider shall conduct annual performance assessments of all PCAs who deliver services to beneficiaries served by the Provider, regardless of whether the PCA is an employee or is secured through another staffing agency. The initial performance assessment shall be conducted no later than three (3)



months after the PCA first provides services to any beneficiary served by the Provider.

5006.16 Each Provider shall develop contingency staffing plans to provide coverage for each beneficiary in the event the assigned PCA cannot provide the services or is terminated.

**5007 DENIAL, SUSPENSION, REDUCTION OR TERMINATION OF SERVICES**

5007.1 When PCA services are no longer desired by the beneficiary or their authorized representative, each Provider shall discontinue PCA services only after:

- (a) Giving the beneficiary written notice that meets the requirements set forth in Subsection 5007.2;
- (b) The thirty (30) day notice period prescribed in Subsection 5007.2 elapses; and
- (c) The time for an appeal has expired, and the beneficiary has not filed an appeal.

5007.2 Except as provided in Subsections 5007.5 and 5007.6, for Provider initiated suspensions, discharges or reductions of service, each Provider shall notify DHCF or its designated agent and the beneficiary or the beneficiary's authorized representative, in writing, no less than thirty (30) calendar days prior to any suspension, discharge or reduction in service, consistent with the requirements set forth in Federal and District law and rules. (See 42 C.F.R. §§ 431.200 *et seq.*, D.C. Official Code § 4-205.55). The beneficiary's record shall contain a copy of the notice and documentation of the date the notice was either personally served upon or mailed to the beneficiary or the beneficiary's designated agent.

5007.3 For denials, suspensions, terminations or reductions of service initiated by DHCF or its agent, DHCF or its designated agent shall notify the beneficiary or the beneficiary's authorized representative, in writing, no less than thirty (30) calendar days prior to any denial, suspension, termination or reduction of services, consistent with the requirements set forth in Federal and District law and rules (See 42 C.F.R. §§ 431.200 *et seq.*, D.C. Official Code § 4-205.55).

5007.4 Consistent with Subsection 5014.3(g), if the PCA or PCA provider staff poses an immediate threat to the safety or well-being of the beneficiary, the provider

must immediately review the threat, initiate an investigation, and provide alternate staff to the beneficiary.

5007.5 If the behavior of a beneficiary poses an immediate threat to the safety and well-being of the PCA or PCA Provider staff, the Provider has the right to immediately suspend the beneficiary's services or discharge the beneficiary. Suspension of services shall not exceed thirty (30) calendar days.

5007.6 Within seventy-two (72) hours of suspension, the Provider shall notify the beneficiary or authorized representative in writing of the following:

(a) The grounds for suspension or discharge; and

(b) The beneficiary's right to appeal the suspension or discharge.

5007.7 At the end of the suspension period, the Provider may re-instate the beneficiary's services or discharge the beneficiary in accordance with Subsection 5007.8. The Provider shall assist the beneficiary in transferring to another provider.

5007.8 The beneficiary or the beneficiary's representative shall be provided with a written notice of discharge at least fifteen (15) days before the effective date of the discharge, if the decision is made to discharge the beneficiary following suspension. The written notice shall comply with Federal and District law and rules (See 42 C.F.R. §§ 431.200 *et seq.*, D.C. Official Code § 4-205.55).

5007.9 In the event of a suspension or discharge, the Provider shall be responsible for ensuring that the beneficiary's health, safety, and welfare are not threatened during the period of suspension or during the period after the beneficiary has been discharged and before transfer to another provider.

## **5008 STAFFING**

5008.1 Each Provider shall utilize an R.N. to manage and provide supervision to PCAs who are qualified to perform all of the functions described in Subsection 5008.3.

5008.2 Each Provider shall verify that each PCA used to deliver services, regardless of whether the PCA is an employee of the Provider or is secured through another staffing agency, meets the qualifications set forth in Section 5009.

5008.3 Each Provider shall employ an R.N. who is responsible for the following:

- (a) Accepting and reviewing the beneficiary's PCA Service Authorization and initial assessment or reassessment of need for PCA services;
- (b) Developing a written plan of care in accordance with Section 5005 that meets the beneficiary's assessed needs and preferences within the service limitations authorized in the PCA Service Authorization;
- (c) Updating each beneficiary's written plan of care based upon subsequent reassessments of need;
- (d) Maintaining a clinical record in accordance with Section 5013;
- (e) Reviewing the beneficiary's plan of care with each assigned PCA and ensuring that each assigned PCA has the requisite training, skills and ability to meet the beneficiary's identified needs and preferences;
- (f) Monitoring the quality of PCA services on a regular basis and ensuring that PCA services are delivered in accordance with the beneficiary's Plan of Care;
- (g) Supervising all PCAs, regardless of whether the PCA is an employee of the Provider or is secured through a staffing agency. Supervision shall include on-site supervision at least once every sixty (60) days;
- (h) Coordinating the provision of PCA services with other home health services, as appropriate and communicating with each beneficiary's physician or APRN regarding changes in the beneficiary's condition and needs;
- (i) Gathering information regarding the beneficiary's condition and the need for continued care;
- (j) Communicating and coordinating with DHCF or its designated agent regarding changes in the beneficiary's condition and needs. At a minimum the Provider must communicate to DHCF or its designated agent:
  - (1) Any failure or inability of the provider to deliver authorized services within three (3) business days of the scheduled visit; and
  - (2) Any change in the beneficiary's status requiring a modification in the amount, duration, or scope of service authorized; and

- (k) Counseling the beneficiary and the beneficiary's family regarding nursing and related needs.

5008.4 The R.N., at minimum, shall visit each beneficiary within forty-eight (48) hours of initiating PCA services, and no less than every sixty (60) days thereafter, to monitor the implementation of the plan of care and the quality of PCA services provided to the beneficiary.

5008.5 The R.N. shall provide additional supervisory visits to each beneficiary if the situation warrants additional visits, such as in the case of an assignment of a new personal care aide or change in the beneficiary's health status.

#### **5009 PERSONAL CARE AIDE REQUIREMENTS**

5009.1 Each PCA, whether an employee of the Provider or secured through a staffing agency, shall meet the following requirements:

- (a) Obtain or have an existing Home Health Aide certification in accordance with Chapter 93 of Title 17 of the District of Columbia Municipal Regulations;
- (b) Confirm, on an annual basis, that he or she is free from communicable diseases including tuberculosis and hepatitis, by initially undergoing an annual purified protein derivative (PPD) test and receiving a hepatitis vaccine during physical examination by a physician, and subsequently obtaining, on an annual basis, written and signed documentation from the examining physician confirming freedom from communicable disease;
- (c) Provide evidence of current cardio pulmonary resuscitation and first aid certification;
- (d) Pass a criminal background check pursuant to the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*);
- (e) Pass a reference check and a verification of prior employment;
- (f) Have an individual NPI number obtained from NPPES;
- (g) Obtain at least twelve (12) hours of continuing education or in-service training annually in accordance with the Department of Health's Home Care Agency training requirements under 22-B DCMR § 3915; and

- (h) Meet all of the qualifications for Home Health Aide trainees in accordance with Chapter 93 of Title 17 DCMR, which includes the following:
  - (1) Be able to understand, speak, read, and write English at a fifth (5<sup>th</sup>) grade level or higher;
  - (2) Be knowledgeable about infection prevention, including taking standard precautions; and
  - (3) Possess basic safety skills including being able to recognize an emergency and be knowledgeable about emergency procedures.

## **5010 STAFFING AGENCIES**

5010.1 A Provider may contract with a licensed staffing agency to secure staff to deliver PCA services. Agreements between the Provider and the staffing agency providing personal care staffing services shall be in writing and include at a minimum, the following:

- (a) A provision requiring the staffing agency to provide the Provider with the staffing agency's NPI number obtained from the NPPES and the NPI numbers of all individuals providing PCA services to the home care agency throughout the duration of the contract;
- (b) A business address and e-mail address for each staffing agency;
- (c) Provisions making explicit and delineating the Provider's responsibility to:
  - (1) Manage, supervise and evaluate the PCA services secured through a staffing agency; and
  - (2) Be accountable for all services delivered by non-employee PCAs to the same extent as if the PCAs were employees of the Provider;
- (d) The duration of the agreement, including provisions for renewal, if applicable; and
- (e) Assurances that the staffing agency shall comply with all applicable federal and District laws and rules, including all relevant licensing requirements imposed by the District of Columbia.

- 5010.2 Each Provider contracting with a staffing agency to provide staffing for PCA services shall:
- (a) Ensure that the staffing agency obtains an NPI number for itself and all personnel performing PCA services through the agency;
  - (b) Provide DHCF with a copy of any and all contract(s) entered into with a staffing agency; and
  - (c) Ensure that each beneficiary's records shall be the property of the beneficiary's Provider and are maintained at the Provider's place of business in accordance with Section 5013.
- 5010.3 A staffing agency supplying staff to the provider for the delivery of PCA services shall be considered an agent of the Provider.
- 5010.4 A Provider is prohibited from having a financial relationship with any staffing agency providing staffing unless the relationship meets one of the exceptions applicable to ownership interests and compensation arrangements established in 42 U.S.C. § 1320a-7b(b)(3) and 42 C.F.R. § 1001.952. A financial relationship includes but is not limited to:
- (a) A direct or indirect ownership or investment interest (including an option or non-vested interest) by the Provider in a staffing agency. This interest may be in the form of partnership shares, limited liability company memberships, loans, bonds, equity, debt, or other means; and
  - (b) A direct or indirect compensation arrangement other than the contract referenced in § 5010.1 between the Provider and the staffing agency for the provision of staff to perform PCA services provided the contract meets the requirements of 42 C.F.R. § 1001.952(d).
- 5010.5 A Provider is prohibited from contracting with a staffing agency that is or has engaged in any of the following:
- (a) Advertising or marketing directly to Medicaid beneficiaries;
  - (b) Misrepresenting the staffing agency as the provider of PCA services; or
  - (c) Offering financial or other types of inducements to individuals for the referral of Medicaid beneficiaries, their names, or other identifying information to any health care provider.

**5011 INSURANCE**

5011.1 Each applicant or Provider shall maintain the following minimum amounts of insurance coverage:

- (a) Blanket malpractice insurance for all employees in the amount of at least one million dollars (\$1,000,000) per incident;
- (b) General liability insurance covering personal property damages, bodily injury, libel and slander of at least one million dollars (\$1,000,000) per occurrence; and
- (c) Product liability insurance, when applicable.

5011.2 Each applicant or Provider shall post a continuous surety bond in the amount of fifty thousand dollars (\$50,000) against all PCA services claims, suits, judgments, or damages including court costs and attorney's fees arising out of the negligence or omissions of the Provider in the course of providing services to a Medicaid beneficiary or a person believed to be a Medicaid beneficiary. The number of bonds required shall be predicated upon the number of Provider offices enrolled by the applicant or Provider in the Medicaid program.

**5012 ADMINISTRATION**

5012.1 NPI numbers for Providers and staffing agencies, and all personnel delivering PCA services shall be included in all Medicaid billings.

5012.2 Each Provider shall have a current organizational chart that clearly describes the organizational structure, management responsibilities, staff responsibilities, lines of authority, and use of any contractors.

5012.3 Each Provider shall maintain current copies of all fully executed contracts including all staffing agency contracts pertaining to the delivery of PCA services and an updated listing of professional staff licensure and registration information and all PCA certifications in the Provider's office and make them available to DHCF, CMS, and other authorized government officials or their agents when requested.

5012.4 Each Provider shall maintain a copy of each license held by their employees and employees of any staffing agency utilized by the Provider for the delivery of PCA services.

- 5012.5 A Provider shall be prohibited from waiving liability or assigning contract authority to any other entity for covered services provided to Medicaid beneficiaries.
- 5012.6 Each Provider shall provide to all employees and contractors (such as staffing agencies providing staffing) a current policy manual in an electronic or hard-copy form, which sets forth all of its policies and procedures.
- 5012.7 Each policy manual shall include, but not be limited to, the following information:
- (a) A description of the services to be provided;
  - (b) Procedures for beneficiary care;
  - (c) The reimbursement methodology or fee schedules;
  - (d) Operational schedules;
  - (e) Quality assurance standards;
  - (f) A statement of beneficiary rights and responsibilities;
  - (g) Financial and record-keeping requirements;
  - (h) Procedures for emergency care, infection control and reporting of incidents;
  - (i) A description of staff positions and personnel policies, which shall be reviewed annually, revised as necessary, and dated at time of review;
  - (j) Policies and procedures for hiring, performance assessments, grievances, and in-service training of all PCAs who deliver services, regardless of whether the PCA is an employee of the Provider or is secured through a staffing agency;
  - (k) Policies and procedures for providing advance notice to beneficiaries in accordance with Section 5007; and
  - (l) Policies, procedures, and presentation materials for owners, managers, employees and contractual staff for in-service training on the following subjects:
    - (1) Compliance with these regulations;



- (2) Compliance with federal and District False Claims Acts;
- (3) Preventing, detecting, and reporting fraud, waste, and abuse;  
and
- (4) Rights of employees to be protected as whistleblowers.

**5013 RECORDS**

5013.1 Each Provider shall maintain complete and accurate records reflecting the specific PCA services provided to each beneficiary for each unit of service billed. Such records must be maintained for a period of ten (10) years or when all audits have been completed, whichever is longer.

5013.2 Each Provider shall be responsible for maintaining the confidentiality of each beneficiary's care, treatment, and records. The disclosure of personal health information by the Provider is subject to all of the provisions set forth in applicable District and Federal laws and rules.

5013.3 Each beneficiary's record shall be readily retrievable and shall be kept in a locked room or file maintained and safeguarded against loss or unauthorized use at the location of the Provider's place of business that is identified on the Provider's Medicaid Provider application.

5013.4 Each Provider shall permit reviews and on-site inspections to be conducted by CMS and its agents, and DHCF, and its agents to determine Provider compliance with all applicable laws.

5013.5 Each Provider shall comply with the terms of its Medicaid Provider Agreement with respect to the maintenance of all beneficiary and financial records.

5013.6 Each beneficiary's record shall include, but is not limited to, the following information:

- (a) General information including the beneficiary's name, Medicaid identification number, address, telephone number, age, sex, name and telephone of emergency contact person, authorized representative (if applicable), and primary care physician's or advanced practice registered nurse's name, address, and telephone number;
- (b) Health care information, including all referrals, assessments, service authorizations, plans of care, and progress notes;

- (c) Dates and description of PCA services rendered, including the name and NPI of the personal care aide performing the services;
- (d) Documentation of each supervisory visit of the R.N., including signed and dated clinical progress notes;
- (e) Discharge summary, if applicable;
- (f) Copies of any written notices given to the beneficiary; and
- (g) Any other appropriate identifying information that is pertinent to beneficiary care.

**5014 BENEFICIARY RIGHTS AND RESPONSIBILITIES**

5014.1 Each Provider shall develop a written statement of a beneficiary's rights and responsibilities consistent with the requirements of this section, which shall be given to each beneficiary in advance of receiving services or during the initial care planning visit before the initiation of services.

5014.2 The written statement of the beneficiary's rights and responsibilities shall be prominently displayed at the Provider's business location and available at no cost upon request by a member of the general public.

5014.3 Each Provider shall develop and implement policies and procedures outlining the following beneficiary's rights:

- (a) To be treated with courtesy, dignity and respect;
- (b) To control his or her own household and lifestyle;
- (c) To participate in the planning of his or her care and treatment;
- (d) To receive treatment, care, and services consistent with the plan of care and to have the plan of care modified for achievement of outcomes;
- (e) To receive services by competent personnel who can communicate with the beneficiary in accordance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code §§ 2-1931 *et seq.*);
- (f) To refuse all or part of any treatment, care, or service and be informed of the consequences;

- (g) To be free from mental and physical abuse, neglect and exploitation from persons providing services;
- (h) To be assured that for purposes of record confidentiality, the disclosure of the contents of the beneficiary's records is subject to all the provisions of applicable District and federal laws;
- (i) To voice a complaint or grievance about treatment, care, or lack of respect for personal property by persons providing services without fear of reprisal;
- (j) To have access to his or her records; and
- (k) To be informed orally and in writing of the following:
  - (1) Services to be provided, including any limits;
  - (2) Amount charged for each service, the amount of payment required from the beneficiary and the billing procedures, if applicable;
  - (3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third party sources;
  - (4) Acceptance, denial, reduction or termination of services;
  - (5) Complaint and appeal procedures;
  - (6) Name, address and telephone number of the Provider;
  - (7) Telephone number of the District of Columbia Medicaid fraud hotline;
  - (8) Beneficiary's freedom from being forced to sign for services that were not provided or were unnecessary; and
  - (9) A statement, provided by DHCF, defining health care fraud and ways to report suspected fraud.

5014.4 Each beneficiary shall be responsible for the following:

- (a) Treating all Provider personnel with respect and dignity;

- (b) Providing accurate information when requested;
- (c) Informing Provider personnel when instructions are not understood or cannot be followed;
- (d) Cooperating in making a safe environment for care within the home; and
- (e) Reporting suspected fraud, waste and abuse to DHCF via the fraud and abuse complaint form available at [www.dc-medicaid.com](http://www.dc-medicaid.com).

5014.5 Each Provider shall take appropriate steps to ensure that each beneficiary, including beneficiaries who cannot read or those who have a language or communication barrier, has received the information required pursuant to this section. Each Provider shall document in the records the steps taken to ensure that each beneficiary has received the information.

#### **5015 REIMBURSEMENT**

5015.1 For dates of services beginning October 27, 2015 through December 31, 2015, each provider shall be reimbursed five dollars (\$5.00) per unit of service for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty five cents (\$3.45) per fifteen (15) minutes for services rendered by a PCA, shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).

5015.2 For dates of services beginning January 1, 2016, each provider shall be reimbursed five dollars and two cents (\$5.02) per unit of service for allowable services as authorized in the approved plan of care, of which no less than three dollars and forty six cents (\$3.46) per fifteen (15) minutes for services rendered by a PCA, shall be paid to the PCA to comply with the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.01 *et seq.* (2012 Repl.)).

5015.3 Subsequent changes to the reimbursement rate(s) shall be posted on the Medicaid fee schedule at [www.dc-medicaid.com](http://www.dc-medicaid.com) and DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s).

5015.4 Each Provider shall maintain adequate documentation substantiating the delivery of allowable services provided in accordance with the PCA service authorization and the beneficiary's plan of care for each unit of service submitted on every claim.

- 5015.5 Reimbursement for PCA services, when provided through the D.C. Medicaid program's State Plan PCA benefit, shall not exceed eight (8) hours per day, seven (7) days a week, and shall be limited to the amount, duration, and scope of services set forth in the PCA Service Authorization and the plan of care, as described in Section 5003.
- 5015.6 Claims for PCA services submitted by a Provider in any period during which the beneficiary is an in-patient at another health care facility including a hospital, nursing home, psychiatric facility or rehabilitation program shall be denied except on the day when a beneficiary is admitted or discharged.
- 5015.7 When a beneficiary is discharged from a health care facility to the beneficiary's home and requires PCA services on the date of discharge, the number of PCA hours on that day shall be authorized in accordance with the beneficiary's discharge plan.
- 5015.8 Claims for PCA service submitted by a Provider for any hour in which the beneficiary was receiving ADHP services under the § 1915(i) State Plan Option, or other similar service in which PCA services are provided concurrently to the beneficiary shall be denied.
- 5015.9 If a beneficiary is also receiving ADHP services on the same day that PCA services are delivered, the combination of both PCA and ADHP services shall not exceed a total of twelve (12) hours per day.
- 5015.10 Each Provider shall agree to accept as payment in full the amount determined by DHCF as Medicaid reimbursement for the authorized services provided to beneficiaries. Providers shall not bill the beneficiary or any member of the beneficiary's family for PCA services.
- 5015.11 Each Provider shall agree to bill any and all known third-party payers prior to billing Medicaid.
- 5015.12 All reimbursable claims for PCA services shall include the NPI numbers for the:
- (a) Provider;
  - (b) Physician or APRN who ordered the PCA services;
  - (c) The staffing agency, if applicable; and

- (d) PCA who provided the PCA services, regardless of whether the PCA is an employee of the Provider or is from another staffing agency.

5015.13 Pursuant to 42 C.F.R. § 424.22(d), DHCF shall deny PCA service claims or recoup paid claims when Provider records or other evidence indicate that the primary care physician or APRN ordering a beneficiary's treatment has a direct or indirect financial relationship, compensation, ownership or investment interest as defined in 42 C.F.R. § 411.354 in the Provider billing for the services, unless the financial relationship, compensation, ownership or investment interest meets an exception as defined in 42 C.F.R. § 411.355.

5015.14 Claims resulting from marketing by a staffing agency (including face-to-face solicitation at doctors' offices, home visits, requests for beneficiary Medicaid numbers, or otherwise directing beneficiaries to any Medicaid Provider) shall not be reimbursed.

## **5016 AUDITS AND REVIEWS**

5016.1 DHCF shall perform audits to ensure that Medicaid payments are consistent with efficiency, economy and quality of care and made in accordance with federal and District rules governing Medicaid.

5016.2 The audit process shall routinely be conducted by DHCF to determine, by statistically valid scientific sampling, the appropriateness of services rendered and billed to Medicaid. These audits shall be conducted on-site or through an off-site, desk review.

5016.3 Each Provider shall allow access to relevant records and program documentation upon request and during an on-site audit or review by DHCF, other District of Columbia government officials and representatives of the United States Department of Health and Human Services.

5016.4 If DHCF denies a claim, DHCF shall recoup, by the most expeditious means available, those monies erroneously paid to the Provider for denied claims, following the period of Administrative Review as set forth in § 5017 of these rules.

5016.5 The recoupment amounts for denied claims shall be determined by the following formula:

- (a) A fraction shall be calculated with the numerator consisting of the number of denied paid claims resulting from the audited sample. The denominator shall be the total number of paid claims from the audit sample; and

- (b) This fraction shall be multiplied by the total dollars paid by DHCF to the Provider during the audit period, to determine the amount recouped. For example, if a Provider received Medicaid reimbursement of ten thousand dollars (\$10,000) during the audit period, and during a review of the claims from the audited sample, it was determined that ten (10) claims out of one hundred (100) claims are denied, then ten percent (10%) of the amount reimbursed by Medicaid during the audit period, or one thousand dollars (\$1000), would be recouped.

5016.6 DHCF shall issue a Notice of Proposed Medicaid Overpayment Recovery (NR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review.

**5017 APPEALS FOR PROVIDERS AGAINST WHOM A RECOUPMENT IS MADE**

5017.1 The Provider shall have sixty (60) days from the date of the NR to request an administrative review of the NR. The request for administrative review of the NR shall be submitted to “Manager, Division of Program Integrity, DHCF”.

5017.2 The written request for administrative review shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested.

5017.3 DHCF shall mail a written determination relative to the administrative review to the provider no later than one hundred twenty (120) days from the date of the written request for administrative review pursuant to § 5017.1.

5017.4 Within fifteen (15) days of receipt of the Medicaid Program’s written determination, the Provider may appeal the written determination by filing a written notice of appeal with the Office of Administrative Hearings (OAH), 441 4<sup>th</sup> Street, NW, Suite 450 North, Washington, D.C. 20001.

5017.5 Filing an appeal with the OAH shall not stay any action to recover any overpayment.

**5099 DEFINITIONS**

When used in this chapter, the following terms and conditions shall have the following meanings:

**Activities of Daily Living** - The ability to bathe, transfer, dress, eat and feed self, engage in toileting, and maintain bowel and bladder control (continence).

**Advanced Practice Registered Nurse** - A person who is licensed or authorized to practice as an advanced practice registered nurse pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2015 Supp.)).

**Authorized representative** – Any person other than a provider:

- (a) Who is knowledgeable about a beneficiary’s circumstances and has been designated by that person to represent him or her; or
- (b) Who is legally authorized either to administer a beneficiary’s financial or personal affairs or to protect and advocate for his/her rights.

**Cueing**- Using verbal prompts in the form of instructions or reminders to assist persons with activities of daily living and instrumental activities of daily living.

**Department of Health Care Finance** – The executive agency of the government responsible for administering the Medicaid program within the District of Columbia, effective October 1, 2008.

**Family** - Any person related to the client or beneficiary by blood, marriage, or adoption.

**Limited English Proficient**- Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English.

**Order** – A formal, written instruction signed by a physician or APRN. regarding a specific patient’s medical care, treatment or management. An order for PCA services may only be written by a physician or APRN in accordance with § 5006.1.

**PCA Service Authorization Form** – A form that has been developed or approved by DHCF that identifies the amount, duration and scope of PCA services and the number of hours authorized based upon a face-to-face assessment in accordance with § 5003.



**Primary care physician** - A person who is licensed or authorized to practice medicine pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2015 Supp.)).

**Registered Nurse** - A person who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2012 Repl. & 2015 Supp.)).

**Significant change** - Changes in a beneficiary's health status that warrants an increase or decrease of supports/services outlined in their plan of care.

**Staffing Agency** – Shall have the same meaning as set forth in the Nurse Staffing Agency Act of 2003, effective March 10, 2004 (D.C. Law 15-74; D.C. Official Code §§ 44-1051.01 *et seq.*).

**Start of Care** – The first date upon which a beneficiary receives or is scheduled to receive PCA services.

Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D., Senior Deputy Director/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4<sup>th</sup> Street, NW, Suite 900 South, Washington D.C. 20001, via telephone on (202) 442-8742, via email at [DHCFPublicComments@dc.gov](mailto:DHCFPublicComments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2016-059  
April 13, 2016

**SUBJECT:** Designation of Special Event Areas for Emancipation Day Celebration

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as the Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2014 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:

1. On Saturday, April 16, 2016, between the hours of 12:00 p.m. and 4:00 p.m., the following area is hereby designated as a special event area to be used as a parade route:
  - a. The area on Pennsylvania Avenue, NW, between 7<sup>th</sup> and 14<sup>th</sup> Streets, NW.
2. On Saturday, April 16, 2016, between the hours of 6:00 a.m. and 4:00 p.m., the following areas are hereby designated as a special event area to be used as a parade route staging area:
  - a. The area of Indiana Avenue, NW, between 3<sup>rd</sup> and 7<sup>th</sup> Streets, NW;
  - b. The area of 7<sup>th</sup> Street, NW, between Pennsylvania Avenue and Indiana Avenue, NW; and
  - c. The area of 4<sup>th</sup> Street NW, between E Street and Indiana Avenue, NW; and
3. On Saturday, April 16, 2016, between the hours of 6:00 a.m. and 6:00 p.m., the following areas are hereby designated as a special event area to be used as a parade route staging area:
  - a. The East and West curb lanes of 3<sup>rd</sup> Street, NW, between Constitution Avenue and Independence Avenue, NW.
4. On Saturday, April 16, 2016, between the hours of 4:00 a.m. and 12 a.m., midnight, the following areas are hereby designated as a special event area to be used as a fairground and staging areas:
  - a. The area on Pennsylvania Avenue (South), NW, between 12<sup>th</sup> and 14<sup>th</sup> Streets, including 13½ Street, NW;

- b. E Street, NW, between 13<sup>th</sup> and 14<sup>th</sup> Streets, NW;
  - c. The North and South curb lanes of E Street, NW, between 12<sup>th</sup> and 13<sup>th</sup> Streets, NW;
  - d. The East and West curb lanes of 13<sup>th</sup> Street, NW, between E and F Streets, NW;
  - e. 13<sup>th</sup> Street, NW, between E Street and Pennsylvania Avenue, NW;
  - f. 12<sup>th</sup> Street NW, between E Street and Pennsylvania Avenue, NW;
  - g. The East curb lane of 14<sup>th</sup> Street, NW, between E Street and Constitution Avenue, NW;
  - h. The North curb lane of Pennsylvania Avenue, NW, between 14<sup>th</sup> and 15<sup>th</sup> Streets, NW; and
  - i. The East curb lane of 14<sup>th</sup> Street, NW, between E and F Streets, NW.
5. The Government of The District of Columbia – Executive Office of the Mayor is authorized to operate said parade route and fairground, and to conduct necessary and appropriate activities in aid of the parade route and the fairground for the 154<sup>th</sup> Anniversary of President Lincoln's signing of the District of Columbia Compensated Emancipation Act.
6. This Order is an authorization for the closure of the designated streets only, and the operating entities shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event on the designated streets. All building, health, life safety, and use of public space requirements shall remain applicable to the Special Event Areas designated by this Order.
7. **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

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## ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-060  
April 13, 2016

**SUBJECT:** Reappointment and Appointments — District of Columbia Bicycle  
Advisory 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 section 5(b) of the District of Columbia Comprehensive Bicycle Transportation and Safety Act of 1984, effective March 16, 1985, D.C. Law 5-179, D.C. Official Code § 50-1604(b) (2014 Repl.), it is hereby **ORDERED** that:


1. The following person is reappointed as a member of the District of Columbia Bicycle Advisory Council (the “**Council**”) and shall serve in that capacity at the pleasure of the Mayor:
  - a. **JIM SEBASTIAN** as the bicycle coordinator of the Office of Bicycle Transportation and Safety, District Department of Transportation.
2. The following persons are appointed as members of the Council and shall serve in that capacity at the pleasure of the Mayor:
  - a. **LAMAR GREENE** as the designee of the Chief of the Metropolitan Police Department, replacing Cathy L. Lanier.
  - b. **DAN EMERINE** as the designee of the Director of the Office of Planning, replacing Josh Ghaffari.
3. **JAY STEWART** is appointed as the community representative member of the Council appointed by the Ward 8 member of the Council of the District of Columbia, replacing Noabeth Bruckenthal, and shall serve for a term to end July 23, 2018 at the pleasure of the Ward 8 member of the Council of the District of Columbia.

4. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to July 23, 2015.



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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2016-061  
April 14, 2016

**SUBJECT:** Re-Establishment — District of Columbia Emancipation Commemoration Commission

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as the Mayor of the District of Columbia by section 422(2) and (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), (11) (2014 Repl.), it is hereby **ORDERED** that:

**I. ESTABLISHMENT**

There is re-established the District of Columbia Emancipation Commemoration Commission (hereinafter referred to as the “**Commission**”) in the Executive Branch of the Government of the District of Columbia.

**II. PURPOSE**

The Commission shall advise the Mayor on programs, projects, activities, and forums to celebrate and commemorate April 16<sup>th</sup> as a public legal holiday in District of Columbia that recognizes the District of Columbia Compensated Emancipation Act (“**Act**”), approved by Congress and signed by President Abraham Lincoln on April 16, 1862 to abolish slavery in the District of Columbia.

**III. FUNCTIONS**

The Commission shall:

- A. Commemorate the emancipation of formerly enslaved persons in the District of Columbia as the first freed, through legislation passed by the Thirty-Seventh Congress that approved the District of Columbia Compensated Emancipation Act, which abolished slavery in the District of Columbia on April 16, 1862;
- B. Develop and implement plans, programs, projects, and activities to celebrate the commemorative history, culture, heritage, customs, and traditions that highlight the struggle to overcome the institution of slavery, and to profile the African-American experience in the struggle for freedom, justice, and equality;
- C. Undertake other duties as are assigned by the Mayor; and,

- D. Submit a report to the Mayor through the Secretary of the District of Columbia on the events, activities, and accomplishments of the Commission.

#### IV. APPOINTMENTS

- A. The Commission shall have a maximum of ten (10) members each appointed and shall serve at the pleasure of the Mayor.
- B. All members of the Commission shall be residents of the District, or shall have some resident business, educational, social or cultural nexus to the District.
- C. The Secretary of the District of Columbia shall serve as ex-officio member and Chairperson of the Commission.
- D. The Mayor, as deemed necessary, shall appoint representatives from District Government agencies as ex officio members of the Commission.
- E. The Commission shall include members of the general public as well as members with experience in business, labor and economic development; history; education; religion, culture and heritage.

#### VI. COMPENSATION

Members of the Commission shall serve without compensation.

#### VII. ORGANIZATION

- A. The Commission may establish subcommittees as needed. Subcommittees may include individuals who are not members of the Commission, provided that a member of the Commission chairs each subcommittee.
- B. Meetings of the Commission shall be scheduled at the discretion of the Chairperson.
- C. The Commission may establish its own by-laws and rules of procedure, subject to the approval of the Chairperson, or her designee.

#### VIII. ADMINISTRATION

- A. The Office of the Secretary of the District of Columbia and the Office of Public Records shall provide administrative support for the Commission. The commemorative undertakings of the Commission shall be considered activities associated with the celebration of Emancipation Day.

B. Each department, agency, instrumentality, or independent agency of the District shall cooperate with the Commission and provide any information, in a timely manner, which the Commission requests to carry out the provisions of this Order.

**IX. SUNSET**

The Commission shall sunset on December 31, 2018.

**X. RESCISSIONS**


This Order shall supersede Mayor's Order 2015-139, dated May 21, 2015.

**XI. EFFECTIVE DATE:** This Order shall become effective immediately.



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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA



GOVERNMENT OF THE DISTRICT OF COLUMBIA

## ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-062  
April 14, 2016

**SUBJECT:** Reappointments and Appointments — Construction Codes Coordinating 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 pursuant to Mayor's Order 2009-22, dated February 25, 2009, as amended by Mayor's Order 2012-32, dated February 29, 2012, it is hereby **ORDERED** that:

1. The following persons are reappointed to the Construction Codes Coordinating Board ("**Board**"):
  - a. **MARC FETTERMAN** as the Architectural Design Profession member, for a term to end July 9, 2018;
  - b. **ETHAN LANDIS** as the Building Industry: Residential and Multi-family member, for a term to end June 15, 2018;
  - c. **JATINDER KHOKHAR** as an Office of the Construction Code Official member, for a term to end February 15, 2018;
  - d. **GARY ENGLEBERT** as an Office of the Construction Code Official member, for a term to end February 15, 2018; and
  - e. **WILLIAM UPDIKE** as the Department of Energy and Environment member, for a term to end February 15, 2018.
2. The following persons are appointed to the Board:
  - a. **KELLIE FARSTER** as the Structural Engineering Profession member, replacing Alexander Berley, for a term to end July 9, 2018;
  - b. **JASON WRIGHT** as the Building Industry: Commercial and Residential member, replacing Greg Colevas, for a term to end June 15, 2018;

- c. **ARMANDO LOURENCO** as the Mechanical Engineering Profession member, replacing Robert Hershey, for a term to end September 15, 2018;
  - d. **ROBERT LOOPER** as the Private Citizen member, replacing Jill Stern, for a term to end June 15, 2018;
  - e. **TONY FALWELL** as the Office of the Fire Marshal member, replacing Herb Taylor, for a term to end February 15, 2018;
  - f. **DAVID EPLEY** is appointed as Office of the Fire Marshal member, replacing Rabbiah Sabbakhan, for a term to end February 15, 2018.
3. **JILL STERN**, who serves as the building code analyst in the Department of Consumer and Regulatory Affairs, is appointed as the Chairperson of the Board, replacing Paul Waters, and shall serve as an *ex officio* non-voting member of the Board.
4. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
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 MURIEL BOWSER  
 MAYOR

ATTEST:   
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 LAUREN C. VAUGHAN  
 SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM


Mayor's Order 2016-063  
April 14, 2016

**SUBJECT:** Appointment — Board of Psychology

**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 211 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1202.11 (2012 Repl.), it is hereby **ORDERED** that:

1. **DR. ANTHONY JIMENEZ** is appointed as Interim Chairperson of the Board of Psychology and shall serve in that capacity at the pleasure of the Mayor.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.




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MURIEL BOWSER  
MAYOR

ATTEST: 

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LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, APRIL 27, 2016  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S  
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson  
Members: Nick Alberti, Mike Silverstein,  
Ruthanne Miller, James Short

<b>Protest Hearing (Status)</b> <b>Case # 16-PRO-00014;</b> The Griffin Group, LLC, t/a Policy, 1904 14th Street NW, License #76804, Retailer CR, ANC 2B <b>Substantial Change (Addition of Dancing to Entertainment Endorsement)</b>	<b>9:30 AM</b>
<b>Protest Hearing (Status)</b> <b>Case # 16-PRO-00016;</b> Capitol Market, LLC, t/a Capitol Market, 2501 North Capitol Street NE, License #91021, Retailer B, ANC 5E <b>Substantial Change (Class Change from Class "B" Grocery to Class "A" Liquor Store)</b>	<b>9:30 AM</b>
<b>Show Cause Hearing (Status)</b> <b>Case # 15-CMP-00975;</b> Kookoovaya, Inc., t/a We, The Pizza, 305 Pennsylvania Ave SE, License #82062, Retailer CR, ANC 6B <b>No ABC Manager on Duty</b>	<b>9:30 AM</b>
<b>Show Cause Hearing (Status)</b> <b>Case # 15-CC-00116;</b> TGR, Inc., t/a Cities DC, 1909 K Street NW, License #77812, Retailer CR, ANC 2B <b>Sale to Minor Violation (Two Counts), Failed to Take Steps Necessary to Ascertain Legal Drinking Age</b>	<b>9:30 AM</b>
<b>Show Cause Hearing (Status)</b> <b>Case # 14-CMP-00740;</b> Lydia Assefa, t/a Super Saver Grocery & Deli, 4413 14th Street NW, License #11247, Retailer B, ANC 4C <b>Sold Go-Cups</b>	<b>9:30 AM</b>

Board's Calendar

April 27, 2016

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-00715;** Nispero, LLC, t/a El Nuevo Migueleno, 1721 Columbia Road NW, License #75403, Retailer CR, ANC 1C

**No ABC Manager on Duty, Licensee Under the Influence of Alcohol**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-00914;** Adams Restaurant Group, Inc., t/a Claudia's Steakhouse, 1501 K Street NW, License #95922, Retailer CR, ANC 2B

**No ABC Manager on Duty**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-00913;** Adams Restaurant Group, Inc., t/a Claudia's Steakhouse, 1501 K Street NW, License #95922, Retailer CR, ANC 2B

**No ABC Manager on Duty**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-00691;** Po Boy Jim, LLC, t/a Po Boy Jim, 709 H Street NE License #87903, Retailer CR, ANC 6C

**Failed to File Quarterly Statements (4th Quarter 2014)**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 15-CMP-01011;** Alexander Market, Inc., t/a Newton Food Mart, 3600 12th Street NE, License #94313, Retailer B, ANC 5B

**No ABC Manager on Duty**

**Fact Finding Hearing\* 10:00 AM**

**Case # 15-251-00225;** TAG Ventures, Inc., t/a Bar 7, 1015 7th Street NW License #82350, Retailer CT, ANC 6E

**Assault Inside of the Establishment, Failed to Follow Security Plan, Interfered with an Investigation**

**Show Cause Hearing\***

**Case # 15-CMP-00733;** Sugar, LLC, t/a Sugar, 2121 K Street NW, License #98866, Retailer CT, ANC 2A **11:00 AM**

**Sale to Minor Violation (Ten Counts), Failed to Take Steps Necessary to Ascertain Legal Drinking Age (Nine Counts), Substantial Change in Operation Without Board Approval, Failed to Post In a Conspicuous Place the Name of the Licensee**

**BOARD RECESS AT 12:00 PM  
ADMINISTRATIVE AGENDA AT 1:00 PM**

Board's Calendar

April 27, 2016

**Show Cause Hearing\***

**1:30 PM**

**Case # 15-CMP-00911;** Khan's BBQ, Inc., t/a Khan's, 1125 H Street NE

License #84082, Retailer CR, ANC 6A

**No ABC Manager on Duty**

**Show Cause Hearing\***

**2:30 PM**

**Case # 15-CMP-00530;** Pacifico on Eight, LLC, t/a Pacifico Cantina, 514 8th Street SE, License #86033, Retailer CR, ANC 6B

**Failed to Take Steps Necessary to Ensure Property is Free of Litter**

**Show Cause Hearing\***

**3:30 PM**

**Case # 15-251-00125;** Chao Charles Zhou, t/a Eye Bar/Garden of Eden, 1716 I Street NW, License #83133, Retailer CN, ANC 25B

**Failed to Follow Security Plan**

**Protest Hearing\***

**4:30 PM**

**Case # 16-PRO-00006;** CS Bond ST. AB-C Holdings, t/a The Carlyle Hotel 1731 New Hampshire Ave NW, License #90805, Retailer CH, ANC 2B

**Substantial Change (Change of Hours of Operation)**

**\*The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Official Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
CEASE AND DESIST AGENDA (CATERERS)

WEDNESDAY, APRIL 27, 2016  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The ABC Board will be issuing Orders to Cease and Desist to the following Licensees for the reasons outlined below.

ABRA-100281 – **Mama Chuy DC** – Retail – Caterer – 2620 GEORGIA AVENUE NW  
[Licensee did not Renew.]

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ABRA-094868 – **Pinstripes** – Retail – Caterer – 3222 M STREET NW  
[Licensee did not Renew.]

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ABRA-092199 – **Taberna del Alabardero** – Retail – Caterer – 1776 I STREET NW  
[Licensee did not Renew.]

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ABRA-092155 – **Equinox** – Retail – Caterer – 818 CONNECTICUT AVENUE NW  
[Licensee did not Renew.]

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ABRA-092307 – **AND** – Retail – Caterer – 1314 9<sup>th</sup> STREET NW  
[Licensee did not Renew.]

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ABRA-086793 – **B Cafe et Brookland Café** – Retail – Caterer – 3740 12<sup>th</sup> STREET NE  
[Licensee did not Renew.]

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ABRA-088164 – **National Democratic Club** – Retail – Caterer – 30 IVY STREET SE  
[Licensee did not Renew.]

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ABRA-077459 – **R & R Catering** – Retail – Caterer – 8004 ALBAN ROAD  
[Licensee did not Renew.]

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ABRA-088832 – **Rosa Mexicano** – Retail – Caterer – 5225 WISCONSIN AVENUE NW  
[Licensee did not Renew.]

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**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING  
INVESTIGATIVE AGENDA**

**WEDNESDAY, APRIL 27, 2016  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

**On April 27, 2016 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.”**

1. Case#16-AUD-00029 Johnny's Half Shell, 400 NORTH CAPITOL ST NW Retailer C Restaurant, License#: ABRA-074573

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2. Case#16-AUD-00028 Le Chat Noir, 4907 WISCONSIN AVE NW Retailer C Restaurant, License#: ABRA-072038

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3. Case#16-AUD-00035 Le Pain Quotidien, 2815 M ST NW Retailer C Restaurant, License#: ABRA-077337

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4. Case#16-AUD-00027 Petits Plats, 2653 CONNECTICUT AVE NW Retailer C Restaurant, License#: ABRA-060146

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5. Case#16-AUD-00036 Wok and Roll, 604 H ST NW Retailer C Restaurant, License#: ABRA-060447

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6. Case#16-AUD-00033 Le Pain Quotidien, 4872 MASSACHUSETTS AVE NW Retailer D Restaurant, License#: ABRA-080772

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7. Case#16-251-00033 Dirty Martini Inn Bar/Dirty Bar, 1223 CONNECTICUT AVE NW Retailer C Nightclub, License#: ABRA-083919

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8. Case#16-CC-00014 Cavalier Wine and Liquors, 3515 14TH ST NW Retailer A Retail -  
Liquor Store, License#: ABRA-085968

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9. Case#16-CMP-00206 Asia DC, 1720 I ST NW Retailer C Nightclub, License#: ABRA-  
086035

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10. Case#16-CMP-00118 Lupo Verde, 1401 T ST NW Retailer C Restaurant, License#: ABRA-  
088527

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11. Case#16-251-00030 Echostage, 2135 QUEENS CHAPEL RD NE Retailer C Nightclub,  
License#: ABRA-090250

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12. Case#16-CMP-00116 Flash, 645 FLORIDA AVE NW Retailer C Tavern, License#: ABRA-  
090823

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, APRIL 27, 2016 AT 1:00 PM  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 8D. SMD 8D07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Al's Liquor*, 4009 South Capitol Street SW, Retailer A Liquor Store, License No. 074611.

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2. Review Application for Safekeeping of License – Original Request. ANC 5E. SMD 5E01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *& Pizza*, 666 Monroe Street NE, Retailer CR, License No. 094478.

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3. Review Application for Safekeeping of License – Original Request. ANC 2B. SMD 2B05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *& Pizza*, 1215 Connecticut Avenue NW, Retailer CR, License No. 096845.

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4. Review Application for Safekeeping of License – Original Request. ANC 2C. SMD 2C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *& Pizza*, 1005 E Street NW, Retailer CR, License No. 094712.

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5. Review Request for Extension of Safekeeping of Licensing. Extensions have been requested twice a year since the Original Safekeeping Date of 03/01/2010. ANC 2A. SMD 2A01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *The George Washington University Club*, 1918 F Street NW, Retailer CX, License No. 026668.

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6. Review to Extend Safekeeping Status of License - First Request. Original Safekeeping Date: 6/17/2015. ANC 6A. SMD 6A08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***M & T Grocer's Beer and Wine***, 201 15<sup>th</sup> Street NE, Retailer B Grocery, License No. 077390.
- 
7. Review Request to Extend Safekeeping Status of License – Second Request. Original Safekeeping Date: 11/19/2014. ANC 2E. SMD 2E05. Pending Enforcement Matter: Case #14-CC-00026, Sale to Minor. Show Cause Hearing scheduled for 12/3/2014. Outstanding Citation: Case #11-CMP-00085, Quarterly Statement for 2/1/11, Citation #1805, \$500 fine (Secondary). No conflict with Settlement Agreement. ***Mr. Smith's of Georgetown***, 3104 M Street NW, Retailer CR, License No. 000864.
- 
8. Review to Extend Safekeeping Status of License - Second Request. Original Safekeeping Date: 9/13/2006. ANC 1C. SMD 1C07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Roxanne/Peyote***, 2296 Champlain Street NW, Retailer CR, License No. 060338.
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9. Review to Extend Safekeeping Status of License - First Request. Original Safekeeping Date: 7/2/2005. ANC 2B. SMD 2B04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Club Chaos***, 1633 Q Street NW, Retailer CR, License No. 025541.
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10. Review Request to increase Sidewalk Café seating from 70 to 72 seats, corresponding with the Sidewalk Café Permit. ANC 2C. SMD 2C01. Original Safekeeping Date: 7/2/2005. ANC 2C. SMD 2C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Momofuku/Milk Bar City Center***, 1090 I Street NW, Retailer CR, License No. 098740.
- 
11. Review Request for Change of Hours. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday-Thursday 11:30am to 2am, Friday-Saturday 11:30am to 3am. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday-Thursday 8:30am to 2am, Friday-Saturday 8:30am to 3am. ANC 6D. SMD 6D07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Bluejacket/The Arsenal***, 300 Tingey Street SE, Retailer CR, License No. 090281.

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12. Review Request to add Cover Charge to existing Entertainment Endorsement. ANC 5E. SMD 5E06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Washington Firehouse Restaurant*, 1626 North Capitol Street NW, Retailer CT, License No. 092685.

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13. Review Application for Manager's License. *Robert M. Long*-ABRA 102535.

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**\*In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

## DISTRICT OF COLUMBIA COMMISSION ON THE ARTS AND HUMANITIES

## NOTICE OF PUBLIC MEETING

## Board of Commissioners

The Board of Commissioners of the District of Columbia Commission on the Arts and Humanities (DCCAH) will be holding a meeting on Thursday, April 28, 2016 at 3:30 p.m. The meeting will be held in the DCCAH Large Conference Room at 200 I Street, SE, Suite 1400, Washington, DC. Below is the draft agenda for this meeting. A final agenda will be posted to the DCCAH website at <http://dcarts.dc.gov/page/commissioner-meetings>.

For further information, please contact the front desk at (202) 724-5613.

## DRAFT AGENDA

- |     |                                |                           |
|-----|--------------------------------|---------------------------|
| 1.  | Public Comment Period          |                           |
| 2.  | Call to Order                  | Chairperson               |
| 3.  | Adoption of the Agenda         | All Commissioners Present |
| 4.  | Adoption of Minutes            | All Commissioners Present |
| 5.  | Chairperson's Report           | Chairperson               |
| 6.  | Executive Director's Report    | Executive Director        |
| 7.  | Office of the Poet Laureate    | Poet Laureate             |
| 8.  | Committee Reports              | Respective Committees     |
| 9.  | Panel Recommendations          |                           |
| 10. | Unfinished Business            | All Commissioners Present |
| 11. | New Business and Announcements | All Commissioners Present |
| 12. | Adjournment                    | Chairperson               |

**DEPARTMENT OF BEHAVIORAL HEALTH  
NOTICE OF FUNDING AVAILABILITY (NOFA)**

**RFA # RM0 PC050216**

**Prevention Centers (Wards 1 & 2 and Wards 5 & 6)**

**Purpose/Description of Project**

The Government of the District of Columbia Department of Behavioral Health (DBH) is soliciting applications for qualified non-profit community-based organizations currently addressing community, public health, substance use and behavioral health issues in the DC communities to continue Prevention Centers in Wards 1 & 2 and Wards 5 & 6. The Prevention Centers were developed to strengthen community capacity, address needed community and system changes, reduce substance use risk factors, and achieve target outcomes for District children and youth. These Centers are envisioned as dynamic hubs that engage, support, and help connect the many community elements that are needed for promoting healthy children, youth, and families as well as a drug-free city.

**Eligibility**

Applicants must:

1. Be a qualified non-profit community-based organization addressing community, public health, substance use and behavioral health issues; and
2. Have a physical presence in the proposed wards (Wards 1 & 2 and/or Wards 5 & 6).

Please note: Current DC Prevention Center (DCPC) grant recipients are eligible to apply for the Request for Application (RFA) if they have a physical presence in the proposed wards (Wards 1 & 2 and/or Wards 5 & 6).

**Review Factors**

All applications will be objectively reviewed and scored against the criteria specified in the RFA.

**Length of Award**

Grant awards will be for a period of one year from the date of award. The grant may be continued for up to two (2) additional years based on documented project success and availability of funding. Grant recipients will be expected to begin project implementation on October 1, 2016, or after the Year 1 Work Plan and Budget and Budget Narrative has been approved by DBH.

**Available Funding**

Approximately \$465,129.00 will be available each year through September 30, 2019 to fund two (2) Prevention Centers (one in Wards 1 & 2 and one in Wards 5 & 6) in the amount of \$232,564.50 each to provide access to substance use prevention to strengthen communities as places where children and youth are healthy and drug free. Funded grants will be awarded by

DBH using funds provided by the United States Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) through the Substance Abuse Prevention and Treatment (SAPT) Block Grant.

**Anticipated Number of Awards**

A total of two (2) awards are available.

**Request for Application Release**

The Request for Applications (RFA) will be released Monday, May 2, 2016. The RFA will be posted on the DBH website and on the Office of Partnerships and Grant Services website, [www.opgs.dc.gov](http://www.opgs.dc.gov) under the District Grants Clearinghouse. Copies may also be picked up at the DBH, 64 New York Avenue NE, Washington, DC 20002, 2<sup>nd</sup> Floor from Katherine Cooke Mundle beginning Monday, May 2, 2016 from 8:15 a.m. – 4:45 p.m.

**Pre-Application Conference**

A pre-application conference will be held at DBH, 64 New York Avenue NE, Washington, DC 20002, 2<sup>nd</sup> Floor Conference Room (Room 242) on Thursday, May 5, 2016 from 10:00 a.m. - 12:00 p.m. Please contact Katherine Cooke Mundle at [katherine.mundle@dc.gov](mailto:katherine.mundle@dc.gov) or (202) 727-7639 for additional information.

**Deadline for Applications**

**The deadline for submission is Thursday, June 2, 2016, at 4:45 p.m., Eastern Time (ET).** Late or incomplete applications will not be forwarded for review.

**CENTER CITY PUBLIC CHARTER SCHOOLS**  
**INTENT TO ENTER A SOLE SOURCE CONTRACT**

**Urban Teachers**

Center City Public Charter Schools states it's Intent to Award a Sole Source Contract for the following:

**Center City PCS intends to award a sole source contract to Urban Teachers for the purposes of securing teaching residents for the 2016-2017 School Year.**

To obtain copies of full Notice of Intent, please visit our website:

[www.centercitypcs.org/contact/requests-for-proposal](http://www.centercitypcs.org/contact/requests-for-proposal)

Contact Person:

Robin Chait

[rchait@centercitypcs.org](mailto:rchait@centercitypcs.org)



**CENTER CITY PUBLIC CHARTER SCHOOLS**  
**REQUEST FOR PROPOSALS**

Center City Public Charter Schools is soliciting proposals from qualified vendors for the following:

**Design-Build School Expansion Services:** Center City PCS would like to engage a contractor to design-build out additional classroom and administrative spaces at three campuses. Scope of work, but not limited to, includes design and construction of PK-3 classrooms with restroom suites, nurse's suites, warming kitchen, and staff office.

Contact person:

Natasha Harrison  
nharrison@centercitypcs.org

**Field Trip Transportation Services:** Center City PCS would like to engage one or more transportation service providers to service six charter schools located in the District of Columbia. The goal is to enter into a contract with a professional and dynamic company that is able to meet all requirements and ensure services are provided for all school events/activities, which will require the need to transport students.

Contact person:

Mr. Kelly Dickens  
kdickens@centercitypcs.org

**Special Education Evaluation Services:** Center City Public Charter School seeks bids for psychological evaluation services in the area of special education. Interested parties should review the requirements to submit a proposal that outlines services, fees and qualifications.

Contact person:

Michelle Pianim  
[mpianim@centercitypcs.org](mailto:mpianim@centercitypcs.org)

**To obtain copies of full RFP's**, please visit our website: [www.centercitypcs.org](http://www.centercitypcs.org). The full RFP's contain guidelines for submission, applicable qualifications and deadlines.

**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, April 26, 2016, from 5:00 pm to 7:30 pm, in the Ground Floor Meeting Room of the Greater Washington Urban League Building, 2901 14<sup>th</sup> 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 CIC Board and Staff
- IV. CIC Strategic Planning
- V. Reports: Publishing Schedule
- VI. Recent Inspections
- VII. Community Outreach Report
- VIII. Other
- IX. Schedule Next CIC Open Meeting and Set Open Meeting Schedule
- X. Adjournment of Open Meeting

**National Reentry Week – CIC Pop-up Think Tank**

- I. Panel Discussion
- II. Breakout Groups
- III. Groups Report-out
- IV. Wrap-up

**D.C. BILINGUAL PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

D.C. Bilingual Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide:

- Playground development and preparation

Please visit [www.dcbilingual.org/bids](http://www.dcbilingual.org/bids) to request a full RFP offering more detail on scope of work and bidder requirements.

Proposals shall be received no later than 9:00 A.M., Monday, April 29th, 2016.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator  
[bids@dcbilingual.org](mailto:bids@dcbilingual.org)

**BOARD OF ELECTIONS****CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

**VACANT: 1A05 and 4A05**

Petition Circulation Period: **Monday, April 25, 2016 thru Monday, May 16, 2016**  
Petition Challenge Period: **Thursday, May 19, 2016 thru Wednesday, May 25, 2016**

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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 - 4<sup>th</sup> Street, NW, Room 250N  
Washington, DC 20001**

For more information, the public may call **727-2525**.

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

**Certification of Filling a Vacancy  
In Advisory Neighborhood Commission**

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Melissa Lane  
Single-Member District 3B03

## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FILING OF A REQUEST FOR A  
CERTIFICATE OF COMPLETION

1711 Florida Avenue, NW

Pursuant to § 601(b) of the Brownfield Revitalization Amendment Act of 2000, D. C. Law 13-312, D.C. Official Code §§ 8-631 *et seq.*, as amended April 8, 2011, D.C. Law 18-369 (herein referred to as the “Act”), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch (LRDB), is informing the public that it has received a Site Completion Report and a request for a Certificate of Completion to support a Voluntary Cleanup Program (VCP) application. The applicant for real property addressed as 1711 Florida Avenue, NW, Case No. VCP 2014-0030, is KJ Florida Avenue Property LLC, 1751 Pinnacle Drive, Suite 700, McLean, Virginia 22102.

The application identified metals in soil and petroleum products and volatile organic compounds in groundwater. A Cleanup Action Plan (CAP) for this site was approved by the Program on July 15, 2015. Based on the cleanup oversight and review of the site completion report, the Voluntary Cleanup Program has determined the issuance of a Certificate of Completion is warranted.

Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-1C) for the area in which the property is located. The Site Completion Report is available for public review at the following location:

Voluntary Cleanup Program  
Department of Energy and Environment (DOEE)  
1200 First Street, NE, Fifth Floor  
Washington, DC 20002

Interested parties may also request a copy of the Site Completion Report and related documents for a charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-2600 or by e-mailing [james.sweeney@dc.gov](mailto:james.sweeney@dc.gov).

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within twenty one (21) days from the date of this publication. DOEE is required to consider all public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FILING OF A REQUEST FOR A  
CERTIFICATE OF COMPLETION

1850 New York Avenue, NE

Pursuant to § 601(b) of the Brownfield Revitalization Amendment Act of 2000, D. C. Law 13-312, D.C. Official Code §§ 8-631 *et seq.*, as amended April 8, 2011, D.C. Law 18-369 (herein referred to as the “Act”), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch (LRDB), is informing the public that it has received a Site Completion Report and a request for a Certificate of Completion to support a Voluntary Cleanup Program (VCP) application. The applicant for real property addressed as 1850 New York Avenue, NE, Case No. VCP 2014-0027, is 1850 N.Y. Ave. Self Storage Partners LLC, 8291 Old Courthouse Road, Suite 210, Vienna, Virginia 22182.

The application identifies the presence of soil gas associated with volatile chlorinated organic solvents in the sub-slab along with petroleum products and metals. The applicant has performed excavation activities at the currently idle vacant land for the purpose of redeveloping into a self-storage facility.

A Cleanup Action Plan (CAP) for this site was approved by the Program on November 18, 2014. Based on the cleanup oversight and review of the site completion report, the Voluntary Cleanup Program has determined the issuance of a Certificate of Completion is warranted.

Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-5C) for the area in which the property is located. The Site Completion Report is available for public review at the following location:

Voluntary Cleanup Program  
Department of Energy and Environment (DOEE)  
1200 First Street, NE, Fifth Floor  
Washington, DC 20002

Interested parties may also request a copy of the Site Completion Report and related documents for a charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-2600 or by e-mailing [james.sweeney@dc.gov](mailto:james.sweeney@dc.gov).

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within twenty one (21) days from the date of this publication. DOEE is required to consider all public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

## DEPARTMENT OF ENERGY AND ENVIRONMENT

**NOTICE OF FILING OF A  
VOLUNTARY CLEANUP ACTION PLAN****South Capitol Shopping Center: 4001 – 4031 South Capitol Street, SW**

Pursuant to § 601(b) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code §§ 8-631 *et seq.*, as amended April 8, 2011, D.C. Law 18-369 (Act)), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch (LRDB), informs the public that it has received a Voluntary Cleanup Action Plan (VCAP) requesting to perform a remediation action. The applicant for contiguous properties located at 4001 – 4031 South Capitol Street, SW, Washington, DC 20032, is South Capitol Improvements, LLC, 2900 K Street, NW, Suite 401, Washington, DC 20007. The application identifies the presence of chlorinated solvents and petroleum hydrocarbons in soil and groundwater. The property is planned for a mixed-use redevelopment consisting of commercial and multi-family residential.

Written comments on the proposed Cleanup Action Plan must be received by the VCP program at the address listed below within twenty one (21) days from the date of this publication. DOEE is required to consider all public comments it receives before acting on the application, the Cleanup Action Plan, or a Certificate of Completion for any voluntary cleanup project.

The Cleanup Action Plan and supporting documents are available for public review at the following location:

Voluntary Cleanup Program  
Department of Energy and Environment (DOEE)  
1200 First St., NE, Fifth Floor  
Washington, DC 20002

Interested parties may also request a copy of the Cleanup Action Plan for a small charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or by calling (202) 535-1771 or by e-mailing [kokeb.tarekegn@dc.gov](mailto:kokeb.tarekegn@dc.gov).

Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC-8D) for the area in which the property is located.

Please refer to Case No. VCP2016-040 in any correspondence related to this notice.



**DEPARTMENT OF ENERGY AND ENVIRONMENT****PUBLIC NOTICE****AIR QUALITY TITLE V OPERATING PERMIT AND  
GENERAL PERMIT FOR  
FORT MYER CONSTRUCTION CORPORATION - PLANT #1**

Notice is hereby given that Fort Myer Construction Corporation has applied for a Title V air quality permit pursuant to the requirements of Title 20 of the District of Columbia Municipal Regulations, Chapters 2 and 3 (20 DCMR Chapters 2 and 3) to operate a 75 MMBtu/hr Rotary Kiln with Genco Ultra II dual fuel-fired (natural gas and No. 2 fuel oil) burner and Genco/Bituma #99 baghouse fabric filter, a crusher and a screener with associated conveyors for recycled asphalt processing at its hot mix asphalt facility located at located at 2001 5th Street NE, Washington DC. The contact person for the facility is Ken Kucina, Corporate Compliance Officer, at (202) 636-9535 ext. 2503.

Fort Myer Construction Plant #1 has the potential to emit approximately 156.91 tons per year of oxides of nitrogen (NO<sub>x</sub>), 50.74 tons per year of volatile organic compounds (VOC), 312.30 tons per year of total particulate matter, 104.31 tons per year of sulfur dioxide (SO<sub>2</sub>), and 364.76 tons per year of carbon monoxide (CO). The NO<sub>x</sub> and VOC emissions exceed the major source threshold in the District of 25 tons per year of NO<sub>x</sub> and VOC. The particulate matter, SO<sub>2</sub>, and CO emissions exceed the major source threshold in the District of 100 tons per year of each of these pollutants. Therefore, the facility is classified as a major source of air pollution and is subject to 20 DCMR Chapter 3 and must obtain an operating permit under the regulation.

The Department of Energy and Environment (DOEE) has reviewed the permit application and related documents and has made a preliminary determination that the applicant meets all applicable air quality requirements promulgated by the U.S. Environmental Protection Agency (EPA) and the District. Therefore, draft permit #028-R1 has been prepared.

The application, the draft permit, and all other materials submitted by the applicant [except those entitled to confidential treatment under 20 DCMR 301.1(c)] considered in making this preliminary determination are available for public review during normal business hours at the offices of the Department of Energy and Environment, 1200 First Street NE, 5<sup>th</sup> Floor, Washington DC 20002. Copies of the draft permit and related fact sheet are available at <http://doee.dc.gov>.

A public hearing on this permitting action will not be held unless DOEE has received a request for such a hearing within 30 days of the publication of this notice. Interested parties may also submit written comments on the permitting action. Hearing requests or comments should be directed to Stephen S. Ours, DOEE Air Quality Division, 1200 First Street NE, 5<sup>th</sup> Floor, Washington DC 20002. Questions about this permitting action should be directed to Olivia Achuko at (202) 535-2997 or [olivia.achuko@dc.gov](mailto:olivia.achuko@dc.gov). Comments or hearing requests submitted after May 23, 2016 will not be accepted.

**DEPARTMENT OF ENERGY AND ENVIRONMENT****PUBLIC NOTICE**

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, D.C. Official Code §2-505, and 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, Washington, DC, intends to issue a permit (#6522-R1) to the District of Columbia Water and Sewer Authority (DC Water) to operate one (1) existing 1,600 kWe emergency generator set with associated 2,346 hp diesel-fired engine. The emergency generator is located at the Minnesota Avenue Pumping Station, 1801 Minnesota Avenue SE, Washington, DC. The contact person for the applicant is Meena Gowda, Principal Counsel, and may be reached at (202) 787-2628.

The proposed emission limits are as follows:

- a. Emissions from this unit shall not exceed those in the following table as measured according to the procedures set forth in 40 CFR 89, Subpart E. [40 CFR 60.4205(b), 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]:

<b>Pollutant Emission Limits (g/kW-hr)</b>		
NMHC+NO <sub>x</sub>	CO	PM
6.4	3.5	0.20

- b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].
- c. In addition to Condition II(b), exhaust opacity, measured and calculated as set forth in 40 CFR 86, Subpart 1, shall not exceed [40 CFR 60.4205(b), 40 CFR 60.4202(a), and 40 CFR 89.113]:
1. 20 percent during the acceleration mode;
  2. 15 percent during the lugging mode;
  3. 40 percent during the peaks in either the acceleration or lugging modes. *Note that this condition is streamlined with the requirements of 20 DCMR 606.1.*
- d. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated maximum emissions from the emergency generator set are as follows:

<b>Pollutant</b>	<b>Maximum Annual Emissions (tons/yr)</b>
Carbon Monoxide (CO)	0.65
Oxides of Nitrogen (NO <sub>x</sub> )	4.55
Volatile Organic Compounds (VOC)	0.32
Total Particulate Matter (PM Total)	1.30
Oxides of Sulfur (SO <sub>x</sub> )	0.0064

The application to operate the emergency generator and the draft renewal permit are available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments, a written request for a public hearing, or both, on the draft permit action within thirty (30) days of publication of this notice. The written comments or a written request for a public hearing must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments or outcome from a public hearing will be considered in issuing the final permit.

Comments or a request for a public hearing should be addressed to:

Stephen S. Ours  
Chief, Permitting Branch  
Air Quality Division  
Department of Energy and Environment  
1200 First Street NE, 5<sup>th</sup> Floor  
Washington, DC 20002  
[stephen.ours@dc.gov](mailto:stephen.ours@dc.gov)

**No written comments postmarked after May 23, 2016 will be accepted.**

For more information, please contact Stephen S. Ours at (202) 535-1747.

**DEPARTMENT OF HEALTH****PUBLIC NOTICE**

The District of Columbia Board of Dentistry hereby gives notice, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.), of the change of its regularly scheduled monthly meeting for the month of May 2016 as follows:

The District of Columbia Board of Dentistry will meet on Wednesday, May 25, 2016 at 10:00 a.m. The open (public) session will begin at 10:30 a.m.

The District of Columbia Board of Dentistry regularly meets on the third Wednesday of each month at 899 North Capitol Street, NE, 2<sup>nd</sup> Floor, Washington, D.C. 20002.

**DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH ADMINISTRATION**

**NOTICE OF FUNDING AVAILABILITY  
Request for Applications RFA#\_CHA\_PHBG050216**

**FY 2016 Preventive Health and Health Services Block Grant**

The Government of the District of Columbia, Department of Health (DOH) Community Health Administration (CHA) is soliciting applications to provide innovative services to improve chronic disease outcomes. The applicants will address education and awareness for respiratory disease in the District of Columbia.

This funding is provided through a grant (B01DP009009) utilizing the Preventive Health and Health Services Block Grant (PHHSBG) funds received from the Centers for Disease Control and Prevention (CDC) pursuant to the authority of Department of Health and Human Services, Public Health Services, and Centers for Disease Control and Prevention, Title XIX, Section 1901, PHS Act as amended.

In FY 2016, approximately \$ 200,000 in funding is expected to be available for one (1) award. The resulting grant award is projected to begin in July 2016.

The following entities are eligible to apply for grant funds under this RFA: not-for profit, public and private organizations located in and licensed to conduct business within the District of Columbia.

**The release date for RFA # CHA\_PHBG050216 is Monday, May 2, 2016.** RFA #CHA\_PHBG050216 will be available on the DC Grants Clearinghouse website <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse> on 05/02/2016. **A limited number of copies will also be available** at the Community Health Administration, 899 North Capitol Street NE, Washington, DC on the 3<sup>rd</sup> floor in the reception area.

**The Request for Application (RFA#CHA PHBG050216** submission deadline is 4:00 pm Thursday, June 2, 2016. The pre-application meeting will be held in the District of Columbia at 899 North Capitol St., NE, 3rd Floor Conference Room, 306, Washington, DC 20002 on Monday, May 16, 2016 at 1:00p.m. – 3:00p.m.

Applicants are encouraged to e-mail any questions to [sherry.billings@dc.gov](mailto:sherry.billings@dc.gov) prior to the pre-application meeting. For assistance, contact Sherry Billings at (202) 442-9173.

**DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH  
COMMUNITY HEALTH ADMINISTRATION**

**RESCINDED**

**NOTICE OF FUNDING AVAILABILITY  
Request for Applications # CHA\_PHBG041816**

**FY 2016 Preventive Health and Health Services Block Grant**

**This notice supersedes the notice published in DC Register on April 1, 2016 volume 63/15**

The Government of the District of Columbia, Department of Health (DOH) Community Health Administration (CHA) is soliciting applications to provide innovative services to improve chronic disease outcomes. The programs will address education and awareness for proper nutrition, weight reduction, oral health, physical activity, respiratory disease and health communication to District of Columbia residents.

This funding is provided through a grant (B01DP009009) utilizing the Preventive Health and Health Services Block Grant (PHHSBG) funds received from the Centers for Disease Control and Prevention (CDC) pursuant to the authority of Department of Health and Human Services, Public Health Services, and Centers for Disease Control and Prevention, Title XIX, Section 1901, PHS Act as amended.

In FY 2016, approximately \$ 600,000 in funding is expected to be available for up to five (5) awards. Resulting grant awards are projected to begin Friday July 01, 2016.

The following entities are eligible to apply for grant funds under this RFA: not-for profit, public and private organizations located in and licensed to conduct business within the District of Columbia.

**The release date for RFA # CHA\_PHBG041816 is Monday, April 18, 2016.** RFA #CHA\_PHBG041816 will be available on the DC Grants Clearinghouse website <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse> on 04/18/2016. **A limited number of copies will also be available** at the Community Health Administration, 899 North Capitol Street NE, Washington, DC on the 3<sup>rd</sup> floor reception area.

**The Request for Application (RFA#CHA\_PHBG041816)** submission deadline is 4:00 pm Wednesday, May 18, 2016. The Pre-Application Conference will be held in the District of Columbia at 899 North Capitol St., NE, 3rd Floor Conference Room, 306, Washington, DC 20002 on **Wednesday, April 27, 2016 at 2:00p.m. – 4:00p.m.**

Applicants are encouraged to e-mail their questions to [sherry.billings@dc.gov](mailto:sherry.billings@dc.gov) prior to the Pre-Application Conference date of Wednesday, April 27, 2016. For assistance, contact Sherry Billings at (202) 442-9173.

**DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING****DISTRICT OF COLUMBIA FINANCIAL LITERACY COUNCIL****NOTICE OF PUBLIC MEETING**

The Members of the District of Columbia Financial Literacy Council (DCFLC) will hold a meeting 3:00 PM, Thursday, May 19, 2016. The meeting will be held at the DC Department of Insurance, Securities and Banking, 810 First St, NE, 7th Floor Conference Room, Washington, D.C. 20002. Below is the draft agenda for this meeting. A final agenda will be posted to the Department of Insurance, Securities, and Banking's website at <http://disb.dc.gov>. Please RSVP to Idriys J. Abdullah, [idriys.abdullah@dc.gov](mailto:idriys.abdullah@dc.gov), for additional information call (202) 442-7832 or e-mail [idriys.abdullah@dc.gov](mailto:idriys.abdullah@dc.gov)

**DRAFT AGENDA**

- I.** Call to Order
- II.** Welcoming Remarks
- III.** Minutes of the Previous Meeting
- IV.** Unfinished Business
- V.** New Business
- VI.** Executive Session
- VII.** Adjournment

**DISTRICT OF COLUMBIA COMMISSION ON  
JUDICIAL DISABILITIES AND TENURE**

**Judicial Tenure Commission Begins Reviews Of  
Judges Melvin R. Wright, Vanessa Ruiz, And Linda Kay Davis**

This is to notify members of the bar and the general public that the Commission is reviewing the qualifications of **Judge Melvin R. Wright**, of the Superior Court of the District of Columbia, who is retiring and has requested a recommendation for an initial appointment as a Senior Judge. In addition, the Commission is reviewing the qualifications of **Judge Vanessa Ruiz** of the District of Columbia Court of Appeals, and **Judge Linda Kay Davis** of the Superior Court of the District of Columbia, who have requested recommendations for reappointment as Senior Judges.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

"...A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations, and members of the public to submit any information bearing on the qualifications of Judges Wright, Ruiz, and Davis which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.



All communications should be mailed, faxed, or e-mailed by **June 8, 2016**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure  
Building A, Room 246  
515 Fifth Street, N.W.  
Washington, D.C. 20001  
Telephone: (202) 727-1363  
FAX: (202) 727-9718  
E-Mail: dc.cjdt@dc.gov

The members of the Commission are:

Hon. Gladys Kessler, Chairperson  
Jeannine C. Sanford, Esq., Vice Chairperson  
Michael K. Fauntroy, Ph.D.  
Hon. Joan L. Goldfrank  
William P. Lightfoot, Esq.  
David P. Milzman, M.D.  
Anthony T. Pierce, Esq.

BY: /s/ Gladys Kessler  
Chairperson

**KIPP DC PUBLIC CHARTER SCHOOLS****NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACTS****Instructional Software Licenses**

KIPP DC intends to enter into sole source contracts for technology licenses with Curriculum Associates (\$51,930), Edgenuity (\$28,500), Hapara (\$31,456), Lexia (\$32,790), MIND Research Institute (\$130,160), Newsela (\$25,000), NoRedInk (\$27,900), Renaissance Learning (\$67,380), Rosetta Stone (\$25,000), Houghton-Mifflin Harcourt (\$78,400), Torsh (\$33,300), Waterford Institute technology (\$33,200), PowerSchool (\$35,000), Box (\$64,000), Microsoft Office (\$47,000), Illuminate (\$30,000), E-Folder, Inc. (\$40,000), and Deanslist (\$78,000). The decision to sole source is due to the fact that these vendors are the exclusive providers of these licenses.

**OFFICE OF THE DEPUTY MAYOR FOR  
PLANNING AND ECONOMIC DEVELOPMENT**

**NOTICE OF PUBLICATION:  
SOLICITATION FOR DEVELOPMENT  
FOR THE CRUMMELL SCHOOL SITE**

The Government of the District of Columbia (the “District”), through the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”), is requesting responses through a Request for Proposals (“RFP”) from qualified real estate development teams (“Developers”) for the disposition and development of the following site:

- **Crummell School, PAR Suffix 0142 Lot 0022;**
  - Solicitation format: RFP
  - Issuance Date: April 25, 2016

DMPED invites Developers to respond to this RFP for the redevelopment of the Crummell Site in the Ivy City neighborhood of Northeast, Washington, D.C. There will be Pre-Response Conferences and Site Visits held at the Site and will be further described in the final RFP. More information will be available in the RFP publication.

For more information and project updates, please visit [www.dmped.dc.gov](http://www.dmped.dc.gov).

**D.C. SENTENCING AND CRIMINAL CODE REVISION COMMISSION****MEETING UPDATE**

The D.C. Sentencing and Criminal Code Revision Commission hereby gives notice that the Commission meeting on Tuesday, May 17, 2016 is cancelled. Inquiries concerning the meeting may be addressed to Mia Hebb, Staff Assistant, at (202) 727-8822 or [Mia.Hebb@dc.gov](mailto:Mia.Hebb@dc.gov).

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
TAXICAB COMMISSION**

**AMENDED NOTICE OF FUNDING AVAILABILITY**

**GRANTS FOR WHEELCHAIR ACCESSIBLE TAXICABS**

The Government of the District of Columbia, Taxicab Commission hereby amends the Notice of Funding Availability (“NOFA”) that was published in the *D. C. Register* on April 8, 2016 at 63 DCR 005380 Volume 63 Number 16. The Government of the District of Columbia, Taxicab Commission is soliciting applications from approved taxicab companies and taxicab operators with current DCTC operating authority to purchase wheelchair accessible taxicabs. Awardees must provide through the TRANSPORT DC pilot program, a cost-effective, high service quality Metro Access paratransit service alternative to Metro Access clients and to individuals with disabilities. Under TRANSPORT DC, approved taxicab companies and operators will provide transportation for certified Metro Access clients and individuals with disabilities to and from various locations within the District of Columbia. Upon approval, participating taxicab companies and owners of licensed taxicabs legally operating and incorporated in the District of Columbia must purchase a **new 2015 or newer wheelchair accessible vehicle (“WAV”) and complete WAV and sensitivity training or provided rental assistance for WAV**. The DCTC, Office of Taxicabs (“Office”), is administering this RFA: “**WAV TAXI GRANT**.” In addition, operators and companies are encouraged to apply for rental assistance under this funding opportunity to off-set weekly rental costs as a participant of this notice of funding availability.

DCTC intends to make available \$300,000 in grant funds, available no later than April 25, 2016. Grant awards may range from a minimum of \$7,500 for purchase of a WAV and \$2,500 for rental assistance to a maximum of \$200,000 for purchase of a WAV and \$100,000 for rental assistance will be awarded to offset the purchase of a new WAV and to offset vehicle rental cost. Completion of wheelchair accessibility and sensitivity training is required prior to operating a WAV purchased through this grant.

The above mentioned grants will be for current taxicab operators and taxicab companies that are in compliance with DCTC laws and regulations. **The pre-application conference is scheduled for 10:00 a.m. Thursday, May 5, 2016.**

The Amended Request for Applications (“RFA”) RFA# WAVTAXI2016-03-004 release date will be Monday, April 25, 2016. The full text of the Request for Applications will be available online at DCTC’s website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

**Download** by visiting the DCTC website, [www.dctaxi.dc.gov](http://www.dctaxi.dc.gov).

**Email** a request to karl.muhammad2@dc.gov with “Amended Request copy of RFA WAV TAXI” in the subject line.

**In person** Copies of the request for application (RFA) may be picked up in Driver Services located on the 2<sup>nd</sup> floor the DC Taxicab Commission located at 2235 Shannon Place, SE, Suite 2001 Washington, DC 20020; or

**Write** DCTC at 2235 Shannon Place, SE, Suite 3001, Washington, DC 20020, "Attn: Request copy of Amended RFA# WAV TAXI 2016-03-004" on the outside of the letter.

**The deadline for application submissions is May 30, 2016, at 3:00 p.m.** Grants will be issued until all funds are exhausted or July 31, 2016, whichever occurs first. Five (5) hard copies must be submitted to the above address and a complete electronic copy must be submitted with your hard copies to karl.muhammad2@dc.gov.

**Eligibility:** Only taxicab companies and taxicab operators that are approved by DCTC to participate in TRANSPORT DC may apply for this funding opportunity.

**Period of Awards:** TRANSPORT DC grant program performance period will begin immediately after notification of the grant award and end on September 30, 2016. A three (3) year commitment to provide Transportation service for the TRANSPORT DC program is required for this funding opportunity.

**Available Funding:** Available funding is \$200,000 for purchase of a WAV and \$100,000 for rental assistance. Grant awards may range from a minimum of \$7,500 for purchase of a WAV and \$2,500 for rental assistance to a maximum of \$200,000 for purchase of a WAV and \$100,000 for rental assistance will be awarded to offset the purchase of a new WAV and to offset vehicle rental cost. A Grant awardee must complete wheelchairs accessible and sensitivity training prior to operation of a wheelchair accessible vehicle.

For additional information regarding this Notice of Funding Availability, please contact Karl Muhammad at karl.muhammad2@dc.gov or (202) 645-4435.

**THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL****INVITATION FOR BID****Food Service Management Services**

Thurgood Marshall is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2016-2017 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **April 25, 2016** from Nora Moore at 202-563-6862 x 181 or [nmoore@tmapchs.org](mailto:nmoore@tmapchs.org).

Proposals will be accepted at 2427 Martin Luther King Jr., Ave., SE, Washington, DC, 20020 on **May 26, 2016** not later than **4:00 P.M.**

**All bids not addressing all areas as outlined in the IFB will not be considered.**

**DISTRICT DEPARTMENT OF TRANSPORTATION  
POLICY, PLANNING & SUSTAINABILITY ADMINISTRATION  
HIGHWAY SAFETY BEHAVIORAL GRANT PROGRAM**

**NOTICE OF FUNDING AVAILABILITY**

**Fiscal Year 2017 Grant to Non-Profit Community-Based Organizations**

The Policy, Planning & Sustainability Administration (PPSA), Highway Safety Division, within the District of Columbia (District) Department of Transportation (DDOT) is soliciting detailed innovative projects that address the following identified problem areas:

Impaired Driving;  
Occupant Protection to include seat belts and child passenger safety;  
Aggressive Driving;  
Pedestrian/Bicycle Safety; and,  
Traffic Records

Successful grant applications will provide solutions to identified problems, implement proven strategies, show a commitment on the part of the applicant to sustain and contribute to success, have measurable outcomes, and/or have the greatest demonstrable need or problem. The purpose of the Highway Safety (Behavioral) Grant Program is to reduce fatalities and injuries in the District of Columbia through the implementation of programs that will bring awareness to aggressive driving, impaired driving, seatbelt usage, pedestrian/bicycle, and motorists. Applicants problem statements must be data driven, have performance measures, goals and objectives.

DDOT intends to make several grant awards of up to one hundred thousand dollars (\$100,000) to fund eligible organizations. The award will be for fiscal year 2017 which begins October 1, 2016 and expires September 30, 2017. Eligible organizations must be non-profit organizations. This is a reimbursable grant based on expenditures. No cash advances are allowed. The service and activities to be funded through these grants should have a direct impact on behavioral changes of residents of the District of Columbia and meet the requirements of the highway safety grant program.

The Request for Application (RAF) will be released on Monday April 18, 2016 and a copy of the grant application may be obtained from PPSA's Highway Safety Division's mail office located at 55 M Street, SE, 5<sup>th</sup> floor, Washington, DC 20003, or can be obtained by going to the safety office's website [www.ddot-hso.com](http://www.ddot-hso.com). Once there click on "*Grants Information*", then click on *2017 Grant Application & Guide*. For additional information please contact Carole A. Lewis by email at: [carole.lewis@dc.gov](mailto:carole.lewis@dc.gov).

The deadline for submission of all grant applications is [Friday, May 13, 2016 at 3:00 pm](#)



## NOTICE OF NON-DISCRIMINATION

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, status as a victim of an intrafamily offense, 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.

**UNIVERSITY OF THE DISTRICT OF COLUMBIA  
REGULAR MEETING OF THE BOARD OF TRUSTEES**

**NOTICE OF PUBLIC MEETING**

The regular meeting of the Board of Trustees of the University of the District of Columbia will be held on Tuesday, April 26, 2016 at 5:00 p.m. in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at [www.udc.edu](http://www.udc.edu).

For additional information, please contact: Beverly Franklin, Executive Secretary at (202) 274-6258 or [bfranklin@udc.edu](mailto:bfranklin@udc.edu).

**Planned Agenda**

- I.** Call to Order and Roll Call
- II.** Approval of the Minutes – February 9, 2016
- III.** Action Items
- IV.** Report of Chairperson
- V.** Report of the President
- VI.** Election of Officers (May 15, 2016 – May 15, 2017)
  - a. Chairperson
  - b. Vice-Chairperson
  - c. Secretary
  - d. Treasurer
- VII.** Committee Reports
  - a. Executive – Dr. Crider
  - b. Committee of the Whole – Dr. Crider
  - c. Academic and Student Affairs – Mr. Wyner
    - i. Alumni Task Force – Mr. Shelton
    - ii. Communications Task Force – Mr. Wilhite
  - d. Audit, Budget and Finance – Mr. Felton
  - e. Community College – Dr. Tardd
  - f. Operations – Mr. Bell
- VIII.** Unfinished Business
- IX.** New Business
- X.** Closing Remarks

**Adjournment**

**Expected Meeting Closure**

In accordance with Section 2-575 (b) (10) of the D. C. Code, the Board of Trustees hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance, evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Order No. 17300-A of St. Patrick’s Protestant Episcopal Church, Motion for Minor Modification of Condition No. 7 in Order No. 17300**, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR § 3104.1, for a special exception under § 206, to allow an increase in the student enrollment at a private school, from 40 to 60 children, in the R-1-B District at premises 4925 MacArthur Boulevard, N.W. (Square 1393, Lot 17).

<b>HEARING DATE</b> (Application No. 17300):	April 12, 2005
<b>DECISION DATE</b> (Application No. 17300):	April 26, 2005
<b>FINAL ORDER ISSUANCE DATE</b> (No. 17300):	September 8, 2005
<b>MINOR MODIFICATION DECISION DATE:</b>	April 5, 2016

**SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION**

**BACKGROUND**

The Board of Zoning Adjustment (“Board” or “BZA”) previously considered the subject property in Applications No. 16852, 17164, and most recently, 17300. In Case No. 16852, published in December 2002, the Board approved an application to allow a private school for grades seven through nine to locate at 4925 MacArthur Boulevard. The approval included 20 conditions, one of which is the requirement to establish a shuttle bus system to transport students between the newly established campus on MacArthur Boulevard and the existing campus on Whitehaven Parkway. A Corrected Decision and Order (Order No. 16852-A) was issued on March 25, 2003. See Condition No. 7 of Order No. 16852-A. (Exhibit 4.) This condition was upheld in subsequent modifications of the order, most recently Order No. 17300 (“Order”), which was approved in April 2005. (See also, Order Nos. 17164 and 17300, attached as Exhibit 4.) It is that condition that is the subject of the request for modification herein.

On April 26, 2005, in Case No. 17300, the Board approved relief for a special exception to allow an increase in students from 40 and 60 in the R-1-B. The Office of Planning (“OP”) had recommended approval of that application with conditions. The affected Advisory Neighborhood Commission (“ANC”) 3D recommended denial of the increase in students. On September 8, 2005, the Board issued Order No. 17300, granting the requested relief with 20 conditions. The conditions deal with the operations of the school and some traffic demand management measures. Condition No. 7 governs the school’s shuttle bus system.

Case No. 17300 was approved by the Board by a vote of 5-0-0 taken on April 26, 2005. The final date of Order No. 17300 is September 8, 2005. (See, Exhibit 3.)

**MOTION FOR MINOR MODIFICATION OF CONDITION NO. 7**

On March 14, 2016, the Applicant submitted a request for a minor modification to the Board's previous approval, specifically of Condition No. 7 in Application No. 17300 and also, pursuant to 11 DCMR § 3100.5, asked for a waiver of the requirement for a hearing under § 3129.7. (*See*, Exhibit 3 in Case No. 17300-A.)

*Preliminary Matter: Waiver of § 3129.7 and Allowing Matter to be Decided Without Hearing as a Minor Modification.*

Subsection 3129.7 of the Zoning Regulations indicates that a request for a modification of an aspect of an application other than plans approved by the Board may be made at any time but shall require a hearing. Here, the request for modification concerns a condition in Order No. 17300. The Applicant requested a waiver of the requirement for a hearing and asked for the motion for modification to be heard on the Board's meeting consent calendar, pursuant to 11 DCMR § 3100.5.

The Board granted the Applicant's request and waived the requirement to hold a hearing on the request for modification of conditions under § 3129.7. Although the request was not a minor modification of plans, such that it could be granted without a hearing, the Board found that the proposed change to the conditions was minor and, as ultimately revised, had the support of the Office of Planning ("OP"), the District of Columbia Department of Transportation ("DDOT"), and the affected Advisory Neighborhood Commission ("ANC"). Accordingly, the Board waived the requirement to hold a public hearing on the modification.

*Motion for Minor Modification of Condition No. 7.*

The Applicant noted that it has abided by this condition for almost 14 years, but because circumstances have changed since the initial imposition of Condition No. 7, the Applicant is now requesting modification of the condition to reflect current environmental considerations, as well as consideration of impacts on the neighborhood and the students' and educators' time. (Exhibit 3.)

In Order No. 17300, Condition No. 7, subsection (c), which is the subject of the requested minor modification request, reads as follows:

The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway.

In its initial request for a minor modification submitted on March 14, 2016, the Applicant proposed changing the language in Condition No. 7(c) to read as follows:

The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway. **If traffic conditions allow, the shuttle shall be permitted to take a legal U-turn on MacArthur Blvd. at Chain Bridge Road, and return to the Whitehaven Campus via MacArthur Blvd.**  
(modified language in bold.)

Subsections (a), (b), (d), and (e) in Condition No. 7 would remain unchanged.

According to the Applicant, the reason for the request for the modification is to create an alternate route for the shuttle bus from the current route to reduce the trip time. The shuttle bus is used to transport the seventh and eighth graders to the Whitehaven Campus two to three times a day for their science and math classes, in addition to any shuttle trips the students may take for drop-off and pick-up. The current designated shuttle bus route is 2.8 miles and can take up to 20 minutes per trip. The Applicant stated that the route is unduly circuitous. By allowing the shuttle bus to take a U-turn on MacArthur Boulevard, the Applicant indicated that the trip time would be considerably reduced and would take only a fraction of the time now required. Simplifying and shortening the shuttle trip, the Applicant maintained, would be important both from saving the students' time and the environment. (Exhibits 3 and 5.)

After working with DDOT, the Applicant proposed revised language for the modified condition. (Exhibit 8.) To minimize safety impacts, the Applicant has revised the request to allow U-turns at Cushing Place instead of Chain Bridge Road. (Exhibit 9.) Thus, revised and modified Condition No. 7(c) would read as follows:

The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway. **Alternatively, if traffic conditions allow, the shuttle shall be permitted to take a legal U-turn on MacArthur Blvd. at Cushing Place, and return to the Whitehaven Campus via MacArthur Blvd.**  
(modified language in bold.)

Pursuant to § 3129.4, all requests for minor modifications shall be served on all other parties to the original application and those parties are allowed to file comments within 10 days of the filed request for minor modification. The Applicant provided proper and timely notice of the request for minor modification to the other parties to the original application, including Advisory Neighborhood Commission ("ANC") 3D and the Single Member District ANC 3D05 as well as OP and DDOT.

The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. An ANC report was submitted to the record, recommending approval of the request for minor modification to Order No. 17300 and citing no concerns with the

proposed minor modification to Condition No. 7(c) designating a new return route from the MacArthur campus to the Whitehaven campus. The ANC's report stated that at a regularly scheduled and properly noticed meeting on March 2, 2016, at which a quorum was present, the ANC voted 8-0-0 in support of the minor modification. (Exhibit 6.)

OP submitted a timely report dated March 29, 2016, recommending denial of the original modification request but also supported the Applicant's proposed alternative language as contained in Exhibit 8 that was modified after conversations with DDOT and OP. (Exhibit 7.)

DDOT submitted a timely report stating that it had no objection to the granting of the modification. (Exhibit 9.)

The only parties to the case were the ANC and the Applicant. No parties appeared at the public meeting in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for minor modification of approval, specifically of Condition No. 7, in Case No. 17300. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a minor modification to the approval in Case No. 17300, the Applicant has met its burden of proof under 11 DCMR § 3129, that the minor modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification and amendment of the Board's approval in Application No. 17300 is hereby **GRANTED SUBJECT TO THE FOLLOWING REVISED CONDITION 7(c)**:

7(c). The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway. Alternatively, if traffic conditions allow, the shuttle shall be permitted to take a legal U-turn on MacArthur Blvd. at Cushing Place, and return to the Whitehaven Campus via MacArthur Blvd.

In all other respects, Order No. 17300 remains unchanged.

**VOTE ON ORIGINAL APPLICATION ON APRIL 26, 2005: 5-0-0**

(Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L Etherly, Jr., and John A. Mann, II, to grant; Anthony J. Hood to grant by absentee ballot.)

**VOTE ON MINOR MODIFICATION OF CONDITION NO. 7 ON APRIL 5, 2016: 4-0-1**

(Marnique Y. Heath, Anita Butani D'Souza, Frederick L. Hill, and Jeffrey L. Hinkle to APPROVE; Peter G. May, not participating or voting.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this summary order.

**FINAL DATE OF ORDER:** April 8, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19165-A of 3317 16th Street LLC**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the off-street parking requirements under § 2101.1, the parking aisle width requirements under § 2117.5, and the loading berth requirements under § 2201.1, and a special exception from the HS Overlay requirements under § 1320.4(f), to convert a vacant church into a new four-story, mixed-use commercial and residential building in the HS-A/C-2-A District at premises 1301 H Street N.E. (Square 1027, Lot 156).

**HEARING DATE:** January 26, 2016

**DECISION DATE:** January 26, 2016

**CORRECTED SUMMARY ORDER<sup>1</sup>**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC submitted a report in support of the application, dated January 21, 2016, indicating that at a duly noticed and scheduled public meeting on January 14, 2016, at which a quorum was in attendance, the ANC voted unanimously (7-0) in support of the application, with conditions. (Exhibit 37.) The Applicant testified at the public hearing on January 26, 2015 that it accepts the ANC's proffered conditions.

The Office of Planning ("OP") submitted a timely report on January 21, 2016, recommending approval of the loading and aisle width variances, as well as the HS Overlay special exception, but indicating that it could not support the variance for off-street parking. (Exhibit 33.) OP also proposed conditions, indicating that it would recommend approval if Applicant provided five parking spaces, sufficient to meet the residential parking requirements, instead of the two parking spaces proposed. At the public hearing, the Applicant provided testimony as to why it would be practically difficult to configure the footprint of the building to allow for the additional parking spaces recommended by OP. In addition, the Applicant noted that the design of the project is supported by the ANC and that the current design is the product of multiple meetings

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<sup>1</sup> This Corrected Summary Order was issued to add an inadvertently omitted condition offered by the ANC and accepted by the Applicant. This is the only change to the Order as originally issued.



with the ANC. Further, the Board determined that the additional three parking spaces would have a detrimental impact on the design of the proposed structure and were not necessary to mitigate the potential impacts on parking, especially in light of the Transportation Demand Management (“TDM”) measures proposed by the Applicant. Accordingly, the Board was not persuaded by OP’s recommendation to deny variance relief and OP’s proposal to require the Applicant to provide five parking spaces on-site.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application, subject to two conditions. (Exhibit 34.) DDOT also testified at the public hearing, specifically noting its support of the parking variance and raising issues about loading that will be further discussed during the Public Space process. The Applicant testified that it accepted DDOT’s conditions, and accordingly, the Board adopted the two conditions as part of this order.

#### Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for area variances from the off-street parking requirements under § 2101.1, the parking aisle width requirements under § 2117.5, and the loading berth requirements under § 2201.1. 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 §§ 2101.1, 2117.5, and 2201.1, 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.

#### Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception from the HS Overlay requirements under § 1320.4(f). No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 1320.4(f), 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.

**BZA APPLICATION NO. 19165-A  
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Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 35 AND THE FOLLOWING CONDITIONS:**

1. Residential Parking Permit restrictions shall be in place.
2. Provided the Applicant receives DCHD approval, the Applicant shall record a covenant in the land records requiring that each lease or contract for sale of a residential unit require the tenant or owner of the unit update their address information with the District of Columbia Department of Motor Vehicles within 60 days of the settlement date and as required under D.C. law.
3. The building shall use an H Street, N.E. address.
4. Any construction or related work in public space taking place on a Saturday shall take place between the hours of 9:00 a.m. and 7:00 p.m. only.
5. The Applicant shall use a consistent design on the 13th Street, N.E. side of the building that face row houses.
6. The Applicant shall provide, as a one-time incentive, each initial purchaser (one per household) a bicycle helmet, for a total of nine helmets.
7. The Applicant shall offer a one-year Capital Bikeshare and Car share membership for each initial residential unit (one per household) for a five-year period.
8. The Applicant shall provide a repair station within the bike room.
9. The Applicant shall post all TDM commitments online for a one-year period. The source will also include links to CommuterConnections.com, goDCgo.com, WMATA Metrobus routes, DC Bicycle maps, and other useful information in support of car-free urban living.
10. The Applicant shall install at least three short-term bicycle parking spaces in public space, pending approval from the Public Space Committee.

**VOTE: 3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Michael G. Turnbull 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.

**BZA APPLICATION NO. 19165-A  
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**FINAL DATE OF ORDER:** April 7, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, 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

**BZA APPLICATION NO. 19165-A  
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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. 19202 of Alon Eckhaus**, as amended,<sup>1</sup> pursuant to 11 DCMR § 3104.1, for special exceptions from the penthouse requirements under §§ 411.5 and 411.18, and a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the side yard requirements under § 405.8, 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).

**HEARING DATES:** March 1, 2016, March 8, 2016, and March 22, 2016<sup>2</sup>  
**DECISION DATE:** April 5, 2016

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was originally self-certified (Exhibits 6 and 8), but subsequent to the original filing, the Applicant amended the application (Exhibit 28, see footnote 1) and submitted a memorandum from the Zoning Administrator certifying the required relief. (Exhibits 30 and 32.<sup>3</sup>)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property 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. ANC 1B submitted a report dated March 7, 2016, noting that at a properly noticed public meeting on March 3, 2016, with a quorum present, it voted 10-0-0 in support of the application. (Exhibit 36.)

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<sup>1</sup> The Applicant amended the application by requesting special exceptions to the penthouse requirements under §§ 411.5 and 411.18 in addition to requesting a special exception under § 223, as the Applicant initially sought and by submitting a Zoning Administrator letter in place of the original Self-Certification form. The Applicant indicated that the application was amended to reflect the new penthouse regulations under § 411.5 that went into effect on January 9, 2016. (Exhibit 28.) Initially, the application was filed as a self-certified application requesting special exceptions under § 223 for lot occupancy (§ 403), side yard (§ 405), court (§ 406), and non-conforming structure (§ 2001.3) relief. (See Zoning Self-Certification Form 135, Exhibits 6 and 8.) Subsequently, on February 24, 2016, the Applicant filed a Memorandum from the Zoning Administrator ("ZA"). The ZA indicated that the Applicant needed a special exception under § 223 for lot occupancy (§ 403), side yard (§ 405), and non-conforming structure (§ 2001.3) relief, and special exceptions under § 411.5 to allow a penthouse on the roof of a semi-detached dwelling, and § 411.18 to allow a penthouse, guard rail, and deck not meeting the roof setback requirements. The special exceptions for § 411 do not fall under § 223 and therefore require separate special exception relief. (Exhibits 30 and 32.) Also, the application was amended to remove the request for relief from the court provisions under § 406. The caption has been changed accordingly.

<sup>2</sup> This case was postponed from the hearings of March 1, 2016 and March 8, 2016 at the Applicant's request. (Exhibits 26 and 35.)

<sup>3</sup> Exhibits 30 and 32 are both Zoning Administrator memorandums with the same content; however, Exhibit 32 contains the Notes and Computations page and Exhibit 30 does not.

The Office of Planning (“OP”) submitted a timely report dated March 1, 2016, recommending approval of the application with the amended relief (Exhibit 33) and testified in support of the application at the hearing.

DDOT submitted a timely report indicating that it had no objection to the application. (Exhibit 34.)

One letter in support was submitted to the record from an adjacent property owner. (Exhibit 25.)

At the hearing on March 22, 2016, the Board heard testimony in opposition from the adjacent neighbor at 2805 Sherman Avenue, N.W. That neighbor raised concerns about the proposed third floor addition blocking light and air to his property, and he noted the damage to his windows as a result of demolition that had taken place at the subject site. The Applicant made a commitment to repair the neighbor’s windows, and at the end of the hearing, the Board held its decision in abeyance and requested that the Applicant submit a statement regarding the progress on the window repairs. The Applicant submitted a letter dated March 29, 2016 confirming his intent to repair the neighbor’s windows and providing details of the progress toward the repairs. (Exhibit 38.) In its deliberations at the public meeting of April 5, 2016, the Board noted the Applicant’s letter and its assurances and approved the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under §§ 3104.1, 411.5, 411.18, and 223 (§§ 403.2, 405.8, 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 averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411.5, 411.18, and 223 (§§ 403.2, 405.8, 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, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 29 – ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 5-0-0** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, Anita Butani D’Souza<sup>4</sup>, and Anthony J. Hood (by absentee ballot) to APPROVE).

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<sup>4</sup> Board member Butani D’Souza read the record to participate in the decision in the case and announced that she had done so on the record at the deliberations.

**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:** April 7, 2016

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. 19218 of Sujatha Jahagirdar and Charles Bergen**, pursuant to 11 DCMR § 3104.1, for a special exception from the accessory apartment requirements pursuant to § 202.10, to permit an accessory apartment in the R-1-B District at premises 1511 Lawrence Street N.E. (Square 4010, Lot 38).

**HEARING DATE:** March 15 and April 5, 2016<sup>1</sup>  
**DECISION DATE:** April 5, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Original – Exhibit 5; Updated – Exhibit 26.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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") 5B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled, properly noticed public meeting on January 13, 2016, at which a quorum was present, the ANC voted unanimously (9-0-0) to support the application. (Exhibit 28.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 30.) OP also testified in support of the application at the public hearing.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the granting of 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

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<sup>1</sup> This application was originally scheduled for the public hearing of March 15, 2016 and postponed to April 5, 2016 to allow the Applicant to post notice signs on the property.



exception under § 202.10 to permit an accessory apartment in the R-1-B District. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be aversive 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, pursuant to 11 DCMR §§ 3104.1 and 202.10, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 24.**

**VOTE: 5-0-0** (Marnique Y. Heath, Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle and Peter G. May, to APPROVE.)

**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:** April 7, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE.

**BZA APPLICATION NO. 19218**

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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. 19227 of Paul Skorochood**, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the side yard requirements under § 405, to enclose a rear porch for an existing one-family dwelling in the R-1-B District at premises 1410 Hamlin Street, N.E. (Square 4016, Lot 808).

**HEARING DATE:** Applicant waived right to a public hearing

**DECISION DATE:** March 22 and April 5, 2016 (Expedited Review Calendar)

**SUMMARY ORDER**

**SELF CERTIFICATION**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit (No. 6.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

Pursuant to 11 DCMR § 3118, this application was tentatively placed on the Board's expedited review calendar for decision without hearing as a result of the Applicant's waiver of his right to a hearing. (Exhibit 2.)

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") 5B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on February 24, 2016, at which a quorum was in attendance, ANC 5B voted unanimously to support the application. (Exhibit 23.)

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 26.) The District Department of Transportation ("DDOT") submitted a report of no objection to the approval of the application. (Exhibit 27.)

No objections to expedited calendar consideration were made by any person or entity entitled to do by §§ 2118.6 and 2118.7. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223 and 405. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, and 405, 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 AND, PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 8A and 8B.**

**VOTE: 5-0-0** (Marnique Y. Heath, Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Peter G. May to APPROVE).

**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:** April 13, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

**BZA APPLICATION NO. 19227**

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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. 19231 of Habitat for Humanity of Washington, DC**, pursuant to 11 DCMR § 3103.2, for variances from the lot width requirements under § 401.3, and the off-street parking requirements under § 2101.1, to permit the construction of four new flats in the R-4 District at premises 1814 Central Place, N.E. (Square 4047, Lot 57).

**HEARING DATE:** April 5, 2016

**DECISION DATE:** April 5, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 3 and 33 (corrected to add the architect's registration number).) In granting the certified relief, the Board of Zoning Adjustment ("Board") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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") 5D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. ANC 5D submitted a report dated February 13, 2016, indicating that at a properly noticed and regularly-scheduled public meeting on February 9, 2016, at which a quorum was in attendance, the ANC voted 7-0-0 in support of the application. (Exhibit 23.)

The Office of Planning ("OP") submitted a timely report dated March 29, 2016, recommending approval of the application (Exhibits 34 and 35 (duplicate)), and testified in support of the application at the hearing. OP noted that the proposed project is intended to meet the requirements of a Planned Unit Development ("PUD") approved by the Zoning Commission ("ZC").<sup>1</sup> (See OP report, Exhibit 34, and Statement of the Applicant, Exhibit 31.)

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<sup>1</sup> The Applicant stated that, "Pursuant to Zoning Commission Order No. 15-01, dated July 13, 2015, and effective on August 21, 2015, the Zoning Commission for the District of Columbia approved a planned unit development ("PUD") and a zoning map amendment for property located at 320 Florida Avenue, NE (Square 3587, Lot 4), submitted by Level 2 Development ("Level 2"). The PUD site was approved to be developed as a mixed-use building with ground floor retail and residential units above." (Statement of the Applicant, Exhibit 31, p. 2.) The Applicant pointed out that the flats proposed by this BZA application are being provided to meet the off-site inclusionary zoning requirements of this ZC Order. (*Id.* at 1-2.)

The District Department of Transportation submitted a timely report indicating that it had no objection to the application. (Exhibit 25.)

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 variances from § 401.3 - the lot width requirements, and § 2101.1 - the off-street parking requirements. The only parties to the application were the Applicant and the ANC which supported 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 averse 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 §§ 401.3 and 2101.1, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. 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, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 31B - ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 5-0-0** (Marnique Y. Heath, Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Peter G. May to APPROVE).

**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:** April 11, 2016

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-

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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. 19232 of Habitat for Humanity of Washington, DC**, pursuant to 11 DCMR § 3103.2, for variances from the lot width requirements under § 401.3, and the off-street parking requirements under § 2101.1, to permit the construction of two new flats in the R-4 District at premises 1833 Central Place, N.E. (Square 4047, Lot 10).

**HEARING DATE:** April 5, 2016

**DECISION DATE:** April 5, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 3 and 30 (corrected<sup>1</sup>)). In granting the certified relief, the Board of Zoning Adjustment ("Board") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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") 5D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5D, which is automatically a party to this application. ANC 5D submitted a report dated February 13, 2016, indicating that at a properly noticed and regularly scheduled public meeting on February 9, 2016, at which a quorum was in attendance, the ANC voted 7-0-0 in support of the application. (Exhibit 22.)

The Office of Planning ("OP") submitted a timely report dated March 29, 2016, recommending approval of the application (Exhibits 31)) and testified in support of the application at the hearing. OP noted that the proposed project is intended to meet the requirements of a Planned Unit Development ("PUD") approved by the Zoning Commission ("ZC").<sup>2</sup> (See OP report, Exhibit 31, and Statement of the Applicant, Exhibit 28.)

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<sup>1</sup> The self-certification form was corrected to add the architect's registration number.

<sup>2</sup> The Applicant stated that, "Pursuant to Zoning Commission Order No. 15-01, dated July 13, 2015, and effective on August 21, 2015, the Zoning Commission for the District of Columbia approved a planned unit development ("PUD") and a zoning map amendment for property located at 320 Florida Avenue, NE (Square 3587, Lot 4), submitted by Level 2 Development ("Level 2"). The PUD site was approved to be developed as a mixed-use building with ground floor retail and residential units above." (Statement of the Applicant, Exhibit 28, p. 2.) The Applicant pointed out that the flats proposed by this BZA application are being provided to meet the off-site inclusionary zoning requirements of this ZC Order. (*Id.* at 1-2.)

The District Department of Transportation submitted a timely report indicating that it had no objection to the application. (Exhibit 24.)

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 variances from § 401.3 - the lot width requirements, and § 2101.1 - the off-street parking requirements. The only parties to the application were the Applicant and the ANC which supported 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 averse 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 §§ 401.3 and 2101.1, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. 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, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 28B - ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 5-0-0** (Frederick L. Hill, Marnique Y. Heath, Anita Butani D'Souza, Jeffrey L. Hinkle, and Peter G. May to APPROVE).

**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:** April 11, 2016

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-

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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.

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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 13-14A  
Z.C. Case No. 13-14A**

**JAIR LYNCH Development Partners, on behalf of Vision McMillan Partners and the  
Office of the Deputy Mayor for Planning and Economic Development  
(Second-Stage PUD @ Square 3128, Lot 800 –  
McMillan Reservoir Slow Sand Filtration Site – Parcel 2)  
March 14, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on December 17, 2015, to consider an application from JAIR LYNCH Development Partners, on behalf of Vision McMillan Partners and the Office of the Deputy Mayor for Planning and Economic Development (collectively the "Applicant") for approval of a second-stage planned unit development ("PUD") at Parcel 2 of the McMillan Reservoir Slow Sand Filtration Site (Lot 800 in Square 3128). 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**

**The Application, Parties, and Hearing**

1. On November 22, 2013, the Applicant filed an application with the Commission for first-stage and consolidated review of a PUD and related map amendment at the McMillan Reservoir Slow Sand Filtration Site (Square 3128, Lot 800) ("Overall PUD Site"), which is bounded by North Capitol Street to the east, Michigan Avenue to the north, First Street to the west, and Channing Street to the south, all in the northwest quadrant of Washington, D.C., and which contains approximately 1,075,356 square feet (24.69 acres) of land area.
2. The Overall PUD Site is part of the larger McMillan Reservoir and Filtration complex, a 92-acre facility comprised of a reservoir, the slow sand filtration facility, and a pumping station, all of which were constructed at the turn of the twentieth century by the U.S. Army Corps of Engineers. The entire complex is listed as an individual landmark in the D.C. Inventory of Historic Sites and as a Historic District in the National Register of Historic Places.
3. Pursuant to Z.C. Order No. 13-14 (corrected), dated November 10, 2014, and effective April 17, 2015, the Commission granted approval of the first-stage and consolidated PUD and zoning map amendment ("Approved PUD").
4. The zoning map amendment related to the Approved PUD rezoned the northern portion of the Overall PUD Site from unzoned to the C-3-C Zone District for a depth of 277 feet,

as measured from the center of the curb at Michigan Avenue, N.W., and the remainder of the Overall PUD Site from unzoned to the CR Zone District.

5. The Approved PUD divides the Overall PUD Site into seven distinct Parcels. Parcel 1 encompasses the northern portion of the Overall PUD Site and consists of the land area located to the north of the Overall PUD Site element known as the North Service Court. Parcels 2 through 5 are located within the center portion of the Overall PUD Site between the North Service Court and the South Service Court. Parcel 6 encompasses the southern portion of the Overall PUD Site and consists of the land area located to the south of the South Service Court, as well as the South Service Court itself. Parcel 7 encompasses the area of North Service Court.
6. The first-stage portion of the Approved PUD includes approval of the master plan for the Overall PUD Site (“Master Plan”), as well as Parcels 2 and 3 (“First-Stage PUD”). Parcel 2, the subject of the second-stage PUD, was approved for a mixed-use, multi-family building containing ground-floor retail. Parcel 3 was approved for a mixed-use commercial building containing healthcare uses and ground-floor retail
7. Parcel 1, and Parcels 4 through 7, comprise the consolidated portion of the Approved PUD. Parcel 1 will be developed with a health care facility with ground-floor retail and a park above a preserved water filtration cell (“Cell 14”). Parcel 4 will be developed with a mixed-use, multi-family residential building with a ground-floor grocery store. Parcel 5 will be developed with approximately 146 individual row dwellings. Parcel 6 will be developed as a 6.2-acre park and community center and include the existing historic structures of South Service Court which will be retained and restored. Lastly, Parcel 7 (North Service Court) will be developed as the primary “main street” of the Overall PUD Site and include the existing historic structures of North Service Court which will be retained and restored.
8. Collectively, the development approved for the Overall PUD Site consists of a large, mixed-use development made up of office, retail and service, apartment house, attached one-family dwelling, community center, and open space uses. The Approved PUD contains approximately 2,070,753 gross square feet (“GFA”) of development, and an overall density of 1.92 floor area ratio (“FAR”) (2.36 FAR excluding easements and private rights-of-way). (*See* Z.C. Order No. 13-14, p. 54.)
9. The Approved PUD prescribes maximum building heights for Parcels 1-6. The maximum building height for Parcel 2 is 110 feet. (*See* Z.C. Order No. 13-14, p. 54.)
10. On June 27, 2014, the Applicant filed an application with the Commission for review and approval of a second-stage PUD for development of Parcel 2, in accordance with the first-stage PUD development parameters (“Second-Stage PUD”).
11. Parcel 2 is located on the west side of the Overall PUD Site and is bounded by First Street to the west, North Service Court to the north, Half Street to the east, and Parcel 5

to the south. While First Street is a public street, North Service Court and Half Street are private streets that will be constructed as part of the Master Plan. The private streets constructed as part of the Master Plan will be publicly owned and/or accessible.

12. Parcel 2 has an actual land area of approximately 66,654 square feet, including the area of private streets and easements. Excluding private streets and easements, Parcel 2 has an effective land area of 48,178 square feet.
13. The First-Stage PUD authorized development of a mixed-use, multi-family building on Parcel 2 ("Parcel 2 Building") consisting of approximately 334,950 GFA, of which approximately 23,250 GFA would be devoted to ground-floor retail, a maximum building height of 110 feet, and a maximum effective (not including private streets and easements) FAR of 6.95 (6.47 residential, 0.48 nonresidential). Under the First-Stage PUD, the Parcel 2 Building included 258 dwelling units, 313 off-street parking spaces (218 residential, 95 retail), and 86 bicycle parking spaces.
14. As part of the Approved PUD's public benefits and project amenities, the Parcel 2 Building was required to provide approximately 25 affordable dwelling units ("ADU"), or approximately 21,341 GFA, devoted to households earning up to 80% of the area median income ("AMI"). The ADUs provided in the Parcel 2 Building will be sufficient to achieve a 20% split of ADUs across the Overall PUD Site. (*See* Z.C. Order No. 13-14, p. 20.)
15. The Applicant was granted flexibility to vary the location and configuration of ADUs in the Parcel 2 Building. (*See* Z.C. Order No. 13-14, pp. 57-58.)
16. At its public meeting held on July 27, 2015, the Commission voted to schedule a public hearing on the application.
17. On September 18, 2015, the Applicant filed a Prehearing Statement. (Exhibits ["Ex.,"] 12-12K.) The Prehearing Statement set forth information requested by the Commission, including: additional information regarding the portion of the building that would span Three Quarter Street (the "Three Quarter Street span"); details on the design and materials of the Three Quarter Street span; revised plans that comply with the penthouse setback requirements; additional information related to the requested loading flexibility and the required 20-foot service/delivery space; and additional information related to the distribution of ADUs within the Parcel 2 Building.
18. A Notice of Public Hearing was published in the *D.C. Register* on October 9, 2015. The Notice of Public Hearing was mailed to all property owners within 200 feet of the Site as well as to the Advisory Neighborhood Commissions ["ANCs"] 5E and 1B.
19. On November 10, 2015, the Applicant filed a Supplemental Prehearing Statement. (Ex. 23.) The Supplemental Prehearing Statement included a traffic statement, dated October

- 30, 2015, prepared by Gorove/Slade Associates, Inc., the Applicant's transportation consultant. The traffic statement was submitted to the District Department of Transportation ("DDOT"), as required by 11 DCMR § 3013.8.
20. On December 4, 2015, the McMillan Coalition for Sustainable Agriculture ("MCSA") filed a party status request to participate at the hearing in opposition to the application. (Ex. 24-27.) The party status request raised issues regarding the impact of the Parcel 2 Building, and the Overall PUD, on MCSA's mission; the lack of analysis of environmental concerns such as increased air pollution, urban heat island effects, and the loss of open space; impacts on historic resources; increased traffic and related impacts on emergency vehicle response times; and impacts on back-up municipal water supply.
  21. The Commission held a hearing on the application on December 17, 2015. The parties to the case were the Applicant and ANC 5E.
  22. At the public hearing, the Commission denied MCSA's party status request based on the Commission's findings that: (i) MCSA is not significantly, distinctively, or uniquely affected by the proposed development on the PUD Site, and (ii) the broad range of issues raised by MCSA in its party status request did not relate directly to anything that was presently before the Commission. However, the Commission granted the MCSA representative additional time at the public hearing to present its case.
  23. The Office of Planning (OP) submitted a report, dated December 7, 2015, recommending approval of the application contingent upon conditions. (Ex. 28.) The conditions are discussed below in the OP section of this Order. The OP report stated that the proposal is not inconsistent with the first-stage PUD approval or the Comprehensive Plan. In its testimony at the public hearing, OP reiterated its support for the application and the requested flexibility and rested on the record.
  24. DDOT submitted a report, dated December 7, 2015, that assessed the potential safety and capacity impacts of the project on the District's transportation network. (Ex. 29.) The DDOT report expressed no objection to the application contingent upon conditions which are discussed below in the DDOT section of this Order. In its testimony at the public hearing, DDOT reiterated its support for the application and rested on the record.
  25. On December 16, 2015, ANC 5E, the ANC in which the Overall PUD Site, including Parcel 2, are located, submitted its resolution in support for the application. (Ex. 34.) The resolution states that at its meeting held on October 20, 2015, which was duly noticed and at which a quorum was present, ANC 5E voted 6-0-2 to support the application. At the public hearing, Commissioner Dianne Barnes, Single Member District ("SMD") 5E09, testified on behalf of ANC 5E.
  26. Four witnesses testified on behalf of the Applicant at the hearing: Anne Corbett of Vision McMillan Partners, Jair Lynch of JAIR LYNCH Development Partners, Jim Voelzke of

MV+A Architects, and Shane Dettman of Holland & Knight. The Commission accepted Mr. Voelzke as an expert in architecture, and Mr. Dettman as an expert in planning and land use.

27. Nineteen individuals and local organizations submitted letters in opposition to the application. (Ex. 30, 31, 33, 35-39, 41-50, 56.)
28. A letter in support for the application was submitted by Ward 5 Councilmember, Kenyan McDuffie. (Ex. 40.)
29. At the public hearing, two persons testified in support of the application. The persons in support of the application were Rashida Brown, representing SMD 1A10, and Andrew Depuy. (*See* Transcript [“Tr.”], 12/17/2015, pp. 96-100.)
30. At the public hearing, eight persons testified in opposition to the application. The persons in opposition of the application were Robin Diener; Paul Cerruti; Debbie Hammerham; Jim Schulman; Daniel Wolkoff, MCSA; Amal Mimish; LeRoy Hall, and Chris Otten, DC for Reasonable Development. (*See* Tr., 12/17/2015, pp. 101-130.)
31. At the conclusion of the public hearing, the Commission requested the Applicant to submit the following alternatives for the Three Quarter Street span: (i) an alternative that retains the design of the Three Quarter Street span with affordable housing units devoted to households earning up to 50% AMI located within the center dwelling units within the span; (ii) an alternative that eliminates the dwelling units from the Three Quarter Street span and includes only a glass-enclosed pedestrian connection; and (iii) an alternative that eliminates the dwelling units from the Three Quarter Street span as well as the lower third and fourth floors of the pedestrian connection portion of the span and adds an additional floor to the Parcel 2 Building.
32. The Commission also requested the Applicant to: (i) submit a roof plan that clearly demonstrates compliance with the 1:1 penthouse setback requirements; (ii) submit larger versions of the precedent images that were submitted for the interior feature wall proposed along the north side of the Three Quarter Street span; and (iii) consider committing to a LEED-Gold rating, at a minimum, rather than the proposed LEED-Silver or Green Communities compliance.
33. On January 12, 2015, the Applicant submitted a Posthearing Submission. (Ex. 58.) The Posthearing Submission included final architectural plans and drawings (“Final Plans”). (Ex. 58A1-58A5.) The Final Plans included two alternatives for the Three Quarter Street span which were identified as Option A and Option B, and are described as follows:
  - a. The Option A alternative for the Three Quarter Street span generally is the same design as shown in the initial application, and as was presented to the Commission at the public hearing. The span consists of a circulation corridor along the north side of the span with dwelling units proposed along the south side



of the corridor. The span begins at the third floor. In Option A, two additional ADUs will be provided, and will be set aside for households earning up to 50% AMI. These two additional ADUs would be located on the third and fifth floors of the span. In addition, one previously proposed ADU (80% AMI) would be relocated to the 4<sup>th</sup> floor of the span; and

- b. The Option B alternative for the Three Quarter Street span only includes a glass-enclosed pedestrian connection between the east and west portions of the building. As a result of the substantially narrowing of the span due to the elimination of the dwelling units, the span in this alternative begins at the second floor in order to increase the internal circulation of the building. The Applicant also included an alternative ground floor plan for Option B that includes the option for approximately 5,200-6,100 square feet of gross floor area of additional retail or live/work residential units. Thus, the Applicant has requested flexibility to adjust the final programming of a portion of the ground floor in Option B, as shown in the Final Plans, and has proffered two additional ADUs (80% AMI) should the Commission grant the flexibility and should the Applicant implement that alternative ground floor plan.
34. Per the Commission's request, the Posthearing Submission also included a study of an alternative for the Three Quarter Street that eliminates the dwelling units from the Three Quarter Street span as well as the lower third and fourth floors of the pedestrian connection portion of the span and adds an additional floor to the Parcel 2 Building. Upon evaluation, the Applicant determined that this alternative caused several programmatic, design, and construction challenges; and therefore, did not include this alternative in the Final Plans as an option for approval by the Commission.
  35. At its public meeting held on February 8, 2016, the Commission took proposed action to approve Option B of the "Final Plans," with the condition that the two additional affordable units shall be reserved for households earning up to 50% of the AMI, including the alternate ground-floor plan that allows flexibility in the final programming of the ground floor, that were submitted to the record. (Ex. 58A1-58A5.)
  36. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on February 9, 2016 under the terms of the District of Columbia Home Rule Act. (Ex. 61.) The Executive Director of NCPC, by delegated action dated March 4, 2016, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 66.)
  37. The Applicant submitted a list of Proffers and Conditions to the record on February 15, 2016. (Ex. 62.) The Office of the Attorney General reviewed the list and returned it to the Applicant with comments. The Applicant revised the list according to the suggestions from the Office of the Attorney General, and submitted a revised list of proffers and

conditions, along with revised draft findings of fact and conclusions of law, on March 3, 2016. (Ex. 63-65.)

38. The Commission took final action to approve the application, with development of Option B of the “Final Plans” on March 14, 2016.

### **The Second-Stage PUD Project**

39. The Second-Stage PUD for Parcel 2 of the McMillan Reservoir Slow Sand Filtration Site is situated in Ward 5, and is zoned CR, pursuant to Z. C. Order No. 13-14. The Overall PUD Site is bounded by North Capitol Street to the east, Michigan Avenue to the north, First Street to the west, and Channing Street to the south, all in the northwest quadrant of Washington, D.C., and contains approximately 1,075,356 square feet (24.69 acres) of land area.
40. Parcel 2 is located on the west side of the Overall PUD Site and is bounded by First Street to the west, North Service Court to the north, Half Street to the east, and Parcel 5 to the south. While First Street is a public street, North Service Court and Half Street are private streets that will be constructed as part of the Master Plan. Not including the area of private streets and easements, Parcel 2 has a land area of approximately 48,178 square feet. Three Quarter Street, another private street that is part of the Master Plan, will bifurcate Parcel 2.
41. The Applicant proposes to develop Parcel 2 with a mixed-use building containing residential and retail uses (“Parcel 2 Building”). The Parcel 2 Building will consist of approximately 235,513 gross square feet, of which approximately 18,259-24,359 gross square feet will be devoted to retail uses, and contain approximately 233 residential dwelling units (plus or minus five percent). The Parcel 2 Building will have a maximum density of approximately 4.89 FAR, not including private streets and easements, and a maximum height of 82’-6,” not including penthouses.

### **Parking and Loading**

42. The Parcel 2 Building will provide a minimum of 222 off-street parking spaces located on two levels of below-grade parking accessed from an entrance located on the east side of Three Quarter Street. The building will also provide a minimum of 86 secure bicycle parking spaces within the parking garage.
43. For the life of the project, the Applicant will implement the Transportation Demand Management (“TDM”) program and monitoring plan approved as part of the Approved PUD under Z.C. Order No. 13-14, as applicable to the Parcel 2 Building, as well as the following additional TDM measures that are specific to the Parcel 2 Building:

- a. The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;
  - b. An electronic display shall be installed in the Half Street residential lobby to display real-time transit arrival and other transportation options information;
  - c. The Applicant shall post all TDM commitments to the project website, which shall include links to Commuter Connections and goDCgo;
  - d. The Applicant shall hold annual commuter fairs with representatives of various transportation providers to explain transportation services available for employees and residents. These fairs can be hosted by the project association or business improvement district established for the Overall PUD Site and not specific to Parcel 2;
  - e. All on-site parking shall be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site, and all residential parking will be unbundled from the costs of leasing apartments or purchasing condos;
  - f. The Applicant shall comply with Zoning Regulations requirements to provide bicycle parking/storage facilities, including secure parking located in the garage for residents;
  - g. As part of the entire McMillan car-sharing program, the Applicant shall accommodate car-sharing company requests to provide parking spaces. Until requested by a car-sharing company, these spaces shall be part of the general parking supply;
  - h. All retail employers shall be encouraged to provide SmartBenefits for their employees; and
  - i. The Applicant shall offer the first occupant of each unit an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years.
44. The Parcel 2 Building will contain two loading berths, one on either side of Three Quarter Street. The loading berth located on the west side of Three Quarter Street will be 40 feet deep. The loading berth on the east side of Three Quarter Street will be 30 feet deep, and will also be managed and signed to function as the required 20-foot service delivery space. The loading berths will be shared by the retail and residential uses.

45. For the life of the project, the Applicant will implement the following restrictions and guidelines on loading operations at the Parcel 2 Building to accommodate expected loading demand, ensure coordination of deliveries and loading between the residential and retail uses, and mitigate any potential impacts that may result from the requested loading flexibility:
- a. A loading dock manager shall be designated by building management and shall be responsible for coordinating delivery schedules among building tenants. All residential move-ins and move-outs shall be scheduled in a manner that does not conflict with retail deliveries;
  - b. The loading dock manager shall schedule deliveries such that the loading dock capacities are not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver shall be directed to return at a later time so as to not impede traffic flow;
  - c. The loading dock manager shall monitor inbound and outbound truck maneuvers and shall ensure that trucks accessing the loading berths do not block vehicular or pedestrian traffic along Three Quarter Street except during those times when a truck is actively entering or exiting a loading berth, and shall ensure that any surrounding pedestrians have vacated the area before allowing a truck to back into the loading area;
  - d. The 30-foot loading berth shall be managed such that conflicts between the building's loading and service/delivery needs are avoided by designating peak periods during the day when the loading berth can only be used for service/delivery vehicles, and loading or unloading is not permitted. The 30-foot loading berth shall be appropriately signed to indicate the hours where loading is not permitted, or when the dock is reserved for deliveries;
  - e. Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including, but not limited to, DCMR 20 – Chapter 9, Section 900 (Engine idling), and the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document; and
  - f. The loading dock manger shall be responsible for disseminating information to drivers related to DDOT's Freight Management and Commercial Vehicle Operations document and DDOT's truck routes; the loading dock manager shall post this information in a prominent location within the loading areas.

### **Sustainable Development**

46. In keeping with the Approved PUD, the Master Plan for the Overall PUD Site will be evaluated for LEED-ND (Neighborhood Development) and shall be certified at least LEED-Gold or its equivalent, and shall achieve, at minimum, the applicable provisions of the Green Construction Code of the 2013 Construction Code of the District of Columbia.
47. As required under the Approved PUD, the Parcel 2 Building will be certified LEED-Silver, or its equivalent under Green Communities. (*see* Z.C. Order No. 13-14, Condition No. C-10 at 61.)

### **Project Association**

48. Pursuant to Z.C Order No. 13-14, the Applicant will establish a project association or business improvement district, referred to as the McMillan Public Space Partnership (the "Partnership"). The Partnership will provide an operating framework to maintain and program the public space within the McMillan redevelopment, including the private roadways, alleys, bicycle paths, historic walks, sidewalks, parks, open space, historic resources, streetscapes, street furniture and fixtures, and signage within the Overall PUD Site boundaries. The Partnership will be a not-for-profit corporation governed by a board of directors responsible for strategic and financial planning, management, and reporting to the public. As its primary function, the Partnership will maintain and program most, if not all, of the public assets within the Overall PUD Site via an agreement with the District. The assets include the parks and open space, historic resources, public art, and internal streets and their components (e.g., paving, light fixtures, benches).

### **CBE and First Source Employment Opportunities**

49. Pursuant to the First Source Agreement established between the D.C. Department of Employment Services ("DOES") and Vision McMillan Partners, dated June 23, 2014 (See Exhibit 832K in Z.C. Case 13-14), the Applicant is required to use DOES as the first source to fill all new jobs created as a result of the Second-Stage PUD, and requires that 51% of all new hires on government contracts between \$300,000 and \$5 million shall be District residents. The Applicant is committed to meeting the requirements under the First Source Agreement and to maximize job opportunities for District residents, especially Ward 5 residents as follows:
  - a. *Training and Employment Opportunities*: During construction of the Parcel 2 Building, the Applicant will abide by the terms of the executed First Source Employment Agreement with DOES. To the extent permitted by law, first preference for employment opportunities will be given to Wards 1 and 5 residents; and

- b. CBE Participation: Pursuant to Z.C. Order No. 13-14, Condition C-7, a CBE Agreement has been executed with the D.C. Department of Small and Local Business Development ("DSLBD") to achieve, at a minimum, 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security created as a result of the Approved PUD. Business opportunities will be posted on the DSLBD website, and CBE businesses will be given opportunities for smaller contracts, such as catering, trash collection, and delivery service. Work will continue with DSLBD, contractors, and with the Business Development Councils and other local community organizations to maximize opportunities for CBE firms throughout the process. The Approved PUD will also include 20% sponsor equity participation by a CBE developer.

**Public Benefits and Project Amenities**

- 50. The public benefits and project amenities associated with Parcel 2 are part of the substantial number of public benefits and project amenities approved as part of the Approved PUD, at which time the Commission considered the balance between the public benefits and project amenities offered, including the amount of affordable housing, and the degree of development incentives requested and any potential adverse effects of the Approved PUD. The Commission found then, as it does now, that the public benefits and project amenities of the Approved PUD are adequate to support the Second-Stage PUD.
- 51. Pursuant to the Approved PUD, approximately 25 units, or approximately 21,341 square feet of total gross floor area, within the Parcel 2 Building will be devoted to households earning up to 80% of the AMI; the Applicant has proposed to increase this amount to 23,487 square feet of gross floor area. The affordable dwelling units located on Parcel 2 will be sufficient to achieve a 20% split of affordable units across the Overall PUD Site (See Z.C. Order No. 13-14, Finding of Fact 79(b), at 19-20.) In addition, the Parcel 2 Building will contain two additional ADUs devoted to households earning up to 50% of the AMI which the Applicant proffered as part of its request for flexibility relating to the final programming of the ground floor of the Parcel 2 Building, which the Commission grants. The following is a chart showing the affordable housing that will be provided.

Residential Unit Type	GFA / Percentage of Total	Units	Income Type	Affordable control period	Affordable unit type
Total	217,254 / 100%	228			
Market Rate	193,767 / 89.4%	201			
Affordable/Non IZ	1,392 / 0.6%	2	50% AMI	For so long as project exists	Rental
Affordable/Non IZ	22,095/ 10%	25	80% AMI	For so long as project exists	Rental

52. As stated in Finding of Fact Nos. 79(d)-(g) of Z.C. Order No. 13-14, The Applicant will be requesting the Zoning Administrator to grant an exemption from the Inclusionary Zoning requirements of Chapter 26 pursuant § 2602.3(f). The provision exempts “any development financed, subsidized, or funded in whole or in part by the federal or District government and administered by the Department of Housing and Community Development (“DHCD”), the District of Columbia Housing Finance Agency, or the District of Columbia Housing Authority and that meets the requirements set forth in § 2602.7.” In the event the waiver is not granted, the Applicant will still be required to provide the affordable housing proffered, except that a portion will be subject to the specific requirements of the Inclusionary Zoning Regulations.

### **Areas of Flexibility**

53. With respect to development of the Parcel 2 Building, the Applicant requested the following areas of flexibility from the Zoning Regulations:
- a. *Flexibility from Residential Lot Occupancy* – Pursuant to § 634 of the Zoning Regulations, the maximum permitted lot occupancy within the CR Zone District for any building or structure, including an accessory building or structure, devoted to residential use is 75%, as calculated on a horizontal plane located at the lowest level where residential uses begin. For the purposes of Section 634, “residential uses” includes dwellings, flats, multiple dwellings, rooming and boarding houses, hospitals, and community based residential facilities. (11 DCMR § 634.3.) As proposed, the Parcel 2 Building includes residential dwelling units on the ground floor, and thus, is the level at which the residential lot occupancy must be calculated. As shown on Sheet 7 of the Final Plans, the lot occupancy of the ground floor is 84%, when calculated without including the areas of Parcel 2 that are encumbered by private streets and easements, exceeding the permitted residential lot occupancy by nine percent. The lot occupancy on Floors 2-7 of the Parcel 2 Building is less than 75%; and therefore, do not require flexibility. The Commission finds the relatively minor extent of lot occupancy flexibility requested on the ground floor to be appropriate and that it can be granted given the reduced amount of land area that can be built on due to the private streets and easements that encumber portions of Parcel 2;
  - b. *Flexibility from Side Yard Requirements* – Pursuant to Section 637 of the Zoning Regulations, a side yard need not be provided in the CR Zone District, however, if one is provided it must meet the requirement of three-inches per foot of building height, and no less than eight feet. Based on the proposed building height of 82'-6", the minimum side yard requirement would be 20'-7". The Parcel 2 Building provides non-compliant side yards along the north and south sides. Along the north, the building is setback approximately 2'-5" to provide additional space for pedestrian circulation and outdoor seating along North Service Court. Along the south, an average side yard of approximately 7'-3" is provided to provide a

modest outdoor space to the dwelling units along the south side of the Parcel 2 Building, and to afford some relief between the Parcel 2 Building and the lower-height townhomes to the south. The Commission finds that the requested side yard flexibility can be granted. On the north, the small side yard that is provided will provide additional space for outdoor seating along North Service Court without adversely impacting pedestrian circulation. In addition, given the width of North Service Court, and the upper-level building setbacks on both the Parcel 2 Building and the building proposed for Parcel 1, there will be no impact to light and air to the Parcel 2 Building, or to the pedestrian realm along North Service Court. Along the south, the flexibility can be granted without adversely impacting the residents of the Parcel 2 Building or the townhomes to the south. In addition to the side yard provided on the Parcel 2, the townhomes to the south will also be setback approximately eight feet, resulting in a total separation distance of approximately 15 feet. This distance will be sufficient to provide adequate light and air; and

- c. *Flexibility from the Loading Requirements* – Section 2201.1 of the Zoning Regulations requires the Parcel 2 Building to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. The Applicant requested flexibility to provide one loading berth at 40 feet deep and one loading berth at 30 feet deep. The 40-foot loading berth would be serviced by a 200-square-foot loading platform, and the 30-foot loading berth would be serviced by a 100-square-foot loading platform. In addition, the Applicant is requesting flexibility to allow the 30-foot loading berth to also be used as the required service delivery space, rather than have a fulltime dedicated service/delivery space, as required by the Zoning Regulations. The Applicant proposes to devote the 30-foot loading berth to service/delivery vehicle use during specified times of the day. These specified times will be clearly marked outside the loading berth and properly enforced through the Applicant's proposed loading management plan. The loading flexibility is necessary due to the narrow width of Three Quarter Street and the limited depth of the footprint of the Parcel 2 Building on either side of Three Quarter Street. As a result of these constraints, a 55-foot truck could not be accommodated on Parcel 2. Based upon the analysis provided in the DDOT Report, the Commission finds that the proposed loading facilities will be sufficient to serve the loading needs of the residential and retail uses of the Parcel 2 Building, including the additional retail that is included in the Applicant's alternative ground floor plan for Option B. Given the modest number of dwelling units and amount of retail, it is expected that the 40-foot loading berth will be sufficient to accommodate the majority of the building's loading demand. The 30-foot loading berth proposed on the east side of Three Quarter Street will be used during infrequent instances where there is a need for two trucks to load/unload simultaneously. These instances will be scheduled such that they do not occur during peak delivery times when the 30-foot loading berth will be reserved for service delivery vehicles.



54. Additional Areas of Flexibility – In addition to the technical areas of zoning flexibility requested by the Applicant, as described above, the Applicant also requested flexibility to make refinements/adjustments to the building design in the areas listed below. The Commission finds these areas of design flexibility to be appropriate, and generally consistent with the flexibility that is typically granted by the Commission to accommodate refinements/adjustments that are often necessary during more advanced stages of design:
- a. To adjust the size and/or number of dwelling units plus or minus five percent to accommodate fluctuations in market conditions, including corresponding changes to required parking so long as the number of parking spaces provided for the residential use is not reduced below the minimum required by §2101.1 of the Zoning Regulations;
  - b. To adjust the final programming of the portion of the ground floor identified in the Final Plans as “FLEXIBLE SPACE (APARTMENTS/LIVE-WORK/RETAIL,” in a manner that is consistent with what is shown on Sheet 35 of Exhibit 58A2 of the case record;
  - c. To vary the location and configuration of affordable dwelling units within the Parcel 2 Building, provided the proportion of studio, efficiency, and one-bedroom affordable units to all affordable units does not exceed the proportion of studio, efficiency, and one-bedroom market-rate units to all market-rate units, and the affordable dwelling units are not overly concentrated in any one portion of the building;
  - d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - e. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total number of parking spaces, for both retail and residential uses, is not reduced below what is required by § 2101.1 of the Zoning Regulations;
  - f. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, location, orientation, and quantity of the fins, or any other changes to comply with the District of Columbia Construction Codes, the recommendations of the D.C.

Historic Preservation Review Board or the Mayor's Agent for Historic Preservation, or that are otherwise necessary to obtain a final building permit;

- g. To vary the location, attributes, and general design of the streetscape within public space to comply with the requirements of and the approval by the District Department of Transportation Public Space Division;
- h. To vary the final design of retail frontages, including locations of doors, design of show windows, and size of retail units, to accommodate the needs of specific retail tenants; and
- i. To design and locate building signage, including all retail signage, in accordance with the sign guidelines approved as part of the Master Plan and the District of Columbia sign regulations in effect at the time of permit.

### **Compliance with the PUD Standards**

- 55. The Second-Stage PUD complies with the standards for a PUD as set forth in Chapter 24 of the Zoning Regulations.
- 56. The Commission finds that the Parcel 2 Building is consistent with the first-stage PUD approval in Z.C. Order No. 13-14.
- 57. The overall development of the Approved PUD, including Parcel 2, provides important public benefits and project amenities which are described in detail in Z.C. Order No. 13-14. These public benefits and project amenities have not changed with this application. Accordingly, the Commission's finding that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects of the Approved PUD, including the Parcel 2 Building, has not changed.
- 58. The Parcel 2 Building has been evaluated under the PUD guidelines for the CR Zone District. The density of the Parcel 2 Building is below the density permitted for a PUD in the CR Zone District and is less than that approved in Z.C. Order No. 13-14. The maximum height of the Parcel 2 Building is well below that permitted for a PUD in the CR Zone District and the first-stage PUD approval in Z.C. Order No. 13-14.
- 59. The application has been evaluated by the relevant District agencies and has been found to have no unacceptable adverse impacts. The Commission finds that the Parcel 2 Building will have a positive impact on the city and will have no unacceptable adverse impacts.

**Compliance with the Comprehensive Plan**

60. The Commission finds that the proposed Second-Stage PUD, continues to: (i) be consistent with the District of Columbia Comprehensive Plan Future Land Use Map and the Generalized Policy Map; (ii) help implement many of the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, connecting the city, and building green and healthy communities; and (iii) further the objectives and policies of the Comprehensive Plan's major elements, as set forth in the OP Report and as previously found by the Commission in Findings of Fact No. 159-173 of Z.C. Order No. 13-14. (Ex. 28, 2E.)

**Office of Planning Reports**

61. By report dated December 7, 2015, and through testimony presented at the public hearing, OP recommended approval of the application, contingent upon the following conditions: (i) if there is a reduction in the total number of units, the number of ADUs at 80% of AMI would remain at 25; (ii) the distribution patterns of ADUs would be of a similar pattern and proportion to that shown on Exhibit 12C4, Sheet 12, Page 53; (iii) flexibility to make changes to the internal parking and loading areas would not extend to external changes or the relocation of parking and loading entrances; and (iv) the roof structure on the western portion of the building will meet the 1:1 setback requirement through selection of a system that has an override that is no taller than the smallest setback dimension shown on the roof plan, and/or making minor adjustments to the configuration, footprint and location of the elevator core/stairway enclosures. (Ex. 28.)
62. The OP report stated that the proposal would not be inconsistent with the Comprehensive Plan Future Land Use and Policy maps, and would further many important Citywide Elements, and specifically those providing guidance for the development of the McMillan Reservoir property. In addition, the OP Report stated that the application is generally consistent with the First-Stage PUD and furthers a number of the Master Plan's Guiding Principles.

**DDOT Report**

63. By report dated December 7, 2015, and through testimony at the public hearing, DDOT expressed no objection to the Second-Stage PUD, contingent upon the following conditions: (i) strengthen the proposed TDM plan to include an electronic display in the Half Street residential lobby to display real-time transit arrival and transportation options information, and offer the first occupant of each unit an annual carsharing membership and an annual Capital Bikeshare membership for a period of three years; and (ii) flip on-street parking on Evarts Street from the south side of the street to the north side to facilitate truck movements. (Ex. 29.) The Applicant agreed to these additional conditions.

64. DDOT also stated in its report that it is likely to require an updated Comprehensive Transportation Review (“CTR”) as part of the Second-Stage PUD for Parcel 3 in order to review multi-modal project impacts, including vehicular impacts based on updated traffic counts that should include observed volumes from completed buildings elsewhere on the site rather than based on projects.

### **ANC 5E Report**

65. By letter dated October 20, 2015 and submitted to the record on December 16, 2015, ANC 5E indicated that it voted to support the application by a vote of 6-0-2, contingent upon the following conditions: (i) if there is a reduction in the total number of units, the number of ADUs at 80% of AMI would remain at 25; (ii) the distribution patterns of ADUs would be of a similar pattern and proportion to that shown on Exhibit 12C4, Sheet 12, Page 53; (iii) flexibility to make changes to the internal parking and loading areas would not extend to external changes or the relocation of parking and loading entrances; and (iv) the roof structure on the western portion of the building will meet the 1:1 setback requirement through selection of a system that has an override that is no taller than the smallest setback dimension shown on the roof plan, and/or making minor adjustments to the configuration, footprint and location of the elevator core/stairway enclosures. (Ex. 34.)
66. The conditions have been adequately met by the Applicant. The affordable housing condition requires that the Applicant provide at least 25 ADUs, or approximately 21,341 square feet of gross floor area for affordable units at 80% of AMI; the Applicant has offered 27 units and 23,487 square feet of gross floor area. The affordable unit mix presented in Option B is a similar pattern and proportion to that shown in Exhibit 12C4, Sheet 12, page 53. The parking and loading flexibility granted to the Applicant will not permit alteration of the location of parking and loading entrances. Finally, the penthouse as presented in Option B adheres to the 1:1 setback requirement.
67. Having discussed the issues and concerns stated by ANC 5E and having explained why it found the advice to be persuasive, the Commission has afforded the ANC the “great weight” to which it is entitled by statute.
68. Overall, based upon the written evidence of record, combined with the testimony presented at the public hearing on this application, the Commission finds that the materials and design of the Parcel 2 Building are compatible with the surrounding neighborhood; that the height and density of the Parcel 2 Building are consistent with the underlying zoning, the approved First-Stage PUD, and the Comprehensive Plan; that the project will not adversely affect neighborhood traffic or on-street parking availability; that the project will not result in an over-concentration of affordable housing within the Parcel 2 Building, or at the Overall PUD Site; and that the Applicant’s TDM Plan and Loading Management Plan, together with the TDM Plan that was previously approved

for the Overall PUD Site, will adequately mitigate any potential impacts to the surrounding transportation network.

### **Contested Issues**

69. The testimony provided at the public hearing by the persons appearing in opposition raised issues related to the inadequacy of the public benefits and project amenities provide by the Second-Stage PUD, the process by which the developer of the Overall PUD Site was selected and was approved, the impact to the historic character and features of the Overall PUD Site, impacts on views, transportation impacts, the loss of open space, sustainability, affordable housing, and the seismic integrity of the Three Quarter Street.
70. The public benefits and project amenities associated with Parcel 2 are part of the substantial number of overall public benefits and project amenities approved as part of the Approved PUD, at which time the Commission considered the balance between the project amenities and public benefits offered, including the amount of affordable housing, and the degree of development incentives requested and any potential adverse effects of the Approved PUD. The Commission finds that the public benefits and project amenities are adequate to support the Second-Stage PUD.
71. The Commission finds that the testimony relating to the process by which the developer of the Overall PUD Site was selected to be outside of the Commission jurisdiction, and not relevant to the scope of review that the Commission must carry out as part of the Second-Stage PUD. The Commission finds that the process carried out for the Approved PUD, and for the current Second-Stage PUD, to be consistent with the requirements of Chapters 24 and 30 of the Zoning Regulations
72. With respect to the other issues raised regarding impacts on traffic and transportation, historic resources, open space, sustainability, and views, the Commission finds that these issues were thoroughly addressed during the Approved PUD process, and that proposed Second-Stage PUD does not change any of Commission's prior findings relating to these issues.

### **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 "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 and approve the Second-Stage 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 Parcel 2, which is part of the Overall PUD Site, 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. Both the Overall PUD Site and Parcel 2 meet the minimum area requirements of § 2401.1 of the Zoning Regulations and complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses proposed are appropriate for the Overall PUD Site and Parcel 2. The impact of the proposed Parcel 2 Building on the surrounding area and on the operation of city services is acceptable given the quality of the public benefits approved as part of the Approved PUD.
5. The application is consistent with the first-stage PUD approval in Z.C. Order No. 13-14.
6. The flexibility requested by the Applicant from the lot occupancy, side yard, loading, and penthouse requirements of the Zoning Regulations are reasonable tradeoffs compared to the public benefits and project amenities that will be provided as part of the Approved PUD, including those that are specific to Parcel 2.
7. Approval of this Second-Stage PUD is appropriate because the proposed development is not inconsistent with the Comprehensive Plan. In addition, the proposed development of Parcel 2 will promote the orderly development of the Overall 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.
8. 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 affected ANC's recommendations. The Commission met this requirement through its discussion of ANC 5E's issues and concerns in Finding of Fact Nos. 65-68.
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) to give great weight to OP recommendations. For the reasons stated above, the Commission

concurs with OP's recommendation for approval, subject to the conditions included in the OP Report, and has given the OP recommendation the great weight it is entitled.

10. Notice was provided in accordance with the Zoning Regulations.
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 a second-stage PUD for Parcel 2 of the McMillan Reservoir Slow Sand Filtration Site. The approval of this PUD is subject to the guidelines, conditions, and standards set forth below:

#### **A. PROJECT DEVELOPMENT**

1. The Parcel 2 Building shall be developed in accordance with Option B of the Final Plans (Exhibits 58A1-58A5), dated January 14, 2016, with flexibility provided in the final programming of the ground floor to allow additional retail or live-work apartments within the area shown on Sheet 35 of the Final Plans (Exhibit 58A2), as modified by the guidelines, conditions, and standards herein.
2. In accordance with Option B of the Final Plans, the Parcel 2 Building shall consist of approximately 235,513 gross square feet, of which approximately 18,259-24,359 gross square feet will be devoted to retail uses, and contain approximately 233 residential dwelling units (plus or minus five percent).
3. The Parcel 2 Building will have a maximum density of approximately 4.89 FAR, not including private streets and easements, and a maximum height of 82'-6," not including penthouses.
4. Subject to the flexibility stated in Condition A-8 of this Order, the Parcel 2 Building shall contain a minimum of 222 off-street parking spaces, and a minimum of 86 secure bicycle parking spaces.
5. The Parcel 2 Building shall contain a 30-foot loading berth and a 40-foot loading berth. The 30-foot loading berth will also serve as the required 20-foot service delivery space.
6. The Applicant shall provide an affordable housing unit distribution that is generally consistent with that which is shown in Exhibit 58A3 of the case record,

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provided the Applicant shall retain the flexibility granted in Z.C. Order No. 13-14, and included below, with respect to the ability to vary the location and configuration of affordable dwelling units within the Parcel 2 Building.

7. The Applicant shall have flexibility from the Zoning Regulations in the following areas:
  - a. From the maximum residential lot occupancy requirements, consistent with Option B of the Final Plans;
  - b. From the minimum side yard requirements, consistent with Option B of the Final Plans; and
  - c. From the loading requirements, consistent with Option B of the Final Plans.
  
8. The Applicant shall have flexibility with the design of the Parcel 2 Building in the following areas:
  - a. To adjust the size and/or number of dwelling units plus or minus five percent to accommodate fluctuations in market conditions, including corresponding changes to required parking so long as the number of parking spaces provided for the residential use is not reduced below the minimum required by § 2101.1 of the Zoning Regulations;
  - b. To adjust the final programming of the portion of the ground floor identified in the Final Plans as “FLEXIBLE SPACE (APARTMENTS/LIVE-WORK/RETAIL)” in a manner that is consistent with what is shown on Sheet 35 of Exhibit 58A2 of the case record;
  - c. To vary the location and configuration of affordable dwelling units within the Parcel 2 Building, provided the proportion of studio, efficiency, and one-bedroom affordable units to all affordable units does not exceed the proportion of studio, efficiency, and one-bedroom market-rate units to all market-rate units, and the affordable dwelling units are not overly concentrated in any one portion of the building;
  - d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - e. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total number of parking



spaces, for both retail and residential uses, is not reduced below what is required by § 2101.1 of the Zoning Regulations and the locations of parking and loading berths and entrances are not altered;

- f. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, location, orientation, and quantity of the fins, or any other changes to comply with the District of Columbia Construction Codes, the recommendations of the D.C. Historic Preservation Review Board or the Mayor's Agent for Historic Preservation, or that are otherwise necessary to obtain a final building permit;
- g. To vary the location, attributes, and general design of the streetscape within public space to comply with the requirements of and the approval by the District Department of Transportation Public Space Division;
- h. To vary the final design of retail frontages, including locations of doors, design of show windows and size of retail units, to accommodate the needs of specific retail tenants; and
- i. To design and locate building signage, including all retail signage, in accordance with the sign guidelines approved as part of the Master Plan and the District of Columbia sign regulations in effect at the time of permit.

## B. TRANSPORTATION MITIGATION MEASURES

- 1. TDM Program: **For the life of the project**, the Applicant shall implement the TDM program and monitoring plan approved for the Overall PUD Site under Z.C. Order No. 13-14, and the TDM measures specific to the Second-Stage PUD that follow:
  - a. The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;
  - b. An electronic display shall be installed in the Half Street residential lobby to display real-time transit arrival and other transportation options information;

- c. The Applicant shall post all TDM commitments to the project website, which shall include links to Commuter Connections and goDCgo;
  - d. The Applicant shall hold annual commuter fairs with representatives of various transportation providers to explain transportation services available for employees and residents. These fairs can be hosted by the project association or business improvement district established for the Overall PUD Site and not specific to Parcel 2;
  - e. All on-site parking shall be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site, and all residential parking will be unbundled from the costs of leasing apartments or purchasing condos;
  - f. The Applicant shall comply with Zoning Regulations requirements to provide bicycle parking/storage facilities, including secure parking located in the garage for residents;
  - g. As part of the entire McMillan car-sharing program, the Applicant shall accommodate car-sharing company requests to provide parking spaces. Until requested by a car-sharing company, these spaces shall be part of the general parking supply;
  - h. All retail employers shall be encouraged to provide SmartBenefits for their employees; and
  - i. The Applicant shall offer the first occupant of each unit an annual carsharing membership or an annual Capital Bikeshare membership for a period of three years.
2. Loading Restrictions and Guidelines: **For the life of the project**, the Applicant shall implement the restrictions and guidelines on loading operations at the Parcel Building, as listed:
- a. A loading dock manager shall be designated by building management and shall be responsible for coordinating delivery schedules among building tenants. All residential move-ins and move-outs shall be scheduled in a manner that does not conflict with retail deliveries;
  - b. The loading dock manager shall schedule deliveries such that the loading dock capacities are not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver shall be directed to return at a later time so as to not impede traffic flow;

- c. The loading dock manager shall monitor inbound and outbound truck maneuvers and shall ensure that trucks accessing the loading berths do not block vehicular or pedestrian traffic along Three Quarter Street except during those times when a truck is actively entering or exiting a loading berth, and shall ensure that any surrounding pedestrians have vacated the area before allowing a truck to back into the loading area;
- d. The 30-foot loading berth shall be managed such that conflicts between the building's loading and service/delivery needs are avoided by designating peak periods during the day when the loading berth can only be used for service/delivery vehicles, and loading or unloading is not permitted. The 30-foot loading berth shall be appropriately signed to indicate the hours where loading is not permitted, or when the dock is reserved for deliveries;
- e. Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including, but not limited to, DCMR 20 – Chapter 9, Section 900 (Engine idling), and the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document; and
- f. The loading dock manger shall be responsible for disseminating information to drivers related to DDOT's Freight Management and Commercial Vehicle Operations document and DDOT's truck routes; the loading dock manager shall post this information in a prominent location within the loading areas.

### C. PUBLIC BENEFITS

1. Affordable Housing: **For so long as the project exists**, the Applicant shall set aside the following number of units and approximate amount of gross floor area for affordable dwelling units:
  - a. A minimum of 25 dwelling units of varying size and unit type comprising approximately 22,095 square feet of gross floor area, as affordable dwelling units for households earning up to 80% of the AMI; and
  - b. Two affordable dwelling units comprising approximately 1,392 square feet of gross floor area as affordable dwelling units for targeted to households earning up to 50% of the AMI.

All affordable dwelling units shall remain subject to the applicable rental or price controls for so long as the Parcel 2 Building is in existence.<sup>1</sup> The affordable dwelling units shall be constructed prior to or concurrently with the market-rate units, except that if the development is phased, the affordable units shall be constructed at a pace that is proportional with the construction of the market rate units.

2. *Training and Employment Opportunities: During construction of the Parcel 2 Building*, the Applicant shall abide by the terms of the executed First Source Employment Agreement with the DOES to help achieve the goal of utilizing District residents for at least 51% of the new jobs created by the Approved PUD. To the extent permitted by law, first preference for employment opportunities shall be given to Wards 1 and 5 residents.
3. *CBE Participation: During construction of the Parcel 2 Building*, the Applicant shall abide by the terms of the executed CBE Agreement with the DOES to achieve, at a minimum, 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security created as a result of the Approved PUD.
4. *Project Association: Prior to issuance of a certificate of occupancy*, the Applicant shall create a project association or business improvement district for the Approved PUD that will be responsible for the maintenance and improvements of the private roadways, alleys, bicycle paths, historic walks, sidewalks, parks, open space, historic resources, streetscapes, street furniture and fixtures, and signage within the Overall PUD Site boundaries. Additionally, the project association will contribute to funding for programming and staging events within the Overall PUD Site boundaries for the benefit of the public.
5. *Environmental Benefits: Prior to the issuance of a certificate of occupancy*, the Applicant shall provide evidence, such as a scorecard, to the Zoning Administrator showing that it has achieved a sufficient number of points to obtain LEED-Silver status, or its equivalent under the Green Communities rating system. The Applicant also shall furnish a copy of its LEED certification application to the U.S. Green Building Council, or a copy of its prebuild submission documentation under Green Communities certification, whichever is applicable to the project, that is generally consistent with the score sheets included in the Final Plans (Exhibit 58A4, Sheets 63-67). Although the Applicant is not required to obtain a LEED certification for the Parcel 2 Building higher than LEED-Silver, the Applicant shall continue to evaluate ways to incorporate additional sustainability features as design of the Parcel 2 Building is further developed, and

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<sup>1</sup> As noted above in Finding of Fact No. 51, the Applicant intends to seek an exemption from the Inclusionary Zoning ("IZ") Regulations set forth in Chapter 26 of the Zoning Regulations. If the exemption is not granted, the Applicant shall nevertheless abide by the requirements of this condition, unless the IZ Regulations impose more restrictive standards.

shall make a good faith effort to achieve LEED-Gold, or its equivalent under Green Communities.

#### D. MISCELLANEOUS

1. The Second-Stage PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 13-14A. Within such time, an application must be filed for a building permit for the Parcel 2 Building as specified in 11 DCMR § 2409.1. Construction must commence within three years of the effective date of Z.C. Order No. 13-14A.
2. No building permit shall be issued for the Second-Stage 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 of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
3. 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.
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.

On February 8, 2016, upon the motion of Commissioner Miller, as seconded by Chairman Hood, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On March 14, 2016, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting, by a vote of **5-0-0**

(Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Anthony J. Hood to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the DC *Register*, that is on April 22, 2016.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 15-12**  
**Z.C. Case No. 15-12**  
**J River 1401 Pennsylvania Avenue, LLC**  
**(Consolidated PUD and Related Zoning Map Amendment**  
**(Square 1065, Lots 30, 31, 32, 33, 142, and 820))**  
**March 14, 2016**

Pursuant to proper notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on February 4, 2016 to consider an application by J River 1401 Pennsylvania Avenue, LLC (“Applicant”) for consolidated review and approval of a planned unit development (“PUD”) and related Zoning Map amendment from the C-2-A and R-4 Zone Districts to the C-2-B Zone District for Square 1065, Lots 30, 31, 32, 33, 142, and 820 (“Application”). The Commission considered the Application pursuant to Chapter 24 and Chapter 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. The Commission approves the Application, subject to the conditions below.

**FINDINGS OF FACT**

**Application, Parties, Hearing, and Post Hearing Submissions**

1. The project site consists of Square 1065, Lots 30, 31, 32, 33, 142, and 820 (“Property”) with the address of 1401-1433 Pennsylvania Avenue, S.E.
2. On May 29, 2015, the Applicant filed an application for consolidated review and approval of a PUD and related Zoning Map Amendment from the C-2-A and R-4 Zone Districts to the C-2-B Zone District. (Exhibit (“Ex.”) 1-1H.)
3. On July 17, 2015, the Office of Planning (“OP”) filed a report recommending that the Application be set down for a public hearing. (Ex. 7.)
4. During its public meeting on July 27, 2015, the Commission voted to set down the Application for a public hearing. Notice of the public hearing was published in the *D.C. Register* on November 30, 2015 and mailed to Advisory Neighborhood Commission (“ANC”) 6B and to owners of property within 200 feet of the Property. (Ex. 12, 13; 7/27/2015 Transcript [“Tr.”] at pp. 71-72.)
5. The Application was further updated by pre-hearing submissions that the Applicant filed on November 19, 2015 and January 14, 2016. (Ex. 9-9B, 16-16E.)
6. The Commission held a public hearing on the Application on February 4, 2016. The Commission accepted Kevin Sperry as an expert in the field of architecture and Daniel Van Pelt as an expert in the field of traffic engineering. (Ex. 16E.) The Applicant provided testimony from these experts as well as from Kevin Riegler and Robin Betteral of CAS Riegler. (2/4/2016 Tr. at pp. 11-60.)

7. In addition to the Applicant, ANC 6B was automatically a party in this proceeding and submitted a report in support of the application. (Ex 20.) Kirt Beatley submitted a request for party status in opposition and a letter in opposition. (Ex. 17, 27.) At the public hearing, Mr. Beatley requested to change his party status to a party in support. (2/4/2016 Tr. at pp. 7-8.) The Commission granted this request. (2/4/2016 Tr. at p. 8)
8. At the public hearing, the Commission heard testimony and received reports from OP and the District Department of Transportation (“DDOT”) in support of the Application. (Ex.18,19.) The Commission also heard testimony from persons in support of the Application. No one testified in opposition. (2/4/2016 Tr. at pp. 98-120.)
9. At the public hearing, the Commission took proposed action to approve the Application and with a request that the Applicant respond to some outstanding comments and concerns prior to the Commission taking final action. (2/4/2016 Tr. at pp. 129-133.) The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. (Ex. 31.) NCPC did not provide a report in this case.
10. On February 11, 2015, the Applicant submitted its list of proffers and proposed conditions pursuant to 11 DCMR § 2403.16. (Ex. 32.)
11. On February 25, 2015, the OP submitted a supplemental report, the contents of which are discussed below in the agency reports section. (Ex. 33.)
12. The Applicant responded to the Commission’s comments and concerns in a post-hearing filing that it submitted on February 25, 2016. (Ex. 35-35B.)
13. On February 25, 2016, the Applicant submitted its final list of proffers and proposed conditions pursuant to 11 DCMR § 2403.19. (Ex. 36.)
14. The Commission took final action to approve the Application at a public meeting on March 14, 2016.

## **THE MERITS OF THE APPLICATION**

### **Overview of the Property**

15. The Property contains approximately 28,098 square feet of land area. It is bounded by Pennsylvania Avenue, S.E. and Potomac Avenue, S.E. to the north, a 10-foot-wide public alley and residential properties to the south, a residential property to the east, and 14<sup>th</sup> Street, S.E. to the west. The Property is currently improved with a free-standing one-story fast food restaurant and accompanying surface parking lot and a small residential building. The remainder of the Property is unimproved. (Ex. 1).
16. The entrance to the Potomac Avenue Metrorail station is located approximately 300 feet directly across Potomac Avenue from the Property. (Ex. 1A, 28.)



17. The surrounding area is mostly a mix of residential uses and commercial/retail uses. Across Pennsylvania Avenue to the north is a row of commercial retail/service buildings and the Potomac Avenue Metrorail station. Further north beyond the Metrorail station are primarily townhouses/flats and small apartment buildings. Directly across 14<sup>th</sup> Street to the west, properties are used primarily as small apartment buildings and townhouses/flats. Slightly further to the west, at the corner of Potomac Avenue and Pennsylvania Avenue is the Jenkins Row mixed-use development, with ground-floor retail, including a Harris Teeter supermarket, and residential condominiums above. Properties to the south are primarily townhouse/flats and apartment buildings. Properties to the east and west along Pennsylvania Avenue are townhouses/flats, retail/commercial buildings, or mixed uses. (Ex. 1, 28.)
18. The Property is zoned C-2-A with a small portion zoned R-4. Most properties along Pennsylvania Avenue are zoned C-2-A, but the Jenkins Row project (less than one block west) is zoned C-2-B. Several apartment buildings at 13<sup>th</sup> and G Streets, S.E. are zoned R-5-B. Other nearby properties off Pennsylvania Avenue are zoned R-4. (Ex. 1A, 28.)
19. The Future Land Use Map (“FLUM”) of the Comprehensive Plan designates the Property in the Moderate-Density Commercial Land Use Category along Pennsylvania Avenue with a Moderate-Density Residential designation for a small portion of the rear of the Property. The Generalized Policy Map (“GPM”) includes the majority of the Property in the Main Street Mixed-Use Corridor category with a small portion of the Property in the rear designated as a Neighbor Conservation Area. (Ex. 1, 19.)

### **The Project**

20. The Applicant plans to redevelop the Property as a seven-story, mixed-use building with ground-floor retail and residential apartments above (“Project”). The Project will contain 170-190 residential units and a total of approximately 148,919 gross square feet, which equates to a density of 5.29 floor area ratio (“FAR”). Approximately 23,548 gross square feet will be dedicated to street-activating ground-floor retail uses. (Ex. 1, 1A, 9A.)
21. The ground-floor retail will wrap all street frontages of the building. The retail spaces will have approximately 18-foot ceilings, box windows, and abundant glass fronts to create an inviting retail experience for pedestrians. The corner of 14<sup>th</sup> Street and Pennsylvania Avenue will be activated with a squared-off prominent retail entrance and bays that will be a distinguishing feature of the Project. The second through seventh stories of the building will contain the apartments. The apartment layout will be based around a double-loaded corridor. (Ex 1, 1A, 9A, 28.)
22. The total height of the Project is 78 feet, but the entire 7<sup>th</sup> floor will be set back from the lower floors. The southeast wing of the Project will include significant transitions to the nearby row dwellings. At this section of the building, from the second to fourth floors, the building will be set back eight feet from the southern property line. At the fourth floor, the building will be set back between eight and 16 feet from the southeast corner.

At the fifth floor, the building will be set back between 16 and 24 feet from the southern property line. At the sixth and seventh floors, the building will be set back 24 and 39 feet, respectively, from the southern property line. On the east elevation, the second and third floors will be set back 11 feet at the southeast corner and 11 feet from the eastern property. The Project will not have a penthouse above the 7<sup>th</sup> floor. (Ex. 1, 9, 9A, 19, 28.)

23. The Project will include 58 underground parking spaces with 50 allocated to the residential and eight to the retail. (Ex. 28.) The parking will be accessed from 14<sup>th</sup> Street through the 20-foot alley (10-foot public alley and 10-foot alley easement proffered by the Applicant) at the rear of the Property. (Ex. 16, 16B, 28.) Loading will also be accessed via the rear alley and will consist of two internal 30-foot loading berths. The alley will be able to accommodate truck turnaround movements so that trucks are able to enter and exit the property front-first. (Ex. 23, 28.) Finally, the Project is required to provide 63 bicycle spaces but will include a total of 198 bicycle parking spaces within the Project and an additional 20 bicycle parking spaces in public space in along the perimeter of the Project. (Ex. 18, 23, 28.)
24. The Project will be designed so as to satisfy the standards for at least LEED-Gold certification. (Ex. 9, 19.)
25. Open space and green features will be incorporated throughout the Project. At the rear of the second floor, the Project will offer a large outdoor terrace for resident recreation. The terrace will have a screen to the rear of the building to obscure its view from nearby other properties. Residential units opening onto the terrace will also have a landscape buffer from the rest of the terrace. Additional outdoor terraces for individual units will be provided for various other units on upper floors. A green roof will occupy a significant portion of the building's roof. (Ex. 28, 35.)

#### Zoning Map Amendment

26. The Property is located primarily in the C-2-A Zone District, with some R-4 to the rear. As a matter of right, the maximum height allowed in the C-2-A Zone District is 50 feet, and the maximum density is 2.5 FAR (3.0 FAR for residential developments that trigger inclusionary zoning).
27. The Applicant requested a PUD-related Zoning Map amendment to the C-2-B Zone District to permit the Project to achieve the requested mix of uses, height, and density. The maximum height permitted in the C-2-B Zone District under the PUD guidelines is 90 feet, and the maximum density permitted is 6.0 FAR.

#### PUD Flexibility Requested

28. The Applicant requested flexibility from court, parking, and loading requirements in order to accommodate the proposed design of the Project, as detailed in the Applicant's written submission and the OP final report. The court flexibility is necessary and

justified to accommodate various setbacks along the south and east sides of the building as well as to allow no penthouse on the roof. The parking flexibility is justified by the Project's proximity to a Metrorail station as well as the fact that the Project will provide more parking than necessary under the new Zoning Regulations. The loading flexibility is justified by the fact that the provided berths will accommodate the demand for loading in the Project. (Ex. 1, 9A, 19, 28, 35.)

29. With respect to the exterior design of the Project, the Applicant requested flexibility to eliminate the proposed pool. (Ex. 35.)

Project Amenities and Public Benefits

30. As detailed in the Applicant's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits:
- a. Exemplary urban design, architecture, and landscaping, including high-quality materials, superior architecture, pedestrian-oriented streetscape improvements (including, clear separation of pedestrian and vehicular entrances and circulation patterns), and sustainable features; (Ex. 1A, 9A, 28, 35.)
  - b. Site planning and efficient land utilization, through the redevelopment of an underutilized parcel into an apartment building with significant retail of a strategic underutilized site located along a key gateway into the Capitol Hill neighborhood; (Ex. 1, 1A, 9A, 16, 16A, 20, 28; 2/4/2016 Tr. at pp. 12-14.)
  - c. Public Space and Park Improvements (Ex. 16, 16A, 20; 2/4 Tr. at pp. 30-35):
    - i. Potomac Avenue Metro Plaza Improvements: The Applicant will install improvements to the Potomac Avenue Metro Station plaza. Subject to WMATA's final approval, these improvements will include removal of aging fencing around the plaza; replacement of existing bike racks with new bike racks in a bright color; and the addition of a public art piece or historical interpretive signage detailing the history of and interesting facts about the neighborhood. The Applicant will not be required to spend more than \$50,000 on these improvements provided that they are completed to WMATA's satisfaction;
    - ii. Friendship Chamberlain Elementary: The Applicant shall design, furnish, and install improvements to the playground area at the Friendship Chamberlain Elementary campus. Playground improvements to include:
      1. Installation of age-inclusive fitness options;
      2. Upgrades to fencing and gates; and
      3. Improved signage and wayfinding; and

- iii. Hopkins Apartments Playground: The Applicant shall design, furnish, and install improvements to the playground area at Hopkins Apartments (1430 L Street, S.E.). Playground improvements to include:
    1. New children's play equipment; and
    2. Improved signage and wayfinding; and
  - iv. Tree Canopy Improvement: The Applicant shall provide funding (\$5,000) to Casey Trees (or equivalent provider) to make trees (at ~\$350/tree) available to residents of ANC 6B to support Ward 6 tree canopy goals. This will include support for distribution and planting;
- d. Transportation and streetscape infrastructure improvements, including:
- i. Enhanced and Improved Alley System: The Applicant will dedicate an easement over approximately 1,800 square feet of private property in order to widen the public alley off of 14<sup>th</sup> Street at the rear of the Property from 10 feet to 20 feet;
  - ii. The entire rear alley from 14<sup>th</sup> Street, S.E. to Ives Place, S.E. will be paved to satisfy DDOT's "Green Alley" standards, and lighting will be installed on the building façade that faces the alley;
  - iii. Additional Alley Improvements: The Applicant will provide additional features to improve the functionality and safety of the alley including security cameras, mirrors, and bollards to protect neighboring homes and vehicles; and
  - iv. Reduction in Curb Cuts: The Applicant will eliminate curb cuts creating more on-street parking. By closing existing curb cuts, approximately 55 feet of additional frontage will be available on both Pennsylvania Avenue, S.E. and 14<sup>th</sup> Street, S.E.;
- (Ex. 16A, 28, 35.)
- e. Housing and affordable housing, through the creation of 170 to 190 residential units, including approximately 9,973 square feet of residential gross floor area set aside for affordable units. As required by the Inclusionary Zoning Regulation, eight percent of the Project's 124,474 square feet of residential gross floor area is being set aside for a total of 13 Inclusionary Zoning Units. Four units with a total of approximately 4,007 square feet of gross floor area will be set aside for households earning up to 50% of the area median income, and nine units with a total of 5,966 square feet of gross floor area will be set aside for households earning up to 80% of the area median income ("AMI"). This represents a significant increase in amount and depth of affordable housing over both a matter-of-right project in the underlying C-2-A Zone District (five percent of the residential gross floor area at 50% AMI and five percent of the residential gross

floor area at 80% AMI) and over the base requirements of the C-2-B Zone District sought through the PUD (eight percent of the residential gross floor area at 80% AMI); (Ex. 35.)

- f. Environmental benefits, including a commitment to achieve LEED-Gold for the Project. (Ex. 16A, 28, 33; 2/4/2016 Tr. at pp. 84). The Project will also include specific sustainable design features such as extensive green roof and courtyard, maximizing daylight throughout the building, high efficiency HVAC units, two electric car charging station, and environmental remediation to mitigate potential contaminants from the former gas station on the Property; and
- g. Uses of special value, including:
  - i. Approximately 23,548 square feet of ground-floor space will be provided for neighborhood-serving retail and service:
    - 1. The Applicant will reserve 10% of the retail space for existing or emerging local businesses; and
    - 2. Ensure Class-A retail design standards and construction methods are used to attract prominent/catalyst retail tenants;
  - ii. Through the landscape design and architectural features, focus on creating a pedestrian friendly streetscape including new paving, street lighting fixtures, varied storefront designs, and preserving old-growth trees and providing additional green space;
  - iii. Potomac Gardens Capital Improvements: The Applicant shall provide and complete needed capital improvement projects for security. Such improvements may include new high-definition security cameras, modifications to sections of the property's exterior fence, or infrastructure and equipment to facilitate increased resident access to Wi-Fi;
  - iv. Tree Protection: Establish and implement a tree protection plan; and
  - v. Public Infrastructure & Utilities: J. River will extend and/or replace public infrastructure and utilities within the neighborhood to serve the project and allow for future utilization by neighboring properties.

(Ex. 16, 16A, 28, 35; 2/4/2016 Tr. at pp. 33.)

#### Transportation Issues

- 31. The Applicant's traffic expert submitted a detailed transportation impact analysis that concluded that the proposed Project would not generate an adverse traffic impact on the surrounding roadway network or cause objectionable impacts in the surrounding neighborhood due to traffic or parking impacts. The Applicant's traffic consultant also concluded that the number of parking and loading spaces as well as the location of the

parking and loading entrances would accommodate the parking and loading needs for the Project and not generate adverse or objectionable impacts on neighboring property. (Ex. 16D, 23.)

32. DDOT submitted a report recommending approval of the Project. DDOT concurred with the scope, methodology, and findings of the Applicant's transportation study, and agreed that the Project would have minimal impact on the surrounding roadway network. DDOT supported the Project's proposed vehicle parking, bicycle parking, and loading. In its report, DDOT supported the Project's Transportation Demand Management ("TDM") plan, the implementation of which is a condition of this Order. (Ex. 18.)
33. The Project will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the Applicant's traffic expert and DDOT:
  - a. The Commission finds that the Project will not impose adverse impacts on the surrounding transportation network. The Commission credits the findings of the Applicant's traffic expert as verified by DDOT that the Project will not create any adverse impacts when compared with future background conditions;
  - b. The Commission finds that the number of vehicular parking spaces will not result in adverse parking conditions in the neighborhood and is appropriate given the transit-oriented location. The Commission concludes that the number of vehicular and bicycle parking spaces provided within the Project, combined with the site's proximity to multiple transportation options, and the Applicant's TDM plan, will ensure that the Project does not adversely impact on-street parking in the surrounding neighborhood;
  - c. The Commission finds that the location of the parking and loading entrance will not generate adverse conditions, for the reasons set forth above; and
  - d. The Commission finds that the Project will not impose adverse impacts on the surrounding pedestrian and bicycle network, and will in fact create significant public benefits as described above. The Commission also credits DDOT's acceptance of the pedestrian and related streetscape measures proffered by the Applicant subject to final approval by DDOT. The Commission recognizes that DDOT will determine the final measures to be installed through the public space approval process.

#### Construction Impacts

34. Working with the ANC 6B and the adjacent neighbors, the Applicant agreed to enter into a Memorandum of Understanding governing construction and operations to mitigate impacts from the construction of the Project. (Ex. 20.)

Project Height and Density

35. Although supportive of the overall Project, some neighbors raised concerns about the height of the Project as viewed from the rear, particularly from Ives Place. OP also raised concerns about the adequacy of the setbacks on the southwestern side of the Project. (2/4 Tr. at pp. 108-115.)
36. The Commission finds that the PUD's height and density are appropriate given the Project's transit-oriented location and surrounding context, which includes many development parcels along Pennsylvania Avenue that can be developed to similar heights or higher. The Commission finds that the top floor setback for the entire building as well as the multiple setbacks on the east façade and at the southwest corner of the Project are adequate to reduce the apparent height and scale of the Project closest to the adjacent residential neighbors to the south. Also, the reduction in the bays at the front of the building minimize the appearance of height along Pennsylvania Avenue. Furthermore, the Commission finds that additional setbacks at the southwest corner of the Project are unnecessary. At this location, the Project will be separated from nearby buildings by a 20-foot-wide alley, and the height differential in such a situation is common in the District and is equally appropriate here. The Commission also notes that the Applicant included a solar study that demonstrates the Project will not cast substantially different shadows on adjacent properties than a matter of right building would cast. (Ex. 16, 28.)

Building Materials

37. While they were generally supportive of the Project, several neighbors expressed concern about the materials on the building's rear façade. In response, the Applicant changed the materials so that the building's rear façade will be composed primarily of masonry. (2/4/2016 Tr. at pp. 108-115; Ex. 35-35A.)
38. The Commission finds that the materials of the Project will be high-quality and will be appropriate for the neighborhood context. All building façades will feature attractive and time-tested materials to ensure that the Project's material visual quality will not degrade over time. (Ex. 35-35A.)

Compliance with the Comprehensive Plan

39. The Commission finds that the PUD advances the goals and policies in the Land Use, Transportation, Housing, Urban Design and Capitol Hill Area Elements of the District of Columbia Comprehensive Plan ("Plan").
40. The Land Use Element of the Plan includes the following policies advanced by the Project:
  - **Policy LU-1.3.1: Station Areas as Neighborhood Centers** – Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed use centers at Metrorail

stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide. This policy should not be interpreted to outweigh other land use policies which call for neighborhood conservation. Each Metro station area is unique and must be treated as such in planning and development decisions. The Future Land Use Map expresses the desired intensity and mix of uses around each station, and the Area Elements (and in some cases Small Area Plans) provide more detailed direction for each station area.

- **Policy LU-1.3.2: Development Around Metrorail Stations** – Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas;
- **Policy LU-1.3.3: Housing Around Metrorail Stations – Recognize the** opportunity to build senior housing and more affordable “starter” housing for first-time homebuyers adjacent to Metrorail stations, given the reduced necessity of auto ownership (and related reduction in household expenses) in such locations.
- **Policy LU-1.3.4: Design to Encourage Transit Use – Require architectural and** site planning improvements around Metrorail stations that support pedestrian and bicycle access to the stations and enhance the safety, comfort and convenience of passengers walking to the station or transferring to and from local buses. These improvements should include lighting, signage, landscaping, and security measures. Discourage the development of station areas with conventional suburban building forms, such as shopping centers surrounded by surface parking lots.
- **Policy LU-1.4.1: Infill Development** – Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create “gaps” in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern.



- **Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods** – Recognize the importance of balancing goals to increase the housing supply and expand neighborhood commerce with parallel goals to protect neighborhood character, preserve historic resources, and restore the environment. The overarching goal to “create successful neighborhoods” in all parts of the city requires an emphasis on conservation in some neighborhoods and revitalization in others.
- **Policy LU-2.2.4: Neighborhood Beautification** – Encourage projects which improve the visual quality of the District’s neighborhoods, including landscaping and tree planting, facade improvement, anti-litter campaigns, graffiti removal, improvement or removal of abandoned buildings, street and sidewalk repair, and park improvements.
- **Policy LU-2.4.5: Encouraging Nodal Development** – Discourage auto-oriented commercial “strip” development and instead encourage pedestrian-oriented “nodes” of commercial development at key locations along major corridors. Zoning and design standards should ensure that the height, mass, and scale of development within nodes respects the integrity and character of surrounding residential areas and does not unreasonably impact them.
- **Policy LU-2.4.6: Scale and Design of New Commercial Uses** – Ensure that new uses within commercial districts are developed at a height, mass, scale and design that is appropriate and compatible with surrounding areas.

The Commission finds that the PUD will advance the land use element of the Comprehensive Plan. The Project will anchor development in the neighborhood by establishing a mixed-use project in close proximity to the Metro and will allow the Property to be used to its highest and best potential given the neighborhood context. The Project will support transit-oriented development, provide more housing, and will create a greater sense of place by capitalizing on its location along Pennsylvania Avenue. The Project will promote the policy of better infill development and concentrating development (and housing in particular) around Metro stations, which is important in this case of the Metro station being less than 300 feet away. This Property’s location, in particular, will allow the Project to balance the goals of a neighborhood-defining development with a greater concentration of housing around a Metrorail station while preserving the residential character nearby through high quality design and compatible features. The Project will embody nodal development with its neighborhood-serving retail options that are consistent with the scale and design that is compatible with the neighborhood. (Ex. 1, 9A, 19, 28.)

41. The Project will advance the following policies of the Transportation Element of the Plan:

- **Policy T-1.1.4: Transit-Oriented Development** – Support transit-oriented development by investing in pedestrian-oriented transportation improvements at or around transit stations, major bus corridors, and transfer points.
- **Policy T-1.2.3: Discouraging Auto-Oriented Uses** – Discourage certain uses, like “drive-through” businesses or stores with large surface parking lots, along key boulevards and pedestrian streets, and minimize the number of curb cuts in new developments. Curb cuts and multiple vehicle access points break-up the sidewalk, reduce pedestrian safety, and detract from pedestrian-oriented retail and residential areas.

The Commission finds that the Project will promote these policies of the Comprehensive Plan because it will be a transit-oriented development since that will contribute multiple new housing units of various sizes across the street from a Metrorail station and adjacent to a major Metrobus corridor. The Property’s proximity to public transportation makes it a prime location for additional density, new residences, and more retail. Also, in support of the applicable policy, the Project will eliminate the auto-oriented fast food restaurant with surface parking that currently exists on the Property and replace it with street-facing, pedestrian-focused retail. (Ex. 1, 9A, 19, 28.)

42. The Urban Design Element of the Plan includes the following policies that the Project will advance:

- **Policy UD-1.4.1: Avenues/Boulevards and Urban Form** – Use Washington’s major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city.
- **Policy UD-1.4.5: Priority Avenues/Boulevards** – Focus the city’s avenue/boulevard design improvements on historically important or symbolic streets that suffer from poor aesthetic conditions. Examples include North and South Capitol Streets, Pennsylvania Avenue SE, and Georgia Avenue and the avenues designated by the “Great Streets” program.
- **Policy UD-2.2.3: Neighborhood Centers** – Undertake strategic and coordinated efforts to create neighborhood centers, civic buildings, and shopping places that reinforce community identity (see Figure 9.11).
- **Policy UD-2.2.4: Transitions in Building Intensity** – Establish gradual transitions between large-scale and small-scale development. The relationship between taller, more visually prominent buildings and lower, smaller buildings (such as single family or row houses) can be made more pleasing when the transition is gradual rather than abrupt. The relationship can be further improved

by designing larger buildings to reduce their apparent size and recessing the upper floors of the building to relate to the lower scale of the surrounding neighborhood.

- **Policy UD-2.2.5: Creating Attractive Facades** – Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street.
- **Policy UD-2.2.6: Maintaining Facade Lines** – Generally maintain the established facade lines of neighborhood streets by aligning the front walls of new construction with the prevailing facades of adjacent buildings. Avoid violating this pattern by placing new construction in front of the historic facade line, or by placing buildings at odd angles to the street, unless the streetscape is already characterized by such variations. Where existing facades are characterized by recurring placement of windows and doors, new construction should complement the established rhythm.
- **Policy UD-2.2.7: Infill Development** – Regardless of neighborhood identity, avoid overpowering contrasts of scale, height and density as infill development occurs.
- **Policy UD-3.1.7: Improving the Street Environment** – Create attractive and interesting commercial streetscapes by promoting ground level retail and desirable street activities, making walking more comfortable and convenient, ensuring that sidewalks are wide enough to accommodate pedestrian traffic, minimizing curb cuts and driveways, and avoiding windowless facades and gaps in the street wall.

The Commission finds that the Project will embody many urban design goals and will promote the urban design policies above. The Project will be the quintessential infill project that will close a gap in the streetscape. Its design will enhance and improve the aesthetics of one of the city's most important avenues: Pennsylvania Avenue. The Project will be along a stretch of Pennsylvania Avenue that is still redeveloping, so the Project will help encourage additional improvements. The Project also will help establish a neighborhood landmark with a well-designed structure and significant retail options. The Project's design will incorporate many elements to create an attractive façade (material changes, box windows for retail, tall retail ceilings) that will avoid a monolithic street wall, but the Project will maintain the historic façade line of Pennsylvania Avenue by constructing the building to the property line (other than projections consistent with the neighborhood). The design will also include transitions to the adjacent and nearby properties to make the overall Project compatible and not overpowering. The street environment will be entirely pedestrian-oriented since all curb cuts will be eliminated, and all street frontages will contain retail spaces to allow for a more active pedestrian experience. (Ex. 1, 9A, 19, 28.)

43. The PUD will advance the following goals and policies from the Housing Element of the Plan:

- **H-1.1 Expanding Housing Supply** – Expanding the housing supply is a key part of the District’s vision to create successful neighborhoods. Along with improved transportation and shopping, better neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city’s fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building, and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs.
- **Policy H-1.1.1: Private Sector Support** – Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives.
- **Policy H-1.1.3: Balanced Growth** – Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing.
- **Policy H-1.1.4: Mixed Use Development** – Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations.
- **Policy H-1.1.6: Housing in the Central City** – Absorb a substantial component of the demand for new high-density housing in Central Washington and along the Anacostia River. Absorbing the demand for higher density units within these areas is an effective way to meet housing demands, create mixed-use areas, and conserve single-family residential neighborhoods throughout the city. Mixed income, higher density downtown housing also provides the opportunity to create vibrant street life, and to support the restaurants, retail, entertainment, and other amenities that are desired and needed in the heart of the city.
- **Policy H-1.3.1: Housing for Families** – Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, row houses, and three- and four-bedroom apartments.

The Commission finds this Project will expand the District’s housing supply in an established, central residential neighborhood on a prominent site along Pennsylvania Avenue that is currently underutilized. The Project will embody the policy of mixed-use

development by contributing significant neighborhood-oriented retail with the additional residents to support it. By providing approximately 170-190 new housing units, the Project will promote housing in the central part of the city. Also, the Project will offer a sizeable number of two-bedroom units, which will accommodate families. In addition, some of the housing units will be affordable at levels of affordability deeper than required. (Ex. 1, 9A, 19, 28.)

44. The PUD will promote the following policies from the Capitol Hill Element of the Plan:

- **Policy CH-1.1.3: Upgrading Commercial Districts** – Reinforce and upgrade the major commercial districts of Capitol Hill, including the H Street and Benning Road corridors, the Pennsylvania Avenue corridor, 7<sup>th</sup> and 8<sup>th</sup> Streets, S.E., and Massachusetts Avenue between Union Station and Stanton Park. Support the further development of these areas with local-serving retail services, provided that such uses are compatible with surrounding land uses and the historic architecture and scale of the shopping districts themselves. Support the retention of existing neighborhood-serving businesses in these areas through programs that provide technical and financial assistance to small, locally-owned establishments.
- **Policy CH-1.1.4: Directing Growth** – Direct growth in the Capitol Hill Planning Area to commercially zoned land, with a particular emphasis on the H Street/Benning Road corridor. Mixed use development combining ground floor retail and upper story residential uses should be supported in this area, along with streetscape improvements that improve visual and urban design qualities and enhance pedestrian, bus, and auto circulation. As in all parts of the city, the scale of development must be sensitive to adjacent uses and should reflect the capacity of roads, infrastructure, and services to absorb additional growth.
- **Policy CH-1.1.6: Inappropriate Commercial Uses** – Prevent the proliferation of fast food outlets, self-service gas stations, convenience mini-marts, and other “drive-through” businesses along Capitol Hill’s commercial corridors, recognizing that these streets are part of the historic L’Enfant Plan and shape the city’s identity and national image.
- **Policy CH-2.2.1: Pennsylvania Avenue “Great Street”** – Improve Pennsylvania Avenue, S.E. as the ceremonial gateway to the U.S. Capitol. The design of the avenue, including adjacent buildings, land uses, and public spaces should adhere to high aesthetic standards and should enhance the avenue’s role as a neighborhood commercial center and walkable street.
- **Policy CH-2.2.2: Neighborhood Shopping Improvements** – Sustain existing businesses and encourage additional neighborhood serving retail uses along Barracks Row, on 7<sup>th</sup> Street, S.E. between Pennsylvania Avenue and North Carolina Avenue, and along Pennsylvania Avenue between 2<sup>nd</sup> Street and 4<sup>th</sup> Street, S.E., 6<sup>th</sup> and 9<sup>th</sup> Streets, S.E., and 12<sup>th</sup> and 16<sup>th</sup> Streets, S.E. Any

improvements or alterations in these areas should protect and preserve the historic texture, scale, and features of the existing buildings and adjoining neighborhoods.

- **Policy CH-2.2.6: Potomac Avenue Metrorail Station** – Support the revitalization of vacant commercial space and additional moderate density mixed use development around the Potomac Avenue Metro station. Such development should be located on existing commercially zoned property and developed in a manner that is consistent with existing zoning (including established provisions for planned unit developments and pending programs for inclusionary housing). Any infill development should be relatively low-scale, respecting the character of the adjacent row house community.

The Commission finds that the Project will advance six important policies of the Capitol Hill Area Element by enhancing Pennsylvania Avenue with an infill project on commercially-zoned land with much desired pedestrian-oriented new retail and by eliminating a low-density, automobile-oriented use. The Project's design will enhance this part of Pennsylvania Avenue with attractive new architecture, so it will contribute to the "gateway" feel of Pennsylvania Avenue that currently lacks in this location. The Project will contribute significantly more retail options than are currently available on the Property. Importantly, the Project will concentrate mixed-use development near the Potomac Avenue Metrorail station in a way that is compatible with the existing neighborhood fabric. (Ex. 1, 9A, 19, 28.)

### **Compliance with PUD Standards**

45. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects." The Commission finds that the development incentives for the height, density, flexibility and related rezoning to C-2-B are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines as set forth in the Applicant's evidence and testimony and the OP report. (Ex. 1, 9, 16, 19, 28, 35.)
46. The Commission credits the testimony of the Applicant and its architectural expert as well as OP, DDOT, and ANC 6B, and finds that the superior design, site planning, streetscape, sustainable design features, transportation infrastructure improvements, housing and affordable housing, ground-floor retail uses, and uses of special value of the Project all constitute acceptable project amenities and public benefits.
47. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing and affordable housing, site planning, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole.

48. The Commission credits the testimony of the Applicant regarding the community-based planning effort that guided the development of the Project, and finds that the process resulted in amenities that reflect community preferences and priorities. The Commission credits the testimony of persons in support as well as OP and ANC 6B that the PUD provides significant and sufficient public benefits and project amenities.
49. The Commission finds that the character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits.
50. The Commission credits the testimony of OP and ANC 6B that the Project will provide benefits and amenities of substantial value to the community and the District commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP's testimony that the impact of the PUD on the level of services will not be unacceptable.
51. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.
52. The Commission credits the testimony of the Applicant and OP that the Project is not inconsistent with the District of Columbia Comprehensive Plan. The Project is consistent with and furthers the goals and policies in the map, citywide, and area elements of the plans, including:
  - a. Designation of the Property as Moderate-Density Commercial with Moderate-Density Residential in the rear of the Property as well as provisions of the Framework Element of the Comprehensive Plan that explicitly state density and height gained through the PUD process are bonuses that may exceed the typical ranges listed in the Comprehensive Plan;
  - b. Land Use Element policies promoting redevelopment around Metrorail stations, strengthening of residential neighborhoods, and mitigation of commercial development;
  - c. Housing Element policies promoting the even distribution of mixed-income housing across the city;
  - d. Other policies in the Transportation and Urban Design Elements related to the Land Use policies and goals stated above;
  - e. The Capitol Hill Area Element of the Comprehensive Plan; and

- f. The Generalized Policy Map (“GPM”) which includes the majority of the Property in the Main Street Mixed-Use Corridor category.

### Agency Reports

53. By report dated January 25, 2016 and by testimony at the public hearing, OP recommended approval of the application and concluded that the Applicant had addressed all previous concerns raised by OP and the Commission, including the modifications to building design, increase in sustainability, and improved public benefits package. OP did raise several supplemental comments to be addressed at the hearing: more brick and stucco than EFIS where possible; consideration of an additional setback at the western bar adjacent to the alley; written confirmation of agreement from WMATA and other parties about the metro station improvements; and consideration of deeper levels of affordability for a portion of the three-bedroom IZ units. The Applicant agreed to address these items at the hearing and in its post hearing submission. OP concluded that the PUD and related rezoning was not inconsistent with the Comprehensive Plan. OP evaluated the PUD and related rezoning under the evaluation standards set forth in Chapter 24 of the Zoning Regulations and concluded that the Project’s benefits and amenities package was appropriate given the size and nature of the PUD and related requests for rezoning and flexibility. (Ex. 19; 2/4/2016 Tr. at pp. 84, 89.)
54. By report dated February 25, 2016, OP provided additional analysis of the Applicant’s amended affordable housing proffer filed on February 25, 2016, and analysis of the precedent scale and height transition examples provided during the Applicant’s public hearing presentation. The Commission requested this analysis during the public hearing. With respect to affordable housing, the report stated that the Applicant was amending its affordable housing proffer to include four units at the 50% AMI level. With respect to the scale and height examples provided at the hearing, the report stated that all but one of the other examples cited by the Applicant at the hearing are located in an area where there is a FLUM designation of “Medium” which is generally associated with greater height and/or density than the “Moderate” FLUM designation for this property. Additionally, most of these areas are either subject to an overlay incentive zone or subject to a recent small area plan. However, all of the provided examples share the common characteristic that they are in close proximity to a Metro Station, and this property is closest to a Metro Station of all the examples. (Ex. 33.)
55. By report dated January 26, 2016 and by testimony at the public hearing, DDOT expressed no objection to the PUD. DDOT found that the Project would have minimal impact on the existing roadway network and agreed that the proposed amount of vehicle and bicycle parking was sufficient given the Project’s location and other features. DDOT also noted that it would continue to work with the Applicant on public space matters, including curbside management and streetscape design. (Ex. 18; 2/4/2016 Tr. at pp. 84-85.)



**ANC 6B Report**

56. At a regularly scheduled and duly-noted public meeting on January 19, 2016, with a quorum present, ANC 6B voted to support the proposed PUD and related rezoning, based on a community benefits agreement and MOU offered by the Applicant. (Ex. 20.)
57. At the February 4, 2016 public hearing, a representative of the ANC testified in support of the application and commended the Applicant for its work with the community. (2/4/2016 Tr. at pp. 95-98.)

**Testimony in Support**

58. At the public hearing, the Commission heard testimony from the party in support and from nearby residents in support of the Application. (2/4/2016 Tr. at pp. 98-115.)

**CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a “well-planned development.” The objectives of the PUD process are to promote “sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities.” (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process, the Commission has the authority to consider this Application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)
3. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
4. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations.
5. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate, and the proposed construction of an attractive mixed-use building that capitalizes on the Property’s transit-oriented location is compatible with the citywide and area plans of the District of Columbia.

6. The Applicant seeks a PUD-related zoning map amendment to the C-2-B Zone District, and flexibility from the courts, parking, and loading requirements in the Zoning Regulations. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.
7. The Commission concludes that approval of the PUD and related rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed project is consistent with the Property's Moderate Density Commercial and Moderate-Density Residential Designation on the FLUM and is consistent with the Property's Main Street Main Street Mixed-Use Corridor and Neighborhood Conservation Area on the GPM. The Project will further numerous goals and policies of the Comprehensive Plan in the Land Use Element, Housing Element, and other citywide elements and policies as delineated by the Applicant and in the OP report. The Commission concludes that:
  - a. The Interpretation Guidelines for the FLUM also state that the Future Land Use Map is not a zoning map and does not specify allowable uses or dimensional standards. The Guidelines also indicate that the typical building heights and densities included in the land use category simply describe the "general character" of the area, and state that the "granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited here." Finally, the Guidelines indicate that the Future Land Use Map designations are not parcel-specific and should be interpreted in conjunction with the text of the Plan;
  - b. Furthermore, the Interpretation Guidelines for the FLUM indicate that it should be considered in conjunction with the policies and guidelines in the text of the Comprehensive Plan. The location and uses of the PUD will advance many policies in the text of the Comprehensive Plan, such as transit-oriented development and redevelopment of Pennsylvania Avenue. With this context, the proposed scale of the Project is not inconsistent with Moderate-Density Commercial (and Moderate-Density Residential) development;
  - c. The C-2-B Zone District is identified in the text of the Comprehensive Plan as a zone appropriate for Moderate-Density Commercial development. The proposed Project's height of seven stories without a penthouse, is generally consistent with the upper limits listed in the definitions in the Moderate-Density Commercial areas particularly when, as the Future Land Use map notes, that "heights may exceed the typical ranges" when bonuses are granted through a PUD. The proposed Project's density, at 5.29 FAR, is within the framework of Moderate-Density Commercial development, as testified to by OP at the public hearing and as set forth by the Applicant in its submissions; (Ex. 9, 35; 2/4/2016 Tr. at pp. 89-90.)

- d. Furthermore, the design of the Project incorporates multiple elements to minimize the appearance of height and massing where appropriate that advance its Moderate-Density Commercial character and sensitivity to the surrounding context. The reduced bays along the front of the building, the series of setbacks at the southeast corner, the setback from the eastern property line, and the setback of the top floor from all sides all allow the Project to blend into the surrounding context and contribute to a scale that is not inconsistent with Moderate-Density Commercial development; and
  - e. The Commission finds that the proposed Map Amendment to the C-2-B Zone District is not inconsistent with the Comprehensive Plan or the character of the surrounding area. The Commission notes that the proposed zoning is consistent with the Property's location directly across from the Potomac Avenue Metrorail station and along a major urban corridor. The rezoning is necessary to permit the mix and density of uses appropriate for this strategic, transit-oriented site. Further, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility.
8. The Commission concludes that the proposed PUD-related Zoning Map Amendment for the Property from the C-2-A and R-4 Zone Districts to the C-2-B Zone District is not inconsistent with the Comprehensive Plan, including the Property's designation as Moderate-Density Commercial and Moderate-Density Residential, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
  9. The PUD will be within the applicable height and bulk standards of the Zoning Regulations. The proposed height and density will not cause an adverse effect on nearby properties, are consistent with the height and density of surrounding and nearby properties, and will create a more appropriate and efficient utilization of land at a significant gateway to Capitol Hill directly across the street from the Potomac Avenue Metrorail station. The mix of residential and retail uses also will be appropriate for the site's location.
  10. The Project will provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe traffic circulation, sustainable features, housing and affordable housing, ground-floor retail, and uses of special value all are significant public benefits. The impact of the Project will be acceptable given the quality of the public benefits of the Project.
  11. The impact of the Project on the surrounding area and the operation of city services will not be unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed project will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The application will be approved

with conditions to ensure that any potential adverse effects on the surrounding area for the Project will be mitigated.

12. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
13. 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) to give great weight to OP recommendations. OP recommended approval and, accordingly, the Commission concludes that approval of the consolidated PUD and related rezoning should be granted.
14. In accordance with § 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)), the Commission must give great weight to the written issues and concerns of the affected ANC. The Commission accorded the issues and concerns raised by ANC 6B the “great weight” to which they are entitled, and in so doing fully credited the unique vantage point that ANC 6B holds with respect to the impact of the proposed application on the ANC’s constituents. ANC 6B recommended approval, provided that the Applicant agree to certain conditions. The Commission concludes that the Applicant has addressed these conditions and, accordingly, the PUD and related rezoning should be approved.
15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the Application for consolidated approval of a PUD and related rezoning to the C-2-B Zone District for the Property. This approval is subject to the following guidelines, conditions, and standards of this Order:

#### **A. Project Development**

1. The Project shall be developed in accordance with the plans marked as Exhibits 9A, 16B, and 35A of the record, as modified by guidelines, conditions, and standards herein (collectively, the “Plans”).
2. The Property shall be rezoned from C-2-A and R-4 to C-2-B. Pursuant to 11 DCMR § 3028.9, the change of zoning shall be effective upon the recordation of the covenant discussed in Condition No. D1.
3. The Applicant shall have flexibility with the design of the PUD in the following areas:

- a. 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 or appearance of the structure;
- b. To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction;
- c. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;
- d. To vary the final streetscape design and materials, including the final design and materials, in response to direction received from District public space permitting authorities;
- e. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, trim, louvers, or any other changes to comply with Construction Codes;
- f. To vary the number of residential units between 170-190 and to accordingly adjust the final unit type mix of the Project; and
- g. To eliminate the pool on the rear courtyard of the Project.

**B. Public Benefits**

- 1. Housing. **For so long as the project exists**, the Applicant shall provide housing including affordable housing in accordance with the following table. The term “IZ” signifies that units will be subject to the Inclusionary Zoning Regulations currently codified at Chapter 26 of Title 11 DCMR.

Residential Unit Type	GFA / Percentage of Total	Units*	Income Type
Total	124,474 (gross)/100%	170-190	
Market Rate	114,516(gross)/92%	157-177	Any

Residential Unit Type	GFA / Percentage of Total	Units*	Income Type
IZ	Approximately 4007(gross)/3.2%	4	50% AMI
IZ	Approximately 5966(gross)/4.8%	9	80% AMI

2. The Project shall be designed to achieve a LEED-Gold certification, but the Applicant shall not be required to obtain LEED-Gold certification from the U.S. Green Building Council. Prior to the issuance of a certificate of occupancy, the Applicant shall submit to the Zoning Administrator a LEED scorecard showing that the Project will receive sufficient points to achieve Gold certification.
  
3. **Prior to the issuance of a certificate of occupancy** for the Project, the Applicant shall complete or provide the following:
  - a. The Applicant shall install improvements to the Potomac Avenue Metro Station plaza. Subject to WMATA’s final approval, these improvements will include removal of aging fencing around the plaza; replacement of existing bike racks with new bike racks in a bright color; and the addition of a public art piece or historical interpretive signage detailing the history of and interesting facts about the neighborhood. The Applicant shall not be required to spend more than \$50,000 on these improvements provided that they are completed to WMATA’s satisfaction;
  
  - b. The Applicant shall design, furnish and install improvements to the playground area at Hopkins Apartments (1430 L Street, S.E.). The playground improvements will include new children’s play equipment and improved signage for wayfinding. The Applicant will spend \$20,000 on these improvements;
  
  - c. The Applicant shall design, furnish, and install improvements to the playground area at the Friendship Chamberlain Elementary campus. The playground improvements shall include installation of age-inclusive fitness options, upgrades to fencing and gates, and improved signage and wayfinding. The Applicant will spend \$75,000 on these improvements;
  
  - d. The Applicant shall record a public use easement for a 10-foot-wide section of its property in order to widen the public alley off of 14<sup>th</sup> Street to 20 feet;

- e. The Applicant shall repave the entire alley from 14<sup>th</sup> Street, S.E. to Ives Place, S.E., and it will be paved to satisfy DDOT's "Green Alley" standards;
  - f. The Applicant shall install additional features to improve the functionality and safety of the alley including security cameras, mirrors, and bollards to protect neighboring homes and vehicles, consistent with the plan included as page 26 of Exhibit 35A in the Record;
  - g. The Applicant shall provide funds to Casey Trees (or similar service) to make trees (at approximately \$350/tree) available to residents of ANC 6B to support Ward 6 tree canopy goals. The Applicant will provide \$5,000 toward this service. **Prior to the issuance of a certificate of occupancy for the project,** the Applicant shall provide evidence that the funds have been or are being used for this purpose; and
  - h. The Applicant shall install new security equipment at the Potomac Gardens Apartments, for a value of up to \$20,000.
4. **For the life of the project** the Applicant shall reserve 10% of the Project's retail space for existing or emerging local businesses. A local business shall be defined as one having five or fewer locations in the Washington metropolitan region.

C. **Mitigation**

1. **For the life of the Project,** the Applicant shall implement the following transportation demand management ("TDM") measures:
- a. The Project shall provide 218 bicycle parking spaces. This includes 198 secure on-site spaces and 20 short-term spaces around the perimeter. The Project also will include a bike service area and a shower/changing area;
  - b. The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase;
  - c. The Applicant shall identify a TDM Leader (for planning, construction, and operations). The TDM Leader will work with residents in the building to distribute and market various transportation alternatives and options;
  - d. The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;
  - e. The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobby, containing real-time information related to local transportation alternatives;

- f. The Applicant shall provide each unit's incoming residents for the first three years with either; a one-year membership to Capital Bikeshare or a one-year membership to a Carsharing service;
- g. Retail tenants of the development shall offer SmartBenefits for all retail employees regardless of the size of the business (under 20 employees) or level of employment (part-time/full-time); and
- h. The Applicant shall provide access to bike showers, changing area, and bike repair station for retail employees.

D. **Miscellaneous**

- 1. No building permit shall be issued for this project until the owner of the Property has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Commission.
- 2. The Application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified in 11 DCMR § 2409.1. Construction must begin within three years after the effective date of this Order for the PUD to remain valid.
- 3. 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.
- 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, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act.



Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On February 4, 2016, on a motion made by 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 **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On March 14, 2016, on a motion made by Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Marcie I. Cohen, Robert E. Miller, Peter G. May, Michael G. Turnbull to adopt; Anthony J. Hood to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on April 22, 2016.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF CLOSED MEETINGS**

**TIME AND PLACE:** **Tuesday, May 3, 2016, @ 9:00 a.m.**  
**Thursday, May 12, 2016, @ 5:00 p.m.**  
**Jerrily R. Kress Memorial Hearing Room**  
**441 4<sup>th</sup> Street, N.W., Suite 220**  
**Washington, D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

The Zoning Commission, in accordance with § 405(c) of the Open Meetings Act, hereby provides notice it will hold a closed meeting on May 3, 2016, at 9:00 a.m., at the place noted above for the purpose of receiving training as permitted by D.C. Official Code § 2-575(b)(12). The subjects of the trainings are: variances/special exceptions; Height Act changes; density definitions; and the new regulations on procedural changes, structure, and new special exceptions.

The Zoning Commission, in accordance with § 405(c) of the Open Meetings Act, hereby provides notice it will hold a closed meeting on Thursday, May 12, 2016, at 5:00 p.m., at the place noted above, pursuant to D.C. Official Code § 2-575(c), for the purpose of obtaining legal advice from our counsel on all cases and to deliberate upon, but not voting on, the contested cases scheduled for proposed action and final action, as those cases are identified on the Commission’s agenda for that meeting.

**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 SPECIAL PUBLIC MEETING**

The Zoning Commission of the District of Columbia, in accordance with § 3005 of the District of Columbia Municipal Regulations, Title 11, Zoning, hereby gives notice that it has scheduled Special Meeting for **May 12, 2016 at 5:30 P.M.**, to consider various items.

For additional information, please contact Sharon Schellin, Secretary to the Zoning Commission at (202) 727-6311.

**Government of the District of Columbia**

**Public Employee Relations Board**

<hr/>		)	
In the Matter of:		)	
		)	
American Federation of State, County and		)	
Municipal Employees, District Council 20,		)	
AFL-CIO,		)	
		)	PERB Case No. 08-U-36
Complainant,		)	
		)	Opinion No. 1387
v.		)	
		)	<b>Amended Decision and Order</b>
District of Columbia Government,		)	
		)	
Respondent.		)	
<hr/>		)	

**AMENDED DECISION AND ORDER**<sup>1</sup>

**I. Statement of the Case**

The American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO, (“Complainant” or “Union”) and the District of Columbia Government (“Respondent” or “District”) entered into a “Collective Bargaining Agreement between the District of Columbia and Labor Organizations Representing Compensation Units 1 and 2” (“Agreement”), which took effect in 2006. The Agreement established a Joint Labor-Management Technical Advisory Pension Reform Committee (“Committee”) to develop an enhanced retirement program for employees hired after October 1, 1987, and set forth procedures to present that program to the City Council including preliminary submission of the program to the City Administrator.

The Union alleges in an unfair labor practice complaint it filed with the Board that the City Administrator failed and refused to act on the Committee’s recommendations and that “the District has no intention of carrying out its duty to implement the joint report and recommendations mandated by Article 7, Section (3) (A) (d), of the . . . Agreement.” (Amended Complaint at para. 9). The Union contends that by the alleged conduct “the District is interfering

<sup>1</sup> This decision and order was originally issued March 27, 2013 (Slip Opinion No. 1377), but due to a clerical error the parties did not receive it timely. To preserve the parties’ rights to judicial review, the Board is re-issuing the decision and order.

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PERB Case No. 08-U-36  
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with, restraining and coercing employees in the exercise of their rights and refusing to bargain in good faith. . . .” (*Id.* at para. 10).

The matter was referred to a hearing examiner, who held a hearing and issued a Report and Recommendations (“R & R”). The R & R recites the following undisputed facts:

1. Complainant is the exclusive collective bargaining representative of certain employees in Compensation Units 1 and 2.
2. Respondent employs individuals in Compensation Units 1 and 2.
3. Complainant and Respondent are parties to a collective bargaining agreement (Agreement), which has an effective date of July 7, 2006 and remains in effect until the end of Fiscal Year (FY) 2010.
4. District of Columbia Government employees hired after October 1, 1987 do not receive the same retirement benefits as those who [were] hired before that date in that their pension system has no defined benefit component and no guaranteed pension.
5. The Agreement provided that the parties would appoint a committee to develop a retirement program for post-October 1987 hires; that the Committee would submit its report and recommendations to the City Administrator within 120 days of the effective date of the Agreement; and that by October 1, 2008, the District would plan and implement an enhanced retirement program which included deferred compensation and a defined benefit component. (Ex C-1).
6. Natwar Gandhi, Chief Financial Officer (CFO), submitted a memorandum dated September 14, 2006, to Linda Cropp, Chair of the Council of the District of Columbia entitled “Fiscal Impact Statement: “Compensation Collective Bargaining Agreement Between the District of Columbia Government and Compensation Units 1 and 2 . . . Compensation System Changes Approval Resolution of 2006. . . Draft Resolution to be Introduced. . .”. The memorandum referred to the establishment of the Joint Committee which was tasked with proposing an enhanced retirement program, effective October 1, 2008, for eligible employees. It noted that the Agreement required the program to have “a deferred compensation component and a defined benefit component”. The memorandum concluded:

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The fiscal effects of an enhanced retirement program to be developed by the [Joint Committee] cannot be determined at this time. The District's CFO will require the findings of the Committee in order to project the fiscal impact on the District's budget and financial plan. It would be noted that because of the size of the membership of the Collective Bargaining Units 1 and 2 and the projected aggregate of their annual salary, the Committee's findings have the potential to greatly impact the local consensus budget and financial plan. (Ex C-2). (emphasis added).

7. The Joint Committee submitted its recommendations to the City Administrator on February 7, 2008. (Ex C-3).
8. The City Administrator returned the plan to the Committee and asked that it revise its recommendations to make them more financially feasible for the District.
9. The Committee submitted revised recommendations to the City Administrator, who returned the revised recommendations to the Committee in June 2008.
10. AFSCME members of the Committee asked to meet with the City Administrator before continuing their participation on the Committee. The meeting took place on or about December 9, 2008.
11. At the meeting, each party designated its labor economist to work on the matter. Brian Klopp, AFSCME Labor Economist and Idi Ohikhuare, OLRCB Labor Economist, were designated to work on the matter on behalf of the parties. Mr. Klopp and Mr. Ohikhuare communicated about the matter in subsequent months. (Tr, 107-111).
12. The Committee has not met or submitted any recommendations since June 2008.
13. The CFO did not prepare a fiscal impact statement based on either of the Committee's submission[s].
14. None of the Committee's recommendations have been presented to the City Council for approval.
15. To date, Respondent has not implemented an enhanced retirement program pursuant to the Agreement.

(R & R at pp. 5-7).

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The hearing examiner found that there were significant disputes over the provisions of the Agreement, that the District was amenable to continuing the process of developing a retirement program, that the Complainant did not prove that the Committee had completed its tasks, and that the Complainant did not prove bad faith and pervasive and unilateral changes on the part of the District. The hearing examiner concluded that the Complainant did not meet its burden of proof by a preponderance of the evidence and recommended that the Board dismiss the complaint.

The Complainant filed Exceptions in which it stated that it excepted to the following findings and recommendations in the Report:

1. “In *AFGE, Local 872 v. D.C. Water and Sewer Authority*, 46 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1999), this Board utilized the approach taken by the National Labor Relations Board in *National Labor Relations Board in [sic] Electronic Reproduction Serv. Corp.*, 213 NLRB 758 (1978) and stated that it would limit its finding that an unfair labor [sic] existed to circumstances where ‘no dispute’ exists over contractual provisions at issue.” (R&R at 14.)

2. (A) “On the other hand, if the City Administrator’s role was only that of a conduit, as argued by Complainant, there would be no reason to have the document submitted to that office in the first place. It could be submitted directly to the CFO.” (R&R at 15.)

(B) Related to this exception, the Union further excepts to the Hearing Examiner's refusal to permit the Union to offer witness testimony regarding the role of the City Administrator. (See Tr. 116-17.)

3. “The Hearing Examiner found the one page submission did not, in her view, meet the contractual requirements of providing a report with recommendations which: ‘[e]stablish a formula cap for employee and employer contributions; [e]stablish the final compensation calculation using the highest three year consecutive average employee wages; [i]nclude retirement provisions such as disability, survivor death benefits, health and life insurance benefits; design a plan sustainable within the allocated budget; [and draft] and support legislation to amend the D.C. Code in furtherance of the “Enhanced Retirement Program.”’ (Ex. C-1). The memorandum from the CFO stated that he would require ‘the findings of the Committee in order to project the fiscal impact on the District’s budget and financial plan.’ (Ex. C-2). The document submitted by the Committee did not make findings. Thus, it is not

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established that the Committee had completed its tasks.” (R&R at 16.)

4. “Viewing the totality of the circumstances, i.e., the omission of any guidance regarding the role of the City Administrator, or the reasonableness of Respondent's interpretation, the paucity of the Committee's final product, and the request by Respondent to continue this endeavor, the Hearing Examiner cannot make a finding of bad faith.” (R&R at 16.)

(Exceptions at pp. 1-2). The Respondent filed an opposition to the Exceptions (“Opposition”). The Report, the Exceptions, and the Opposition are before the Board for disposition.

## II. Discussion

### A. Elements of the Alleged Unfair Labor Practice

As the hearing examiner noted, a “breach of a collective bargaining agreement is not a *per se* unfair labor practice.” (R & R at p. 14) (citing *Green v. D.C. Dep't of Corrections*, 37 D.C. Reg. 8086, Slip Op. No. 257 at p. 4, PERB Case No. 89-U-10 (1990), and *AFGE, Local Union No. 3721 v. D.C. Fire Dep't*, 41 D.C. Reg. 1585, Slip Op. No. 297 at pp. 4-5, PERB Case No. 90-U-11 (1991)). Nonetheless, the Board has asserted jurisdiction where a violation of the collective bargaining agreement constitutes an unfair labor practice. *AFGE, Local 631 v. District of Columbia*, 59 D.C. Reg. 7334, Slip Op. No. 1264 at p. 4, PERB Case No. 09-U-57 (2012).

Among the tests the hearing examiner applied in determining whether there was an unfair labor practice were two tests that are not called for by the Board's precedents. First, the hearing examiner asserted without citation of authority that “[i]n order to establish an unfair labor practice, the Hearing Examiner must conclude that the City Administrator acted in bad faith by returning the product to the Committee for additional work.” (R & R at 16). Contrary to this assertion, a showing of bad faith is not required in order to establish an unfair labor practice. *AFSCME Local 2087 v. Univ. of D.C.*, 59 D.C. Reg. 6064, Slip Op. No. 1009 at p. 7, PERB Case No. 08-U-54 (2009). A conclusion that a party failed to bargain in good faith does not equate to a conclusion that the party acted in bad faith. *Int'l Bhd. of Teamsters v. D.C. Pub. Schs.*, 36 D.C. Reg. 5993, Slip Op. No. 226 at p. 4 n.4, PERB Case No. 08-U-10 (1989). The hearing examiner determined that in view of the totality of the circumstances she could not make a finding of bad faith. (R & R at 16). In its fourth exception, the Complainant excepts to this determination, but as it is an unnecessary determination, the Complainant's exception is immaterial to the outcome of the case.

The second test that the hearing examiner erroneously added was a test for a repudiation of a collective bargaining agreement. The hearing examiner stated, “This Board must find that Respondent initiated pervasive unilateral changes to an existing agreement or rejected the bargaining relationship in order to conclude that a party has repudiated a collective bargaining agreement. American Federation of Government Employees. Local 3721 v. D.C. Fire



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Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1992).” (R & R at p. 16). The cited case does not support the asserted proposition, but the Board has cited that case for the principle that when “pervasive unilateral changes in an effective agreement are precipitated by a fundamental rejection of a bargaining relationship, a request to bargain is not a prerequisite to finding a violation of a duty to bargain.” *Dist. Council 20, AFSCME Locals 1200, 2776, 2402 & 2087 v. D.C. Gov’t*, 46 D.C. Reg. 6513, Slip Op. No. 590 at p. 7, PERB Case No. 97-U-15A (1999). This principle is not germane to the present case as the Respondent does not contend that the Complainant failed to request bargaining.

The tests that the Board has applied in determining when a contractual violation is an unfair labor practice are discussed in *Teamsters Local Unions No. 639 & 730 v. D.C. Public Schools*:

The Board has previously held that disputes over the meaning or application of terms of a collective bargaining agreement are matters for resolution through the grievance procedure rather than an Unfair Labor Practice Complaint. See, e.g., Fraternal Order of Police / Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department, 39 DCR 9617, Slip Op. No. 295 at n. 2, PERB Case No. 91-U-18 (1992). However, if an employer has entirely failed to implement the terms of a negotiated or arbitrated agreement such conduct constitutes a repudiation of the collective bargaining process and a violation of the duty to bargain. Cf., Electronic Reproduction Serv. Corp., 213 NLRB 758 (1974).

In the absence of any specifics indicating a repudiation of the agreement as opposed to disputes over its terms, we conclude that this portion of the Complaint does not state a statutory violation, and it is, accordingly, dismissed.

43 D.C. Reg. 6633, Slip Op. No. 400 at p. 7, PERB Case No. 93-U-29 (1994). *See also D.C. Water & Sewer Auth. v. AFGE, Local 872*, 59 D.C. Reg. 4659 Slip Op. No. 949 at pp. 6-7, PERB Case No. 05-U-10 (2009).

The present case is one in which there is an absence of proof of a repudiation of the Agreement, and instead there are numerous disputes over the terms of the Agreement. As a result, the Complainant has not proven a statutory violation.

**B. The Union Did Not Prove Repudiation of the Agreement.**

The Union did not prove that the District entirely failed to implement the Agreement. The District did a number of things to implement the Agreement. In accordance with the

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Agreement, the District appointed three of the members of the Committee and also had technical advisors sitting with the Committee. (Tr. at p. 44; Ex. C-1 at p. 20). The City Administrator reviewed two reports of the Committee and requested changes. (R & R at p. 6). After the City Administrator requested changes, the City Administrator met with the Union's representatives (*Id.*; Tr. at p. 81), and an economist for the Office of Labor Relations and Collective Bargaining met with the Union's economist. (R & R at p. 6; Tr. at pp. 103 & 106-107). Finally, the hearing examiner found that "Respondent presented credible evidence that it is amenable to continuing the process." (R & R at p. 16).

By sending the recommendations back to the Committee, the City Administrator did not repudiate the Agreement. In the District's view, the City Administrator's duty to perform under the Agreement did not arise because the Committee had not fulfilled the condition precedent of designing a plan sustainable within the budget and completing a report with its recommendations. (Respondent's Post-Hearing Br. at 7). Whether the Committee had fulfilled a condition precedent is a contractual issue not within the jurisdiction of the Board. See *F.O.P./Metropolitan Police Dep't Labor Comm. v. Metropolitan Police Dep't*, 59 D.C. Reg. 5427, Slip Op. 984 at pp. 7-8, PERB Case No. 08-U-09 (2009). The contractual nature of the issue is underscored by the Union's extended discussion in its post-hearing brief of canons of contractual interpretation that it regards as applicable. (Complainant's Post-Hearing Br. at pp. 18-20).

### **C. The Parties Have Genuine Disputes over the Terms of the Agreement.**

"[W]hen a party simply refuses or fails to implement an award or negotiated agreement where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith and, thereby, an unfair labor practice under the CMPA." *AFGE, Local 872 v. D.C. Water & Sewer Auth.*, 46 D.C. Reg. 4398, Slip Op. No. 497 at p. 3, PERB Case No. 96-U-23 (1996). The Complainant correctly points out in its first exception that the phrase "where no dispute exists over its terms" as used in the preceding case, which the R & R cites, has been understood to refer to a *genuine* dispute. See *AFGE, Local 631 v. D.C. Water & Sewer Auth.*, 51 D.C. Reg. 11403, Slip Op. No. 766 at p. 5, PERB Case No. 04-U-16 (2004); *AFGE, Local 631 v. D.C. Water & Sewer Auth.*, 51 D.C. Reg. 11379, Slip Op. No. 734 at p. 5, PERB Case No. 03-U-52 (2004). If a dispute asserted by a respondent is not genuine, failure to implement an agreement is an unfair labor practice. *Psychologists Union Local 3758 v. D.C. Dep't of Mental Health*, 59 D.C. Reg. 9770, Slip Op. No. 1260 at p. 3, PERB Case No. 06-U-40 (2012). This point does not change the result in the present case because the disputes over the terms of the Agreement are genuine.

The parties have genuine disputes concerning the duties of the Committee and of the City Administrator as set forth in article 7, section I(3)(A)(4)(c) and (d) of the Agreement. Those two sections provide:

(c) Responsibilities of the [Committee]

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The Committee shall be responsible to:

- Plan and design an enhanced retirement program for employees hired on or after October 1, 1987 with equitable sharing of costs and risks between employee and employer;
- Establish a formula cap for employee and employer contributions;
- Establish the final compensation calculation using the highest three-year consecutive average employee wages;
- Include retirement provisions such as disability, survivor and death benefits, health and life insurance benefits;
- Design a plan sustainable within the allocated budget;
- Draft and support legislation to amend the D.C. Code in furtherance of the “Enhanced Retirement Program.”

(d) Duration of the Committee

The Committee shall complete and submit a report with its recommendations to the City Administrator for the District of Columbia within one hundred and twenty (120) days after the effective date of the Compensation Units 1 and 2 Agreement.

(Ex. C-1 at pp. 20-21).

**1. Duty to Design a Plan Sustainable within the Budget**

The parties disagree on whether the Committee designed “a plan sustainable within the allocated budget” as required by section I(3)(A)(4)(c) of the Agreement. The Committee concluded that it carried out this duty, and the Complainant argued that the Committee’s conclusion is entitled to deference. (Complainant’s Post-Hearing Br. at pp. 6 & 17; Exceptions at p. 15). The Respondent and its witnesses insisted that the plan was not sustainable within the budget. (Tr. at pp. 25, 27-28, 61-65, 77-76; Respondent’s Post-Hearing Br. at pp. 3 & 7).

**2. Duty to Submit a Report with Recommendations to the City Administrator**

The Agreement directs the Committee to “complete and submit a report with its recommendations to the City Administrator. . . .” (Ex. C-1, § I(3)(A)(4)(d)). The parties disagree about the import of the words “complete” and “recommendations” in this directive. The Respondent contends that the Committee’s report and recommendations were not complete. (Tr. 75 & 96-97). Similarly, the hearing examiner noted that the Committee attached a one-page table to its report and recommendations. The hearing examiner found that that submission did not meet the requirements listed in section I(3)(A)(4)(c), which she quoted. In addition, the hearing examiner noted that a memorandum from the Chief Financial Officer stated that he

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would require “the findings of the Committee in order to project the fiscal impact on the District’s budget and financial plan.” (Ex C-2). The hearing examiner stated that the “document submitted by the Committee did not make findings.” (R & R at p. 16).

In its third exception, the Complainant objects that “the Hearing Examiner reached beyond the parties’ agreement to require compliance with a unilaterally issued memorandum by the Chief Financial Officer. This memorandum was not the parties’ agreement.” (Exceptions at p. 14). This assertion is inconsistent with the testimony of the Complainant’s own witness, Al Bilik, Executive Assistant to the Union’s Executive Director. Exhibit C-2 was introduced into evidence by the Complainant and identified by Bilik as “a condensed version of the agreement that negotiated [*sic*] that was referred to earlier. . . .” (Tr. at p. 39). Counsel for the Complainant had the witness read into the record the very language of the exhibit regarding findings that the hearing examiner also quoted to the dissatisfaction of the Complainant. (*Id.* at 41-42). Even if Exhibit C-2 were not what the Complainant’s witness testified it was, the Complainant’s objection would still be of no merit because the hearing examiner first noted that the Committee’s report and recommendation did not satisfy the text of the Agreement and then alluded only secondarily to Ex. C-2.

Aside from the bearing of Ex. C-2 on the question, the Union’s position is that the Committee by consensus agreed upon the submission. (Tr. at pp. 44-45 & 76; Exceptions at p. 15). The Union argues, “If the parties agreed that they made their submission to the City Administrator, it is not for the Hearing Examiner to second-guess the recommendations as being incomplete.” (Exceptions at p. 15). This is an incongruous argument for the Complainant to make as the reason the hearing examiner took a second look at the Committee’s recommendations is because the Complainant brought this case before the Board, which referred the case to the hearing examiner. If the hearing examiner simply assumed that either side’s version of the facts was correct, she would not have been performing her assigned task and she could not make findings that would assist the Board in determining whether there was a genuine dispute. Because the hearing examiner performed her assigned task, it is clear from her findings and the arguments of the parties that there is a genuine dispute on what was required for the Committee’s report to be complete.

In addition, the parties do not agree on the meaning of the word “recommendations” as used in section I(3)(A)(4)(d) of the Agreement. The District contends that the Committee was to make its recommendations to the City Administrator, who could reject them. (Tr. at pp. 85-86; Opposition at p. 4). The Union regards the City Administrator’s role as ministerial and contends that the Agreement uses the word “recommendations” because “the plan could not be anything other than a recommendation until the City Council appropriated money to fund it.” (Complainant’s Post-Hearing Br. at p. 17).

Thus, the parties genuinely dispute the role of the City Administrator under the Agreement. The District adduced testimony and presented arguments in support of its view that the understanding and practice of the parties was that the City Administrator had an active role in the approval of recommendations. (Tr. at pp. 75, 79-80, 96; Opposition at pp. 8-9). Pursuant to that role, the City Administrator sent the recommendations back because they were not

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sustainable within the budget and were not consistent with the provisions of the Agreement. (Respondent's Post-Hearing Br. at p. 3). The Union denies that the Agreement gave the City Administrator the authority to reject recommendations, asserting that "the City Administrator's sole function in the pension reform process is to take the steps necessary to implement the plan." (Complainant's Post-Hearing Br. at p. 17). The step the Union identifies in particular is the step of requesting the Chief Financial Officer to propose a fiscal impact statement. The City Administrator could make this request, but the Committee could not because only the mayor or his designee, a Council member, or a Council committee clerk may ask the Chief Financial Officer to prepare a fiscal impact statement. (*Id.* at 10-11).

The hearing examiner found logical flaws in both positions:

If Respondent is correct, i.e., that the Committee makes recommendations to the City Administrator who then can respond to those recommendations, then it seems illogical to the Hearing Examiner that the parties would have explicitly provided that the Committee ceased to exist after it completed its submission to the City Administrator. The result would be that the City Administrator would not have an entity to which to respond. Thus, by default, the City Administrator would be the decision maker, a result not stated in the Agreement and not, to this reader, a reasonable interpretation of the language. (Elkouri & Elkouri, 6th ed., pp. 470-471). On the other hand, if the City Administrator's role was only that of a conduit, as argued by Complainant, there would be no reason to have the document submitted to that office in the first place. It could be sent directly to the CFO.

(R & R at p. 15).

The Complainant objects in its second exception that it gave a reason to have the Committee submit the document to the City Administrator rather than to the Chief Financial Officer directly: "In its brief, the Union presented a statutory<sup>2</sup> explanation for the parties' need to include the City Administrator in the process. But rather than consider the Union's argument, the Hearing Examiner determined the District's admittedly unreasonable explanation must be the only explanation, or at least that it was enough, in the absence of a counter-argument, to create a genuine dispute." (Exceptions at p. 10). In the *presence* of the Union's counter-argument, however, the District's argument that the City Administrator had decision-making authority is enough to create a genuine dispute.

Related to this exception, the Union excepts to the hearing examiner's refusal to allow Eric Bunn, president of Local 2725 of the American Federation of Government Employees, to testify on the contractual role of the City Administrator. *Id.* Before Mr. Bunn began his

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<sup>2</sup> Actually, the Union cited the website of the Chief Financial Officer rather than a statute in support of its assertion that only the mayor or his designee, a Council member, or a Council committee clerk may ask the Chief Financial Officer to prepare a fiscal impact statement. (Complainant's Post-Hearing Br. at p. 11).

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testimony, the hearing examiner tried to determine the probative value of his testimony on this point:

HEARING EXAMINER: But is that something your witness could testify about?

MS. ZWACK: Yes. . . . Based on being part of the -- when in two negotiations and having drafted the Article 7.

HEARING EXAMINER: I mean, how does he know what the authority of the City Administer is?

MS. ZWACK: Based on a contractual authority?

HEARING EXAMINER: Then he's interpreting what this is. . . . Again, I don't really want these provisions on [pages] 18, 19, 20 and 21 [of Ex. C-1] reviewed any more. They say what they say and each side interprets it differently, and I think the language is open to interpretation on both parts and I'm more interested in reading your final arguments on that, but I don't need for him to say, this is what he thinks it said, I really don't.

(Tr. at pp. 116-17).

Thus, the hearing examiner determined that the witness's testimony interpreting the Agreement would not have probative value. Issues concerning the probative value of evidence are reserved to the hearing examiner. *Bonaccorsy v. Exec. Council F.O.P./Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 3364, Slip Op. No. 826 at p. 6, PERB Case No. 03-S-01 (2011).

#### **D. Conclusion**

The evidence received by the hearing examiner along with the arguments of counsel are more than enough to support the hearing examiner's conclusion that "[t]he role of the City Administrator is only one of the items in the relevant provision of the Agreement that [the] Hearing Examiner found was 'reasonably susceptible of different constructions or interpretations'." (R & R at p. 15) (quoting *Lee v. Flintkote Co.*, 593 F.2d 1275, 1282 (D.C. Cir. 1979)). The Agreement's provisions calling for completion of a report and a plan sustainable within the budget are also reasonably susceptible of different interpretations. On all these matters the parties have genuine disputes. Those genuine disputes, along with the Union's failure to prove a repudiation of the Agreement, prevent the Union from establishing an unfair labor practice. Therefore, the Board adopts the hearing examiner's recommendation that the case be dismissed.

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**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The 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**

Washington, D.C.

May 9, 2013

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**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision in PERB Case No. 08-U-36 was served via U.S. Mail and electronic mail to the following parties on this the 9th day of May, 2013:

Brenda C. Zwack  
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**VIA U.S. MAIL AND E-MAIL**

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**VIA U.S. MAIL AND E-MAIL**

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Adessa Barker  
Administrative Assistant



Government of the District of Columbia
Public Employee Relations Board

In the Matter of:
Fraternal Order of Police/Metropolitan Police Department Labor Committee,
Complainant,
v.
District of Columbia Metropolitan Police Department,
Respondent.
PERB Case Nos. 06-U-23, 07-U-11, 07-U-12, 07-U-16, 07-U-30
Opinion No. 1526

DECISION AND ORDER

I. Statement of the Case

Complainant Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") filed five (5) unfair labor practice complaints; PERB Case Nos. 06-U-23, 07-U-11, 07-U-12, 07-U-16, and 07-U-30. The cases were consolidated for hearing purposes by PERB's former Executive Director based on the similarity of issues and lack of objection by the parties. In each complaint, FOP alleged that Respondent Metropolitan Police Department ("MPD") violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by failing to bargain in good faith, and interfering with and restraining employees in the exercise of rights protected under the Comprehensive Merit Personnel Act. Specifically, FOP asserted that MPD either (1) failed to furnish requested information; (2) delayed its response in providing the information causing detriment to FOP and its members; or (3) refused to provide requested information. Consistent with the findings and recommendations of the Supplemental Hearing Examiner, the Board finds that MPD committed unfair labor practices in PERB Case Nos. 06-U-23 and 07-U-11, but did not commit unfair labor practices in PERB Case Nos. 07-U-12, 07-U-16, and 07-U-30, respectively.

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## II. Background

On various dates in 2006 and 2007, FOP filed the above captioned complaints.<sup>1</sup>

In 06-U-23, FOP requested information it claimed was relevant and necessary to help two officers grieve their non-appointments to MPD's Horse Mounted Unit.<sup>2</sup> Specifically, FOP sought documents related to the selection process and the officers' scores. MPD admitted in its Post-Hearing Brief that it did not respond to the request or produce the information. Although MPD eventually agreed prior to arbitration to appoint the officers to the unit, FOP asserts that the information is still relevant and necessary to protect members who apply for similar positions in the future.<sup>3</sup>

In 07-U-11, MPD proposed to discipline an officer for failing to register a camera-phone that he used to photograph another MPD employee.<sup>4</sup> FOP requested information related to the number of disciplinary actions that MPD had taken against other officers for violations of the same General Order that was cited in the officer's proposed discipline letter. MPD did not respond to the request or produce the information. Although the proposed discipline was eventually dismissed, FOP asserts that the information is still relevant and necessary to protect members who may be similarly disciplined in the future.<sup>5</sup>

In 07-U-12, MPD proposed to discipline an officer for failing to timely transfer funds from the property office to the evidence control branch, which caused the funds to be lost.<sup>6</sup> FOP requested information seeking "all log books accounting for keys to the property office, all log books recording the names of individuals who had custody of keys to the property office, the names of people who had the combination to the safe in the property office, and any documents that describe the process of obtaining a key to the property office and/or the safe combination."<sup>7</sup> FOP requested that MPD provide the information within 10 days. After approximately two months, MPD provided all of the documents it claimed it had that were responsive to the request. Because the information was not provided within 10 days as FOP requested, FOP asserts that MPD's response was untimely and therefore constituted an unfair labor practice.<sup>8</sup>

In 07-U-16, MPD proposed to discipline an officer for failing to obey orders and directives following a traffic incident wherein he struck a civilian vehicle with his patrol car.<sup>9</sup> FOP requested information related to the incident, including the estimated and actual costs of the repairs for both vehicles. After approximately a month and a half, MPD provided all of the documents it claimed it had that were responsive to the request. Because the information was

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<sup>1</sup> (Supplemental Report and Recommendation at 1) (hereinafter cited as "Supp. R&R").

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; *see also* p. 6.

<sup>9</sup> *Id.*

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not provided within the timeframe that FOP had requested, FOP asserts that MPD's response was untimely and therefore constituted an unfair labor practice.<sup>10</sup>

In 07-U-30, FOP requested information related to the investigation and discipline of any Assistant Chiefs of Police for unauthorized outside employment.<sup>11</sup> FOP submitted the request to MPD's Office of Professional Responsibility. Two days later, MPD informed FOP that it should redirect its request to the MPD's Office of the General Counsel, Labor and Employee Relations Unit. FOP asserts that MPD's response was a refusal to provide the information and therefore constituted an unfair labor practice.<sup>12</sup>

PERB consolidated the cases and assigned them to a hearing, which was held on July 19, 2007, before Hearing Examiner Aline Pacht. Ms. Pacht issued a Report and Recommendation finding that FOP's allegations were contractual and that PERB therefore lacked jurisdiction over the complaints. In *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department Labor Committee*, 62 D.C. Reg. 4685, Slip Op. No. 1490, PERB Case Nos. 06-U-23, *et al.* (2014), the Board rejected Ms. Pacht's findings on grounds that they were not consistent with PERB precedent, and remanded the cases to Ms. Pacht for further consideration and analysis on the merits.<sup>13</sup> However, Ms. Pacht was unavailable to address the remanded cases. So PERB's Executive Director, with the consent of the parties, re-assigned the matters to Supplemental Hearing Examiner, Bruce D. Rosenstein, who reviewed the existing record, and issued a Supplemental Report and Recommendation in accordance with the Board's Order in Slip Op. No. 1490.<sup>14</sup>

In the Supplemental Report and Recommendation, Mr. Rosenstein found that MPD committed unfair labor practices in PERB Case Nos. 06-U-23 and 07-U-11, but did not commit unfair labor practices in PERB Case Nos. 07-U-12, 07-U-16, and 07-U-30.<sup>15</sup> FOP filed exceptions to Mr. Rosenstein's findings in PERB Case Nos. 07-U-12, 07-U-16, and 07-U-30, to which MPD filed an Opposition. Neither party filed exceptions to Mr. Rosenstein's findings in PERB Case Nos. 06-U-23 and 07-U-11.

### III. Analysis

It is an unfair labor practice for an agency to withhold requested information that is relevant and necessary to a union's duties as the bargaining unit's exclusive representative.<sup>16</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.*

<sup>13</sup> *See* ps. 1-2, 5-8.

<sup>14</sup> (Supp. R&R at 1).

<sup>15</sup> *Id.* at 5-7.

<sup>16</sup> *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 3386, Slip Op. No. 835, PERB Case No. 06-U-10 (2006); *see also University of the District of Columbia v. University of the District of Columbia Faculty Association*, 38 D.C. Reg. 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991).

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When an agency fails or refuses, without a viable defense, to produce information that the union has requested, the agency violates its statutory duty to bargain in good faith under D.C. Official Code § 1-617.04(a)(5).<sup>17</sup> Further, a violation of the duty to bargain in good faith also derivatively constitutes a violation of the counterpart duty in D.C. Official Code § 1-617.04(a)(1) to not interfere, restrain, or coerce the employees' in the exercise of their statutory rights.<sup>18</sup>

The Board will affirm a hearing examiner's findings and recommendations if the findings are reasonable, supported by the record, and consistent with PERB precedent.<sup>19</sup> Determinations concerning the admissibility, relevance, and weight of evidence are reserved to the Hearing Examiner.<sup>20</sup> Issues concerning the probative value of evidence are also reserved to the Hearing Examiner.<sup>21</sup> Mere disagreements with a Hearing Examiner's findings and/or challenging the Examiner's findings with competing evidence do not constitute proper exceptions if the record contains evidence supporting the Hearing Examiner's conclusions.<sup>22</sup>

A. 06-U-23

In PERB Case No. 06-U-23, Mr. Rosenstein reasoned that (1) "MPD admits, in its post-hearing brief, that it did not respond to the FOP information requests nor did it provide any of the requested information," and (2) "[w]hile ... both grievances were resolved at the arbitration level and the officers were assigned to the Horse Mounted Unit, this does not negate the FOP's right to receive necessary and relevant information for the processing of a grievance or at the arbitration stage under the parties' CBA."<sup>23</sup> Thus, Mr. Rosenstein found that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) as alleged in FOP's complaint.<sup>24</sup>

As a remedy, Mr. Rosenstein recommends that the Board order MPD to (1) cease violating the statute as described, (2) release to FOP the requested information, (3) pay FOP's reasonable costs in PERB Case No. 06-U-23, and (4) post a notice detailing the violations found.<sup>25</sup> Mr. Rosenstein reasoned that costs are warranted in PERB Case No. 06-U-23 because "MPD failed to provide evidence to substantiate its claim that the information requested was not necessary and relevant for the FOP to represent bargaining unit employees in pending grievances

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<sup>17</sup> *American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, 59 D.C. Reg. 6003, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65 (2009).

<sup>18</sup> *Id.*

<sup>19</sup> *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).

<sup>20</sup> *Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20 (1996).

<sup>21</sup> *American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07 (1998).

<sup>22</sup> *Hoggard v. DCPS, supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

<sup>23</sup> (Supp. R&R at 5-6).

<sup>24</sup> *Id.* at 6 (citing *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002)).

<sup>25</sup> *Id.* at 7-8.

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or disciplinary matters,” and therefore, “MPD’s failure to provide the requested information was without merit.”<sup>26</sup>

The Board’s review of the hearing transcript and MPD’s post-hearing brief confirms that Mr. Rosenstein’s findings and recommendations are reasonable, supported by the record, and consistent with PERB precedent.<sup>27</sup> Furthermore, neither party excepted to Mr. Rosenstein’s findings in PERB Case No. 06-U-23. Accordingly, the Board finds that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) in PERB Case No. 06-U-23 and grants the relief that Mr. Rosenstein recommended.<sup>28</sup>

#### B. 07-U-11

In PERB Case No. 07-U-11, Mr. Rosenstein reasoned that (1) “[t]he record confirms that MPD did not reply to the request for information nor did it provide any of the information to the FOP,” and (2) “[w]hile ... the adverse action against [the officer] was ultimately dismissed, this does not negate the FOP’s right to receive necessary and relevant information for the processing of disciplinary appeals.”<sup>29</sup> Thus, Mr. Rosenstein found that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) as alleged in FOP’s complaint.<sup>30</sup>

As a remedy, Mr. Rosenstein recommends that the Board order MPD to (1) cease violating the statute as described, (2) release to FOP the requested information, (3) pay FOP’s reasonable costs in PERB Case No. 07-U-11, and (4) post a notice detailing the violations found.<sup>31</sup> Mr. Rosenstein reasoned that costs are warranted in PERB Case No. 07-U-11 because “MPD failed to provide evidence to substantiate its claim that the information requested was not necessary and relevant for the FOP to represent bargaining unit employees in pending grievances or disciplinary matters,” and therefore, “MPD’s failure to provide the requested information was without merit.”<sup>32</sup>

The Board’s review of the hearing transcript confirms that Mr. Rosenstein’s findings and recommendations are reasonable, supported by the record, and consistent with PERB

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<sup>26</sup> *Id.* (citing D.C. Official Code § 1-617.13(d) (which grants the Board authority to require the payment of reasonable costs); and *American Federation of State, County and Municipal Employees, District Council 20, Local 2776 v. D.C. Department of Finance and Revenue*, 73 D.C. Reg. 5658, Slip Op. No. 245 at ps. 4-5, PERB Case No. 98-U-02 (1990) (holding that the Board can award costs if it is in the “interest of justice” to do so)).

<sup>27</sup> See Transcript at 14; and (MPD Post-Hearing Brief at 16-17); see also *AFGE, Local 2725 v. DOH, supra*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65; and *AFGE, Local 872 v. DC WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

<sup>28</sup> *Id.*

<sup>29</sup> (Supp. R&R at 6) (citing *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 11371, Slip Op. No. 1302, PERB Case Nos. 07-U-49, 08-U-13, & 08-U-16 (2012)).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 7-8.

<sup>32</sup> *Id.* (citing D.C. Official Code § 1-617.13(d); and *AFSCME, Local 2776 v. DFR, supra*, Slip Op. No. 245 at ps. 4-5, PERB Case No. 98-U-02).

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precedent.<sup>33</sup> Furthermore, neither party excepted to Mr. Rosenstein's findings in PERB Case No. 07-U-11. Therefore, the Board finds that MPD violated D.C. Official Code §§ 1-617.04(a)(1) and (5) in PERB Case No. 07-U-11 and grants the relief that Mr. Rosenstein recommended.

C. 07-U-12

In PERB Case No. 07-U-12, Mr. Rosenstein reasoned that FOP "admitted that on October 18, 2006, [FOP] received a response [to its August 10, 2006 information request<sup>34</sup>] from [MPD] that some of the requested documents did not exist but those that did would be provided."<sup>35</sup> Mr. Rosenstein further reasoned that FOP "acknowledged that [it] did receive the materials and used them during the [officer's] appeal proceeding."<sup>36</sup> Accordingly, Mr. Rosenstein found that (1) while MPD did not provide the information within 10 days as requested by FOP, it did provide the information "in just over two months," which was prior to the officer's appeal hearing, (2) the information provided contained "all of the documents responsive to [FOP's] request" except for the documents that MPD stated did not exist, and (3) MPD's delay in providing the information was therefore not unreasonable under *American Federation of Government Employees, Local 631 v. District of Columbia Water and Sewer Authority*, 51 D.C. Reg. 4163, Slip Op. No. 730, PERB Case No. 02-U-19 (2003) ("Slip Op. No. 730").<sup>37</sup> Thus, Mr. Rosenstein found that MPD did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) and recommended that the complaint in PERB Case No. 07-U-12 be dismissed.<sup>38</sup>

FOP asserts in its Exceptions that Mr. Rosenstein did not make any findings regarding the relevance and necessity of the requested documents in PERB Case No. 07-U-12, and that it must therefore be presumed that its information request met the "relevant and necessary" standard in PERB case law. Upon this predicate, FOP argues that although MPD did eventually provide the requested documents, its delay in doing so was unreasonable and therefore constituted an unfair labor practice.<sup>39</sup>

FOP cites to a string of National Labor Relations Board ("NLRB") cases to support its contention that MPD's alleged delay in producing the documents was "as much of a violation of

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<sup>33</sup> See Transcript at 14; see also *AFGE, Local 2725 v. DOH, supra*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65; and *AFGE, Local 872 v. DC WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

<sup>34</sup> Mr. Rosenstein states in the Supp. R&R that FOP's request was submitted on August 6, 2006. (See p. 3, 6). However, FOP asserts in its Exceptions that the request was actually submitted on August 10, 2006 (see p. 5, 11), which the Hearing Transcript confirms (see p. 9, 121, 174-175). Therefore, the Board finds that the request was submitted on August 10, 2006, not on August 6<sup>th</sup>.

<sup>35</sup> (Supp. R&R at 6).

<sup>36</sup> (Supp. R&R at 6) (citing *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 11371, Slip Op. No. 1302, PERB Case Nos. 07-U-49, 08-U-13, & 08-U-16 (2012)).

<sup>37</sup> *Id.* at 3, 6.

<sup>38</sup> *Id.*

<sup>39</sup> (Exceptions to the Supp. R&R at 9-10).

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[the statute] as a refusal to furnish the information at all.”<sup>40</sup> Primarily, FOP relies on *Earthgrains Co.*, 349 NLRB 389 (2007)<sup>41</sup>, in which the NLRB held that, subject to the complexity and extent of the information sought, its availability, and the difficulty of retrieving the information, employers should make “a reasonable good faith effort to respond to the request as promptly as circumstances allow.”<sup>42</sup> FOP claims that, under this standard, MPD should have been able to quickly produce the information in PERB Case No. 07-U-12 because the request was specific, and the information sought was not complex. Nevertheless, FOP argues that MPD still waited over two months to comply with the request despite being aware of the officer’s short deadline to appeal the proposed discipline and the high burden she would face if she did not have the information. Thus, FOP contends that even though MPD responded to the request, it did not “respond to the request as promptly as circumstances allow[ed]” as required under *Earthgrains*, and therefore committed an unfair labor practice. Accordingly, FOP asserts that Mr. Rosenstein erred when he found that, based on the reasonableness standard in PERB’s 2003 Decision in Slip Op. No. 730 (which FOP claims was usurped by the NLRB’s 2007 decision in *Earthgrains*) MPD’s delay in providing the requested information was not unreasonable, and that MPD therefore did not commit an unfair labor practice.<sup>43</sup>

Further, FOP asserts that Mr. Rosenstein erred when he found that the documents “were received in advance of the officer’s appeal hearing” because, as FOP notes, the officer “only had ten (10) business days to respond to the proposed discipline at the first level,” and “there was no ‘hearing.’”<sup>44</sup> Accordingly, FOP contends that Mr. Rosenstein’s “inference that MPD has cured any perceived lengthy delay because [the officer] was able to use this information during a subsequent ‘hearing’ is false.”<sup>45</sup>

The Board rejects FOP’s exceptions, and finds that Mr. Rosenstein’s conclusions regarding PERB Case No. 07-U-12 are reasonable, supported by the record, and consistent with PERB precedent.<sup>46</sup> The record supports Mr. Rosenstein’s findings that MPD provided all the documents that could be produced, and that the information was produced in a sufficient and timely manner for FOP to use it in the officer’s defense. MPD’s witness, Supervisory Labor Relations Specialist Anna McClanahan, gave un-rebutted testimony detailing the lengthy and time consuming steps she took to respond to FOP’s August 10, 2006 information request, and the reasons why MPD was not able to fully respond to the request until October 18, 2006.<sup>47</sup> Additionally, Ms. McClanahan testified that FOP used the information MPD provided in the officer’s appeal to the Chief of Police.<sup>48</sup> FOP’s own witness, Labor Representative Philip

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<sup>40</sup> *Id.* at 10-11 (citing *Amersig Graphics, Inc.*, 334 NLRB 880, 885 (2001)).

<sup>41</sup> (Enf. granted in part, denied in part, 514 F.3d 422 (5<sup>th</sup> Cir. 2008)).

<sup>42</sup> <sup>42</sup> See p. 400 (quoting *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enf. in pertinent part, 349 F.3d 233 (4<sup>th</sup> Cir. 2005)).

<sup>43</sup> (Exceptions to Supp. R&R at 10-12).

<sup>44</sup> *Id.* at 12.

<sup>45</sup> *Id.*

<sup>46</sup> *AFGE, Local 872 v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

<sup>47</sup> Transcript at 174-180, 196.

<sup>48</sup> *Id.* at 184.

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Burton, also testified that the information MPD provided would be used at the officer's then pending arbitration proceeding.<sup>49</sup>

Since determinations concerning the admissibility, relevance, weight, and probative value of evidence are reserved to the Hearing Examiner, the Board finds, based on the above testimony and the specific facts of PERB Case No. 07-U-12, that Mr. Rosenstein's conclusion—that MPD's two-month delay in providing the requested information was not unreasonable—is supported by the record and reasonable.<sup>50</sup> Further, based on the above testimony, the Board finds that the record does not support FOP's assertions that the information was not used in the officer's defense and that there was "no hearing." While the information was not yet available when the officer submitted her initial response to the proposed discipline, Ms. McClanahan testified that the officer was able to proffer what the information showed, and was then able to substantiate that proffer in her later appeal to the Chief of Police after MPD provided the information.<sup>51</sup> Furthermore, FOP's witness, Philip Burton, testified that FOP never requested any extensions of time in the officer's appeals while the information request was still pending.<sup>52</sup> Lastly, FOP does not allege or offer any evidence that the officer lost her appeal, or that her defense was otherwise substantively prejudiced because MPD did not produce the information prior to October 18, 2006. Accordingly, the Board finds that Mr. Rosenstein's conclusion that the information was provided in a reasonably timely manner to be used in the officer's defense is also reasonable and supported by the record.<sup>53</sup>

Additionally, the Board rejects FOP's assertion that the NLRB's reasonableness standard in *Earthgrains* usurped PERB's reasonableness standard articulated in Slip Op. No. 730. As stated previously, the Board will uphold a hearing examiner's findings if they are "consistent with PERB precedent," not NLRB precedent.<sup>54</sup> While the Board does sometimes look to NLRB precedent for guidance when relevant,<sup>55</sup> it mostly does so when PERB's case law is silent on a particular issue.<sup>56</sup> Here, PERB already had a standard to measure whether a delay in providing requested information was reasonable or unreasonable. Thus, Mr. Rosenstein did not err when

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<sup>49</sup> *Id.* at 150.

<sup>50</sup> See *AFGE, Local 872 v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12; see also *Hoggard v. DCPS, supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20; and *AFGE, Local 2725 v. DCHA, supra*, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07.

<sup>51</sup> Transcript at 183-184 (citing Hearing Joint Exhibit 10).

<sup>52</sup> *Id.* at 147-148.

<sup>53</sup> See *AFGE, Local 872 v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12; see also *Hoggard v. DCPS, supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20; and *AFGE, Local 2725 v. DCHA, supra*, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07.

<sup>54</sup> *Id.*

<sup>55</sup> The NLRB administers the National Labor Relations Act ("NLRA"), 29 U.S.C. §§ 151-169, a federal law governing private sector labor relations nationwide. PERB, however, administers the Comprehensive Merit Personnel Act ("CMPA"), D.C. Official Code § 1-601 *et seq.*, which governs public-sector labor relations in the District of Columbia. While there are certain similarities between the NLRA and the CMPA, there are also many key differences. Further, PERB is not in any way subject to or dependent upon the jurisdiction of the NLRB, and *vice versa*. Therefore, FOP's contention that PERB's case law is subject to NLRB case law is erroneous.

<sup>56</sup> See *American Federation of Government Employees, Local 2714 v. District of Columbia Department of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697 at p. 8, PERB Case No. 00-U-22 (2002).



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he failed to cite to and rely on the NLRB's standard in *Earthgrains* in his analysis.<sup>57</sup> Under Slip Op. No. 730, the Board considered the following factors<sup>58</sup> to determine whether the agency's delay in providing requested information was unreasonable and therefore constituted an unfair labor practice: (1) how many times the request was made, (2) whether the documents were eventually produced, and (3) the length of the delay. Applying this standard to the facts of this case, (1) FOP's witness, Philip Burton, testified that he never followed up or "made any other overtures to try to get [the] information" once MPD missed the 10-day deadline that FOP had set<sup>59</sup> in its August 10<sup>th</sup> request<sup>60</sup>; (2) the requested information was provided<sup>61</sup>; and (3) while it took MPD over two months to provide the information, Ms. McClanahan testified that due to the nature of the request, October 18<sup>th</sup> was the soonest that the information could have been provided.<sup>62</sup> In light of these facts, and based on PERB's reasonableness standard in Slip Op. No. 730, the Board holds that Mr. Rosenstein's finding—that MPD's delay in providing the requested information was not unreasonable and therefore did not constitute an unfair labor practice—is reasonable, supported by the record, and consistent with PERB precedent.<sup>63</sup>

Thus, the Board finds that FOP's exceptions in PERB Case No. 07-U-12 constitute nothing more than mere disagreements with Mr. Rosenstein's findings, and/or are simply based on competing evidence, and are therefore invalid.<sup>64</sup> Accordingly, the Board affirms Mr. Rosenstein's findings, and dismisses the complaint in PERB Case No. 07-U-12 in accordance with Mr. Rosenstein's recommendation.<sup>65</sup>

D. 07-U-16

In PERB Case No. 07-U-16, Mr. Rosenstein reasoned that MPD "promptly" responded to FOP's information request on October 17, 2006, "with all of the documents that the MPD

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<sup>57</sup> The Board notes that even if Mr. Rosenstein had relied on *Earthgrains* instead of Slip Op. No. 730, he still would have likely concluded that MPD's delay was not unreasonable based on Ms. McClanahan's testimony that October 18<sup>th</sup> was the soonest that MPD could have responded to the request due to the complexity and extent of the information sought, its availability, and the difficulty of retrieving the information. See Transcript at 174-180, 196.

<sup>58</sup> See p. 5-6.

<sup>59</sup> FOP's witness, Philip Burton, testified that he was the one who set the 10-day deadline in FOP's request based on nothing more than how long *he* thought it would take for MPD to produce the information, and that no such deadline is set forth in or required by the parties' collective bargaining agreement. See Transcript at 150.

<sup>60</sup> Transcript at 147-148. The Board wishes to reiterate here what it stated in Slip Op. No. 730; that while there is no requirement that unions submit information requests more than once, PERB case law suggests that when an agency has delayed in producing requested information, "in the interest of labor relations, it may be better to request documents a second time" before filing an unfair labor practice complaint in order to better ascertain and understand the agency's motivations for the delay. See f. 9 (citing *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992)).

<sup>61</sup> See Transcript at 150, 184, 196.

<sup>62</sup> *Id.* at 174-180, 196.

<sup>63</sup> See *AFGE, Local 872 v. WASA*, *supra*, Slip Op. No. 702, PERB Case No. 00-U-12. Further, the Board notes that since the information was provided, then even if it is conceded that FOP's request was "relevant and necessary," such would still not likely change Mr. Rosenstein's or the Board's conclusions that MPD's delay was not unreasonable.

<sup>64</sup> See *Hoggard v. DCPS*, *supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

<sup>65</sup> (Supp. R&R at 6).

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maintained in its records that were responsive to the information request.”<sup>66</sup> Further, Mr. Rosenstein reasoned that “at no time after the receipt of the information did [FOP] inform [MPD] that it was not responsive to [the] request,” and that “the first time that this issue arose was during the hearing in this matter that was held on July 19, 2007.”<sup>67</sup> Thus, Mr. Rosenstein found that MPD did not commit an unfair labor practice and recommended that the Board dismiss the complaint in PERB Case No. 07-U-12.<sup>68</sup>

Similar to its exceptions in PERB Case No. 07-U-12, FOP relies on the NLRB’s reasonableness standard in *Earthgrains*, and asserts that since FOP’s information request in PERB Case No. 07-U-16 was “neither complex nor burdensome,” the information “should have been able to be located by making a couple of phone calls.”<sup>69</sup> FOP suggests that “[i]n fact, that is exactly what Ms. McClanahan testified that she did” to obtain the information.<sup>70</sup> Even so, FOP argues that MPD still did not respond to the request until October 17, 2006, which was over a month after FOP had filed the officer’s appeal to the Chief of Police.<sup>71</sup> Moreover, FOP asserts that the information MPD provided was not complete because it did not include the invoices detailing the actual costs of the repairs to both the patrol car and the civilian’s car that the officer hit.<sup>72</sup> FOP argues that those invoices were “the most crucial pieces of information requested.”<sup>73</sup> FOP contends that “[d]ue in large part to the Department’s unreasonable delay, [the officer] lost his appeal to the Chief of Police and, under the [collective bargaining agreement], his particular penalty [—a 3-day suspension—] does not allow the Union to take his imposed discipline to arbitration.”<sup>74</sup>

In regard to Mr. Rosenstein’s specific findings, FOP argues that Mr. Rosenstein’s reasoning erroneously focused on the facts that MPD eventually provided the information, and that FOP never informed MPD until the hearing that its response was incomplete.<sup>75</sup> FOP contends that “[w]hether or not MPD provided some (or even all) of the information requested on October 17, 2006 is irrelevant because that date is significantly after [the officer] lost his appeal—the primary reason why the Union was asking for the information in the first place.”<sup>76</sup> Accordingly, FOP urges PERB to discard Mr. Rosenstein’s reasoning and rationale.<sup>77</sup>

The Board rejects FOP’s exceptions. As reasoned above, PERB is not bound by the NLRB’s reasonableness standard in *Earthgrains*. Further, the Board finds that the record in this

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<sup>66</sup> *Id.* at 7.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> (Exceptions to Supp. R&R at 12).

<sup>70</sup> *Id.* (citing Transcript at 181-182).

<sup>71</sup> *Id.* at 12-13.

<sup>72</sup> *Id.* at 7, 12-13.

<sup>73</sup> *Id.* at 13 (emphasis removed).

<sup>74</sup> *Id.* (emphasis removed).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 13-14.

<sup>77</sup> *Id.* at 14.

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case does not warrant a finding that MPD's response to FOP's information request constituted an unfair labor practice in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5).

At the hearing, FOP's witness, Philip Burton, testified that he "drafted" the information request on August 31, 2006, but there is no testimony or other information in the record that establishes a date certain of when FOP's request was actually delivered to MPD.<sup>78</sup> Even FOP's complaint is vague about when the request was delivered—merely alleging that: "[o]n or about August 31, 2006, the FOP forwarded a written request for information pursuant to Article 10 of the CBA."<sup>79</sup> Indeed, Mr. Burton testified that "often there's a disparity between the date [a document] is drafted and the day it was delivered."<sup>80</sup> Further, there is nothing in the record establishing how the request was delivered to MPD.<sup>81</sup> This is important because even if the Board reads the available facts in the light most favorable to FOP and assumes that the request was hand-delivered<sup>82</sup> to MPD on August 31, 2006, FOP's demand that MPD provide the requested information by "no later than Monday, September 11, 2006,"<sup>83</sup> would have still only given MPD six (6) working days to gather all of the information and deliver it to MPD.<sup>84</sup> If, however, the request was sent by U.S. Mail, it is entirely possible that MPD might not have even received the request prior to FOP's designated deadline.<sup>85</sup>

Additionally, according to FOP's information request, the officer's appeal to the Chief of Police was due on September 12, 2006. FOP's witness, Philip Burton, testified that he intentionally did not request the information in advance of the officer's initial appeal to the Assistant Chief of Police because he (Mr. Burton) thought the officer "had an unbeatable disciplinary case" based solely on the documents that MPD had already provided with the officer's notice of proposed discipline.<sup>86</sup> It was only after MPD denied the officer's initial appeal on August 28, 2006, that Mr. Burton began drafting the information request and the officer's final appeal to the Chief of Police on August 31, 2006, and September 5, 2006,

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<sup>78</sup> Transcript at 137.

<sup>79</sup> (Complaint in PERB Case No. 07-U-16 at 4) (emphases added).

<sup>80</sup> Transcript at 141.

<sup>81</sup> See (Complaint in PERB Case No. 07-U-16, Exhibit 2).

<sup>82</sup> A copy of FOP's written request is attached to the complaint as Exhibit 2. The Exhibit contained a photo-copy of an unstamped envelope addressed to MPD's General Counsel. Presumably, FOP included the copy because it used the envelope to deliver its request to MPD. Accordingly, the Board can reasonably surmise that the request was not sent by email or facsimile, but was instead likely either hand-delivered or sent by U.S. Mail.

<sup>83</sup> (Complaint in PERB Case No. 07-U-16, Exhibit 2).

<sup>84</sup> Labor Day in 2006 was on Monday, September 4, thus shortening the number of working days that FOP gave MPD to comply with its request.

<sup>85</sup> As noted in footnote 59 herein, the parties' collective bargaining agreement does not require MPD to respond to information requests within a specific timeframe. See Transcript at 150. That does not mean MPD can drag its feet or unreasonably delay its responses, but it does mean that it is not always an automatic unfair labor practice if MPD fails to produce requested information by a deadline that FOP has unilaterally chosen on its own, particularly if FOP's chosen deadline only gives MPD a very short timeframe to respond to the request, as was the case in PERB Case No. 07-U-16.

<sup>86</sup> Transcript at 135-136. The Board notes that Mr. Burton's testimony seemingly contradicts FOP's assertion in its information request that the officer "was forced by the deadlines imposed for adverse action appeals to submit [the] initial appeal without the [information that was being requested]." See (Complaint in PERB Case No. 07-U-16, Exhibit 2).

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respectively.<sup>87</sup> Mr. Burton testified that even though the officer's final appeal was date-stamped by MPD on September 11, 2006, FOP may have actually sent it to MPD at any time between the 5<sup>th</sup> and the 11<sup>th</sup> since the date-stamp only indicates "when the document was actually delivered to the Chief's office."<sup>88</sup> Therefore, even if MPD had provided the information toward the end of the day on September 11, which would have been in accordance with the deadline that FOP had set in its request, it is still possible that it would have been too late because, according to Mr. Burton's testimony, FOP had already filed the officer's appeal, perhaps as early as September 5<sup>th</sup>.<sup>89</sup>

Furthermore, FOP's request does not conspicuously indicate that the information sought was urgent.<sup>90</sup> For instance, in the written request, the subject line did not state that the request was urgent, nor did the request conspicuously indicate anywhere on the front page that the information needed to be produced within just six (6) or less working days. Indeed, the one and only place that the request states that the information was needed in a shorter-than-normal timeframe was in a single un-bolded and un-underlined sentence in the middle of the fifth main section of FOP's two-page request, which stated that, "[t]o enable [the officer] to submit a Final Appeal to the Chief of Police with the relevant information required for his defense, and in time to meet his deadline of September 12, 2006, please forward the information no later than Monday, September 11, 2006." There is also no indication in the record that FOP ever followed up with MPD regarding the status of the request after it was submitted, or that FOP ever asked the Chief of Police for an extension of time to file the officer's final appeal while it waited for MPD to produce the information. While FOP was not necessarily required to conspicuously note that the request was urgent, or to follow up with MPD once the request was submitted, or to seek an extension of time from the Chief of Police to file the officer's appeal, the fact that FOP did none of these tends to negate FOP's assertions that it considered the requested information to be "crucial" to the officer's defense, and that the officer's appeal was denied "[d]ue in large part to the Department's unreasonable delay."

In regard to FOP's assertions that the requested information was "neither complex nor burdensome," and that Ms. McClanahan only had to "make a couple of phone calls" to obtain it, the Board notes that the record shows that while it is true that Ms. McClanahan coordinated MPD's effort to respond to the request by just making a few calls, it was actually Fleet Management that had to locate and compile all of the information.<sup>91</sup> Based on Ms. McClanahan's testimony that Fleet Management "eventually" sent her information, it is possible that the process of gathering and producing the information was more complex and time-consuming than FOP assumes.<sup>92</sup> At the very least, Ms. McClanahan's testimony does not, by

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<sup>87</sup> *Id.* at 137, 140.

<sup>88</sup> *Id.* at 139-142.

<sup>89</sup> Indeed, if FOP did submit the officer's appeal on September 5<sup>th</sup>, and if FOP's information request was delivered to MPD on August 31<sup>st</sup> (which, as noted, is hardly certain), then that would mean FOP filed the officer's appeal just two (2) working days after it submitted its information request.

<sup>90</sup> *See* (Complaint in PERB Case No. 07-U-16, Exhibit 2).

<sup>91</sup> *See* Transcript at 181-182.

<sup>92</sup> *Id.*

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itself, conclusively demonstrate by a preponderance of the evidence<sup>93</sup> that the information was easily producible, or that MPD's October 17, 2006 response was unreasonably untimely, as FOP asserts.

Additionally, the Board rejects FOP's "irrelevancy" argument concerning Mr. Rosenstein's findings that MPD did not commit an unfair labor practice because it eventually provided the information, and because FOP never informed MPD that its response was incomplete until the hearing. As stated previously, determinations concerning the admissibility, relevance, weight, and probative value of evidence are reserved to the Hearing Examiner.<sup>94</sup> Primarily, FOP alleges that MPD committed an unfair labor practice by failing to timely produce the requested information.<sup>95</sup> As noted in the Board's analysis of PERB Case No. 07-U-12, when determining whether or not an agency has committed an unfair labor practice by unreasonably delaying a response to an information request, the Board looks at (1) how many times the request was made, (2) whether the documents were eventually produced, and (3) the length of the delay.<sup>96</sup> As noted above, FOP only made its request once, and did not conspicuously note in the request that the documents were needed in a shorter-than-normal timeframe. FOP also did not follow up with MPD on the status of its request at any time prior to its stated September 11, 2006 deadline. Further, the record substantiates that MPD did produce all of the records it had that were responsive to the request in just over a month-and-a-half after the request was made.<sup>97</sup> Therefore, the Board holds that Mr. Rosenstein's finding that MPD did eventually produce the information was indeed relevant, contrary to FOP's assertion.

As to whether or not the information provided was complete, the Board agrees with Mr. Rosenstein that since FOP never notified MPD (either directly, or even in its complaint) that it did not consider MPD's response to be complete until Philip Burton's testimony at the hearing, it cannot be concluded by a preponderance of the evidence<sup>98</sup> that MPD's response (complete or not) constituted an unfair labor practice.

Based on the foregoing, the Board holds that Mr. Rosenstein's conclusion that MPD did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) is reasonable, supported by the record, and consistent with PERB precedent.<sup>99</sup> Further, the Board finds that FOP's exceptions in PERB Case No. 07-U-16 constitute nothing more than mere disagreements with Mr. Rosenstein's findings, and/or are simply based on competing evidence, and are therefore invalid.<sup>100</sup> Accordingly, the

<sup>93</sup> PERB Rule 520.11, states, in pertinent part, that "[t]he party asserting a violation of the CMPA, shall have the burden of proving the allegations of the complaint by a preponderance of the evidence."

<sup>94</sup> See *Hoggard v. DCPS*, *supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20; and *AFGE, Local 2725 v. DCHA*, *supra*, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07.

<sup>95</sup> See (Complaint in PERB Case No. 07-U-16 at 7).

<sup>96</sup> *AFGE, Local 631 v. WASA*, *supra*, Slip Op. No. 730, PERB Case No. 02-U-19.

<sup>97</sup> Transcript at 181-183.

<sup>98</sup> See footnote 93, herein.

<sup>99</sup> See *AFGE, Local 872 v. WASA*, *supra*, Slip Op. No. 702, PERB Case No. 00-U-12. As it did in PERB Case No. 07-U-12, the Board notes here that since the information was provided, then even if it is conceded that FOP's request was "relevant and necessary," such would still not likely change Mr. Rosenstein's or the Board's conclusions that MPD's delay was not unreasonable.

<sup>100</sup> See *Hoggard v. DCPS*, *supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

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Board affirms Mr. Rosenstein's findings, and dismisses the complaint in PERB Case No. 07-U-16 in accordance with Mr. Rosenstein's recommendation.<sup>101</sup>

E. 07-U-30

In PERB Case No. 07-U-30, Mr. Rosenstein reasoned that FOP's witness, then FOP Treasurer Delroy Burton, "admitted that two days [after he submitted FOP's December 5, 2006 information request], he received a response to his request directing him to seek the information from [MPD's] Office of the General Counsel, Labor and Employee Relations Unit."<sup>102</sup> Mr. Rosenstein further reasoned that "[t]he record confirms that [Delroy] Burton did not resubmit the information request to the Labor and Employee Relations Unit, despite testifying that he knew the Unit could provide the information that he requested."<sup>103</sup> Thus, Mr. Rosenstein found that MPD "promptly" responded to FOP's request, and that MPD's direction to resubmit the request to the Labor and Employee Relations Unit did not constitute an unfair labor practice. Accordingly, Mr. Rosenstein recommended that the complaint in PERB Case No. 07-U-30 be dismissed.<sup>104</sup>

FOP's Exceptions assert that Mr. Rosenstein erred by considering MPD's December 7, 2006 letter to Delroy Burton to be a "response" to the information request because "(1) it didn't provide any substantive information and (2) it was a letter that was only created to frustrate the Union's purpose and to improperly deflect the MPD's responsibility."<sup>105</sup> FOP further argues that the information sought was relevant and necessary, that the request itself was narrowly tailored and not a "fishing expedition," and that the information sought is still needed.<sup>106</sup> Additionally, FOP contends that MPD's instruction to resubmit the request to the Labor and Employee Relations Unit "contravened the past practice of the parties [to request information] from 'the lowest level possible,'" and that Mr. Rosenstein's finding that FOP did not re-submit its request to the Labor and Employee Relations Unit is therefore "irrelevant."<sup>107</sup> Further, FOP asserts that even if the Labor and Employee Relations Unit was the only unit that could respond to the request (which FOP disputes), it was still MPD's responsibility to forward the request to that office, not FOP's. Accordingly, FOP argues that MPD's conduct violated *Earthgrains* and PERB case law,<sup>108</sup> and therefore urges the Board to reject Mr. Rosenstein's finding that MPD's response to its information request was "appropriate."<sup>109</sup>

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<sup>101</sup> (Supp. R&R at 7).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> (Exceptions to Supp. R&R at 14).

<sup>106</sup> *Id.* at 14-15.

<sup>107</sup> *Id.* at 15.

<sup>108</sup> FOP cites to *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 3386, Slip Op. No. 835 at p. 9, PERB Case No. 06-U-10 (2006), which held it is an unfair labor practice for an agency to, without a viable defense, withhold from the exclusive representative information that is relevant and necessary to the representative's handling of a grievance.

<sup>109</sup> (Exceptions to Supp. R&R at 15-16).

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The Board rejects FOP's exceptions. Again, PERB is not bound by the NLRB's decision in *Earthgrains*. Additionally, the Board notes that FOP's primary allegation in its complaint in PERB Case No. 07-U-30 is that MPD "refus[ed]" to provide the requested information.<sup>110</sup> The record does not show, however, that MPD's response constituted such a refusal. Indeed, unlike in PERB Case Nos. 06-U-23 and 07-U-11 above, where MPD never even acknowledged or responded to FOP's requests, in this case MPD "promptly" replied to the request after just two days and advised FOP that the Labor and Employee Relations Unit was the more "appropriate body to address [the] request."<sup>111</sup> MPD never stated in its response that it would not provide the information, that the information was unavailable, that the information was privileged or confidential, or that FOP was otherwise not entitled to the information. It merely stated that another unit needed to handle the request.<sup>112</sup> Thus, since MPD never stated it would not give FOP the information, but rather stated how FOP could obtain the information, the Board finds that Mr. Rosenstein did not err in labeling MPD's December 7, 2006 letter to FOP as a "response" to FOP's information request. Further, the Board finds that FOP has not proven, by a preponderance of the evidence, that MPD "refused" to provide the information in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5). Accordingly, the Board affirms Mr. Rosenstein's findings that MPD "promptly" responded to FOP's request, and that its response did not constitute an unfair labor practice.

Additionally, the Board disagrees with FOP's assertion that Mr. Rosenstein's finding that FOP never sent a second request was "irrelevant." At the hearing, FOP's witness, Delroy Burton, testified that he never forwarded the request to the Labor and Employee Relations Unit as instructed because "that had not been the pattern and practice of the Agency in providing [FOP] with information," and because MPD had not previously bargained with FOP in order to change that practice.<sup>113</sup> Even if Mr. Burton's assertions are true, there is absolutely no evidence in the record that FOP ever expressed that objection to MPD, or that FOP ever requested bargaining over MPD's alleged attempt to change the parties' pattern and practices. Instead, FOP remained silent for nearly four months and then filed the instant unfair labor practice complaint alleging that MPD had refused to comply with the request. While such was certainly within FOP's rights, if FOP had simply sent a reply back to MPD explaining its position, it is possible that this issue might have been resolved and the information provided years ago. At the very least, FOP would have been able to better ascertain whether MPD was truly refusing to produce the information, or whether it was simply waiting for FOP to resubmit the request to the Labor and Employee Relations Unit, as it had stated.<sup>114</sup> As the record currently sits, however, there is simply not enough evidence to conclude, by a preponderance of the evidence, that MPD's purpose was to frustrate FOP, or to improperly deflect the MPD's responsibilities under the parties' collective bargaining agreement, as FOP asserts. Furthermore, since determinations concerning the admissibility, relevance, weight, and probative value of evidence are reserved to the Hearing Examiner, the Board finds that Mr. Rosenstein did not err when he considered the

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<sup>110</sup> (Complaint in PERB Case No. 07-U-30 at 3-4).

<sup>111</sup> *Id.*, Attachment 3.

<sup>112</sup> *Id.*

<sup>113</sup> Transcript at 64.

<sup>114</sup> *See* footnote 60 herein.

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fact that FOP never resubmitted its request to be a relevant factor in his analysis and conclusions.<sup>115</sup>

Finally, even though the Board agrees with FOP that MPD's Assistant Chief should have simply forwarded FOP's request to the Labor and Employee Relations Unit himself rather than sending it back to FOP, the Board still cannot find, by a preponderance of all the evidence, that MPD's response constituted a flat-out refusal to produce the information at all.

Therefore, based on the foregoing, the Board holds that Mr. Rosenstein's conclusion that MPD's response in PERB Case No. 07-U-30 did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5)<sup>116</sup> is reasonable, supported by the record, and consistent with PERB precedent.<sup>117</sup> Further, the Board finds that FOP's exceptions in PERB Case No. 07-U-16 constitute nothing more than mere disagreements with Mr. Rosenstein's findings, and/or are simply based on competing evidence, and are therefore invalid.<sup>118</sup> Accordingly, the Board affirms Mr. Rosenstein's findings, and dismisses the complaint in PERB Case No. 07-U-30 in accordance with Mr. Rosenstein's recommendation.<sup>119</sup>

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<sup>115</sup> See *Hoggard v. DCPS*, *supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20; and *AFGE, Local 2725 v. DCHA*, *supra*, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07.

<sup>116</sup> Notwithstanding the Board's finding that MPD's particular response to FOP's December 5, 2006 information request did not constitute an unfair labor practice, the Board notes that since FOP's request was not attached to or dependent upon any particular employee's grievance, and since FOP asserts that the information is still needed, there is really nothing that prevents FOP from resubmitting its request to either MPD's Office of Professional Responsibility or to the Labor and Employee Relations Unit, and then working with MPD to sort out any issues or objections that may arise.

<sup>117</sup> *AFGE, Local 872 v. WASA*, *supra*, Slip Op. No. 702, PERB Case No. 00-U-12. The Board notes that even if it is conceded that FOP's request was "relevant and necessary," such would still not likely change Mr. Rosenstein's or the Board's conclusions that the evidence does not support FOP's allegation that MPD refused to provide the information.

<sup>118</sup> See *Hoggard v. DCPS*, *supra*, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20.

<sup>119</sup> (Supp. R&R at 7).



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## ORDER

### IT IS HEREBY ORDERED THAT:

1. In PERB Case Nos. 06-U-23 and 07-U-11, MPD must:
  - a. Cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing and failing, without a viable defense, to provide relevant and necessary information that is requested by the exclusive representative;
  - b. Provide FOP with the information requested in PERB Case Nos. 06-U-23 and 07-U-11 within fourteen calendar (14) days of the service of this Decision and Order;
  - c. Conspicuously post, within fourteen (14) calendar days of the service of this Decision and Order, the attached Notices in PERB Case Nos. 06-U-23 and 07-U-11 where notices to bargaining-unit employees are customarily posted. Said Notices shall remain posted for thirty (30) consecutive days; and
  - d. Pay FOP's reasonable costs in PERB Case Nos. 06-U-23 and 07-U-11 within forty-five (45) calendar days of the service of this Decision and Order, provided that FOP provides to MPD statements of said costs within fourteen (14) calendar days of the service of this Decision and Order. If FOP fails to submit said statements to MPD by that deadline, it will forfeit its right to the costs unless FOP files a motion with PERB showing good cause why it missed the deadline.
2. FOP's respective complaints in PERB Case Nos. 07-U-12, 07-U-16, and 07-U-30 are each 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, and Members Keith Washington, Yvonne Dixon, and Ann Hoffman.

June 25, 2015

Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case Nos. 06-U-23, 07-U-11, 07-U-12, 07-U-16, and 07-U-30, Op. No. 1526 was transmitted by File & ServeXpress to the following parties on this the 26<sup>th</sup> day of June, 2015.

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/s/ Felice Robinson  
PERB



Public Employee Relations Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA



1100 4<sup>th</sup> Street S.W. Suite E630 Washington, D.C. 20024 Business: (202) 727-1822 Fax: (202) 727-9116 Email: [perb@dc.gov](mailto:perb@dc.gov)

# NOTICE

**TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1526, PERB CASE NO. 06-U-23, ET AL., (JUNE 26, 2015).**

**WE HEREBY NOTIFY** our employees that the District of Columbia Public Employee Relations Board has found that we violated the law in the manners alleged in PERB Case No. 06-U-23, and has ordered MPD to post this Notice.

**WE WILL** cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) in the manners stated in Slip Opinion No. 1526.

**WE WILL** cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing or failing, without a viable defense, to provide relevant and necessary information that is requested by the exclusive representative, the Fraternal Order of Police/Metropolitan Police Department Labor Committee.

Metropolitan Police Department

Date: \_\_\_\_\_ By: \_\_\_\_\_

**This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.**

If employees have any questions concerning this Notice or MPD’s compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4<sup>th</sup> Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

June 26, 2015

Washington, D.C.



Public Employee Relations Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA



1100 4<sup>th</sup> Street S.W. Suite E630 Washington, D.C. 20024 Business: (202) 727-1822 Fax: (202) 727-9116 Email: [perb@dc.gov](mailto:perb@dc.gov)

# NOTICE

**TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1526, PERB CASE NO. 06-U-23, ET AL., (JUNE 26, 2015).**

**WE HEREBY NOTIFY** our employees that the District of Columbia Public Employee Relations Board has found that we violated the law in the manners alleged in PERB Case No. 07-U-11, and has ordered MPD to post this Notice.

**WE WILL** cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) in the manners stated in Slip Opinion No. 1526.

**WE WILL** cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing or failing, without a viable defense, to provide relevant and necessary information that is requested by the exclusive representative, the Fraternal Order of Police/Metropolitan Police Department Labor Committee.

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**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

June 26, 2015

Washington, D.C.



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requested a Disinterested Director's Hearing per the Collective Bargaining Agreement ("CBA"). On September 3, 2014 Cuthbert Braveboy ("Braveboy"), Director of Sewer Services, was appointed by DC Water as the Disinterested Department Director, and on September 16, 2014 Braveboy issued a written decision supporting the decision to terminate.<sup>6</sup> AFGE filed a request for arbitration on September 29, 2014.<sup>7</sup>

The parties submitted the following issues to the Arbitrator:

1. Whether the Respondent committed harmful procedural errors to invalidate the termination.
2. Whether the Respondent met its burden of proving that the Grievant's performance constituted cause for the Respondent to terminate the Grievant and properly considered the *Douglas* factors in determining the penalty.

AFGE argued that DC Water did not follow the proper procedures to terminate Grievant, as required in the CBA and a negotiated Memorandum of Understanding ("MOU") between the parties that defines the guidelines for evaluating employee performance. AFGE's primary complaint was that the Grievant was not given proper notice that his failure to improve his employment behaviors could result in termination. According to DC Water, Grievant's objectionable behavior included inappropriate communications with customers, attendance and punctuality issues, and his tendency to talk loudly on the phone and to pace while on the phone that distracted other employees. Arbitrator Stephen B. Forman credited the testimony of two of Grievant's supervisors that they did put Grievant on notice that his actions could result in termination, and that there was constant communication regarding the deficiencies in Grievant's performance. The Arbitrator stated, "with respect to the Union's claim, that the Authority failed to give the Grievant guidance as required by the MOU to assist him to achieve satisfactory performance, the evidence proved otherwise."<sup>8</sup>

The MOU states:

At the end of the ninety (90) day period, the employee's immediate supervisor shall make a determination as to whether the employee has met the requirements of the Performance Improvement Plan and shall issue a written determination. The employee shall be given a written determination within twenty (20) workdays after the ninety (90) days have passed. If the employee has met the requirements of the plan, then the matter is closed, and the employee is expected to maintain the improvement. Employees who fail to show improvement after being given a Performance Improvement Plan shall be subject to a reassignment, demotion, or removal.<sup>9</sup>

The parties agreed that the Grievant was not given any written determination after any of the PIPs. Neither the Grievant's supervisor or the AFGE's Shop Steward was aware of that

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<sup>6</sup>Award at 4.

<sup>7</sup>Award at 4.

<sup>8</sup>Award at 7.

<sup>9</sup>Award at 5.

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provision in the MOU. However, the Arbitrator found that the purpose of the written determination was to put the employee on notice that his failure to show improvement subjected the employee to be disciplined severely, and that Grievant was on constant notice that his performance needed improvement.

AFGE also complained that the Grievant's PIP in 2013 was extended for another 90 days even though the MOU does not authorize such an action. The Arbitrator disagreed finding that the MOU did not prohibit the extension of a PIP and that if the Grievant had not been offered the second PIP in 2013, he would not have had a further opportunity to improve his job performance and likely would have been terminated months earlier.<sup>10</sup>

For the first time at the arbitration hearing, AFGE raised the issue of DC Water's failure to give the Grievant a written determination following the PIPs. The CBA states, "After a grievance has been put in writing, regardless of the step at which it is filed, the grievance shall not be amended."<sup>11</sup> Citing this CBA provision and the "general rule of arbitration that parties are considered to have waived matters not raised before the hearing,"<sup>12</sup> the Arbitrator found that AFGE should be barred from raising this procedural argument. The Arbitrator concluded by saying, "the Authority's procedural errors did not possibly affect its decision to terminate the Grievant and did not constitute harmful error requiring reversal of the Authority's decision to terminate the Grievant."<sup>13</sup>

As to the issue of whether the Grievant's performance constituted cause for his dismissal, the Arbitrator credited the testimony of six senior DC Water employees from the Customer Service Department who testified that there were numerous customer complaints about the Grievant's rudeness, disrespect and discourteous attitude on the phone.<sup>14</sup> All of the supervisors testified about his loud telephone voice and his constant pacing that disrupted the work environment. In addition, his attendance and punctuality were problems, and he also often entered information into the wrong customer accounts.<sup>15</sup> The supervisors testified that the customer care management team worked daily with the Grievant to improve his job performance and his customer interaction. According to them, he also received numerous training courses to improve his skills; including classes in handling customer service complaints, communication with tact and professionalism and working with challenging personalities.<sup>16</sup> Finally, it was decided that nothing more could be done to improve the Grievant's job performance. Finally, the Arbitrator cited DC Water's application of the *Douglas* factors to reach the conclusion that termination was the appropriate penalty.<sup>17</sup>

In his Decision and Award, dated March 19, 2015, Arbitrator Forman found there were no procedural violations in how DC Water handled the Grievant's termination and that DC

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<sup>10</sup> Award at 7.

<sup>11</sup> Award at 6.

<sup>12</sup> Award at 6.

<sup>13</sup> See *Cornelius v. Nutt*, 472 U.S. 648 (1985) and *Stephen v. Department of the Air Force*, 47 M.S.P.R. 672 (1991).

<sup>14</sup> Award at 8.

<sup>15</sup> Award at 9.

<sup>16</sup> Award at 7-8.

<sup>17</sup> Award at 12.

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Water met its burden of proving that the Grievant's poor performance was the cause of his termination. The grievance was denied.

## II. Analysis

D.C. Official Code § 1-605.02(6) authorizes the Board to modify or set aside an arbitration award in only three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.<sup>18</sup>

AFGE bases its Arbitration Review Request on two arguments. First, it states that the Arbitrator's Award should be reversed because the Arbitrator exceeded his authority by not requiring a written determination after the PIPs, by ruling that the extension of the 2012 PIP was not a harmful procedural error, and by ruling that the use of letters of direction as prior disciplinary actions was not a harmful procedural error. Second, AFGE states that the Arbitrator should be reversed because DC Water made a clear error of judgment in violation of law and public policy. AFGE does not contend that the award was procured by fraud, collusion or other similar and unlawful means.

- A. *The Arbitrator did not exceed his authority by not requiring a written determination after the PIPs, or by allowing the extension of the 2012 PIP and letters of direction as prior disciplinary actions.*

An arbitrator derives his jurisdiction from the collective bargaining agreement and any applicable statutory or regulatory provision.<sup>19</sup> The question of when an arbitrator's award is within that jurisdiction was "addressed in *Steel Workers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 597 (1960), wherein the Court stated that the test is whether the Award draws its essence from the collective bargaining agreement."<sup>20</sup> The Board has held that when determining whether an award draws its essence from the CBA the Board will ask, "Did the arbitrator act "outside his authority" by resolving a dispute not committed to arbitration? Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award? And in resolving any legal or factual disputes in the case, was the arbitrator "arguably construing or applying the contract?"<sup>21</sup> In this case, the arbitrator did not offend any of these requirements, so there is no basis for judicial intervention.

AFGE makes much of the fact that the arbitrator did not put more significance on the fact that DC Water did not produce written determinations after the PIPs, especially the 2012 PIP. As

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<sup>18</sup> *University of the District of Columbia v. PERB*, 2012 CA 8393 P (MPA) (2014).

<sup>19</sup> *D.C. Water & Sewer Auth. v. AFSCME, Local 2091*, Slip Op. No. 1276 at 3, PERB Case No. 04-A-24 (June 12, 2012).

<sup>20</sup> *D.C. Pub. Schs. v. AFSCME, District Council 20 (on behalf of Johnson)*, 34 D.C. Reg. 3610, Slip Op. No. 156 at 5, PERB Case No. 86-A-05 (1987).

<sup>21</sup> *D.C. Dep't of Corrections v. Fraternal Order of Police/Dep't of Corrections Labor Committee* 60 D.C. Reg. 7185, Slip Op. No. 1380 at 2, PERB Case No. 10-A-03 (April 30, 2013).



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the arbitrator points out, this argument was raised in an untimely fashion because it was not part of the original grievance and was not raised until the arbitration hearing.<sup>22</sup> The CBA prohibits amending a grievance, and “it is a general rule of arbitration that parties are considered to waive matters not raised before the hearing.”<sup>23</sup> The arbitrator further stated that even if AFGE had raised the issue of the written determination in a timely fashion the result would be the same. The purpose of the written determination after a PIP is to apprise the employee of his or her progress in curing the behavior that made the PIP necessary. In this case, the Grievant was made fully aware of the necessity of improving his performance consistently and in a number of ways. There was regular counseling by supervisors, several letters of direction, and the extension of the 2013 PIP, of which AFGE complained, should have made clear to Grievant that his progress in the first 2013 PIP was not satisfactory.

It is clear that the Arbitrator’s Award drew its essence from the CBA. Also, AFGE sought to attribute significance to the fact that DC Water did not produce written determinations after the PIPs. But aside from the fact that issue was not raised until the hearing, the purpose of the written determinations was accomplished by the regular communications supervisors had with Grievant about his job performance, including that his actions could result in termination. Therefore, we find that the Arbitrator did not exceed his authority in his determination of the Award.

*B. The Award is not contrary to law and public policy.*

A petitioner claiming that an arbitration award is contrary to law and public policy has the burden to specify applicable law and definite public policy that mandate that the arbitrator arrive at a different result.<sup>24</sup> The Board’s scope of review, particularly concerning the public policy exception, is extremely narrow. To justify judicial intervention, a petitioner must demonstrate that the arbitration award “compels” the violation of an explicit, well-defined, and dominant public policy grounded in law or legal precedent and not from general considerations of supposed public interest.<sup>25</sup> Furthermore, the petitioning party has the burden to specify the “applicable law and definite public policy that mandate that the Arbitrator arrive at a different

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<sup>22</sup> Award at 6.

<sup>23</sup> *Id.*

<sup>24</sup> *Univ. of the Dist. Of Columbia. v. Am. Fed’n of State, County and Mun. Employees, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. No. 1333 at 3, PERB Case No. 12-A-01(2012), cited in *Dist. Of Columbia Dep’t of Corrections v. Fraternal Order of Police/Dep’t of Corrections Labor Committee*, DC Reg. 7185 (2013), Slip Op. No. 1380, PERB Case No. 10-A-03 (April 30, 2013).

<sup>25</sup> See *United Paperworkers Int’l Union, AFL-CIO v. Misco, Inc.*, 484 US 29, 126 LRRM 3113 (1987).

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result.”<sup>26</sup> Absent a clear violation of law evident on the face of the arbitrator’s award, the Board lacks authority to substitute its judgment for that of the arbitrator.<sup>27</sup>

By submitting a grievance to arbitration, “the parties agree to be bound by the Arbitrator’s interpretation of the parties’ agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based.”<sup>28</sup> The Board has held that a mere “disagreement with the Arbitrator’s interpretation ... does not make the award contrary to law and public policy.”<sup>29</sup> In the instant case, AFGE has failed to specify applicable law and definite public policy that mandates the Arbitrator arrive at a different result.

To support its contention that the Arbitrator’s award should be overturned because it violates law and public policy, AFGE cites *Payne v. Metro. Police Dep’t*,<sup>30</sup> and *Stokes v. District of Columbia*.<sup>31</sup> Neither of these cases stands for the propositions that AFGE suggests. *Payne* makes no reference to Table of Penalties, *Douglas* factors or “a clear error in judgment,” as asserted by AFGE. In citing *Stokes*, AFGE mistook the holding to apply to an arbitrator. It did not. In fact, the D.C. Court of Appeals, in that case, upheld an agency’s dismissal of an employee stating that the Office of Employee Appeals was arbitrary and capricious when it overturned the agency’s decision. *Stokes* is not the correct standard to apply to an arbitrator’s review of agency decisions because the parties agreed to submit this case to arbitration. Further, the Superior Court of the District of Columbia has recently held in *MPD v. PERB* that “PERB reasonably found that [the Arbitrator] was not bound by the standards that apply to OEA’s review of agency decisions set forth in *Stokes*.” In that case, the Court upheld a PERB decision that affirmed an arbitrator’s finding reducing a police officer’s penalty from termination to a thirty day suspension.<sup>32</sup>

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<sup>26</sup> *District of Columbia Metro. Police Dep’t and Fraternal Order of Police/Metro. Police Dep’t Labor Committee*, 59 D.C. Reg. 11329, Slip Op. No. 1295, PERB Case No. 09-A-11 (2012). *Metro. Police Dep’t and Fraternal Order of Police/Metro. Police Dep’t Labor Committee*, 47 DC Reg. 717, Slip Op. No. 633 at 2, PERB Case No. 00-A-04 (2000); see also *District of Columbia Public Schools and American Fed’n of State, County and Municipal Employees, District Council 20*, 34 DC Reg. 3610, Slip Op. No. 156 at 6, PERB Case No. 86-A-05 (1987).

<sup>27</sup> *Fraternal Order of Police/Dep’t Of Corrections Labor Committee v. PERB*, 973 A.2d 174, 177 (D.C. 2009).

<sup>28</sup> *District of Columbia Metro. Police Dep’t v. Fraternal Order of Police/Metro. Police Dep’t Labor Comm.*, 47 DC Reg. 7217, Slip Op. No. 633 at 3, PERB Case No. 00-A-04 (2000); *District of Columbia Metro. Police Dep’t and Fraternal Order of Police/Metro. Police Dep’t Labor Comm. (Grievance of Angela Fisher)*, 51 DC Reg. 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

<sup>29</sup> *District of Columbia Metro. Police Dep’t v. Fraternal Order of Police/Metro. Police Dep’t Labor Committee*, Slip Op. No. 933, PERB Case No. 07-A-08 (2008); see also *District of Columbia Metro. Police Dep’t v. Fraternal Order of Police/Metro. Police Dep’t Labor Committee (on behalf of Thomas Pair)*, 61 D.C. Reg. 11609, Slip Op. No. 1487 at 7-8, PERB Case No. 09-A-05 (2014) and *Metro. Police Dep’t v. Fraternal Order of Police/Metro. Police Dep’t Labor Comm.*, 31 DC Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A-05 (1984).

<sup>30</sup> OEA Matter No. 1601-0054-01 (2005).

<sup>31</sup> 502 A.2d 1006, 1010-11 (1985).

<sup>32</sup> *District of Columbia Metro. Police Dep’t v. District of Columbia Public Employee Relations Board*, 2014 CA 007679 P(MPA) (December 16, 2015).

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As the Court of Appeals has stated, the Board must “not be led by our own (or anyone else’s) concept of ‘public policy’ no matter how tempting such a course might be in any particular factual setting.”<sup>33</sup> In the absence of a clear violation of law and public policy apparent on the face of the Award, the Board may not modify or set aside the Award as contrary to law and public policy. AFGE has offered no such clear violation of law and public policy. Therefore, AFGE’s allegation must be dismissed.

### III. Conclusion

The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law, and concludes that the Arbitrator did not exceed his authority and the Award, on its face is not contrary to law and public policy. The Board finds that the Arbitrator’s conclusion is based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law and public policy. For the reasons discussed, no statutory basis exists for setting aside the Award. The Arbitration Review Request is hereby denied.

### ORDER

#### IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, AFL-CIO, Local 872 Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Chairman Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, and Member Keith Washington.

Washington, D.C.

February 18, 2016

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<sup>33</sup> *District of Columbia Dep’t of Corrections v. Teamsters Union Local 246*, 54 A.2d 319, 325 (D.C. 1989).

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 15-A-09, Opinion No. 1566, was served by File & ServXpress on the following parties on this the 29<sup>th</sup> day of February, 2016.

Marc L. Wilhite  
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/s/ Sheryl Harrington

PERB

Government of the District of Columbia  
Public Employee Relations Board

<hr/>		)	
In the Matter of:		)	
		)	
Kenneth W. Johnson		)	
		)	
Complainant,		)	PERB Case No. 15-U-40
	v.	)	Opinion No. 1567
		)	Motion for Reconsideration
District of Columbia Government		)	
and		)	
D.C. Metropolitan Police Department		)	
		)	
Respondents.		)	
<hr/>		)	

**DECISION AND ORDER**

**I. Statement of the Case**

On a Motion for Reconsideration (“Motion”), Kenneth W. Johnson (“Complainant”) appeals to the Board an Executive Director’s Administrative Dismissal (“Administrative Dismissal”) of an unfair labor practice complaint (“Complaint”)<sup>1</sup>, pursuant to Board Rule 500.4. By a letter dated October 9, 2015, the Executive Director dismissed the Complaint for untimeliness and failure to state a violation under the CMPA. The Complainant filed the Motion on the grounds that the Executive Director erred in finding that the Complaint was untimely and that he was not reinstated for discriminatory reasons.<sup>2</sup> On February 17, 2016, Complainant filed a Motion For Brief Stay. Both the Motion for Reconsideration and the Motion to Stay are before the Board for disposition.

<sup>1</sup> The Complaint alleged a “violation of Title 7 of the United States Code of Law” and that he was subjected to discriminatory treatment when he was refused reinstatement that was given to 217 other police officers.

<sup>2</sup> Complainant originally filed and proceeded in this case *pro se*. Complainant’s Motion for Reconsideration was filed on November 9, 2015. On December 4, 2015, Complainant’s newly retained counsel filed an Entry of Appearance and Motion for Leave to Supplement Pending Reconsideration Motion. Because the Complainant had previously proceeded *pro se*, the Executive Director granted the extension until January 15, 2016. On January 15, 2016, Petitioner’s Motion for Reconsideration was filed and received as a supplement to Complainant’s original Motion for Reconsideration.

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For the following reasons, the Board denies the Motion for Reconsideration and the Motion for a Brief Stay, and dismisses the Complaint.

## II. Facts

Complainant was employed as a police officer by the District of Columbia Metropolitan Police Department (“MPD”) from November 20, 1989 until November 6, 1996.<sup>3</sup> No details were provided about when or under what circumstances he was terminated. Reference was made in the Complaint to a May 20, 2008 *Washington Post* article that mentioned 217 police officers who were ordered to be reinstated after having been terminated for misconduct. According to the article, D.C. Superior Court judges or arbitrators ruling on PERB cases ordered the reinstatements after MPD exceeded the 55 day limit to notify officers who were under investigation of the charges against them.<sup>4</sup> It was not until May 18, 2015 that Complainant asked MPD for a “trial board hearing for reinstatement.” That request was denied on May 27, 2015, because it was “not supported by any facts, circumstances, or other evidence” to support an Adverse Action Hearing by MPD.<sup>5</sup>

## III. Discussion

It is well settled that a mere disagreement with the Executive Director’s decision is not a valid basis for the Board to grant a motion for reconsideration.<sup>6</sup> Moreover, the Board will not grant a motion for reconsideration that does not assert any legal grounds that would compel overturning an Executive Director’s dismissal.<sup>7</sup> The Board will uphold an Executive Director’s dismissal where the decision is reasonable and supported by PERB precedent.<sup>8</sup>

### A. The Complaint was untimely filed.

Board Rule 520.4 states that “Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred.” The Complaint was filed on September 2, 2015. The Motion states that the operative date for the alleged unfair labor practice should be May 27, 2015, when complainant was refused reinstatement by MPD. However, that request for reinstatement was filed with MPD on May 18, 2015. Complainant’s last day of employment with MPD was November 6, 1996. Thus, it appears the Complainant sought to extend the 120 day period by waiting almost 19 years before applying for reinstatement. If complainant believed that he was unjustly terminated, he should have filed the unfair labor practice complaint within 120 days of being terminated.<sup>9</sup>

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<sup>3</sup> Complaint at 2, paragraph 2.

<sup>4</sup> Exhibit 1 to the Complaint. Allison Klein, 17 Officers Fired for Misconduct Reinstated, *Wash. Post*, May 20, 2008.

<sup>5</sup> Exhibit 2 to the Complaint.

<sup>6</sup> *Marcus Steele v. AFGE Local 383*, 61 DCR 12373 (2014), Slip Op. No. 1492, PERB Case No. 14-U-16 (2014).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> PERB Rule 520.4.

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Included with the Complaint was a May 20, 2008 newspaper article stating that MPD was forced to rehire 17 officers because the department missed critical deadlines for taking action during disciplinary proceedings. The Complainant even stated, "I was subjected to discriminatory treatment when I was refused reinstatement that was formerly given to 217 other police officer [sic]."<sup>10</sup> If the Complainant believed that his case was the same as those rehired officers he should have filed for reinstatement or the unfair labor practice complaint in 2008 upon learning that he may have been treated differently from other officers. It is not reasonable to wait almost 19 years before seeking reinstatement with MPD or filing the Complaint.

B. There was no clear cause of action stated in the complaint.

Board Rule 520.3(d) requires, "A clear and complete statement of the facts constituting the alleged unfair labor practice, including the date, time and place of occurrence of each particular act alleged, and the manner in which D.C. Official Code § 1-617.04 (2001 ed.) of the CMPA is alleged to have been violated." The Complaint fails to state a claim under the CMPA. The Complaint does not allege any unlawful conduct by MPD. It states no facts about complainant's termination from employment with MPD in relation to the reinstated officers, or that he possessed the same qualifications for reinstatement as the other officers. Merely stating, he and others were terminated and some were reinstated while he was not, is not a clear and complete statement as required under Rule 520.3. The Complaint does not even allege that an unfair labor practice was committed, as is required under PERB Rule 520.3(d) for the Board to be authorized to consider the matter.

C. New argument cannot be filed in the Motion for Reconsideration.

In the supplement to his motion for reconsideration, complainant raises new arguments, namely that MPD violated the 55-day rule found in the operative Collective Bargaining Agreement ("CBA") and violated the 90-day rule of D.C. Official Code § 5-1031. The Complainant, therefore, believes that MPD has committed continuing violations by not abiding by these rules. "This Board has found that we 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 afforded time."<sup>11</sup> Consistent with the Board's ruling in the *Lane* case, we will only consider evidence previously submitted and will not consider new evidence that was not before the Executive Director, as a basis for reversing the Executive Director's determination."<sup>12</sup> Similarly, the Board will not consider new arguments that are raised in the motion for reconsideration.<sup>13</sup>

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<sup>10</sup> Complaint at 1.

<sup>11</sup> *Lane v. University of the District of Columbia*, Slip Op. No. 862 at p. 4, PERB Case No. 03-U-45( 2002).

<sup>12</sup> *Horace Lomax v. Int'l Bhd. Of Teamsters, Local Union 639*, 59 DC Reg. 4611 (2012), Slip Op. No. 942, PERB Case No. 08-U-17 (April 30, 2008).

<sup>13</sup> *Am. Fed'n of Gov't Employees, Local 1547 and U.S. Dep't of the Air Force Like Air Force Base*, 68 F.L.R.A. 557, 68 FLRA No. 92. See also *Dyson v. DC*, 710 F.3d 415 (February 5, 2013) and *Pearson v. Thompson*, 141 F.Supp.2d 105 (May 9, 2001).

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D. Motion for Brief Stay is denied.

On February 17, 2016, Complainant filed a Motion For Brief Stay of fourteen (14) days. The request was for Complainant to supplement his pending Motion for Reconsideration with information being sought from the D. C. Office of Human Rights. That information should have been submitted previously. As stated above, the Board will not consider new arguments or evidence in a motion for reconsideration.<sup>14</sup> Moreover, in this case, the Complainant filed a motion for reconsideration on November 9, 2015. Despite being given until January 15, 2016 to supplement his motion for reconsideration, the Complainant waited until February 17, 2016 to request a second extension to add more evidence and arguments to his motion. We find such a delay, under the circumstances as unreasonable. Consequently, the Motion to Stay is denied.

#### IV. Conclusion

The Board finds that complainant's Motion for Reconsideration fails to assert any legal grounds that compel the Board to overturn the Executive Director's decision and is nothing more than a mere disagreement with the Executive Director's decision to dismiss the Complaint. The decision was reasonable and supported by the record. Both the Motion for Reconsideration and the Motion to Stay are denied.

### ORDER

#### IT IS HEREBY ORDERED THAT:

1. Complainant's Motion for Reconsideration is denied.
2. Complainant's Motion for Brief Stay is denied.
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 Chairman Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, and Member Keith Washington.

Washington, D.C.

February 18, 2016

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<sup>14</sup> Id. and *Horace Lomax v. Int'l Bhd. Of Teamsters, Local Union 639*, 59 DC Reg. 4611 (2012), Slip Op. No. 942, PERB Case No. 08-U-17 (April 30, 2008). See also, *Lane v. University of the District of Columbia*, Slip Op. No. 862 at p. 4, PERB Case No. 03-U-45( 2002).



**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 15-A-09, Opinion No. 1567, was served by File & ServXpress on the following parties on this the 29<sup>th</sup> day of February, 2016.

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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,
v.
District of Columbia
Metropolitan Police Department,
Respondent.
PERB Case No. 09-U-37
Opinion No. 1568

DECISION AND ORDER

I. Statement of the Case

On June 9, 2010, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complainant" or "FOP") filed an Unfair Labor Practice Complaint ("Complaint") against the Metropolitan Police Department ("MPD"),<sup>1</sup> alleging that MPD violated D.C. Official Code § 1-617.04(a)(1) and (5), by refusing to provide information requested by a union representative.<sup>2</sup>

MPD filed an Answer, requesting that the Board dismiss the Complaint; because (1) "Respondent has not committed an unfair labor practice, and (2) "there is no evidence of the

1 The Executive Director has removed the name of an individual respondent from the caption, consistent with the Board's precedent that suits against District officials in their official capacities should be treated as suits against the District. See Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 4-5, PERB Case No. 08-U-19 (2011). The D.C. Superior Court upheld the Board's dismissal of such respondents in Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Public Employee Relations Board, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013).

2 Complaint at 4-5.

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commission of an unfair labor practice....”<sup>3</sup> In Opinion No. 1116, the Board denied MPD’s request to dismiss the Complaint, finding that material issues of fact existed concerning whether MPD committed an unfair labor practice.<sup>4</sup> The Board referred the matter to an unfair labor practice hearing.

MPD filed a Motion for Reconsideration (“Motion”), which was opposed by FOP. An unfair labor practice hearing was scheduled without resolution of the Motion. Prior to the hearing, MPD filed an Amended Answer. A hearing was conducted and a Hearing Examiner’s Report and Recommendation (“Report and Recommendation”) was submitted to the Board. Following a hearing conducted on October 25, 2011, and briefing by the parties, the Hearing Examiner submitted her Report and Recommendation, finding that MPD had committed unfair labor practices in violation of D.C. Official Code § 1-617.04(a)(1) and (5). MPD submitted Exceptions to the Report and Recommendation, and FOP submitted an opposition to MPD’s Exceptions.

## **II. Hearing Examiner’s Report and Recommendations**

### **A. Factual Background**

The Hearing Examiner conducted a hearing and made the following factual determinations. On February 10, 2009, a bargaining unit employee appeared for an Internal Affairs Division (“IAD) interview. FOP’s Chief Shop Steward for the Special Operations Division (“Chief Shop Steward”) represented the employee (“Employee”). At the beginning of the interview, the Chief Shop Steward requested more information about the allegations against the Employee. The interviewing agent responded that the allegation regarded “sexual harassment.”<sup>5</sup> When the Chief Shop Steward asked for additional information about the allegation, the interviewing agent terminated the interview. As the interview ended, the interviewing agent told the Employee “to get another union steward” and replace the Chief Shop Steward as his representative.<sup>6</sup>

On February 11, 2009, the Chief Shop Steward requested the tape recording of the February 10, 2009 interview; “good cause documents,” relating to the issue of “good cause” for the removal of the Chief Shop Steward as the Employee’s representative; and “IAD Standards and Practices,” regarding the “removal of FOP Union representatives from administrative interviews” when attending in their representational capacities.<sup>7</sup> The information request was titled “Release of Information request pursuant to Article 10 of the Collective Bargaining Agreement,” which was sent to the IAD Director.<sup>8</sup> The information request stated that “the requested information was necessary for the proper administration of terms of the parties’

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<sup>3</sup> Answer at 4.

<sup>4</sup> *FOP/MPD Labor Committee v. MPD*, 59 D.C. Reg. 6568, Slip Op. No. 1116 at 5, PERB Case No. 09-U-37 (2012).

<sup>5</sup> Report and Recommendation at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

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collective bargaining agreement and that the request was being made pursuant to D.C. Official Code § 1-617.04(a)(5) as well as Article 10 of the parties' agreement."<sup>9</sup>

MPD denied FOP's information request. MPD asserted that FOP was entitled to the tape during an ongoing investigation, and that the tape would only be released after the end of the investigation, if the tape was relied upon for proposing action against a bargaining unit employee. MPD also responded that "good cause" removal of a representative was covered by the CBA and did not require MPD to provide the reason for "good cause."<sup>10</sup> MPD asserted that the CBA does not guarantee that IAD standards and practices must be provided as related to removing FOP representatives from administrative interviews.

On February 24, 2009, the Chief Shop Steward sent an information request for a February 6, 2009 taped interview. The information request "stated documents were being requested pursuant to both D.C. Code § 1-617.04(a)(5)(CMPA) and Article 10 of the parties' collective bargaining agreement" and that the information was necessary for administration of the CBA.<sup>11</sup>

MPD denied the February 24, 2009 information request, asserting that the contract barred disclosure of the tape, because the Chief Shop Steward was interviewed as a witness and that it would not be used for proposing action against him.<sup>12</sup>

The Hearing Examiner noted that the Union had a number of grievances concerning the interviewing agents in the February 6 and 10, 2009 interviews, prior to the Chief Shop Steward's removal as a representative.<sup>13</sup> At the time of the hearing, the tape recorded interviews and requested documents had not been provided to FOP.<sup>14</sup>

## **B. Hearing Examiner's Recommendations**

The Hearing Examiner found that the Board has subject matter jurisdiction over the Complaint, because the inclusion of Article 10 of the parties' CBA concerning information requests did not preclude a finding of a statutory violation of the CMPA. The Hearing Examiner rejected MPD's argument that the information was not "relevant and necessary" for either processing a grievance, engaging in or preparing for an arbitration hearing, or collective bargaining.<sup>15</sup> The Hearing Examiner determined that FOP did not have to file a grievance in order to assert that the information was necessary and relevant, because FOP had a right to gather information to frame grievance issues and to determine the likelihood of success for a grievance.<sup>16</sup> The Hearing Examiner found that FOP's information requests were relevant and necessary to collective bargaining.

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<sup>9</sup> *Id.*

<sup>10</sup> Report and Recommendation at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 28 – 30.

<sup>16</sup> *Id.* at 29.

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### III. Analysis

#### A. Subject matter jurisdiction

MPD filed a Motion for Reconsideration, asserting that the Board does not have subject matter jurisdiction to consider the allegations in the Complaint, because provisions of the parties' CBA controls the information requests.<sup>17</sup> MPD notes in its Motion that it did not file a Motion to Dismiss, and that the Board construed a portion of its Answer as a Motion to Dismiss.<sup>18</sup> FOP opposed the Motion, asserting that information requests were not strictly contractual in nature<sup>19</sup>. MPD requested in its Motion that its jurisdiction argument be considered by the Board. Additionally, in its Exceptions, MPD also excepted to the Hearing Examiner's findings on the issue of subject matter jurisdiction. The Board has held that a subject matter jurisdiction argument may be raised at any time.<sup>20</sup> Therefore, the Board will consider MPD's argument that the Board lacks subject matter jurisdiction, because the information requests were covered by the parties' collective bargaining agreement ("CBA").<sup>21</sup>

The Board has held that an agency has an obligation to furnish information that a union requests that is both relevant and necessary to the union's role in processing of a grievance, an arbitration proceeding, or in collective bargaining.<sup>22</sup> Notwithstanding, the Board has held that it "distinguishes between those obligations that are statutorily imposed under the CMPA and those that are contractually agreed upon between the parties."<sup>23</sup> The Board's authority only extends to resolving statutorily based obligations under the CMPA.<sup>24</sup> The Board examines the particular record of a matter to determine if the facts concern a violation of the CMPA, notwithstanding the characterization of the dispute in the complaint or the parties' disagreement over the application of the collective bargaining agreement.<sup>25</sup>

The answer to "the key question" of "whether an interpretation of a contractual obligation is necessary and appropriate to a determination of whether or not a non-contractual, statutory violation has been committed" depends upon the facts and circumstances of the individual case.<sup>26</sup> For example, the Board has held in document request cases that if the allegations made in the complaint concern statutory violations, the Board is empowered to decide whether a response to

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<sup>17</sup> Motion at 4 (citing Article 10 and 19 of the parties' CBA).

<sup>18</sup> *Id.*

<sup>19</sup> Opposition to Motion at 4.

<sup>20</sup> *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C Metropolitan Police Dep't*, 60 D.C. Reg. 5322, Slip Op. No. 1372 at p. 2-3, PERB Case No. 11-U-52 (2013). See also *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C Metropolitan Police Dep't.*, Slip Op. No. 1391, PERB Case Nos. 09-U-41, et al. (2013).

<sup>21</sup> Motion at 4-7.

<sup>22</sup> *Washington Teachers' Union, Local No. 6 v. D.C. Pub. Sch.*, 61 D.C. Reg. 1537, Slip Op. No. 1448 at 4, PERB Case No. 04-U-25 (2014).

<sup>23</sup> *American Federation of State, County and Municipal Employees, D. C. Council 20, Local 2921, AFL-CIO v. District of Columbia Public Schools*, 42 D.C. Reg. 5685, Slip Op. No. 339, PERB Case No. 92-U-08 (1992).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

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a document request was an unfair labor practice, even though the document request was made pursuant to a contractual provision. Through this precedent, the Board examines each of the different types of requested information.<sup>27</sup>

*1. Taped interviews*

FOP requested copies of tapes from the February 6 and February 11, 2009 interviews. MPD denied these requests, asserting that release of these tapes was governed by Article 13, Section 9 of the parties' CBA. Article 13, Section 9 states:

When, in the judgment of the Department, an administrative interview is to be recorded, all portions of the administrative interview shall be recorded with proper notations as to when rest breaks and off-the-record discussions began and ended.

If a recording device is used, a copy of the tape shall be made available to the Union at its request and at its expense if the copy is relied upon in proposing action against the member.

Before the Hearing Examiner, MPD asserted that this contract provision controls the information requests regarding the interview tapes.<sup>28</sup>

The Hearing Examiner rejected MPD's arguments and found that the information was necessary and relevant to FOP's duties concerning administration of the contract and that MPD's denial of the requested tapes interfered with FOP's statutory rights.<sup>29</sup> The Hearing Examiner did not address MPD's argument that release of the interview tapes was governed by Article 13, Section 9 of the parties' CBA.

The Board has found that where the contract dictates the obligation to furnish a specific type of information in a particular manner, the information request is controlled by the contract.<sup>30</sup> In the present case, the parties' CBA dictates the handling of taped interviews. The Board would need to interpret the contract in order to determine whether the parties had agreed that MPD would only be obliged to provide the requested information in the circumstances set forth in the agreement. If the Board must interpret the parties' collective bargaining agreement in order to determine whether there has been a violation of the CMAA, then the Board does not have

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<sup>27</sup> The Board notes that MPD has asserted that the Board lacks jurisdiction over information requests, pursuant to Article 10 of its CBA. The Board has rejected that this provision governs all information requests between the parties. See, e.g., *FOP/MPD Labor Committee v. MPD*, Slip Op. No. 1302, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16 (2012).

<sup>28</sup> Report and Recommendation at 10, 19.

<sup>29</sup> *Id.* at 26-30.

<sup>30</sup> See *AFSCME, D.C. Council 20, Local 2921 v. District of Columbia Public Schools*, 42 D.C. Reg. 5685, Slip Op. No. 339 at p. 5, PERB Case No. 92-U-08 (1992)(The Board held that it did not have jurisdiction to consider a complaint regarding an agency's failure to provide the union with a step 3 grievance decision on the grounds that the obligation to furnish that information was dictated by the collective bargaining agreement.)

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jurisdiction over the allegations and will defer the matter to the parties' negotiated grievance and arbitration process.<sup>31</sup>

As stated above, the Hearing Examiner's analysis did not consider MPD's argument that Article 13, Section 9 of the parties' CBA controlled the release of information in this case. The Hearing Examiner rejected MPD's argument without discussion, and only considered whether the information request for the interview tapes was relevant and necessary to FOP's duties as exclusive representative.<sup>32</sup> The Board finds that the request for the interview tapes is arguably controlled by Article 13, Section 9, and that the Hearing Examiner erred in failing to consider MPD's argument to that effect. As the Board does not have jurisdiction over those requests, the Board grants MPD's Motion and rejects the Hearing Examiner's conclusions regarding the information requests concerning the taped interviews. The Board dismisses this portion of the Complaint.

2. *Documents regarding "good cause" removal and IAD standards*

MPD argued before the Hearing Examiner that Article 13, Section 3(a) governs the request for documents related to the removal of a union representative from an administrative interview.<sup>33</sup> This provision states:

A member's Union representative may be present at all administrative interview sessions under this Article, but may not answer questions on behalf of the employee. The Department reserves the right to refuse a particular Union representative for good cause, and the member to be interviewed shall then name an alternate representative.

The Hearing Examiner found that these documents constituted information that MPD was statutorily required to provide, because FOP needed the information in determining whether there was a breach of the parties' contract and that no contract interpretation was required to determine if the Union was requesting the information pursuant to its rights under the CMPA.<sup>34</sup> Unlike the provision that involves the release of the interview tapes, this provision does not concern the disclosure of documents related to the issue of good cause for refusing a particular steward. The Board finds that it need not engage in contract interpretation to determine whether a statutory violation has occurred.<sup>35</sup> The Board finds that it has subject matter jurisdiction over the requests for documents regarding "good cause" removal of a union representative and IAD policies and standards.

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<sup>31</sup> *FOP/MPD Labor Committee v. MPD*, Slip Op. No. 1534, PERB Case No. 08-U-22 (2015).

<sup>32</sup> Report and Recommendation at 21.

<sup>33</sup> *Id.* at 19.

<sup>34</sup> *Id.* at 22-23.

<sup>35</sup> *Id.*

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## B. Information is relevant and necessary

MPD argues that “the relevant case on this issue requires that the information be needed for either processing a grievance, an arbitration proceeding, or collective bargaining and not the generalized statement of ‘contract administration.’”<sup>36</sup> MPD asserts that the way in which FOP requested the information did not place MPD on notice that it was intended for grievance processing.<sup>37</sup> MPD disputes that FOP’s request for the documents as “information necessary for the proper administration of the Agreement” placed it on notice that the information was necessary for a grievance, arbitration, or collective bargaining.<sup>38</sup> Additionally, MPD asserts that FOP did not include in its ULP Complaint FOP’s justification for seeking the information.<sup>39</sup>

Notwithstanding MPD’s Exceptions, FOP’s Complaint stated that “[t]he requested information was, and remains necessary for the Union to conduct its business.”<sup>40</sup> The Board finds that the Complaint put MPD on sufficient notice that FOP was asserting that MPD denied it relevant and necessary information for conducting its functions under D.C. Official Code § 1-617.04(a)(1) and (5).<sup>41</sup>

As for MPD’s claim that FOP did not adequately place MPD on notice concerning the requested information, the Hearing Examiner found that the February 11, 2009 information request “unequivocally stated the Union wanted to examine the records and policies affecting their members.”<sup>42</sup> MPD’s arguments are factual in nature, and do not present a basis for reversing or modifying the Hearing Examiner’s conclusions.<sup>43</sup> The Board has stated, “Challenges to evidentiary findings do not give rise to a proper exception where, as here, the record contains evidence supporting the Hearing Examiner’s findings.”<sup>44</sup> Because the Hearing Examiner fully considered all relevant issues of fact and law in his Report and Recommendation, the Board finds his ruling fully supported by the record. The Board has ‘previously stated that the relative weight and veracity accorded both testimonial and documentary evidence are for the Hearing Examiner to decide . . .’<sup>45</sup>

The Hearing Examiner found that the information requested was relevant and necessary for the Union to evaluate whether a cause of action existed and whether sufficient facts existed to

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<sup>36</sup> Exceptions at 11-12.

<sup>37</sup> *Id.* at 12.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Complaint at 5.

<sup>41</sup> *See id.*

<sup>42</sup> Report and Recommendation at 27.

<sup>43</sup> Slip Op. No. 1302.

<sup>44</sup> *Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02. (1998). *See also American Federation of Government Employees, Local 872 v. D.C. Department of Public Works*, 38 D.C. Reg. 6693, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-01, 89-U-16, 89-U-18 and 90-U-04 (1991).

<sup>45</sup> *AFGE, Local 874 v. D.C. Department of Public Works*, 38 D.C. Reg. 6693, Slip Op. No. 266 at p.3, PERB Case Nos. 89-U-15, 89-U-18 and 90-U-04 (1991).



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file a grievance.<sup>46</sup> Processing a grievance encompasses information gathering to determine how to proceed with a potential grievance and the merits of that potential grievance and the extent to which the contract has been breached.<sup>47</sup> In the present case, FOP would be unable to determine whether the “good cause” provision of the parties’ CBA was being violated without the information requested.

The Board finds that the Hearing Examiner’s determination was reasonable, supported by the record, and consistent with Board precedent. The Board finds that MPD has not presented a viable defense for its refusal to provide the requested information concerning the denial of the requested steward and finds MPD’s conduct to be a violation of D.C. Official Code § 1-617.04(a)(1) and (5).<sup>48</sup> The Board adopts the Hearing Examiner’s finding and conclusions that MPD’s failure to provide the requested information is without merit and in violation of the CMPA. The Board rejects MPD’s Exceptions for the documents related to the “good cause” removal of a union representative and IAD policies and standards.

#### **IV. Conclusion**

The Board finds that it does not have jurisdiction over the information request for the interview tapes. The Board adopts the findings and recommendations of the Hearing Examiner regarding the documents related to the “good cause” removal of a union representative and the policies and standards for removal by the IAD.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. MPD’s Motion for Reconsideration is granted, in part, and denied, in part.
2. The Complaint is dismissed with prejudice with respect to the allegations related to the interview tapes.
3. FOP’s Complaint is granted for the allegations regarding the requested information concerning “good cause” removal of union representatives and IAD’s policies and standards for making those determinations.
4. MPD will cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing to respond to the Complainant’s February 11, 2009 information request, regarding the requested information concerning good cause removal of union representatives and IAD’s policies and standards for making those determinations.

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<sup>46</sup> Report and Recommendation at 29.

<sup>47</sup> See *Conrock Co. & Building Material & Dump Truck Drivers, Local 420, 263 NLRB 1293, 1294* (1982)(stating “It is well settled that an employer has an obligation, as part of its duty to bargain in good faith, to provide information needed by a union to enforce and administer a collective-bargaining agreement. An employer must furnish information that is of even probable or potential relevance to the union’s duties.”).

<sup>48</sup> See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 3386, Slip Op. 835, PERB Case No. 06-U-10 (2012).

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5. MPD shall provide the requested information to the Complainant within fourteen (14) days from the issuance of this Decision and Order.
6. MPD shall conspicuously post within fourteen (14) days from the issuance of this Decision and Order the attached Notice where notices to bargaining unit members are normally posted. The Notice shall remain posted for thirty (30) consecutive days.
7. MPD shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the issuance of this Decision and Order that the information has been provided and Notice has been posted.
8. 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.

February 18, 2016

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-37 was served to the following parties via File & ServeXpress on this the 2nd day of March 2016. The Notice for posting was served via U.S. Mail.

Mark Viehmeyer, Esq.  
Nicole Lynch, Esq.  
Metropolitan Police Department  
300 Indiana Ave., NW  
Room 4126  
Washington, D.C. 20005

Marc Wilhite, Esq.  
Pressler & Senftle, P.C.  
1432 K Street, NW  
Twelfth Floor  
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/s/Pat Waller  
Pat Waller  
Public Employee Relations Board  
1100 4th Street, SW  
Suite E630  
Washington, D.C. 20024  
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Public Employee Relations Board



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# NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT, THIS NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN OPINION NO. 1568, PERB CASE NO. 09-U-37.

**WE HEREBY NOTIFY** our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered us to post this notice.

**WE SHALL** cease and desist from violating D.C. Official Code § 1-617.04(a) (1) and (5) by the actions and conduct set forth in Opinion No. 1568.

**WE SHALL** cease and desist from refusing to bargain in good faith by failing to provide certain information requested by the Fraternal Order of Police/Metropolitan Police Department Labor Committee in conjunction with the administration of the our collective bargaining agreement.

**WE SHALL NOT**, in any like or related manner (1) interfere with, restrain, coerce; or (2) take any reprisals against employees for exercising or pursuing their protected rights guaranteed by the Labor-Management Subchapter of the District of Columbia Comprehensive Merit Personnel Act.

District of Columbia Metropolitan Police Department

Date: \_\_\_\_\_ By: \_\_\_\_\_

Chief of Police or Designee

**This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.**

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4<sup>th</sup> Street SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

Washington, D.C.

March 2, 2016

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