

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council passes Law 21-105, Domestic Partnership Termination Recognition Amendment Act of 2015
- D.C. Council enacts Act 21-388, Made in DC Program Establishment Act of 2016
- D.C. Council schedules a public oversight hearing on “Lead Testing in Public Facilities”
- University of the District of Columbia adjusts tuition rates for degree-granting programs beginning in the fall semester of 2016
- Department of Energy and Environment solicits comments on the District of Columbia’s Draft Annual Ambient Air Monitoring Network Plan for 2017
- Department of Health announces funding availability for the IMPACT DMV HIV Program
- Department of Housing and Community Development announces funding availability for the Community Development Block Grant Program

# DISTRICT OF COLUMBIA REGISTER

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ADMINISTRATOR

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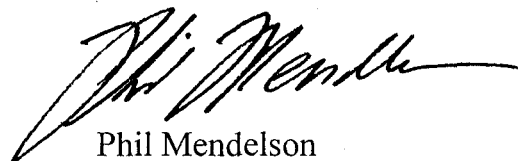
## NOTICE

## D.C. LAW 21-102

**"Chancellor of the District of Columbia Public  
Schools Salary and Benefits Approval  
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 21-595 on first and second readings February 2, 2016, and February 16, 2016, respectively. Following the signature of the Mayor on March 3, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-323 and was published in the March 11, 2016 edition of the D.C. Register (Vol. 63, page 3652). Act 21-323 was transmitted to Congress on March 9, 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 21-323 is now D.C. Law 21-102, effective April 20, 2016.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31
April	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19

## COUNCIL OF THE DISTRICT OF COLUMBIA

## NOTICE

## D.C. LAW 21-103

**"Protecting Pregnant Workers Fairness  
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 21-605 on first and second readings February 2, 2016, and February 16, 2016, respectively. Following the signature of the Mayor on March 3, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-324 and was published in the March 11, 2016 edition of the D.C. Register (Vol. 63, page 3654). Act 21-324 was transmitted to Congress on March 9, 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 21-324 is now D.C. Law 21-103, effective April 20, 2016.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31
April	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19

## COUNCIL OF THE DISTRICT OF COLUMBIA

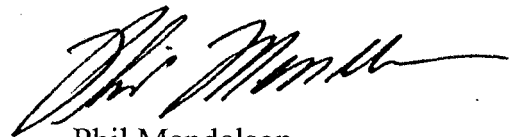
## NOTICE

## D.C. LAW 21-104

**"Marion S. Barry Summer Youth Employment  
Expansion 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 21-607 on first and second readings February 2, 2016, and February 16, 2016, respectively. Following the signature of the Mayor on March 3, 2016, as required by Section 404(e) of the Charter, the bill became Act 21-325 and was published in the March 11, 2016 edition of the D.C. Register (Vol. 63, page 3656). Act 21-325 was transmitted to Congress on March 9, 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 21-325 is now D.C. Law 21-104, effective April 20, 2016.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31
April	1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19

## COUNCIL OF THE DISTRICT OF COLUMBIA

## NOTICE

## D.C. LAW 21-105

**"Domestic Partnership Termination Recognition  
Amendment Act of 2015"**

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 21-199 on first and second readings November 3, 2015, and December 1, 2015, respectively. Following the signature of the Mayor on December 29, 2015, as required by Section 404(e) of the Charter, the bill became Act 21-248 and was published in the January 8, 2016 edition of the D.C. Register (Vol. 63, page 217). Act 21-248 was transmitted to Congress on January 8, 2016 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 21-248 is now D.C. Law 21-105, effective April 9, 2016.



Phil Mendelson  
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

January	8, 11, 12, 13, 14, 15, 19, 20, 21, 22, 25, 26, 27, 28, 29
February	1, 2, 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, 23, 24, 25, 28, 29, 30, 31
April	1, 4, 5, 6, 7, 8,

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AN ACT

**D.C. ACT 21-378**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend the Department of Transportation Establishment Act of 2002 to establish within the District Department of Transportation the Project Delivery Administration, the Operations Administration, the Administrative Administration, and the Performance Administration; to amend the District of Columbia Traffic Adjudication Act of 1978 to require the Department of Motor Vehicles to provide the Department of Public Works and the District Department of Transportation with monthly reports about parking infraction adjudication and to require the Mayor to provide the Council with a report and recommendation about the location of parking infraction adjudication; to establish the Transit Rider Advisory Council and the Multimodal Accessibility Advisory Council; to amend the District of Columbia Taxicab Commission Establishment Act of 1985 to alter the structure of the District of Columbia Taxicab Commission and rename it the Department of For-Hire Vehicles, and to establish the For-Hire Vehicle Advisory Council; and to amend the Confirmation Act of 1978, the Office of Administrative Hearings Establishment Act of 2001, Chapter 28 of Title 47 of the District of Columbia Official Code, the Employee Transportation Amendment Act of 2012, the Taxicab and Passenger Vehicle for Hire Impoundment Act of 1992, the Fiscal Year 1997 Budget Support Act of 1996, and the Non-Resident Taxi Drivers Registration Amendment Act of 2008 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Transportation Reorganization Amendment Act of 2016".

## TITLE I. DISTRICT DEPARTMENT OF TRANSPORTATION

Sec. 101. The Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.01 *et seq.*), is amended as follows:

(a) Section 4 (D.C. Official Code § 50-921.03) is amended to read as follows:

"Sec. 4. Organization.

"There is established within DDOT the following offices and divisions:

"(1) The Office of the Director, with subordinate staff responsible for:

"(A) Legal affairs;

"(B) Civil rights matters;

## ENROLLED ORIGINAL

“(C) Compliance with the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 327; 42 U.S.C. § 12101 *et seq.*);

“(D) Senior and elderly affairs; and

“(E) Policy and legislative affairs;

“(2) The Project Delivery Administration, with subordinate staff responsible for:

“(A) Design and engineering and related support;

“(B) Street and bridge construction project management and related

support;

“(C) Material inspection and testing;

“(D) Project materials specification review;

“(E) Construction project review and coordination;

“(F) Construction contract execution;

“(G) Intermodal planning;

“(H) State Transportation Environmental Compliance;

“(I) Project Identification and Development;

“(J) DC Circulator bus service;

“(K) DC Streetcar service;

“(L) Freight and passenger rail, to the extent such authority has been delegated or required by federal law;

“(M) Mass Transit Policy, with functions to include supporting the Washington Metropolitan Area Transit Authority (“WMATA”) Board members and acting as a liaison between WMATA and the District government on matters including:

“(i) Alternative transportation; and

“(ii) School transit subsidy; and

“(N) Traffic safety planning, engineering, and construction;

“(3) The Operations Administration, with subordinate staff responsible for:

“(A) Tree planting and maintenance;

“(B) Tree inventory management;

“(C) Public space permits and records;

“(D) Investigations and inspections relating to public space regulations;

“(E) Asset management;

“(F) Bridge and street maintenance;

“(G) Streetlight management;

“(H) Traffic operations and safety;

“(I) Transportation systems management;

“(J) Traffic sign fabrication and installation;

“(K) Concurrent with any other agency’s authority to do so, the enforcement of violations of motor vehicle parking offenses and violations of motor vehicle moving offenses, where necessary to manage the flow of traffic, respond to incidents, and manage special events;



## ENROLLED ORIGINAL

“(L) Parking, carsharing, tour bus, and motor carrier regulation, permitting, and operations; and

“(M) Advertisements on parking meters, including the back of receipts printed out by multi-space parking meters;

“(4) The Administrative Administration, with subordinate staff responsible for:

“(A) Human resources;

“(B) Workforce development;

“(C) Budget and financial services;

“(D) Financial planning and management; and

“(E) Contracting and procurement; and

“(5) The Performance Administration, with subordinate staff responsible for:

“(A) Coordinating and managing transportation system data;

“(B) Customer service;

“(C) Coordinating and managing the agency’s fleet, warehouses, and other facilities; and

“(D) Technology and information services.”.

(b) Section 5(a) (D.C. Official Code § 50-921.04(a)) is amended to read as follows:

“(a) The offices of DDOT shall plan, program, operate, manage, control, and maintain systems, processes, and programs to meet transportation needs as follows:

“(1) The Project Delivery Administration shall:

“(A) Manage and implement transportation improvement plans and projects;

“(B) Develop and update the Intermodal State Transportation Plan, corridor management plans, and other traffic studies on a regular basis, focusing on the safe and efficient movement of people, goods, and information;

“(C) Conduct planning studies on the condition and quality of the District’s transportation system in order to locate areas where future investment is required;

“(D) Manage and construct capital projects related to the design and installation of streets, alleys, curbs, gutters, bicycle lanes, sidewalks, streetscapes, and medians;

“(E) Review and approve the use of construction materials for capital projects;

“(F) Administer the full range of processing required to execute construction contracts for transportation, from initial preparation of bid documents through final construction completion;

“(G) Implement managed lane policies, including lane pricing, vehicle eligibility, and access control; provided, that at least one lane of traffic on a street with managed lanes shall be free of charge; provided further, that DDOT shall submit to the Council any policy created pursuant to this subparagraph for approval by act before implementation;

“(H) With the consent of the Chief Property Management Officer, acquire real property by purchase, lease, grant, or gift for use by DDOT, and dispose of real property

## ENROLLED ORIGINAL

through sale, lease, or other authorized method, and exercise other acquisition and property disposition authority delegated to the Mayor;

“(I) Conduct studies;

“(J) Develop streetscape standards;

“(K) Develop policies and programs to encourage and provide for the safe use of bicycles for recreation and work-related travel, including planning, developing, operating, and regulating a Bicycle Sharing program, and administering the Bicycle Sharing Fund established by section 9h to fund a Bicycle Sharing program;

“(L) Develop and update the District’s various transportation improvement plans, consistent with federal and local requirements;

“(M) Plan, manage, and contract for all, or any part of, the design, engineering, construction, operation, and maintenance of any element of the Integrated Premium Transit System;

“(N) Develop paratransit systems, water taxis, tour bus support systems, light rail streetcar transit systems, and other transportation services to provide for safe and efficient movement of persons throughout the city;

“(O) Operate the District of Columbia School Transit Subsidy Program;

“(P) Prepare studies on mass transit needs of District residents, including rail and bus services, review and revise bus routes, review and revise the location of bus shelter locations, support WMATA Board members, and act as a liaison between WMATA and the District government;

“(Q) Operate, maintain, and regulate the DC Circulator pursuant to Title III;

“(R) Operate, maintain, and regulate the DC Streetcar pursuant to Title V;

“(S) Submit to the Transit Rider Advisory Council proposed fare or service adjustments, as that term is defined in section 11e(a-1)(3);

“(T) Submit to the Transit Rider Advisory Council strategic or long-term plans to expand and improve local transit service;

“(U) Develop and implement transportation safety programs; and

“(V) Incorporate transportation safety features in the development, design, and construction of pedestrian, bicycle, motor vehicle, and mass transportation facilities and programs.

“(2) The Project Delivery Administration may enter into agreements to allow the private sponsorship of bicycles, equipment, and facilities used in the Bicycle Sharing program, and the placement of a corporate logo, slogan, or other indicia of sponsorship on the bicycles or facilities, and on related websites and social media; provided, that an agreement that would modify the name or design of any part of the Capital Bikeshare system, including equipment or facilities, shall be submitted to the Council for a 30-day period of passive review before execution. The agreement submitted to the Council shall include detailed information about a proposed name or design. All proceeds collected from a private sponsorship agreement shall be deposited into the Bicycle Sharing Fund established by section 9h.

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- “(3) The Operations Administration shall:
- “(A) Maintain a tree inventory system;
  - “(B) Perform routine tree maintenance;
  - “(C) Review transportation related construction plans to ensure the provision of adequate rights-of-way for tree planting;
  - “(D) Plant, remove, and trim trees citywide;
  - “(E) Review, approve, and issue public space permit requests for occupancy, work within, or other use of the public space, including private use and utility work public space requests, and ensure that transportation services are maintained and that the infrastructure is restored after the occupancy, work within, or other use is complete;
  - “(F) Maintain official public space records;
  - “(G) Perform regular inspections of the transportation system infrastructure;
  - “(H) Enter into agreements to allow the placement of advertisements on District property, under the control of DDOT, in public space and collect payments under the agreements, if:
    - “(i) The placement of the advertisement is not in violation of District or federal laws, regulations, or orders; and
    - “(ii) All proceeds collected from the advertising agreement shall be paid into the DDOT Enterprise Fund for Transportation Initiatives, established under section 9e; provided, that proceeds related to advertisements on bicycles, equipment, or facilities used for the purposes of the Bicycle Sharing program shall be deposited into the Bicycle Sharing Fund established by section 9h;
  - “(I) Develop, implement, and enforce a comprehensive plan that covers the care, maintenance, and upkeep of public space and federal reservations under the control of DDOT;
  - “(J) Ensure that the transportation system is maintained to the highest standards;
  - “(K) Perform routine repair and maintenance activities to maintain a high quality of transportation infrastructure;
  - “(L) Coordinate seasonal snow removal operation on streets throughout the District in conjunction with the Department of Public Works and other District agencies;
  - “(M) Maintain the mechanical and electrical street light systems that support the transportation infrastructure;
  - “(N) Provide a safe transportation system by maintaining a high-quality traffic control system, including traffic signals and street lights;
  - “(O) Maintain the mechanical and electrical systems signal systems that support the transportation infrastructure;
  - “(P) Where necessary to manage the flow of traffic, respond to incidents, or manage special events, concurrent with any other agency’s authority to do so, enforce all violations of statutes, regulations, executive orders, or rules relating to motor vehicle parking

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offenses and the operation of a motor vehicle, except those violations contained in section 202 of the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2302.02);

“(Q) Allocate and regulate on-street parking;

“(R) Develop a city-wide parking management program to balance the needs of parking in support of economic development;

“(S) Establish citywide parking and curbside management regulations, taking into account input from other District agencies, as necessary;

“(T) Install and maintain parking meters and other parking control devices and systems on public rights-of-way and other public spaces in the District; and

“(U) Establish policies encouraging energy conservation, the reduction of pollution, including through the use of alternative-fuel vehicles, the reduction of traffic congestion, and an increase in transportation services to persons with disabilities.

“(4) The Administrative Administration shall develop alternative methods of financing transportation projects and services to achieve financial self-sufficiency.

“(5) The Performance Administration shall:

“(A) Develop and maintain a performance monitoring system to measure the quality and effectiveness of transportation services; and

“(B) Develop and maintain the transportation elements of the Geographic Information System.”.

(c) Section 9h(a) (D.C. Official Code § 50-921.16(a)) is amended by striking the phrase “established pursuant to section 5(2)(K)” and inserting the phrase “established pursuant to section 5(a)(1)(K)” in its place.

(d) Section 11e (D.C. Official Code § 50-921.35) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “The Mayor” and inserting the phrase “Except as provided in subsection (a-1) of this section, the Mayor” in its place.

(2) A new subsection (a-1) is added to read as follows:

“(a-1)(1) Before making a fare or service adjustment for the DC Circulator, the Mayor shall hold at least one public hearing and publish notice of the fare or service adjustment in the District of Columbia Register. The notice shall:

“(A) Establish a public comment period of not fewer than 45 days from the date of publication;

“(B) Set a date for a public hearing on the fare or service adjustment, which shall be held not fewer than 20 days from the date of publication; and

“(C) Include a hyperlink to a fare or service adjustment plan, which shall include:

“(i) A summary of the proposed fare or service adjustment;

“(ii) A proposed timeline for the implementation of the fare or service adjustment;

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“(iii) An equity analysis illustrating any disparate impact of the proposed fare or service adjustment on populations protected under Title VI of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 252; 42 U.S.C. § 2000d *et seq.*); and

“(iv) An explanation of the necessity of the fare or service adjustment and a description of alternative fare or service adjustments examined.

“(2) In the event of an emergency declaration, the Mayor may make a fare or service adjustment for the DC Circulator for the duration of the emergency without complying with the requirements of paragraph (1) of this subsection.

“(3) For the purposes of this subsection, the term “fare or service adjustment” shall mean a change in the fare, the creation of a new route, or a significant change to an existing route or schedule of the DC Circulator.”.

(e) Section 11r (D.C. Official Code § 50-921.76) is amended as follows:

(1) Subsection (a) is amended by striking the phrase “The Mayor” and inserting the phrase “Except as provided in subsection (a-1) of this section, the Mayor” in its place.

(2) A new subsection (a-1) is added to read as follows:

“(a-1)(1) Before making a fare or service adjustment for the DC Streetcar, the Mayor shall hold at least one public hearing and publish notice of the fare or service adjustment in the District of Columbia Register. The notice shall:

“(A) Establish a public comment period of not fewer than 45 days from the date of publication;

“(B) Set a date for a public hearing on the fare or service adjustment, which shall be held not fewer than 20 days from the date of publication; and

“(C) Include a hyperlink to a fare or service adjustment plan, which shall include:

“(i) A summary of the proposed fare or service adjustment;

“(ii) A proposed timeline for the implementation of the fare or service adjustment;

“(iii) An equity analysis illustrating any disparate impact of the proposed fare or service adjustment on populations protected under Title VI of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 252; 42 U.S.C. § 2000d *et seq.*); and

“(iv) An explanation of the necessity of the fare or service adjustment and a description of alternative fare or service adjustments examined.

“(2) In the event of an emergency declaration, the Mayor may make a fare or service adjustment for the DC Streetcar for the duration of the emergency without complying with the requirements of paragraph (1) of this subsection.

“(3) For the purposes of this subsection, the term “fare or service adjustment” shall mean a change in the fare, the creation of a new route, or a significant change to an existing route or schedule of the DC Streetcar.”.

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## TITLE II. DEPARTMENT OF MOTOR VEHICLES

Sec. 201. The District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.01 *et seq.*), is amended by adding new sections 110 and 111 to read as follows:

“Sec. 110. Reports to Department of Public Works and the District Department of Transportation.

“(a) Before the 10th day of each month, the Department shall transmit a report to the Department of Public Works (“DPW”) and the District Department of Transportation (“DDOT”) with the following information from the previous month:

“(1) The number of answers filed for parking infractions, including:

“(A) The number of “admit” answers, including ticket payments, filed for parking infractions;

“(B) The number of “admit with explanation” answers filed for parking infractions; and

“(C) The number of “deny” answers filed for parking infractions, including:

“(i) The number of determinations of liability of respondents who deny the commission of parking infractions; and

“(ii) The number of dismissals of respondents who deny the commission of parking infractions;

“(2) The most common reasons for the dismissal of respondents who deny the commission of parking infractions;

“(3) The badge numbers of the officers whose notices of infraction most frequently resulted in the dismissal of respondents who deny the commission of parking infractions;

“(b) On a quarterly basis, the Department shall transmit a report to DPW and DDOT describing relevant trends in parking infraction adjudication and dismissals of respondents who deny the commission of parking infractions.

“Sec. 111. Study of parking infraction adjudication.

“Before January 2, 2017, the Mayor shall transmit to the Chairperson of the Council committee with oversight of transportation a report and recommendation as to whether the adjudication of parking infractions should be transferred from the Department to a different entity, such as the Office of Administrative Hearings or the District Department of Transportation. The report shall review best practices in other jurisdictions and examine issues such as staffing levels, timeliness of decisions, caseloads, and qualifications of hearing examiners.”.

## TITLE III. ADVISORY COUNCILS

Sec. 301. Definitions.

For the purposes of this title, the term:

(1) “DDOT” means the District Department of Transportation.

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- (2) "Local transit" means intra-District streetcar and bus service.
- (3) "MAAC" means the Multimodal Accessibility Advisory Council.
- (4) "TRAC" means the Transit Rider Advisory Council.

## Sec. 302. Transit Rider Advisory Council.

- (a) There is established a Transit Rider Advisory Council.
- (b) The TRAC shall be composed of 11 members appointed as follows:
  - (1) The Director of DDOT, or the Director's designee;
  - (2) The Director of the Office of Planning, or the Director's designee; and
  - (3)(A) Nine community representatives who are District residents who regularly use local transit and who do not receive a salary from, do business with, or lobby the District government, appointed as follows:
    - (i) Each Ward Councilmember shall appoint one community representative; and
    - (ii) The Chairperson of the Council committee with oversight over DDOT shall appoint one community representative.
  - (B) The community representatives shall be appointed for a term of 3 years, with initial staggered appointments of 3 community representatives appointed for one year, 3 community representatives appointed for 2 years, and 3 community representatives appointed for 3 years. The community representatives to serve the one-year term, the community representatives to serve the 2-year term, and the community representatives to serve the 3-year term shall be determined by lot at the first meeting of the TRAC.
  - (C) Vacancies shall be filled in the same manner as the original appointment to the position that became vacant. Community representatives who are appointed to fill vacancies that occur before the expiration of a community representative's full term shall serve only the unexpired portion of the community representative's term.
- (c) A chairperson shall be elected from among the community representatives at the first meeting of the TRAC, for a term of 2 years, and every 2 years thereafter.
- (d) The TRAC shall meet on a quarterly basis, and more often as needed, at times to be determined by the chairperson of the TRAC at the first meeting of the TRAC.
- (e) DDOT shall provide the TRAC with an annual operating budget, which shall include funds to maintain a website where the TRAC shall provide a public listing of members, meeting notices, and meeting minutes.

## Sec. 303. Functions and operations of the TRAC.

- (a) The purpose of the TRAC shall be to serve as the advisory body to the Mayor, the Council, and DDOT on matters pertaining to operating, improving, and expanding local transit.
- (b)(1) Before the notice of a proposed fare or service adjustment is published in the District of Columbia Register, pursuant to sections 11e(a-1) or 11r(a-1) of the Department of Transportation Establishment Act, effective May 21, 2002 (D.C. Law 14-137; D.C. Official

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Code §§ 50-921.35 and 50-921.76), DDOT shall submit the proposed fare or service adjustment, to the TRAC.

(2) The TRAC may hold public hearings on the proposed fare or service adjustment.

(3) Before the expiration of the public comment period on the proposed fare or service adjustment, the TRAC shall submit comments to DDOT on the proposed fare or service adjustment, including proposed modifications to the proposal, if any.

(4) If DDOT does not incorporate the TRAC's suggested modifications in its final fare or service adjustment, DDOT shall provide the TRAC with a detailed written explanation as to why the proposed modifications were not incorporated into the final fare or service adjustment.

(5) For the purposes of this subsection, the term "fare or service adjustment" shall mean a change in the fare, the creation of a new route, or a significant change to an existing route or schedule of the DC Circulator or DC Streetcar.

(c)(1) Before finalizing a strategic or long-term plan to expand and improve local transit service, DDOT shall submit a draft of the proposed plan to the TRAC.

(2) The TRAC may hold public hearings on the proposed planning plan.

(3) Within 45 days, the TRAC shall submit comments to DDOT on the proposed plan, including proposed modifications to the plan, if any.

(4) If DDOT does not incorporate the TRAC's suggested modifications into the final plan, the agency shall provide the TRAC with a detailed written explanation as to why the proposed modifications were not incorporated into the final plan.

Sec. 304. Multimodal Accessibility Advisory Council.

(a) There is established a Multimodal Accessibility Advisory Council.

(b) The MAAC shall be composed of 9 members appointed as follows:

(1) The Director of DDOT, or the Director's designee;

(2) The Director of the Office of Disability Rights, or the Director's designee;

(3) The Director of the Office of Human Rights, or the Director's designee;

(4)(A) Six community representatives, who are District residents and who represent the disability advocacy community, appointed by the Mayor.

(B) The community representatives shall be appointed for a term of 3 years, with initial staggered appointments of 2 community representatives appointed for one year, 2 community representatives appointed for 2 years, and 2 community representatives appointed for 3 years. The community representatives to serve the one-year term, the community representatives to serve the 2-year term, and the community representatives to serve the 3-year term shall be determined by lot at the first meeting of the MAAC.

(C) Vacancies shall be filled in the same manner as the original appointment to the position that became vacant. Community representatives who are appointed to fill vacancies that occur before the expiration of a community representative's full term shall serve only the unexpired portion of the community representative's term.



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(c) A chairperson shall be elected from among the 6 community representatives at the first meeting of the MAAC, for a term of 2 years, and every 2 years thereafter.

(d) The MAAC shall meet on a quarterly basis, and more often as needed, at times to be determined by the chairperson of the MAAC at the first meeting of the MAAC.

(e) DDOT shall provide the MAAC with reasonable and accessible accommodations for holding meetings and an annual operating budget, which shall include funds to maintain a website where the MAAC shall provide a public listing of members, meeting notices, and meeting minutes.

(f) The purpose of the MAAC shall be to serve as the advisory body to the Mayor, the Council, and District agencies on making local transit and public space in the District more accessible to persons with disabilities.

Sec. 305. Discussion of advisory council recommendations.

(a) At least once every 6 months, the Director of DDOT, or the Director's designee, shall meet separately with the chairperson of the Bicycle Advisory Council, the Pedestrian Advisory Council, the TRAC, and the MAAC to discuss recommendations provided by the advisory councils to DDOT.

(b) Following each meeting held pursuant to subsection (a) of this section, DDOT shall make publicly available all recommendations discussed between DDOT and the advisory councils, DDOT's decision in response to the recommendations, and an explanation of the decision made by DDOT.

TITLE IV. DEPARTMENT OF FOR-HIRE VEHICLES

Sec. 401. The District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-301.01 *et seq.*), is amended as follows:

(a) The undesignated section 1 (short title) is amended by striking the phrase "District of Columbia Taxicab Commission" and inserting the phrase "Department of For-Hire Vehicles" in its place.

(b) Section 3 (D.C. Official Code § 50-301.02) is amended by striking the word "Commission" wherever it appears and inserting the word "DFHV" in its place.

(c) Section 4 (D.C. Official Code § 50-301.03) is amended as follows:

(1) Paragraph (6) is repealed.

(2) A new paragraph (8A-i) is added to read as follows:

"(8A-i) "Director" means the Director of the Department of For-Hire-Vehicles."

(3) New paragraphs (9A) and (9B) are added to read as follows:

"(9A) "DFHV" means the Department of For-Hire Vehicles established by section

5.

"(9B) "FHVAC" means the For-Hire Vehicle Advisory Council established by section 11a."

(4) Paragraph (15) is repealed.

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(5) New paragraphs (15A), (15B), (15C), and (15D) are added to read as follows:  
“(15A) “ORPP” means the Office of Regulatory Policy and Planning established  
by section 7.

“(15B) “OCS” means the Office of Client Services established by section 7.

“(15C) “OCE” means the Office of Compliance and Enforcement established by  
section 7.

“(15D) “OHCR” means the Office of Hearings and Conflict Resolution established  
by section 7.”.

(6) Paragraph (21) is amended as follows:

(A) Strike the word “Commission” and insert the word “DFHV” in its place.

(B) Strike the phrase “Commission-approved meter” and insert the phrase  
“DFHV-approved meter” in its place.

(7) Paragraph (29) is amended by striking the word “Commission” and inserting  
the word “DFHV” in its place.

(8) Paragraph (30) is amended by striking the word “Commission” and inserting  
the word “DFHV” in its place.

(d) Section 5 (D.C. Official Code § 50-301.04) is amended as follows:

(1) The section heading is amended by striking the phrase “Establishment of the  
District of Columbia Taxicab Commission” and inserting the phrase “Department of For-Hire  
Vehicles – Established” in its place.

(2) Strike the phrase “District of Columbia Taxicab Commission” and insert the  
phrase “Department of For-Hire Vehicles” in its place.

(e) Section 6 (D.C. Official Code § 50-301.05) is amended to read as follows:

“Sec. 6. Department of For-Hire Vehicles – Director.

“(a) The DFHV shall be headed by a Director. The Director shall be appointed by the  
Mayor with the advice and consent of the Council pursuant to section 2(a) of the Confirmation  
Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(a)).

“(b) The Director shall have authority over the DFHV, its functions and personnel,  
including the power to re-delegate to employees authority as, in the judgment of the Director, is  
warranted in the interests of efficiency and sound administration.

“(c) The Director may organize the personnel and property transferred herein within any  
organizational unit of the DFHV as the Director deems appropriate.

“(d) The Director may promulgate rules, regulations, standards, and programs to  
preserve, protect, and enhance the environment that are at least as stringent as corresponding  
federal rules, regulations, and standards.”.

(f) Section 7 (D.C. Official Code § 50-301.06) is amended to read as follows:

“Sec. 7. Department of For-Hire Vehicles – Organization.

“(a) There is established within the DFHV the following offices and divisions:

“(1) The Office of the Director, which shall be responsible for the management of  
the DFHV, including the final approval of any rulemaking and ratemaking conducted by the

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ORPP. The Office of the Director shall include the Director, the General Counsel, and the Chief of Staff, with subordinate staff responsible for:

“(A) Administrative support;

“(B) Human resources;

“(C) Budget and financial services;

“(D) Technology and information services;

“(E) Contracting and procurement;

“(F) Compliance with legislative directives, analysis, and opinions to ensure appropriate rulemaking and operational activities;

“(G) Receiving confidential complaints about hack inspectors;

“(H) Providing updated facts pertaining to operations and rulemaking through various communication platforms, including press releases, testimony, speech, and the DFHV website; and

“(I) Serving as a liaison between the DFHV and the District Department of Transportation on policies related to transportation.

“(2) The Office of Regulatory Policy and Planning, which shall be responsible for regulatory policy, and industry-wide research, analysis, and planning related to the regulation of the vehicle-for-hire industry. The ORPP shall be responsible for proposing ratemaking, rulemaking, and fee adjustments related to public vehicles-for-hire and submitting such proposals to the Office of the Director for final approval. The ORPP’s subordinate staff shall also be responsible for analyzing industry updates, market data, and trends for the purpose of planning, assessment, and rulemaking.

“(3) The Office of Client Services, which shall be responsible for communicating with and educating the public and the vehicle-for-hire industry regarding rules, standards, rates, charges, and orders issued by the DFHV. The OCS’s subordinate staff shall also be responsible for:

“(A) Administering all license examinations applicable to the taxicab industry;

“(B) Providing all training and refresher courses required by this act;

“(C) Maintaining a system of electronic public records relating to licensed owners and operators of public vehicles-for-hire and public vehicle-for-hire companies, associations, and fleets, including:

“(i) Developing, maintaining, and keeping current a body of information relating to public vehicle-for-hire industry operations within the District, regionally, and nationwide; and

“(ii) Providing statistics, analyses, studies, and projections relating to matters such as revenue, operational costs, passenger carriage, profits, practices, and technologies pertaining to the public vehicle-for-hire industry;

“(D) Maintaining accurate records of in-service public vehicles-for-hire and retaining those records for a minimum of 3 years;

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“(E) Communicating with the vehicle-for-hire industry and members of the public to inform them of agency procedures and regulations and solicit feedback to enhance public awareness; and

“(F) Accepting applications for licenses applicable to public vehicle-for-hire operators and vehicles and issuing new licenses and renewals.

“(4) The Office of Compliance and Enforcement, which shall be responsible for:

“(A) Auditing public vehicle-for-hire companies and payment service providers to the extent authorized by this act, and regulations issued pursuant to this act, including review of vehicle records to ensure compliance with regulatory requirements, and private vehicle-for-hire companies to the extent authorized by section 20j-7(b);

“(B) Administering and enforcing all rules, rates, charges, and orders issued by the DFHV;

“(C) Collecting fees to recover the actual costs of producing and distributing official DFHV vehicle decals, stickers, and information placards;

“(D) Collecting any other fees obtained pursuant to this act;

“(E) Inspecting public vehicles-for-hire for compliance with safety regulations established by the DFHV and the Department of Motor Vehicles;

“(F) Performing hack inspections and issuing notices of infraction; and

“(G) Providing street enforcement of the rules and regulations of the DFHV through the use of vehicle inspection officers.

“(5) The Office of Hearings and Conflict Resolution, which shall be responsible for conducting all hearings, adjudications, appeals, and any form of conflict resolution, including mediation. The OHCR’s subordinate staff shall also receive, document, and manage all complaints lodged against the owners and operators of public and private vehicles-for-hire, including taxicabs, taxicab companies, associations, fleets, and dispatch services, for the violation of any rule, regulation, order, rate, or law applicable to the vehicle-for-hire industry.

(g) Section 8 (D.C. Official Code § 50-301.07) is amended as follows:

(1) The section heading is amended to read as follows:

“Sec. 8. Department of For-Hire Vehicles – duties; jurisdiction; powers.”.

(2) Strike the word “Commission” wherever it appears and insert the word “DFHV” in its place.

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

“(a) The DFHV is charged with the continuance, further development, and improvement of the vehicle-for-hire industry within the District, and for the overall regulation of limousines, sedans, taxicabs, taxicab companies, taxicab fleets, and taxicab associations.”.

(4) Subsection (b) is repealed.

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

“(b-1) The DFHV shall employ no fewer than 20 vehicle inspection officers to enforce the laws, rules, and regulations pertaining to public and private vehicles-for-hire. A primary function of vehicle inspection officers shall be to ensure the proper provision of service and to support safety through street enforcement efforts, including traffic stops of public and private vehicles-for-hire, pursuant to protocol prescribed by the DFHV.

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“(b-2) Nothing in this act shall abrogate the authority of officers of the Metropolitan Police Force to enforce and issue citations relating to taxicab requirements.

“(b-3)(1) A proposed suspension or revocation of a license by the OCE issued pursuant to this act shall not take effect until a final decision is rendered by the OHCR upon a timely appeal taken by a licensee or, if no appeal is taken, upon the lapse of the period specified, by rule, for appeal.

“(2) The OCE may immediately suspend or revoke a license issued under the authority of this act where the OCE has determined that the operator of a vehicle poses an imminent danger to the public. Within 3 business days of the issuance by the OCE of an immediate suspension or revocation, an administrative hearing shall be held before the OHCR, or the matter may be referred to the Office of Administrative Hearings, 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.*)”.

(6) Subsection (c) is amended as follows:

(A) Paragraph (14) is amended by striking the phrase “Office of Taxicabs” and inserting the word “OHCR” in its place.

(B) Paragraph (16) is amended by striking the phrase “Office of Taxicabs” and inserting the word “OCE” in its place.

(C) Paragraph (17) is amended by striking the phrase “Office of Taxicabs” and inserting the word “DFHV” in its place.

(7) Subsection (d) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase “In exercising the rulemaking” and inserting the phrase “Except as provided in paragraph (2) of this subsection, in exercising the rulemaking” in its place.

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

“(2)(A) Before adjusting rates, or changing any existing fee or charge relating to public vehicles-for-hire, the DFHV shall hold at least one public hearing and publish notice of the proposed change in the District of Columbia Register. The notice shall:

“(i) Establish a public comment period of not fewer than 45 days from the date of publication; and

“(ii) Set a date for a public hearing on the proposed change, which shall be held no fewer than 20 days from the date of publication.

“(B) In the event of an emergency declaration, the DFHV may adjust rates for public vehicles-for-hire for the duration of the emergency without complying with the requirements of subparagraph (A) of this paragraph.”.

(C) Paragraph (3) is repealed.

(h) Section 8a (D.C. Official Code § 50-301.07a) is repealed.

(i) Section 8b (D.C. Official Code § 50-301.07b) is repealed.

(j) Section 10b (D.C. Official Code § 50-301.09b) is amended as follows:

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

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(A) Strike the word “Chairperson” and insert the word “Director” in its place.

(B) Strike the phrase “Office of Taxicabs” and insert the word “DFHV” in its place.

(2) Subsection (b)(4) is amended by striking the word “Commission” both times it appears and inserting the word “DFHV” in its place.

(k) Section 11 (D.C. Official Code § 50-301.10) is amended by striking the word “Commission” both times it appears and inserting the word “DFHV” in its place.

(l) A new section 11a is added to read as follows:

“Sec. 11a. For-Hire Vehicle Advisory Council.

“(a) There is established a For-Hire Vehicle Advisory Council.

“(b) The FHVAC shall be composed of 11 members appointed as follows:

“(1) The Director of the DFHV, or the Director’s designee;

“(2) The Director of the District Department of Transportation, or the Director’s designee;

“(3)(A) Nine community representatives, who do not work for the District government, appointed by the Mayor as follows:

“(i) Two District residents who operate public or private vehicles-for-hire in the District;

“(ii) Two representatives of companies providing vehicle for-hire industry services in the District;

“(iii) Two representatives of the hospitality or tourism industry in the District; and

“(iv) Three District residents, unaffiliated with the vehicle for-hire industry, who regularly use public or private vehicles-for-hire in the District.

“(B) The community representatives shall be appointed for a term of 3 years, with initial staggered appointments of 3 community representatives appointed for one year, 3 community representatives appointed for 2 years, and 3 community representatives appointed for 3 years. The community representatives to serve the one-year term, the community representatives to serve the 2-year term, and the community representatives to serve the 3-year term shall be determined by lot at the first meeting of the FHVAC.

“(C) Each community representative shall serve until the appointment of a successor. No community representative shall serve more than 2 consecutive terms, which shall not include an appointment to fill a vacancy due to removal, resignation, or death of a member. The Mayor may remove a community representative for cause. An appointment to fill a vacancy occurring during a term due to removal, resignation, or death of a member shall be made in the same manner as other appointments and for the remainder of the unexpired term.

“(c) A chairperson shall be elected from among the 9 community representatives at the first meeting of the FHVAC, for a term of 2 years, and every 2 years thereafter.

“(d) The FHVAC shall meet on a quarterly basis, and more often as needed, at times to be determined by the chairperson of the FHVAC at the first meeting of the FHVAC.

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“(e) The DFHV shall provide the FHVAC with an annual operating budget, which shall include funds to maintain a website where the FHVAC shall provide a public listing of members, meeting notices, and meeting minutes.

“(f) The purpose of the FHVAC shall be to advise the DFHV on all matters related to the regulation of the vehicle for-hire industry.

“(g)(1) At least once every 6 months, the Director of the DFHV, or the Director’s designee, shall meet with the chairperson of the FHVAC to discuss recommendations provided by the FHVAC to the DFHV.

“(2) Following each meeting held pursuant to paragraph (1) of this subsection, the DFHV shall make publicly available all recommendations discussed between the DFHV and the FHVAC, the DFHV’s decision in response to the recommendations, and an explanation of the decision made by the DFHV.”.

(m) Section 12 (D.C. Official Code § 50-301.11) is amended as follows.

(1) The section heading is amended by striking the phrase “Full Commission meetings; annual report” and inserting the phrase “Annual report; budget and oversight.” in its place.

(2) Subsection (a) is repealed.

(3) Subsection (b) is repealed.

(4) Subsection (c) is amended to read as follows:

“(c) The DFHV shall provide an annual report to the Council during its annual performance and budget oversight hearings. The report shall include information and statistics relating to licensing, enforcement, training courses relating to public vehicles-for-hire, the status of taxicab equipment, estimated industry revenues, and passenger carriage, and shall outline briefly the activities and goals of the agency.”.

(5) Subsection (d) is amended to read as follows:

“(d) The DFHV shall periodically evaluate program development and implementation of the hacker’s license training course and may issue policy directives pertaining to program content and program direction.”.

(n) Section 13 (D.C. Official Code § 50-301.12) is repealed.

(o) Section 14 (D.C. Official Code § 50-301.13) is amended as follows:

(1) Subsection (a) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

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

(A) Strike the phrase “The Commission” and insert the phrase “The DFHV” in its place.

(B) Strike the phrase “by the Commission” and insert the phrase “by the DFHV” in its place.

(3) Subsection (c) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(4) Subsection (d) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

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(5) Subsection (e) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(p) Section 15 (D.C. Official Code § 50-301.14) is amended as follows:

(1) Subsection (d) is amended by striking the word “Office” both times it appears and inserting the phrase “Office of Client Services of the Department of For-Hire Vehicles” in its place.

(2) Subsection (h) is amended by striking the phrase “and Office” both times it appears and inserting the phrase “and the Office of Client Services of the Department of For-Hire Vehicles” in its place.

(q) Section 17 (D.C. Official Code § 50-301.16) is repealed.

(r) Section 18 (D.C. Official Code § 50-301.17) is amended by striking the word “Commission” both times it appears and inserting the word “DFHV” in its place.

(s) Section 19 (D.C. Official Code § 50-301.18) is amended to read as follows:

“Sec. 19. Existing taxi regulations.

“Except as modified by this act, or until changed by the Office of the Director pursuant to this act, all regulations to taxicabs contained in the District of Columbia Municipal Regulations shall remain in effect. Within 9 months of the appointment and confirmation of the Director, the DFHV shall cause a republication of all regulations relating to taxicabs, including applicable amendments to conform the regulations to this act, and revisions issued by the DFHV.”

(t) Section 20 (D.C. Official Code § 50-301.19) is amended as follows:

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

(A) Paragraph (1) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(B) Paragraph (2) is amended by striking the phrase “Commission-approved” and inserting the phrase “DFHV-approved” in its place.

(2) Subsection (b) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(3) Subsection (d) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(u) Section 20a (D.C. Official Code § 50-301.20) is amended by striking the word “Commission” wherever it appears and inserting the word “DFHV” in its place.

(v) Section 20d (D.C. Official Code § 50-301.23) is amended as follows:

(1) The section heading is amended by striking the phrase “Taxicab Commission Fingerprinting Fund” and inserting the phrase “Department of For-Hire Vehicles Fingerprinting Fund” in its place.

(2) Strike the phrase “Taxicab Commission” wherever it appears and insert the phrase “Department of For-Hire Vehicles” in its place.

(3) Subsection (a) is amended by striking the phrase “hacker and limousine” and inserting the phrase “public vehicle-for-hire” in its place.

(w) Section 20f (D.C. Official Code § 50-301.25) is amended as follows:

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



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(A) Paragraph (1) is amended by striking the word “Commission” both times it appears and inserting the word “DFHV” in its place.

(B) Paragraph (2)(A)(vii) is amended by striking the phrase “The Commission.” and inserting the phrase “The Department of For-Hire Vehicles.” in its place.

(2) Subsection (c) is amended by striking the word “Commission” wherever it appears and inserting the word “DFHV” in its place.

(3) Subsection (d) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(4) Subsection (e) is amended by striking the word “Commission” and inserting the phrase “Department of For-Hire Vehicles” in its place.

(5) Subsection (f) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(6) Subsection (i) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(x) Section 20f-2 (D.C. Official Code § 50-301.25b) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(y) Section 20g (D.C. Official Code § 50-301.26) is amended by striking the word “Commission” wherever it appears and inserting the word “DFHV” in its place.

(z) Section 20h (D.C. Official Code § 50-301.27) is amended by striking the word “Commission” both times it appears and inserting the word “DFHV” in its place.

(aa) Section 20i (D.C. Official Code § 50-301.28) is amended by striking the word “Commission” both times it appears and inserting the word “DFHV” in its place.

(bb) Section 20j (D.C. Official Code § 50-301.29) is amended by striking the word “Commission” wherever it appears and inserting the word “DFHV” in its place.

(cc) Section 20j-1 (D.C. Official Code § 50-301.29a) is amended by striking the word “Commission” wherever it appears and inserting the word “DFHV” in its place.

(dd) Section 20j-3(c) (D.C. Official Code § 50-301.29c(c)) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(ee) Section 20j-7 (D.C. Official Code § 50-301.29g) is amended as follows:

(1) Strike the word “Commission” wherever it appears and insert the word “DFHV” in its place.

(2) Strike the word “Commission’s” and insert the word “DFHV’s” in its place.

(ff) Section 20l (D.C. Official Code § 50-301.31) is amended as follows:

(1) Strike the word “Commission” wherever it appears and insert the word “DFHV” in its place.

(2) Strike the word “Committee” and insert the word “DFHV” in its place.

(3) Strike the word “Commission’s” both times it appears and insert the word “DFHV’s” in its place.

(gg) Section 20m (D.C. Official Code § 50-301.32) is amended as follows:

(1) The lead-in language is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

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(2) Paragraph (1) is amended by striking the phrase “Commission’s website” and inserting the phrase “DFHV’s website” in its place.

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

“(2A) Allow the public to file confidential complaints through a hotline and electronically in a location of its website dedicated solely to the reporting of misconduct committed by hack inspectors;”.

(4) New paragraphs (3A) and (3B) are added to read as follows:

“(3A) Respond, in writing, to the hack inspector against whom the complaint was filed, with a detailed description of the complaint against him or her, including the time, date, and location. Provide an opportunity for the hack inspector to respond within 48 hours of receiving the notice of a complaint filed against him or her;”

“(3B) Maintain, update, and hold any records and documents relating to complaints filed with the DFHV. Any dispositions by the OHCR pertaining to complaints against hack inspectors shall be submitted to and reviewed by the Office of the Director, and held on file by the agency for at least 3 years from the date of disposition;”.

(5) Paragraph (6) is amended by striking the word “Commission” and inserting the word “OHCR” in its place.

(6) Paragraph (7) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(hh) Section 20n (D.C. Official Code § 50-301.33) is amended by striking the word “Commission” and inserting the word “DFHV” in its place.

(ii) Section 20o(c) (D.C. Official Code § 50-301.34(c)) is amended as follows:

(1) Strike the word “Chairperson” both times it appears and insert the word “Director” in its place.

(2) Strike the word “Commission” wherever it appears and insert the word “DFHV” in its place.

## TITLE V. CONFORMING AMENDMENTS

### Sec. 501. Conforming amendments.

(a) Section 2(e)(24) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)(24)), is repealed.

(b) Section 1108(c) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.08(c)), is amended as follows:

(1) Paragraph (1)(E) is repealed.

(2) Paragraph (2)(K) is repealed.

(c) Section 6(b)(3) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03(b)(3)), is amended by striking the phrase “Taxicab Commission” and inserting the phrase “Department of For-Hire Vehicles” in its place.

(d) Section 47–2829 of the District of Columbia Official Code is amended as follows:

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(1) Subsection (a)(1)(E) is amended by striking the phrase “District of Columbia Taxicab Commission” and inserting the phrase “Department of For-Hire Vehicles” in its place.

(2) Subsection (d) is amended by striking the phrase “District of Columbia Taxicab Commission” both times it appears and inserting the phrase “Department of For-Hire Vehicles” in its place.

(3) Subsection (e) is amended as follows:

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

(i) Strike the phrase “District of Columbia Taxicab Commission” and insert the phrase “Department of For-Hire Vehicles” in its place.

(ii) Strike the phrase “The Commission may” and insert the phrase “The Department of For-Hire Vehicles may” in its place.

(B) Paragraph (2) is amended as follows:

(i) Subparagraph (A) is amended as follows:

(I) Strike the phrase “District of Columbia Taxicab Commission” and insert the phrase “Department of For-Hire Vehicles” in its place.

(II) Strike the phrase “Office of Taxicabs” and insert the phrase “Office of Client Services of the Department of For-Hire Vehicles” in its place.

(ii) Subparagraph (C) is amended by striking the phrase “Office of Taxicabs, under the direction of the District of Columbia Taxicab Commission” and inserting the phrase “Office of Client Services of the Department of For-Hire Vehicles” in its place.

(4) Subsection (e-1) is amended as follows:

(A) Strike the phrase “District of Columbia Taxicab Commission” and insert the phrase “Department of For-Hire Vehicles” in its place.

(B) Strike the phrase “Office of Taxicabs” and insert the phrase “Office of Client Services of the Department of For-Hire Vehicles” in its place.

(C) Strike the phrase “present to the Commission” and insert the phrase “present to the Department of For-Hire Vehicles” in its place.

(5) Subsection (e-2) is amended by striking the phrase “After March 25, 1987, the Office of Taxicabs under the discretion of the District of Columbia Taxicab Commission, and prior to March 25, 1987, the Department of Public Works” and inserting the phrase “The Department of For-Hire Vehicles” in its place.

(6) Subsection (e-3) is amended by striking the phrase “District of Columbia Taxicab Commission” and inserting the phrase “Department of For-Hire Vehicles” in its place.

(7) Subsection (e-4) is amended as follows:

(A) Strike the phrase “After March 25, 1987, the Office of Taxicabs under the discretion of the District of Columbia Taxicab Commission, and prior to March 25, 1987, the Department of Public Works” and insert the phrase “The Department of For-Hire Vehicles” in its place.

(B) Strike the phrase “The District of Columbia Taxicab Commission” and insert the phrase “The Department of For-Hire Vehicles” in its place.

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(8) Subsection (i) is amended by striking the phrase “the Office of Taxicabs” and inserting the phrase “the Office of Client Services of the Department of For-Hire Vehicles” in its place.

(9) Subsection (j) is amended as follows:

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

(i) Strike the phrase “The District of Columbia Taxicab Commission” and insert the phrase “The Department of For-Hire Vehicles” in its place.

(ii) Strike the phrase “the Commission shall” and insert the phrase “the Department of For-Hire Vehicles shall” in its place.

(B) Paragraph (3) is repealed.

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

(i) Strike the phrase “The Commission shall” and insert the phrase “The Department of For-Hire Vehicles shall” in its place.

(ii) Strike the phrase “granted by the Commission” and insert the phrase “granted by the Department of For-Hire Vehicles” in its place.

(D) Paragraph (5) is amended to read as follows:

“(5) The Department of For-Hire Vehicles shall seek to actively license public vehicle-for hire drivers and vehicles.”.

(e) Section 47-2853.04(c)(5) of the District of Columbia Official Code is amended by striking the phrase “District of Columbia Taxicab Commission” and inserting the phrase “Department of For-Hire Vehicles” in its place.

(f) Section 47-2862(a)(1)(E) of the District of Columbia Official Code is amended by striking the phrase “District of Columbia Taxicab Commission” and inserting the phrase “Department of For-Hire Vehicles” in its place.

(g) Section 102(b)(11) of the Employee Transportation Amendment Act of 2012, effective March 5, 2013 (D.C. Law 19-223; D.C. Official Code § 50-211.02(b)(11)), is amended by striking the phrase “District of Columbia Taxicab Commission” and inserting the phrase “Department of For-Hire Vehicles” in its place.

(h) Section 2 of the Taxicab and Passenger Vehicle for Hire Impoundment Act of 1992, effective March 16, 1993 (D.C. Law 9-199; D.C. Official Code § 50-331), is amended as follows:

(1) Strike the word “Commission” both times it appears and insert the phrase “Department of For-Hire Vehicles” in its place.

(2) Strike the word “Commission’s” wherever it appears and insert the phrase “Department of For-Hire Vehicles” in its place.

(3) Strike the word “Chairperson” and insert the word “Director” in its place.

(4) Strike the phrase “Office of Taxicabs” and insert the phrase “Department of For-Hire Vehicles” in its place.

(i) Section 505 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 50-332), is amended as follows:

(1) Strike the phrase “Taxicab Commission” wherever it appears and insert the phrase “Department of For-Hire Vehicles” in its place.

## ENROLLED ORIGINAL

(2) Strike the phrase “Public Works and the Environment” both times it appears and insert the phrase “Transportation and the Environment” in its place.

(3) Strike the phrase “Taxicab Hack Inspectors” and insert the phrase “vehicle inspection officers” in its place.

(j) Section 3a(b) of the Non-Resident Taxi Drivers Registration Amendment Act of 2008, effective March 26, 2008 (D.C. Law 17-130; D.C. Official Code § 50-1501.03a(b)), is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “the Chairperson of the District of Columbia Taxicab Commission” and inserting the phrase “the Director of the Department of For-Hire Vehicles” in its place.

(2) Paragraph (3) is amended by striking the phrase “used for the operational or capital needs of the District of Columbia Taxicab Commission.” and inserting the phrase “deposited in the Public Vehicles-for-Hire Consumer Service Fund, established by section 20a of the Department of For-Hire Vehicles Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-301.)” in its place.

## TITLE VI. FISCAL IMPACT STATEMENT; EFFECTIVE DATE

## Sec. 601. Applicability.

(a) Sections 301, 302, 303, 304, 305, and 401(l) shall apply upon the date of inclusion of their fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

## Sec. 602. 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. 603. Effective date.

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

ENROLLED ORIGINAL

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



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Chairman  
Council of the District of Columbia

UNSIGNED

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Mayor  
District of Columbia  
May 2, 2016

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-379**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend, on a temporary basis, 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.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “DMPED Procurement Clarification Temporary Amendment Act of 2016”.

Sec 2. Section 201 of 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 § 2-1225.11), is amended by adding a new subsection (b-1) to read as follows:

“(b-1) Any contract between the Deputy Mayor for Planning and Economic Development and a developer for the development of Square 3128 related to Zoning Commission Order No. Z.C. 13-14, or amendment to that order, shall not be subject to titles IV, V, and VI, and sections 702 and 1101 of 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.*)”.

Sec. 3. Fiscal impact statement.

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

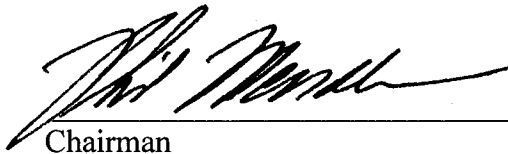
Sec. 4. Effective date.

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

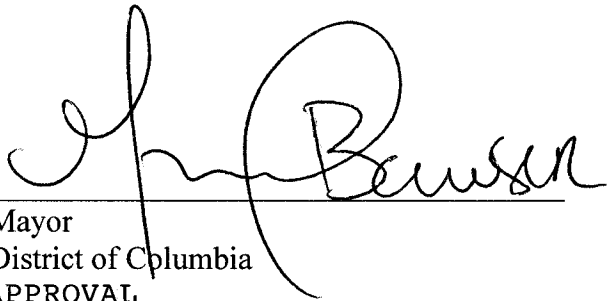
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Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVAL  
May 4, 2016



ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-380**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend, on a temporary basis, the Education Licensure Commission Act of 1976 to require that postsecondary educational institutions providing degree-granting or non-degree-granting online programs or courses to District residents must be licensed by the Higher Education Licensure Commission or authorized to operate in the District pursuant to a reciprocity agreement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Higher Education Licensure Commission Clarification Temporary Amendment Act of 2016”.

Sec. 2. The Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; D.C. Official Code § 38-1301 *et seq.*), is amended as follows:

(a) Section 201 (D.C. Official Code § 38-1302) is amended as follows:

(1) Paragraph (4)(C) is amended by striking the phrase “through agents offers” and inserting the phrase “through agents or an online presence offers” in its place.

(2) A new paragraph (17) is added to read as follows:

“(17) “Reciprocity agreement” means an agreement joined by the District of Columbia with other member states, districts, or U.S. territories that establishes national standards for interstate offering of postsecondary distance education courses and programs.”.

(b) Section 6(b)(3) (D.C. Official Code § 38-1306(b)(3)) is amended by striking the phrase “45-day” both times it appears and inserting the phrase “14-day” in its place.

(c) Section 7(5) (D.C. Official Code § 38-1307(5)) is amended as follows:

(1) Strike the phrase “agreements with other jurisdictions as it relates to the licensing” and insert the phrase “reciprocity agreements with other jurisdictions that relate to the authorization” in its place.

(2) Strike the word “instruction” and insert the phrase “online instruction” in its place.

(d) Section 9 (D.C. Official Code § 38-1309) is amended as follows:

(1) Subsection (a-1) is repealed.

(2) Subsection (c-1) is amended by adding a new paragraph (3) to read as follows:

“(3) Paragraph (1) of this subsection shall not apply to a postsecondary educational institution that provides degree-granting or non-degree-granting online instruction to residents of the District through an online presence and that is authorized to operate in the District pursuant to a reciprocity agreement.”.

ENROLLED ORIGINAL

(e) A new section 9a is added to read as follows:

“Sec. 9a. Delivery of online instruction by a postsecondary educational institution.

“(a) A postsecondary educational institution may provide degree-granting or non-degree-granting online instruction to residents of the District through an online presence.

“(b) An educational institution that provides degree-granting or non-degree-granting online instruction to residents of the District through an online presence shall be deemed to be operating in the District, and shall either be:

“(1) Licensed by the Commission in accordance with this act; or

“(2) Authorized to operate in the District pursuant to a reciprocity agreement.”.


Sec. 3. Fiscal impact statement.


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

Sec. 4. Effective date.

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

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

  
Chairman  
Council of the District of Columbia

  
Mayor  
District of Columbia  
APPROVED  
May 4, 2016

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-381**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend, on a temporary basis, the Business Improvement Districts Act of 1996 to repeal the sunset provision.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Business Improvement Districts Sunset Repeal Temporary Amendment Act of 2016".

Sec. 2. Section 24(b) of the Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; 43 DCR 1698), is repealed.

Sec. 3. Fiscal impact statement.

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

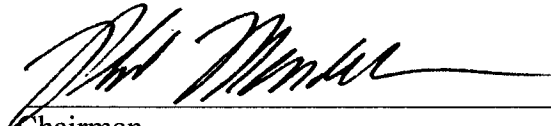
Sec. 4. Effective date.

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

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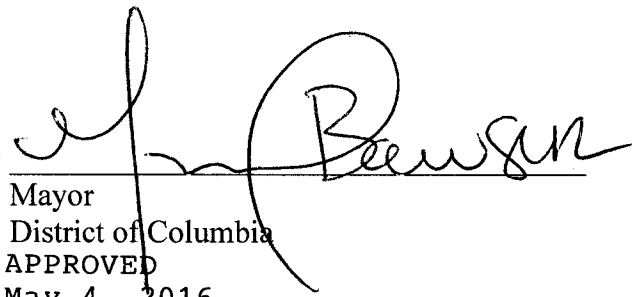
December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
May 4, 2016

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-382**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend, on a temporary basis, the Fiscal Year 1997 Budget Support Act of 1996 to authorize 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 are conducted by a civic association; and to amend section 24-225 of the District of Columbia Municipal Regulations to allow for the waiver or reduction of permit fees, except for application fees, for the use of public space, public rights-of-way, and public structures for projects that are conducted by a civic association.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Civic Associations Public Space Permit Fee Waiver Temporary Amendment Act of 2016”.

Sec. 2. 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), is amended as follows:

- (a) Designate the existing text as subsection (a).
- (b) The newly designated subsection (a)(1) is amended by striking the phrase “Is conducted by a” and inserting the phrase “Is conducted by a civic association or a” in its place.
- (c) A new subsection (b) is added to read as follows:
  - “(b) For the purposes of this section, the term “civic association” means an organization that is:

- “(1) Comprised of residents of the community within which the public space, public right of way, or public structure is located;

- “(2) Operated primarily for the improvement of the community within which the public space, public right of way, or public structure is located; and

- “(3) Exempt from taxation under section 501(c)(3) or (4) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3) or (4)).”.

Sec. 3. Section 24-225.12 of the District of Columbia Municipal Regulations is amended as follows:

- (a) Designate the existing text as paragraph (a).
- (b) The newly designated paragraph (a)(1) is amended by striking the phrase “Is

ENROLLED ORIGINAL

conducted by a” and inserting the phrase “Is conducted by a civic association or a” in its place.

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

“(b) For the purposes of this subsection, the term “civic association” means an organization that is:

“(1) Comprised of residents of the community within which the public space, public right-of-way, or public structure is located;

“(2) Operated primarily for the improvement of the community within which the public space, public right-of-way, or public structure is located; and

“(3) Exempt from taxation under section 501(c)(3) or (4) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3) or (4)).”.

Sec. 4. Fiscal impact statement.

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

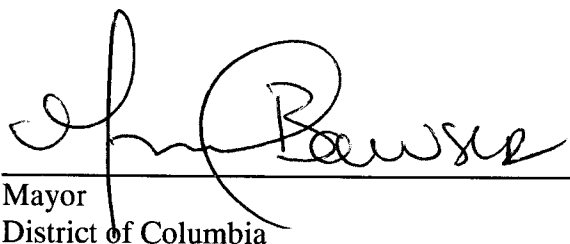
Sec. 5. Effective date.

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

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



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED  
May 4, 2016

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-383**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend, on a temporary basis, 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 in order to receive a tax deed.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Tax Sale Resource Center Clarifying Temporary Amendment Act of 2016".

Sec. 2. Chapter 13A of Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-1341 is amended as follows:

(1) Subsection (a)(2) is amended by striking the phrase:

"Tax Sale Resource Center. Resource Center attorneys provide legal information to taxpayers and interested parties who do not have their own lawyers on Wednesday mornings from 10:00am to 12:00pm when court is in session. The Resource Center is located in the Moultrie Courthouse at 500 Indiana Ave. NW."

(2) Subsection (b-1)(2) is amended by striking the phrase:

"Tax Sale Resource Center. Resource Center attorneys provide legal information to taxpayers and interested parties who do not have their own lawyers on Wednesday mornings from 10:00am to 12:00pm when court is in session. The Resource Center is located in the Moultrie Courthouse at 500 Indiana Ave. NW."

(b) Section 47-1353.01(b) is amended by striking the phrase:

"Tax Sale Resource Center. Resource Center attorneys provide legal information to taxpayers and interested parties who do not have their own lawyers on Wednesday mornings from 10:00am to 12:00pm when court is in session. The Resource Center is located in the Moultrie Courthouse at 500 Indiana Ave., NW."

(c) Section 47-1382(b) is amended to read as follows:

"(b) Notwithstanding subsection (a)(1) of this section, upon issuance of a tax deed concerning a real property sold under § 47-1353(a)(3) or (b), the real property shall be free and clear of all prior taxes and liabilities owed by the real property to a taxing agency. The purchaser shall not be required to pay such prior taxes and liabilities to receive the tax deed."

ENROLLED ORIGINAL

Sec. 3. Fiscal impact statement.

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

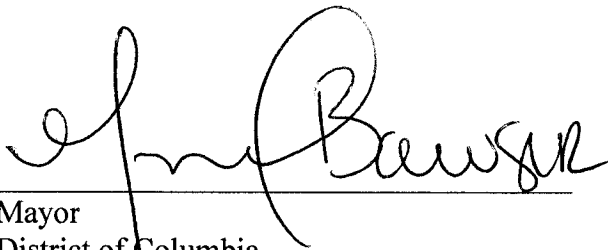
Sec. 4. Effective date.

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

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



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED  
May 4, 2016



ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-384**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend, on a temporary basis, the District of Columbia Uniform Controlled Substances Act of 1981 to add certain classes and substances to the list of Schedule I controlled substances.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Revised Synthetics Abatement and Full Enforcement Drug Control Temporary Amendment Act of 2016".

Sec. 2. The District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-901.01 *et seq.*), is amended as follows:

(a) Section 102(27) (D.C. Official Code § 48-901.02(27)) is amended as follows

(1) Strike the phrase "as used in section 204(3) and section 206(1)(D)" and insert the phrase "as used in section 204(3), (5), and (6) and section 206(1)(D)" in its place.

(2) Strike the phrase "As used in section 204(3)" and insert the phrase "As used in section 204(3), (5), and (6)" in its place.

(b) Section 204 (D.C. Official Code § 48-902.04) is amended as follows:

(1) Paragraph (3) is amended as follows:

(A) The lead-in language is amended by striking the phrase "(for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers)".

(B) New subparagraphs (G-i) through (G-xii) are added to read as follows:

"(G-i) 25I-NBOMe (also known as 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine);

"(G-ii) 25B-NBOMe (also known as 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine);

"(G-iii) 25C-NBOMe (also known as 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine);

"(G-iv) 5-APB (also known as 1-(benzofuran-5-yl)propan-2-amine);

"(G-v) 5-APDB (also known as 1-(2,3-dihydrobenzofuran-5-yl)propan-2-amine);

"(G-vi) 6-APB (also known as 1-(1-benzofuran-6-yl)propan-2-amine);

"(G-vii) 6-APDB (also known as 1-(2,3-dihydrobenzofuran-6-yl)propan-2-amine);

"(G-viii) 3-methoxy-PCE (also known as *N*-ethyl-1-(3-

## ENROLLED ORIGINAL

methoxyphenyl)cyclohexanamine);

“(G-ix) 3-methoxy-PCP (also known as 1-[1-(3-methoxyphenyl)cyclohexyl]piperidine);

“(G-x) 4-methoxy-PCP (also known as 1-[1-(4-methoxyphenyl)cyclohexyl]piperidine);

“(G-xi) 5-MeO-DALT (also known as *N,N*-diallyl-5-methoxytryptamine);

“(G-xii) 4-AcO-DMT (also known as 5-acetoxy-*N,N*-dimethyltryptamine);”.

(C) A new subparagraph (M-i) is added to read as follows:

“(M-i) Methoxetamine (also known as 2-(ethylamino)-2-(3-methoxyphenyl)cyclohexanone);”.

(D) Subparagraph (JJ) is amended by striking the word “and”.

(E) Subparagraph (KK) is amended by striking the phrase “(2C-P);” and inserting the phrase “(2C-P); and” in its place.

(F) A new subparagraph (LL) is added to read as follows:

“(LL) Cathinone;”.

(2) Paragraph (5) is repealed.

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

“(5A) Synthetic Cathinones, which includes any material, compound, mixture, or preparation that is not otherwise listed as a controlled substance in this schedule or in Schedules II through V, is not approved by the Food and Drug Administration as a drug, and is structurally derived from or contains any quantity of the following substances, their salts, isomers, homologues, analogues, and salts of isomers, homologues, and analogues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, analogues, and salts of isomers, homologues, and analogues is possible within the specific chemical designation:

“(A) Classified Synthetic Cathinones:

“(i) Any compound containing a 2-amino-1-propanone structure with substitution at the 1-position with a monocyclic or fused polycyclic ring system and a substitution at the nitrogen atom by an alkyl group, cycloalkyl group, or incorporation into a heterocyclic structure. Examples of this structural class include:

“(I)  $\alpha$ -pyrrolidinopropiophenone, also known as:

“(aa) 1-phenyl-2-(1-pyrrolidinyl)-1-propanone; or

“(bb)  $\alpha$ -PPP;

“(II) Dimethylcathinone, also known as:

“(aa) 2-(dimethylamino)-1-phenyl-1-propanone; or

“(bb) *N,N*-Dimethylcathinone; and

“(III) Ethcathinone, also known as:

“(aa) 2-(ethylamino)-1-phenyl-1-propanone;

“(bb) Ethylcathinone;

“(cc) *N*-Ethylcathinone; or

## ENROLLED ORIGINAL

“(dd) 2-Ethylaminobuphedro;

“(ii) Any compound containing a 2-amino-1-propanone structure with substitution at the 1-position with a monocyclic or fused polycyclic ring system and a substitution at the 3-position carbon with an alkyl, haloalkyl, or alkoxy group. Examples of this structural class include naphyrone (also known as 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one);

“(iii) Any compound containing a 2-amino-1-propanone structure with substitution at the 1-position with a monocyclic or fused polycyclic ring system and a substitution at any position of the ring system with an alkyl, haloalkyl, halogen, alkylendioxy, or alkoxy group, whether or not further substituted at any position on the ring system to any extent. Examples of this structural class include:

“(I) 3-fluoromethylone;

“(II) Mephedrone, also known as:

“(aa) 2-(methylamino)-1-(4-methylphenyl)-1-propanone;

“(bb) 4-MeMC;

“(cc) 4-Methylmethcathinone;

“(dd) 4-Methylephedrone; or

“(ee) 4-MMC; and

“(III) Methylone, also known as

“(aa) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)-1-propanone; or

“(bb) 3,4-Methylenedioxy-N-methylcathinone);

“(iv) Any compound containing or structurally derived from a piperazine, or diethylenediamine, structure with or without substitution at one of the nitrogen atoms of the piperazine ring to any extent. Examples include:

“(I) BZP, also known as:

“(aa) 1-(phenylmethyl)-piperazine;

“(bb) 1-Benzylpiperazine; or

“(cc) N-Benzylpiperazine; and

“(II) TMFPP, also known as:

“(aa) 1-[3-(trifluoromethyl)phenyl]-piperazine;

“(bb) 1-(m-Trifluoromethylphenyl) piperazine; or

“(cc) 3-Trifluoromethylphenylpiperazine;

“(B) Unclassified Synthetic Cathinones:

“(i) Aminorex (also known as (RS)-5-phenyl-4,5-dihydro-1,3-oxazol-2-amine);

“(ii)  $\alpha$ -ET, also known as:

“(I)  $\alpha$ -ethyl-1H-indole-3-ethanamine;

“(II)  $\alpha$ -ethyltryptamine; or

“(III) 3-Indolybutylamine;

## ENROLLED ORIGINAL

- “(iii)  $\alpha$ -MT, also known as:  
    “(I)  $\alpha$ -methyl-1H-indole-3-ethanamine; or  
    “(II)  $\alpha$ -methyltryptamine;
- “(iv)  $\alpha$ -PBP, also known as:  
    “(I) 1-phenyl-2-(1-pyrrolidinyl)-1-butanone; or  
    “(II)  $\alpha$ -pyrrolidinobutiophenone;
- “(v)  $\alpha$ -PVP (also known as  $\alpha$ -pyrrolidinopentiophenone);
- “(vi) bk-MDDMA, also known as:  
    “(I) 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)propan-1-one;  
    “(II) Dimethylone;  
    “(III) *N,N*-dimethyl-3',4'-methylenedioxcathinone;  
    “(IV) *N,N*-dimethyl-3,4-methylenedioxcathinone; or  
    “(V) *N,N*-Dimethyl MDCATH;
- “(vii) Buphedrone, also known as:  
    “(I) 2-(methylamino)-1-phenylbutan-1-one; or  
    “(II) MABP;
- “(viii) Butylone (also known as 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one);
- “(ix) 3,4-DMMC, also known as:  
    “(I) 1-(3,4-dimethylphenyl)-2-(methylamino)-1-propanone;  
    “(II) 3,4-Dimethylmethcathinone;
- “(x) EMA, also known as:  
    “(I) *N*-ethyl- $\alpha$ -methyl-benzeneethanamine; or  
    “(II) *N*-Ethylamphetamine;
- “(xi) EMC, also known as:  
    “(I) 1-(4-ethylphenyl)-2-(methylamino)propan-1-one;  
    “(II) 4-EMC; or  
    “(III) 4-Ethylmethcathinone;
- “(xii) Ethylone, also known as:  
    “(I) 3,4-Methylenedioxy-*N*-ethylcathinone; or  
    “(II) MDEC;
- “(xiii) Fenethylline (also known as (RS)-1,3-dimethyl-7-[2-(1-bpphenylpropan-2-ylamino)ethyl]purine-2,6-dione);
- “(xiv) Fluoromethcathinone (also known as 1-(4-fluorophenyl)-2-(methylamino)propan-1-one);
- “(xv) 3-FMC (also known as 3-fluoro-*N*-methylcathinone);
- “(xvi) 4-FMC, also known as:  
    “(I) 1-(4-fluorophenyl)-2-(methylamino)propan-1-one;  
    “(II) 4-fluoro-*N*-methylcathinone; or

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- butanone; or
- propanone; or
- pentanone; or
- (methylamino)-1-propanone);
- “(III) Flephedrone;
  - “(xvii) MDPBP, also known as:
    - “(I) 1-(1,3-benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-
    - “(II) 3,4-Methylenedioxy- $\alpha$ -Pyrrolidinobutiophenone;
  - “(xviii) MDPPP, also known as:
    - “(I) 1-(1,3-benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-
    - “(II) 3,4-Methylenedioxy- $\alpha$ -Pyrrolidinopropiophenone;
  - “(xix) MDPV, also known as:
    - “(I) 1-(1,3-benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-
    - “(II) 3,4-Methylenedioxy Pyrovalerone;
  - “(xx) 4-MeBP, also known as:
    - “(I) 2-(methylamino)-1-(4-methylphenyl)-1-butanone;
    - “(II) 4-Methylbuphedrone;
    - “(III) 4-methyl BP; or
    - “(IV) 4-MeMABP
  - “(xxi) 3-MEC, also known as:
    - “(I) 2-(ethylamino)-1-(m-tolyl)propan-1-one; or
    - “(II) 3-Methyl-N-ethylcathinone;
  - “(xxii) 4-MEC, also known as:
    - “(I) 2-(ethylamino)-1-(4-methylphenyl)-1-propanone; or
    - “(II) 4-Methyl-N-ethylcathinone;
  - “(xxiii) 4-MePPP, also known as
    - “(I) 4'-methyl- $\alpha$ -Pyrrolidinopropiophenone;
    - “(II) 4'-methyl PPP; or
    - “(III) 2-(pyrrolidin-1-yl)-1-(p-tolyl)propan-1-one;
  - “(xxiv) 3-MMC, also known as:
    - “(I) 2-(methylamino)-1-(3-methylphenyl)-1-propanone;
    - “(II) 3-methyl MS; or
    - “(III) 3-Methylmethcathinone;
  - “(xxv) Methedrone (also known as 1-(4-methoxyphenyl)-2-(methylamino)-1-propanone);
    - “(xxvi) 4'-methyl PHP, also known as:
      - “(I) 4'-methyl- $\alpha$ -pyrrolidinohexanophenone;
      - “(II) MPHP;
      - “(III) 4'-methyl-  $\alpha$ -PHP; or
      - “(IV) PV4;
    - “(xxvii) Naphyrone, also known as:
      - “(I) 1-(2-naphthalenyl)-2-(1-pyrrolidinyl)-1-pentanone; or
      - “(II) Naphpyrovalerone;

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“(xxviii) N-hydroxy MDA, also known as:

“(I) MDOH;

“(I) N-hydroxy- $\alpha$ -methyl-1,3-benzodioxole-5-ethanamine;

or

“(II) N-Hydroxy-3,4-methylenedioxyamphetamine;

“(xxix) N,N-DMA, also known as:

“(I) N,N, $\alpha$ -trimethyl-benzeethanamine;

“(II) N,N-Dimethylamphetamine;

“(III) Dimetamphetamine; or

“(III) Metrotonin;

“(xxx) Pentedrone (also known as 2-(methylamino)-1-

phenylpentan-1-one); and

“(xxxi) Pentylone (also known as 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one);”.

(4) A new paragraph (6) is added to read as follows:

“(6) Synthetic Cannabimimetic Agents (also known as synthetic cannabinoids), which includes, unless specifically exempted, unless listed in another schedule, or unless approved by the Food and Drug Administration as a drug, any material, mixture, preparation, any compound structurally derived from, or that contains any quantity of the following synthetic substances, their salts, isomers, homologues, analogues and salts of isomers, homologues, and analogues, whenever the existence of these salts, isomers, homologues, analogues, and salts of isomers, homologues, and analogues is possible within the specific chemical designation:

“(A) Classified Synthetic Cannabimimetic Agents:

“(i) Adamantanoylindoles: Any compound containing or structurally derived from an adamantanyl-(1H-indol-3-yl)methanone structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, 1-methylazepanyl, phenyl, or halophenyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent. Examples include:

“(I) AB-001, also known as:

“(aa) (1s,3s)-adamantan-1-yl(1-pentyl-1H-indol-3-yl)methanone; or

“(bb) JWH 018 adamantyl analog; and

“(II) AM-1248, also known as:

“(aa) [1-[(1-methyl-2-piperidinyl)methyl]-1H-indol-3-yl]tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-methanone; or

“(bb) AM1248;

“(ii) Adamantoylindazoles: or any compound containing or structurally derived from 3-(1-adamantoyl) indole, 3-(1-adamantoyl)indazole, 3-(2-adamantoyl)indole, N-(1-adamantyl)-1H-indole-3-carboxamide, or N-(1-adamantyl)-1H-

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indazole-3-carboxamide by substitution at the nitrogen atom of the indole or indazole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole or indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent. This category includes adamantyl carboxamide indazoles;

“(iii) Adamantylamidoindoles: Any compound containing or structurally derived from an N-(adamantyl)-indole-3-carboxamide structure, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring to any extent;

“(iv) Adamantylindazoles: Any compound containing or structurally derived from an N-(adamantyl)-indazole-3-carboxamide structure with substitution at a nitrogen atom of the indazole ring, whether or not further substituted on the indazole ring to any extent, whether or not substituted on the adamantyl ring to any extent. Examples include:

“(I) 5F-APINACA, also known as:

“(aa) 5-fluoro-APINACA

“(bb) 5F-AKB-48;

“(cc) 5F-AKB48;

“(dd) N-((3s,5s,7s)-adamantan-1-yl)-1-(5-

fluoropentyl)-1H-indazole-3-carboxamide; or

“(ee) N-(1-adamantyl)-1-(5-fluoropentyl)-1H-

indazole-3-carboxamide); and

“(II) APINACA, also known as:

“(aa) AKB-48;

“(bb) AKB48;

“(cc) 1-pentyl-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H-

indazole-3-carboxamide; or

“(dd) N-(1-adamantyl)-1-pentyl-1H-indazole-3-

carboxamide;

“(v) Adamantylindoles: Any compound containing or structurally derived from an N-(adamantyl)-indole-3-carboxamide with substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, and whether or not substituted on the adamantyl ring to any extent. Examples include:

“(I) 2NE1, also known as:

“(aa) APICA;

“(bb) JWH 018 adamantyl carboxamide; or

“(cc) 1-pentyl-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H-

indole-3-carboxamide;

“(II) Adamantyl carboxamide indoles; and

“(III) STS-135, also known as:

“(aa) 1-(5-fluoropentyl)-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-

1-yl-1H-indole-3-carboxamide;

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Carboxamide; “(bb) N-adamantyl-1-fluoropentylindole-3-

“(cc) 5F-APICA; or

“(dd) 5-fluoro-APICA;

“(vi) Benzimidazole Ketone: Any compound containing or structurally derived from (benzimidazole-2-yl) methanone structure with or without substitution at either nitrogen atom of the benzimidazole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, 1-methylazepanyl, phenyl, or halophenyl group, with substitution at the carbon of the methanone group by an adamantyl, naphthyl, phenyl, benzyl, quinolinyl, cycloalkyl, 1-amino-3-methyl-1-oxobutan-2-yl, 1-amino-3, 3-dimethyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-methoxy-3, 3-dimethyl-1-oxobutan-2-yl or pyrrole group, and whether or not further substituted in the benzimidazole, adamantyl, naphthyl, phenyl, pyrrole, quinolinyl, or cycloalkyl rings to any extent. Benzimidazole Ketones include:

“(I) FUBIMINA, also known as:

“(aa) (1-(5-fluoropentyl)-1H-benzo[d]imidazol-2-yl)(naphthalen-1-yl)methanone; or

“(bb) AM2201 benzimidazole analog; and

“(II) JWH-018 benzimidazole analog, also known as:

“(aa) naphthalen-1-yl(1-pentyl-1H-benzo[d]imidazol-2-yl)methanone; or

“(bb) BIM-018;

“(vii) Benzoylindoles: Any compound containing or structurally derived from a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples include:

“(I) AM-630, also known as:

“(aa) [6-iodo-2-methyl-1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl](4-methoxyphenyl)-methanone;

“(bb) AM630; or

“(cc) Iodopravadoline ;

“(II) AM-661 (also known as 1-(N-methyl-2-piperidine)methyl-2-methyl-3-(2-iodo)benzoylindole);

“(III) AM-679, also known as:

“(aa) (2-iodophenyl)(1-pentyl-1H-indol-3-yl)methanone; or

“(bb) AM679;

“(IV) AM-694, also known as:



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- iodophenyl)-methanone;
- or
- “(aa) [1-(5-fluoropentyl)-1H-indol-3-yl](2-iodophenyl)-methanone;
- “(bb) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole;
- “(cc) AM694;
- “(V) AM-1241, also known as:
- “(aa) (2-iodo-5-nitrophenyl)-(1-(1-methylpiperidin-2-ylmethyl)-1H-indol-3-yl)methanone; or
- “(bb) AM1241;
- “(VI) AM-2233, also known as:
- “(aa) (2-iodophenyl)[1-[(1-methyl-2piperidinyl)methyl]-1H-indol-3-yl]-methanone; or
- “(bb) AM2233;
- “(VII) RCS-4, also known as:
- “(aa) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone; or
- “(bb) SR-19; and
- “(VIII) WIN 48,098, also known as
- “(aa) (4-methoxyphenyl)[2-methyl]-1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl]-methanone; or
- “(bb) “Pravadoline”;
- “(viii) Carbazole Ketone: Any compound containing or structurally derived from (9H-carbazole-3-yl) methanone structure with or without substitution at the nitrogen atom of the carbazole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, 1-methylazepanyl, phenyl, or halophenyl group with substitution at the carbon of the methanone group by an adamantyl, naphthyl, phenyl, benzyl, quinolinyl, cycloalkyl, 1-amino-3-methyl-1-oxobutan-2-yl, 1-amino-3, 3-dimethyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-methoxy-3, 3-dimethyl-1-oxobutan-2-yl or pyrrole group, and whether or not further substituted at the carbazole, adamantyl, naphthyl, phenyl, pyrrole, quinolinyl, or cycloalkyl rings to any extent. Carbazole Ketones include naphthalen-1-yl(9-pentyl-9H-carbazol-3-yl)methanone (“EG-018”);
- “(ix) Carboxamideindazoles: Any compound containing or structurally derived from 3-carboxamide-1H-indazoles, whether or not substituted in the indazole ring to any extent and substituted to any degree on the carboxamide nitrogen and 3-carboxamide-1H-indoles, whether or not substituted in the indole ring to any extent and substituted to any degree on the carboxamide nitrogen. Examples include:
- “(I) AB-CHMINACA (also known as N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide);
- “(II) AB-FUBINACA (also known as N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide);

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- “(III) AB-PINACA (also known as N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide);
- “(IV) 5F AB-PINACA, also known as:
- “(aa) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide); or
- “(bb) 5-fluoro AB-PINACA;
- “(V) ADB-FUBINACA (also known as N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1-H-indazole-3-carboxamide);
- “(VI) ADB-PINACA (also known as N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide);
- “(VII) 5F ADB-PINACA, also known as:
- “(aa) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide); or
- “(bb) 5-fluoro ADB-PINACA;
- “(VIII) FUB-AMB, also known as:
- “(aa) methyl (1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate; or
- “(bb) AMB-FUBINACA;
- “(IX) MAB-CHMINACA (also known as N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide);
- “(X) MMB CHMINACA, also known as:
- “(aa) methyl (S)-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate; or
- “(bb) MDMB-CHMICA; and
- “(XI) 5F MN-18, also known as:
- “(aa) 1-(5-fluoropentyl)-N-1-naphthalenyl-1H-indazole-3-carboxamide; or
- “(bb) 5-fluoro MN-18;
- “(x) Cycloalkanemethanone Indoles: whether or not substituted at the nitrogen atom on the indole ring, whether or not further substituted in the indole ring to any extent, and whether or not substituted on the cycloalkane ring to any extent;
- “(xi) Cyclohexylphenols: Any compound containing or structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidiny)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the cyclohexyl ring to any extent. Examples include:
- “(I) CP 47,497 (also known as 2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol);
- “(II) CP 47,497 C8 homologue, also known as:
- “(aa) rel-2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol; or

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“(bb) Cannabicyclohexanol;

“(III) CP 55,490;

“(IV) CP 55,940 (also known as 5-(1,1-dimethylheptyl)-2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol); and

“(V) CP 56,667;

“(xii) Cyclopropanoylindoles: Any compound containing or structurally derived from 3-(cyclopropylmethanoyl)indole, 3-(cyclopropylmethanone)indole, 3-(cyclobutylmethanone)indole or 3-(cyclopentylmethanone)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, and whether or not substituted on the cyclopropyl, cyclobutyl, or cyclopentyl rings to any extent;

“(xiii) Cyclopropylmethanone Indole: Any compound containing or structurally derived from 3-Cyclopropylmethanone indole or 3-Cyclobutylmethanone indole or 3-Cyclopentylmethanone indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent and whether or not substituted on the cyclopropyl, cyclobutyl or cyclopentyl rings to any extent;

“(xiv) Hexahydrodibenzopyrans: Any compound containing or structurally derived from Hexahydrodibenzopyrans, whether or not substituted in the tricyclic ring system except where contained in cannabis or cannabis resin;

“(xv) Hydroxycyclohexylphenol: Any compound containing or structurally derived from 2-(3-hydroxycyclohexyl)phenol structure, also known as cyclohexylphenols, with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted on the cyclohexyl ring to any extent. Examples of this structural class include:

“(I) CP-47,497 (also known as rel-5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol);

“(II) CP 47,497-C8-homolog, also known as:

“(aa) rel-2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol; or

“(bb) cannabicyclohexanol; and

“(III) CP-55,940 (also known as 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol);

“(xvi) Indazole Ester (also known as carboxylateindazole): Any compound containing or structurally derived from 3-carboxylate-indazoles, whether or not substituted in the indazole ring to any extent or substituted to any degree on the carboxylate, whether or not substituted in the indazole ring to any extent and substituted to any degree on the carboxylate oxygen. Examples of indazole esters include 5-fluoro SDB-005, also known as:

“(I) naphthalen-1-yl 1-(5-fluoropentyl)-1H-indazole-3-carboxylate; or

“(II) 5F SDB-005;

“(xvii) Indole Amides: Any compound containing or structurally

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derived from or containing a 1H-Indole-3-carboxamide structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, 1-methylazepanyl, phenyl, or halophenyl group, whether or not substituted at the carboxamide group by an adamantyl, naphthyl, phenyl, benzyl, quinolinyl, cycloalkyl, 1-amino-3-methyl-1-oxobutan-2-yl, 1-amino-3,3-dimethyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-oxobutan-2-yl, 1-methoxy-3,3-dimethyl-1-oxobutan-2-yl or pyrrole group and whether or not further substituted in the indole, adamantyl, naphthyl, phenyl, pyrrole, quinolinyl, or cycloalkyl rings to any extent. Indole Amides include:

“(I) 5F ABICA, also known as:

“(aa) (S)-N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide;

“(bb) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide; or

“(cc) 5-fluoro ABICA;

“(II) ADBICA (also known as N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indole-3-carboxamide));

“(III) 5F-ADBICA, also known as:

“(aa) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indole-3-carboxamide; or

“(bb) 5-fluoro-ADBICA;

“(IV) NNE1 (also known as N-(naphthalen-1-yl)-1-pentyl-1H-indole-3-carboxamide);

“(V) 5F-NNE1, also known as:

“(aa) 1-(5-fluoropentyl)-N-(naphthalene-1-yl)-1H-indole-3-carboxamide); or

“(bb) 5-fluoro-NNE1

“(VI) SDB-006 (also known as N-benzyl-1-pentyl-1H-indole-3-carboxamide); and

“(VII) 5F-SDB-006, also known as:

“(aa) N-benzyl-1-(5-fluoropentyl)-1H-indole-3-carboxamide); or

“(bb) 5-fluoro-SDB-006;

“(xviii) Indole Esters: Any compound containing or structurally derived from a 1H-Indole-3-carboxylate structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, 1-methylazepanyl, phenyl, or halophenyl group, whether or not substituted at the carboxylate group by an adamantyl, naphthyl, phenyl, benzyl, quinolinyl, cycloalkyl, 1-amino-3-methyl-1-oxobutan-2-yl, 1-amino-3,3-dimethyl-1-oxobutan-2-yl, 1-methoxy-3-methyl-1-

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oxobutan-2-yl, 1-methoxy-3, 3-dimethyl-1-oxobutan-2-yl or pyrrole group and whether or not further substituted in the indole, adamantyl, naphthyl, phenyl, pyrrole, quinolinyl, or cycloalkyl rings to any extent. Indole Esters may also be referred to as Quinolinylindolecarboxylates. Indole Esters include:

“(I) BB-22, also known as:

“(aa) 1-(cyclohexylmethyl)-8-quinolinyl ester-1H-indole-3-carboxylic acid;

indole-3-carboxylate; or

“(bb) quinolin-8-yl 1-(cyclohexylmethyl)-1H-

“(cc) QUCHIC;

“(II) FDU-PB-22 (also known as naphthalen-1-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate);

“(III) FUB-PB-22, also known as:

“(aa) 1-[(4-fluorophenyl)methyl]-1H-indole-3-carboxylic acid, 8-quinolinyl ester; or

3-carboxylate;

“(bb) Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-

“(IV) NM2201, also known as:

3-carboxylate; or

“(aa) naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-

“(bb) CBL-2201;

“(V) PB-22, also known as:

carboxylic acid;

“(aa) 1-pentyl-8-quinolinyl ester-1H-indole-3-

carboxylate;

“(bb) quinolin-8-yl 1-pentyl-1H-indole-3-

carboxylate; or

“(cc) 8-Quinolinyl 1-pentyl-1H-indole-3-

“(dd) “QUPIC”; and

“(VI) 5F-PB-22, also known as:

indole-3-carboxylic acid;

“(aa) 1-(5-fluoropentyl)-8-quinolinyl ester-1H-

carboxylate;

“(bb) quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-

carboxylate;

“(cc) 8-Quinolinyl 1-(5-fluoropentyl)-1H-indole-3-

“(dd) 5-fluoro-PB-22; or

“(ee) 5-fluoro QUPIC;

“(xix) Naphthoylindoles: Any compound containing or structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl,

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cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl group, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the naphthyl ring to any extent. Naphthoylindoles include the following: AM-678, AM-1220, AM-1221, AM-1235, AM-2232, EAM-2201, JWH-004, JWH-007, JWH-009, JWH-011, JWH-015, JWH-016, JWH-018, JWH-019, JWH-020, JWH-022, JWH-046, JWH-047, JWH-048, JWH-049, JWH-050, JWH-070, JWH-071, JWH-072, JWH-073, JWH-076, JWH-079, JWH-080, JWH-081, JWH-082, JWH-094, JWH-096, JWH-098, JWH-116, JWH-120, JWH-122, JWH-148, JWH-149, JWH-164, JWH-166, JWH-180, JWH-181, JWH-182, JWH-189, JWH-193, JWH-198, JWH-200, JWH-210, JWH-211, JWH-212, JWH-213, JWH-234, JWH-235, JWH-236, JWH-239, JWH-240, JWH-241, JWH-242, JWH-258, JWH-262, JWH-386, JWH-387, JWH-394, JWH-395, JWH-397, JWH-398, JWH-399, JWH-400, JWH-412, JWH-413, JWH-414, JWH-415, JWH-424, MAM-2201, WIN 55,212. Naphthoylindoles also include:

“(I) AM-2201 (also known as (1-(5-fluoropentyl)-3-(1-naphthoyl)indole); and

“(II) WIN 55,212-2, also known as: \*

“(aa) (R)-(+)-[2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone; or

“(bb) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[(1,2,3-de)-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone);

“(xx) Naphthoynaphthalenes: Any compound containing or structurally derived from naphthalene-1-yl-(naphthalene-1-yl) methanone with substitutions on either of the naphthalene rings to any extent, including CB-13 (also known as 1-naphthalenyl[4-(pentylox)-1-naphthalenyl]-methanone or CRA-13);

“(xxi) Naphthoypyrroles: Any compound containing or structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including the following: JWH-030, JWH-031, JWH-145, JWH-146, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-309, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-373, JWH-392;

“(xxii) Naphthylamidoindoles: Any compound containing or structurally derived from a N-(naphthyl)-indole-3-carboxamide structure, whether or not further substituted in the indole ring to any extent or whether or not substituted in the naphthyl ring to any extent;

“(xxiii) Naphthylmethylindenes: Any compound containing or

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structurally derived from a 1-(1-naphthylmethylene)indene structure with or without substitution at the 3-position of the indene ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, 1-methylazepanyl, phenyl, or halophenyl group, whether or not further substituted on the indene group to any extent, and whether or not substituted on the naphthyl group to any extent. Naphthylmethylindenes include JWH-176 (also known as 1-[(E)-(3-pentyl-1H-inden-1-ylidene)methyl]-naphthalene or (1-(3-pentyl)-1H-inden-1-ylidene)methylnaphthalene);

“(xxiv) Naphthylmethyl indoles: Any compound containing or structurally derived from 1H-indol-3-yl-(1-naphthyl)methane structure, also known as naphthylmethylindoles, with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not substituted on the naphthyl ring to any extent. Examples of this structural class include:

“(I) JWH-175 (also known as 3-(1-naphthalenylmethyl)-1-pentyl-1H-indole); and

“(II) JWH-184 (also known as 3-[(4-methyl-1-naphthalenyl)methyl]-1-pentyl-1H-indole);

“(xxv) Naphthylmethylindenes: Any compound containing or structurally derived from a naphthylideneindene structure or that is structurally derived from 1-(1-naphthylmethyl)indene with substitution at the 3-position of the indene ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include JWH-171, JWH-176, and JWH-220;

“(xxvi) Naphthylmethylindoles: Any compound containing or structurally derived from an H-indol-3-yl-(1-naphthyl) methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include JWH-175, JWH-184, JWH-185, JWH-192, JWH-194, JWH-195, JWH-196, JWH-197, and JWH-199;

“(xxvii) Phenylacetylindoles: Any compound containing or structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples include: JWH-167, JWH-201, JWH-202, JWH-203,

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JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH-237, JWH-248, JWH-249, JWH-250, JWH-251, JWH-253, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306, JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-8, SR-18, and Cannabipiperidiethanone (also known as 2-(2-methoxyphenyl)-1-[1-[(1-methyl-2-piperidinyl)methyl]-1H-indol-3-yl]-ethanone);

“(xxviii) Quinolinoyl Pyrazole: Any compound containing or structurally derived from Quinolinoyl pyrazole carboxylate (also known as Quinolinyl fluoropentyl fluorophenyl pyrazole carboxylate);

“(xxix) Quinolinyl Ester Indoles: Any compound containing or structurally derived from Quinolinyl ester indoles, being any compound containing or structurally derived from 1H-indole-3-carboxylic acid-8-quinolinyl ester, whether or not substituted in the indole ring to any extent or the quinolone ring to any extent;

“(xxx) Tetrahydrobenzochromen: Any compound containing or structurally derived from (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol. Examples of this structural class include:

“(I) AM-087 (also known as (6aR,10aR)-3-(2-methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol);

“(II) AM-411 (also known as (6aR,10aR)-3-(1-adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol);

“(III) HU-210, also known as:

“(aa) 3-(1,1'-dimethylheptyl)-6aR,7,10,10aR-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol;

“(bb) [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol];

“(cc) 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; or

“(dd) 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol;

“(IV) HU-211, also known as:

“(aa) 3-(1,1-dimethylheptyl)-6aS,7,10,10aS-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol;

“(bb) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

“(cc) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol; or

“(dd) “Dexanabinol”;

“(V) HU-243, also known as

“(aa) (6aR,8S,9S,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-8,9-ditritio-7,8,10,10a-tetrahydro-6aH-benzo[c]chromen-1-ol; or

“(bb) 3-dimethylheptyl-11-hydroxyhexahydrocannabinol;



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“(VI) JWH-051 (also known as (6aR,10aR)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-9-yl)methanol);

“(VII) JWH-133 (also known as (6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran); and

“(VIII) JWH-359 (also known as (6aR,10aR)-1-methoxy-6,6,9-trimethyl-3-[(2R)-1,1,2-trimethylbutyl]-6a,7,10,10a-tetrahydrobenzo[c]chromene);

“(xxxix)  $\Delta^8$  Tetrahydrocannabinol: Any compound containing or structurally derived from 11-hydroxy- $\Delta^8$ -tetrahydrocannabinol structure, also known as dibenzopyrans, with further substitution on the 3-pentyl group by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(n-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group;

“(xxxix) Tetrahydrodibenzopyrans: Any compound containing or structurally derived from whether or not substituted in the tricyclic ring system except where contained in cannabis or cannabis resin;

“(xxxix) Tetramethylcyclopropanoylindoles: Any compound containing or structurally derived from 3-tetramethylcyclopropanoylindole, 3-(1-tetramethylcyclopropyl)indole, 3-(2,2,3,3-tetramethylcyclopropyl)indole or 3-(2,2,3,3-tetramethylcyclopropylcarbonyl)indole with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropanoyl ring to any extent. Tetramethylcyclopropanoylindoles include cyclopropoylindoles, any compound containing or structurally derived from a 3-(cyclopropoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, benzyl, halobenzyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, (tetrahydropyran-4-yl)methyl, 1-methylazepanyl, phenyl, or halophenyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the cyclopropoyl ring to any extent. Examples of tetramethylcyclopropanoylindoles include:

“(I) A-796,260, also known as:

“(aa) [1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)-methanone; or

“(bb) A-796260;

“(II) A-834,735, also known as:

“(aa) [1-[(tetrahydro-2H-pyran-4-yl)methyl]-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)-methanone; or

“(bb) A-834735;

“(III) AB-034 (also known as [1-[(N-methylpiperidin-2-yl)methyl]-1H-indole-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone);

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- tetramethylcyclopropoyl)indole);
- “(IV) UR-144 (also known as 1-pentyl-3-(2, 2, 3, 3-tetramethylcyclopropyl)-methanone); or
- “(V) 5-bromo-UR-144, also known as:
- “(aa) [1-(5-bromopentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)-methanone; or
- “(bb) UR-144 N-(5-bromopentyl) analog;
- “(VI) 5-chloro-UR-144, also known as:
- “(aa) 1-(5-chloropentyl)-3-(2, 2, 3, 3-tetramethylcyclopropoyl)indole; or
- “(bb) 5Cl-UR-144; and
- “(VII) XLR11, also known as:
- “(aa) 1-(5-fluoropentyl)-3-(2,2,3, 3-tetramethylcyclopropoyl)indole;
- “(bb) 5-FUR-144; or
- “(cc) 5-fluoro UR-144;
- “(xxxiv) Tetramethylcyclopropane-Thiazole Carboxamides: Any compound containing or structurally derived from 2,2,3,3-tetramethyl-N-(thiazol-2-ylidene)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the thiazole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. Examples of tetramethylcyclopropane-thiazole carboxamides include the group tetramethylcyclopropyl thiazoles, or any compound containing or structurally derived from 2,2,3,3-tetramethyl-N-(thiazol-2-ylidene)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring, whether or not further substituted in the thiazole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent. Tetramethylcyclopropane-thiazole carboxamides also include A-836,339, also known as:
- “(I) [N(Z)]-N-[3-(2-methoxyethyl)-4,5-dimethyl-2(3H)-thiazolylidene]-2,2,3,3-tetramethyl-cyclopropanecarboxamide;
- “(II) N-[3-(2-Methoxyethyl)-4,5-dimethyl-1,3-thiazol-2(3H)-ylidene]-2,2,3,3-tetramethylcyclopropanecarboxamide: or
- “(III) A-836339;
- “(B) Unclassified Synthetic Cannabimimetic Agents:
- “(i) AM-356, also known as:
- “(I) AM356;
- “(II) arachidonyl-1'-hydroxy-2'-propylamide;
- “(III) N-(2-hydroxy-1R-methylethyl)-5Z,8Z,11Z,14Z-eicosatetraenamide
- “(IV) (R)-(+)-Arachidonyl-1'-Hydroxy-2'-Propylamide;
- “(V) Methanandamide; or
- “(VI) R-1 Methanandamide;

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- “(ii) AM-855 (also known as (4aR,12bR)-8-hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol);
- “(iii) AM-905 (also known as (6aR,9R,10aR)-3-[(E)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol);
- “(iv) AM-906 (also known as (6aR,9R,10aR)-3-[(Z)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol);
- “(v) AM-2389 (also known as (6aR,9R,10aR)-3-(1-hexyl-cyclobut-1-yl) -6a,7,8,9,10,10a - hexahydro -6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9-diol);
- “(vi) BAY38-7271 (also known as (-)-(R)-3-(2-Hydroxymethylindanyl -4-oxy) phenyl-4,4,4-trifluorobutyl-1-sulfonate);
- “(vii) CP 50,556-1, also known as:
- “(I) 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate;
- “(II) [(6S,6aR,9R,10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-; octahydrophenanthridin-1-yl] acetate;
- “(III) [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate; or
- “(IV) “Levonantradol”;
- “(viii) FUB-144 (also known as (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone);
- “(ix) FUB-AMB, also known as:
- “(I) AMB-FUBINACA; or
- “(II) Methyl (1-(4-fluorobenzyl)-1 *H*-indazole-3-carbonyl) valinate; and
- “(x) 5-fluoro-AMB (also known as (S)- methyl 2- (1- (5-fluoropentyl)- 1*H*- indazole- 3-carboxamido)- 3- methylbutanoate);
- “(xi) HU-308 (also known as (91R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol);
- “(xii) HU-331 (also known as 3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione);
- “(xiii) JTE-907 (also known as N-(benzol[1,3]dioxol-5-ylmethyl) - 7-methoxy-2-oxo-8-pentyloxy-1,2-dihydroquinoline-3-carboxamide);
- “(xiv) JWH-057 (also known as (6aR,10aR)-3-(1,1-dimethylheptyl) -6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-Dibenzo[b,d]pyran);
- “(xv) Mepirapim (also known as (4-methylpiperazin-1-yl)(1-pentyl-1*H*-indol-3-yl) Methanone);
- “(xvi) URB597 (also known as [3-(3-carbamoylphenyl)phenyl] - N-Cyclohexylcarbamate);
- “(xvii) URB602, also known as:
- “(I) [1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester;
- or
- “(II) cyclohexyl [1,1'-biphenyl]-3-ylcarbamate;

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“(xviii) URB754 (also known as 6-methyl-2-[(4-methylphenyl)amino]-4H-3,1-benzoxazin-4-one);

“(xix) URB937 (also known as 3'-carbamoyl-6-hydroxy-[1,1'-biphenyl]-3-yl Cyclohexylcarbamate);

“(xx) SDB-006 (also known as N-benzyl-1-pentyl-1H-indole-3-carboxamide);

“(xxi) THJ-2201 (also known as [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone); and

“(xxii) THJ-018 (also known as Naphthalen-1-yl(1-pentyl-1H-indazol-3-yl)methanone).”.

(c) Section 208(a)(7) (D.C. Official Code § 48-902.08(a)(7)) is repealed.

Sec. 3. Fiscal impact statement.

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

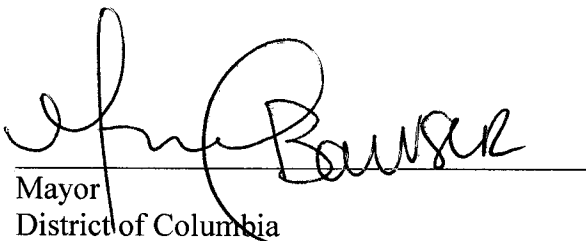
Sec. 4. Effective date.

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

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



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED

May 4, 2016

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AN ACT

**D.C. ACT 21-385**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend Chapter 22 of Title 21 of the District of Columbia Official Code to require hospitals to allow a patient the opportunity to designate, upon inpatient admission, a lay caregiver in the patient's medical record, to require a hospital to notify and meet with the designated lay caregiver along with the patient to discuss the patient's plan of care before the patient's discharge, and to require a hospital to instruct the designated lay caregiver in certain after-care tasks upon a patient's discharge to the patient's current residence.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Caregiver Advise, Record, and Enable Amendment Act of 2016".

Sec. 2. Chapter 22 of Title 21 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new Subchapter III to read as follows:

"Subchapter III. Hospital Discharge Planning.

"21-2231.01. Definitions.

"21-2231.02. Lay caregiver designation.

"21-2231.03. Hospital discharge plan.

"21-2231.04. Construction.

"21-2231.05. Rules."

(b) A new Subchapter III is added to read as follows:

"Subchapter III. Hospital Discharge Planning.

"§ 21-2231.01. Definitions.

"For the purposes of this subchapter, the term:

"(1) "After-care" means any type of assistance that is not regulated under Chapter 12 of Title 3, or similar law, and that is provided by a lay caregiver to a patient after the patient's discharge and is limited to the patient's condition at the time of discharge.

"(2) "Authorized representative" means a person who is authorized to make a health-care decision on behalf of an incapacitated individual or minor in accordance with §§ 21-2205 and 21-2210.

"(3) "Discharge" means a patient's exit and release from a hospital to the patient's residence following an inpatient admission.

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“(4) “Hospital” shall have the same meaning as provided in § 44-501(a)(1).

“(5) “Lay caregiver” means an individual who is designated by the patient or authorized representative to provide after-care to the patient at the patient’s residence and accepts the role as the patient’s lay caregiver.

“(6) “Residence” means a dwelling that the patient considers to be the patient’s home and does not include a rehabilitation facility, hospital, nursing home, assisted living facility, or group home licensed by the Department of Health.

“§ 21-2231.02. Lay caregiver designation.

“(a) A hospital shall provide each patient or authorized representative an opportunity to designate a lay caregiver as soon as practicable following the patient’s inpatient admission into a hospital and before the patient’s discharge.

“(b)(1) If the patient or authorized representative designates an individual as a lay caregiver, the hospital shall:

“(A) Provide notice to the lay caregiver as soon as practicable following the designation and before the patient’s discharge;

“(B) Promptly request the written consent of the patient or authorized representative to release medical information to the patient’s lay caregiver in accordance with the hospital’s procedures for releasing personal health information and in compliance with all federal and District laws, including the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (Pub. L. No. 104-191; 110 Stat. 1936);

“(C) Record the patient’s or authorized representative’s designation of the lay caregiver, the relationship of the lay caregiver to the patient, and the name, telephone number, and address of the lay caregiver in the patient’s medical record; and

“(D) Notify the lay caregiver of the patient’s discharge to the patient’s residence as soon as practicable; provided, that if the hospital is unable to contact the lay caregiver, the hospital shall document that in the patient’s medical record as soon as practicable.

“(2) If a patient or authorized representative fails to authorize the release of medical information to the lay caregiver under paragraph (1)(B) of this subsection, the hospital is deemed to have met the requirements of the subchapter and no further action is needed.

“(3) A patient or authorized representative may elect to change the designation of a lay caregiver at any time before the patient’s discharge; provided, that if a change is made, the hospital shall record that change in the patient’s medical record as soon as practicable.

“(4) The designation of a lay caregiver by the patient or authorized representative does not obligate the lay caregiver to accept the designation or provide after-care.

“(5) A hospital is not obligated to determine the ability of a lay caregiver to understand or perform after-care tasks.

“§ 21-2231.03. Hospital discharge plan.

“(a) As soon as practicable before the patient’s discharge, the hospital shall:

“(1) Consult with the lay caregiver and the patient or authorized representative regarding the lay caregiver’s capabilities and limitations;

“(2) Provide a copy of the discharge plan to the lay caregiver;

## ENROLLED ORIGINAL

“(3) Consult with, and provide instruction to, the lay caregiver regarding the patient’s discharge plan; and

“(4) Provide contact information for any health care, community resources, and long-term care services and supports necessary to carry out the patient’s discharge plan.

“(b) At a minimum, the discharge plan described in subsection (a) of this section shall include:

“(1) The name and contact information of the lay caregiver;

“(2) A description of all after-care tasks necessary to maintain the patient’s ability to reside in the patient’s residence; and

“(3) Contact information for any health care, community resources, and long-term care services and supports necessary to carry out the patient’s discharge plan.

“(c)(1) At a minimum, the instruction to the lay caregiver described in subsection (a) of this section shall include:

“(A) An opportunity for a demonstration at the hospital of the after-care tasks; and

“(B) An opportunity for the lay caregiver and the patient to ask questions and receive answers to questions about the after-care tasks; and

“(2) The instruction provided shall be documented in the patient’s medical record and shall include, at minimum, the date, time, and contents of the instruction.

“§ 21-2231.04. Construction.

“(a) Nothing in this subchapter shall be construed to delay the discharge of a patient or the transfer of a patient from a hospital to another facility, including the inability of the hospital to contact a designated lay caregiver;

“(b) Nothing in this subchapter shall be construed to create a private right of action not otherwise existing in the law for compliance or non-compliance with this subchapter.

“§ 21-2231.05. Rules.

“The Mayor, pursuant to subchapter 1 of Chapter 5 of Title 2, may issue rules to implement the provisions of this subchapter.”.

### Sec. 3. 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).

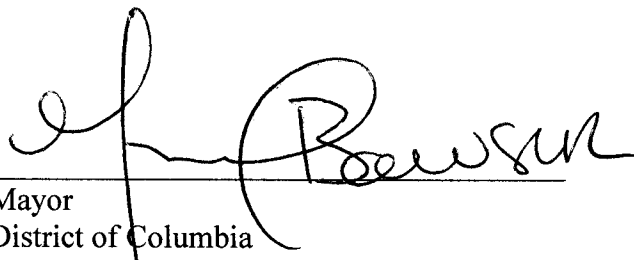
### Sec. 4. Effective date.

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

ENROLLED ORIGINAL

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

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
May 4, 2016



ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-386**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend the Urban Forestry Preservation Act of 2002 to decrease the size of a Special Tree, to increase the permit fees for Special Tree removal and the fines for unlawful removal of a Special Tree, to protect trees with a circumference of 100 inches or more, to expand the permissible uses of the Tree Fund, and to establish the Urban Forestry Advisory Council; and to amend the Department of Transportation Establishment Act of 2002 to expand the duties of the Operations Administration of the District Department of Transportation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Tree Canopy Protection Amendment Act of 2016".

Sec. 2. The Urban Forest Preservation Act of 2002, effective June 12, 2003 (D.C. Law 14-309; D.C. Official Code § 8-651.01 *et seq.*), is amended as follows:

(a) Section 102 (D.C. Official Code § 8-651.02) is amended as follows:

(1) A new paragraph (3A) is added to read as follows:

"(3A) "Heritage Tree" means a tree with a circumference of 100 inches or more."

(2) Paragraph (5) is amended by striking the phrase "of 55 inches or more" and inserting the phrase "between 44 inches and 100 inches" in its place.

(b) Section 104 (D.C. Official Code § 8-651.04) is amended as follows:

(1) Subsection (b)(3) is amended by striking the phrase "equal to \$35 for each inch" and inserting the phrase "not less than \$55 for each inch" in its place.

(2) Subsection (d) is amended by striking the phrase "a fine of not less than \$100" and inserting the phrase "a fine of not less than \$300" in its place.

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

"(e) The Mayor may increase the fee described in subsection (b)(3) of this section or the fine described in subsection (d) of this section by regulation."

(c) A new section 104a is added to read as follows:

"Sec. 104a. Protection of Heritage Trees.

"(a) It shall be unlawful for any person or nongovernmental entity, without a Heritage Tree removal permit issued by the Mayor, to top, cut down, remove, girdle, break, or destroy any Heritage Tree.

"(b)(1) The Mayor shall issue a Heritage Tree removal permit under this section where the applicant has:

"(A) Shown that the Heritage Tree in question is a Hazardous Tree; or

## ENROLLED ORIGINAL

“(B) Shown that the Heritage Tree in question is of a species that has been identified, by regulation, as appropriate for removal.

“(2) The Mayor may issue a Heritage Tree removal permit under this section where the applicant has averred in the Heritage Tree removal permit application that the applicant will relocate and replant, in compliance with any applicable regulations, the Heritage Tree to an identified new location within the District, without significant harm to the tree; provided, that it shall be a violation of subsection (a) of this section if a Heritage Tree that is relocated and replanted pursuant to this paragraph dies within 3 years of replanting.

“(c) A violation of subsection (a) of this section, or a failure to comply with the conditions contained in a Heritage Tree removal permit, shall constitute a violation subject to a fine of not less than \$300 per each inch of the circumference of the Heritage Tree in question.

“(d) The Mayor may increase the fine described in subsection (c) of this section by regulation.”.

(d) Section 107 (D.C. Official Code § 8-651.07) is amended as follows:

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

“(b)(1) The Fund shall be used to:

“(A) Plant trees on public space and on District-owned land, including parks and school property; and

“(B) Provide income-contingent subsidies to assist District residents with costs related to the removal and replacement of hazardous trees.

“(2) The Fund may be used:

“(A) In coordination with the District Department of the Environment, to support tree planting on private land;

“(B) To conduct survival checks of replacement trees planted on public or private land; and

“(C) For any associated costs incurred by the District in administering this title.”.

(2) A new subsection (b-1) is added to read as follows:

“(b-1) The Mayor shall ensure that trees planted pursuant to this section are checked for survival at appropriate intervals to evaluate canopy replacement and inform future planting decisions.”.

(e) A new section 109 is added to read as follows:

“Sec. 109. Urban Forestry Advisory Council.

“(a) There is established an Urban Forestry Advisory Council (“UFAC”).

“(b) The UFAC shall be composed of 12 members, as follows:

“(1) The Director of the District Department of Transportation, or the Director’s designee;

“(2) The Director of the District Department of the Environment, or the Director’s designee;

“(3) The Director of the Department of Parks and Recreation, or the Director’s designee;

## ENROLLED ORIGINAL

“(4) The Director of the Department of General Services, or the Director’s designee;

“(5) The General Manager of District of Columbia Water and Sewer Authority, or the General Manager’s designee;

“(6) A representative of the U.S. National Park Service;

“(7) A representative of the U.S. General Services Administration;

“(8) A representative of the District’s electric utility;

“(9) Three community representatives appointed by the Mayor knowledgeable in the fields of urban forestry, public policy, environmental protection, public administration, or environmental justice and equity; and

“(10) One community representative appointed by the Chairperson of the Council committee with oversight of the District Department of the Environment.

“(c)(1) The community representatives shall be appointed for a term of 3 years, with initial staggered appointments of one community representative appointed for one year, 2 community representatives appointed for 2 years, and one community representative appointed for 3 years. The community representative to serve the one-year term, the community representatives to serve the 2-year term, and the community representative to serve the 3-year term shall be determined by lot at the first meeting of the UFAC.

“(2) Vacancies shall be filled in the same manner as the original appointment to the position that became vacant. Community representatives who are appointed to fill vacancies that occur before the expiration of a community representative’s full term shall serve only the unexpired portion of the community representative’s term.

“(d) The UFAC shall be co-chaired by the Director of the District Department of Transportation and the Director of the District Department of the Environment, or their designees. The UFAC may designate other officers and create temporary, ad-hoc committees as necessary.

“(e)(1) The UFAC shall hold at least 3 meetings per year.

“(2) The UFAC shall conduct its meetings in compliance with the Open Meetings Amendment Act of 2010, effective March 31, 2010 (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.*).

“(f) The purpose of the UFAC shall be to:

“(1) Ensure coordination between the District agencies responsible for achieving the District’s tree canopy goals and partners engaged in programs and activities geared toward achieving those goals.

“(2) Advise District agencies responsible for achieving the District’s tree canopy goals regarding policies, programs, and partnerships for the purpose of maintaining, protecting, and increasing the District’s tree canopy; and

“(3) Provide input on the 5-year urban forest report and master plan required by section 103(c).

“(g) The District Department of Transportation and the District Department of the Environment shall provide the UFAC with an annual operating budget, which shall include funds

## ENROLLED ORIGINAL

to maintain a website where the UFAC shall provide a public listing of members, meeting notices, and meeting minutes.”.

Sec. 3. Section 5(a)(3) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.04(a)(3)), is amended as follows:

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

“(D) Plant and maintain trees on public space and on District-owned land, including parks and school property;”.

(b) New subparagraphs (D-i) and (D-ii) are added to read as follows:

“(D-i) Remove and trim trees citywide;

“(D-ii) Review construction plans for the District of Columbia Public Schools, the Department of General Services, the Department of Parks and Recreation, and other District agencies to ensure the tree canopy is protected;”.

Sec. 4. Applicability.

(a) Section 2(a), (b)(1), and (c) shall not apply to a person or nongovernmental entity who has an application for a Special Tree removal permit pending as of the effective date of this act.

(b)(1) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(2) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(3)(A) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(B) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 5. 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. 6. Effective date.

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


ENROLLED ORIGINAL

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



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
May 4, 2016

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-387**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To order the closing of a portion of the public alley system in Square 342, bounded by Massachusetts Avenue, N.W., 10th Street, N.W., K Street, N.W., and 11th Street, N.W., in Ward 2.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 342, S.O. 14-21629, Act of 2016".

Sec. 2. (a) Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds the portion of the public alley system in Square 342, as shown on the Surveyor's plat filed in S.O. 14-21629, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

(b) The approval of the Council of this alley closing is contingent upon the satisfaction of all conditions in the official file for S.O. 14-21629 before the recordation of the alley closing.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

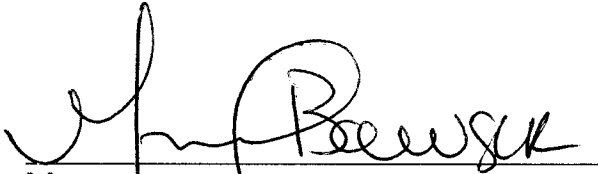
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as

ENROLLED ORIGINAL

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



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
May 4, 2016

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-388**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 3, 2016**

To establish the Made in DC program within the Department of Small and Local Business Development, to establish the Made in DC Fund, and to require the Deputy Mayor for Planning and Economic Development to submit a report to the Mayor and the Council by a date certain on opportunities for establishing a District-sponsored Innovation Space and Marketplace.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Made in DC Program Establishment Act of 2016".

## Sec. 2. Definitions:

For the purposes of this act, the term:

- (1) "Department" means the Department of Small and Local Business Development, established by the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*).
- (2) "District-based business" or "DBB" means a maker that:
  - (A) Maintains its primary office in the District;
  - (B) Possesses a current license pursuant to Chapter 28 of Title 47;
  - (C) Has certified that either the majority owners are District residents or 51% or more of its employees are District residents; and
  - (D) Is registered with the Department.
- (3) "Fund" means the Made in DC Fund established by section 4.
- (4) "Innovation Space and Marketplace" means studio space together with sales gallery space, space with high-end shared equipment, and classrooms that would be available to local makers on a low-cost membership basis.
- (5) "Made in DC" means the brand name developed under the Made in DC program, established by section 3, which may be used by a maker who is registered with the Department as a DBB to promote a product that has been:
  - (A) Created, manufactured, or assembled in the District; and
  - (B) Approved by the Department.



## ENROLLED ORIGINAL

(6) “Maker” means an individual, including an artisan or craftsperson, or a business, who creates, manufactures, or assembles a product through a process involving intellectual property, ingredients, raw materials, or other components.

(7) “Program” means the Made in DC program established by section 3.

Sec. 3. Made in DC program.

(a) There is established within the Department a Made in DC program, which shall:

(1) Promote products created, manufactured, or assembled in the District;

(2) Develop and promote the Made in DC brand name as an identifier of products created, manufactured, or assembled in the District;

(3) Develop a logo for the Made in DC brand name to aid District-based businesses in marketing their products and to promote public recognition of the logo;

(4) Raise awareness of and pride in products created, manufactured, or assembled in the District that carry the Made in DC logo;

(5) Conduct a public awareness campaign, including producing public service announcements and distributing marketing materials, such as stickers, flyers, and digital logos, to promote the Made in DC brand name;

(6) Coordinate with Events DC and Destination DC to market the Made in DC brand name and products created, manufactured, or assembled in the District to conventions, tourists, and major events;

(7) Establish and maintain an online resource listing of products branded Made in DC;

(8) Establish an application process to approve an eligible product created, manufactured, or assembled in the District; provided, that the Department shall review each approval every 3 years to confirm a product’s continued eligibility and revoke its approval for use of the Made in DC brand name of any product or DBB that no longer meets the requirements of this section;

(9) Provide technical assistance and other support to help eligible makers utilize the Made in DC brand name, including:

(A) Coordinating with the Department of Consumer and Regulatory Affairs to market the Program to eligible makers; and

(B) Developing an interactive network to enable designers and makers to connect to spur local product innovation and partnerships;

(10) Monitor the use of the Made in DC brand name to identify and stop the unauthorized use of the brand name and its logo; and

(11) Develop criteria to evaluate on an ongoing basis the effectiveness of the Program.

(b) The Department may engage a non-governmental organization with specific expertise in the District maker community to:

(1) Assist the Department with the duties listed in subsection (a) of this section;

(2) Identify makers who may be eligible to participate in the Program; and

## ENROLLED ORIGINAL

(3) Assess obstacles, if any, to the viability of the District maker community and make recommendations to address those obstacles.

Sec. 4. Made in DC Fund.

(a) There is established as a special fund the Made in DC Fund, which shall be administered by the Department in accordance with subsection (c) of this section.

(b) Revenue from the following sources shall be deposited in the Fund:

- (1) Appropriated funds;
- (2) Donations from the public;
- (3) Donations and grants from private entities;
- (4) Interest earned from funds in the Fund; and
- (5) Any other available funding.

(c) Money in the Fund shall be used for the purposes set forth in section 3.

(d)(1) The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

Sec. 5. Innovation Space and Marketplace report.

(a) Within 180 days of the effective date of this act, the Deputy Mayor for Planning and Economic Development shall submit to the Mayor and the Council a report on opportunities for establishing a District-sponsored Innovation Space and Marketplace to support the local maker community by providing a central venue in which members can work and display and sell their products.

(b) The report shall:

(1) Identify District property for potential use as an Innovative Space and Marketplace;

(2) Estimate the cost of developing potential sites for such use;

(3) Estimate the costs of operating and maintaining the site;

(4) Assess the availability of public-private partnerships to develop an Innovation Space and Marketplace;

(5) Assess the availability of private donations, grants, or sponsorships to support the Innovation Space and Marketplace and the purchase of a wide range of equipment, such as tools for:

- (A) 3D printing and prototyping;
- (B) Woodworking;
- (C) Metal working and welding;
- (D) Sewing;
- (E) Screen printing;
- (F) Electronics; and

## ENROLLED ORIGINAL

(G) Robotics; and

(6) Consider the most efficient management option for an Innovative Space and Marketplace.

(c) In preparing the report, the Deputy Mayor for Planning and Economic Development shall work with a variety of stakeholders, including:

- (1) Diverse members of the maker community;
- (2) Local creative organizations;
- (3) Universities and colleges;
- (4) The Commission on Arts and Humanities; and
- (5) The Department.

Sec. 6. Rules.

The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this act.

Sec. 7. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 8. 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. 9. Effective date.

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

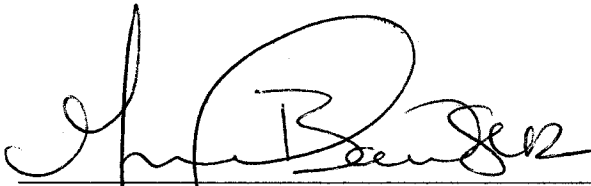
ENROLLED ORIGINAL

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



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
May 3, 2016

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-389**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To order the closing of a portion of the public alley system in Square 697, bounded by K Street, S.E., Half Street, S.E., L Street, S.E., and South Capitol Street, S.E., in Ward 6.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Closing of a Public Alley in Square 697, S.O. 15-26230, Act of 2016".

Sec. 2. (a) Pursuant to section 404 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.04), and consistent with the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-201.01 *et seq.*), the Council finds the portion of the public alley system in Square 697, as shown on the Surveyor's plat filed in S.O. 15-26230, is unnecessary for alley purposes and orders it closed, with title to the land to vest as shown on the Surveyor's plat.

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

(1) The recordation of a covenant establishing new portions of the alley system by easement as shown on the Surveyor's plat in S.O. 15-26230 that includes an agreement by the owner of the property encumbered by the easement to maintain the new portions of the alley system; and

(2) The satisfaction of all conditions in the official file for S.O. 15-26230 before the recordation of the alley closing.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.


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

Sec. 5. Effective date.

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


ENROLLED ORIGINAL

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



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
May 4, 2016

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 21-390**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**MAY 4, 2016**

To amend An Act To establish a code of law for the District of Columbia to raise the fee charged by a notary public to, at minimum, \$5 per notarial act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Notary Public Fee Enhancement Amendment Act of 2016".

Sec. 2. Section 571 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1280; D.C. Official Code § 1-1213), is amended as follows:

(a) Subsection (a) is amended by striking the phrase "charged by notaries public." and inserting the phrase "charged by notaries public; provided, that the schedule of fees shall not include a fee for a notarial act in an amount less than the fee established for that act by subsection (c) of this section." in its place.

(b) Subsection (c) is amended by striking the figure "\$2" wherever it appears and inserting the figure "\$5" in its place.

Sec. 3. Fiscal impact statement.


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

Sec. 4. Effective date.

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

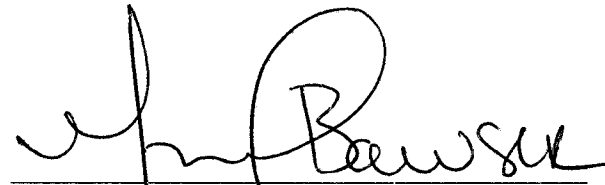
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provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
May 4, 2016



## ENROLLED ORIGINAL

## A RESOLUTION

21-470

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency, due to congressional review, with respect to the need to amend the Retired Police Officer Redeployment Amendment Act of 1992 to allow for the rehiring of retired Metropolitan Department officers by the Department of Forensic Sciences without jeopardy to the retirement benefits of the employee.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Crime Scene Investigator Hiring Clarification Congressional Review Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to allow for the rehiring of retired Metropolitan Police Department officers by the Department of Forensic Sciences.

(b) On February 16, 2016, the Council of the District of Columbia passed the Crime Scene Investigator Hiring Clarification Emergency Amendment Act of 2016, effective March 3, 2016 (D.C. Act 21-327; 63 DCR 3665). This emergency legislation will expire on June 1, 2016.

(c) Permanent legislation, which is substantively identical to the emergency legislation – the Neighborhood Engagement Achieves Results Amendment Act of 2016 – was enacted on March 26, 2016 (D.C. Act 21-0356; 63 DCR 4659). The bill is undergoing congressional review and is not expected to become law until September 8, 2016.

(d) In order to prevent a gap in the law, it is now necessary to move this congressional review emergency legislation.

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 Crime Scene Investigator Hiring 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

21-471

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To appoint Ms. Brianne Nadeau, Councilmember of the District of Columbia, and Mr. Brandon Todd, Councilmember of the District of Columbia, as members of the Marijuana Private Club Task Force.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Marijuana Private Club Task Force Brianne Nadeau and Brandon Todd Appointment Resolution of 2016”.

Sec. 2. The Council of the District of Columbia appoints:

Ms. Brianne Nadeau  
1414 Belmont Street, N.W. #312  
Washington, D.C. 20009  
(Ward 1)

and

Mr. Brandon Todd  
423 Buchanan Street, N.W.  
Washington, D.C. 20011  
(Ward 4)

to the Marijuana Private Club Task Force, established pursuant to section 2(b) of the Marijuana Possession Decriminalization Clarification Temporary Amendment Act of 2016, effective April 6, 2016 (D.C. Law 21-98; 63 DCR 2211), and Mayor’s Order 2016-032 (March 3, 2016), for a term to end no later than 120 days after the creation of the task force.

Sec. 3. The Council shall transmit copies of this resolution, upon its adoption, to the appointees, the chairperson of the task force, and the Mayor.

Sec. 4. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

21-473

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To 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 in one or more series and to authorize and provide for the loan of the proceeds of such 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.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “The Institute of World Politics Revenue Bonds Project Approval Resolution of 2016”.

Sec. 2. Definitions.

For the purposes of this resolution, the term:

(1) “Authorized Delegate” means the Mayor or the Deputy Mayor for Planning and Economic Development, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated or to whom the foregoing individuals have subdelegated any of the Mayor’s functions under this resolution pursuant to section 422(6) of the Home Rule Act.

(2) “Bond Counsel” means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(3) “Bonds” means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this resolution.

(4) “Borrower” means the owner of the assets financed, refinanced, or reimbursed with proceeds from the Bonds, which shall be The Institute of World Politics, a nonprofit corporation organized under the laws of the District of Columbia, which is exempt from federal income taxes under 26 U.S.C § 501(a) as an organization described in 26 U.S.C. § 501(c)(3) and organized under the laws of the District and which is liable for the repayment of the Bonds.

(5) “Chairman” means the Chairman of the Council of the District of Columbia.

(6) “Closing Documents” means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the Bonds and to make the Loan, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

## ENROLLED ORIGINAL

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

(8) "Financing Documents" means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the Bonds and the making of the Loan, including any offering document, and any required supplements to any such documents.

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

(10) "Issuance Costs" means all fees, costs, charges, and expenses paid or incurred in connection with the authorization, preparation, printing, issuance, sale, and delivery of the Bonds and the making of the Loan, including, but not limited to, underwriting, legal, accounting, rating agency, and all other fees, costs, charges, and expenses incurred in connection with the development and implementation of the Financing Documents, the Closing Documents, and those other documents necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale, marketing, and delivery of the Bonds and the making of the Loan, together with financing fees, costs, and expenses, including program fees and administrative fees charged by the District, fees paid to financial institutions and insurance companies, initial letter of credit fees (if any), and compensation to financial advisors and other persons (other than full-time employees of the District) and entities performing services on behalf of or as agents for the District.

(11) "Loan" means the District's lending of proceeds from the sale, in one or more series, of the Bonds to the Borrower.

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

(13) "Project" means the financing, refinancing, or reimbursing of all or a portion of the Borrower's costs of:

(A) A portion of the costs of the acquisition, renovation, and equipping of 1521 16th Street, N.W., and 1523 16th Street, N.W., in Washington, D.C. (also known as 1531 Church Street, N.W.) (Lots 0114 and 0817, Square 0194), constituting approximately 25,470 square feet of above-grade improvements, plus an on-site parking lot and structure of approximately 4,000 square feet (collectively, "Facility");

(B) The purchase of certain equipment and furnishings, together with other property, real and personal, functionally related and subordinate to the Facility;

(C) Funding certain expenditures associated with the financing of the Facility, to the extent permissible, including credit enhancement costs, liquidity costs, debt service reserve fund, or working capital; and

(D) Paying costs of issuance and other related costs to the extent permissible.

### Sec. 3. Findings.

The Council finds that:

(1) Section 490 of the Home Rule Act provides that the Council may, by resolution, authorize the issuance of District revenue bonds, notes, or other obligations

**ENROLLED ORIGINAL**

(including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse costs, and to assist in the financing, refinancing, or reimbursing of, the costs of undertakings in certain areas designated in section 490 and may effect the financing, refinancing, or reimbursement by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series pursuant to a plan of finance, in an aggregate principal amount not to exceed \$10 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

(3) The Project is located in the District and will contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District.

(4) The Project is an undertaking in the area of facilities used to house and equip operation related to the study, development, application or production of innovative commercial or industrial technologies and social services, within the meaning of section 490 of the Home Rule Act.

(5) The authorization, issuance, sale, and delivery of the Bonds and the Loan to the Borrower are desirable, are in the public interest, will promote the purpose and intent of section 490 of the Home Rule Act, and will assist the Project.

**Sec. 4. Bond authorization.**

(a) The Mayor is authorized pursuant to the Home Rule Act and this resolution to assist in financing, refinancing, or reimbursing the costs of the Project by:

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed \$10 million; and

(2) The making of the Loan.

(b) The Mayor is authorized to make the Loan to the Borrower for the purpose of financing, refinancing, or reimbursing the costs of the Project and establishing any fund with respect to the Bonds as required by the Financing Documents.

(c) The Mayor may charge a program fee to the Borrower, including, but not limited to, an amount sufficient to cover costs and expenses incurred by the District in connection with the issuance, sale, and delivery of each series of the Bonds, the District's participation in the monitoring of the use of the Bond proceeds and compliance with any public benefit agreements with the District, and maintaining official records of each bond transaction, and assisting in the redemption, repurchase, and remarketing of the Bonds.

**Sec. 5. Bond details.**

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this resolution in connection with the preparation, execution, issuance, sale,

## ENROLLED ORIGINAL

delivery, security for, and payment of the Bonds of each series, including, but not limited to, determinations of:

- (1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificated or book-entry form;
- (2) The principal amount of the Bonds to be issued and denominations of the Bonds;
- (3) The rate or rates of interest or the method for determining the rate or rates of interest on the Bonds;
- (4) The date or dates of issuance, sale, and delivery of, and the payment of interest on, the Bonds, and the maturity date or dates of the Bonds;
- (5) The terms under which the Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;
- (6) Provisions for the registration, transfer, and exchange of the Bonds and the replacement of mutilated, lost, stolen, or destroyed Bonds;
- (7) The creation of any reserve fund, sinking fund, or other fund with respect to the Bonds;
- (8) The time and place of payment of the Bonds;
- (9) Procedures for monitoring the use of the proceeds received from the sale of the Bonds to ensure that the proceeds are properly applied to the Project and used to accomplish the purposes of the Home Rule Act and this resolution;
- (10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed; and
- (11) The terms and types of credit enhancement under which the Bonds may be secured.

(b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve the faith and credit or the taxing power of the District, do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary of the District of Columbia's manual or facsimile signature. The Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the Bonds.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds.

(e) The Bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee to be selected by the Borrower subject to the approval of the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

**ENROLLED ORIGINAL**

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

**Sec. 6. Sale of the Bonds.**

(a) The Bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interest of the District.

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the Bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters and may authorize the distribution of the documents in connection with the sale of the Bonds.

(c) The Mayor is authorized to deliver the executed and sealed Bonds, on behalf of the District, for authentication, and, after the Bonds have been authenticated, to deliver the Bonds to the original purchasers of the Bonds upon payment of the purchase price.

(d) The Bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the Bonds of such series and, if the interest on the Bonds is expected to be exempt from federal income taxation, the treatment of the interest on the Bonds for purposes of federal income taxation.

**Sec. 7. Payment and security.**

(a) The principal of, premium, if any, and interest on, the Bonds shall be payable solely from proceeds received from the sale of the Bonds, income realized from the temporary investment of those proceeds, receipts and revenues realized by the District from the Loan, income realized from the temporary investment of those receipts and revenues prior to payment to the Bond owners, other moneys that, as provided in the Financing Documents, may be made available to the District for the payment of the Bonds, and other sources of payment (other than from the District), all as provided for in the Financing Documents.

(b) Payment of the Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Bond owners of certain of its rights under the Financing Documents and Closing Documents, including a security interest in certain collateral, if any, to the trustee for the Bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

**Sec. 8. Financing and Closing Documents.**

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the Bonds and to make the Loan to the Borrower. Each of the Financing Documents and each of the Closing Documents to which the District is not a party shall be approved, as to form and content, by the Mayor.

**ENROLLED ORIGINAL**

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Financing Documents and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the Bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

**Sec. 9. Authorized delegation of authority.**

To the extent permitted by District and federal laws, the Mayor may delegate to any Authorized Delegate the performance of any function authorized to be performed by the Mayor under this resolution.

**Sec. 10. Limited liability.**

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of, or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The Bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the Bonds.

(c) Nothing contained in the Bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the Bonds from sources other than those listed for that purpose in section 7.

(d) The District shall have no liability for the payment of any Issuance Costs or for any transaction or event to be effected by the Financing Documents.

(e) All covenants, obligations, and agreements of the District contained in this resolution, the Bonds, and the executed, sealed, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

(f) No person, including, but not limited to, the Borrower and any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or



**ENROLLED ORIGINAL**

agents for monetary damages suffered as a result of the failure of the District or any of its elected or appointed officials, officers, employees, or agents to either perform any covenant, undertaking, or obligation under this resolution, the Bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

**Sec. 11. District officials.**

(a) Except as otherwise provided in section 10(f), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Bonds or be subject to any personal liability by reason of the issuance, sale, or delivery of the Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the Bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the Bonds, the Financing Documents, or the Closing Documents.

**Sec. 12. Maintenance of documents.**

Copies of the specimen Bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

**Sec. 13. Information reporting.**

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the Bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

**Sec. 14. Disclaimer.**

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

(b) The District reserves the right to issue the Bonds in the order or priority it determines in its sole and absolute discretion. The District gives no assurance and makes no representations that any portion of any limited amount of bonds or other obligations, the interest on which is

**ENROLLED ORIGINAL**

excludable from gross income for federal income tax purposes, will be reserved or will be available at the time of the proposed issuance of the Bonds.

(c) The District, by adopting this resolution or by taking any other action in connection with financing, refinancing, or reimbursing costs of the Project, does not provide any assurance that the Project is viable or sound, that the Borrower is financially sound, or that amounts owing on the Bonds or pursuant to the Loan will be paid. Neither the Borrower, any purchaser of the Bonds, nor any other person shall rely upon the District with respect to these matters.

**Sec. 15. Expiration.**

If any Bonds are not issued, sold, and delivered to the original purchaser within 3 years of the date of this resolution, the authorization provided in this resolution with respect to the issuance, sale, and delivery of the Bonds shall expire.

**Sec. 16. Severability.**

If any particular provision of this resolution or the application thereof to any person or circumstance is held invalid, the remainder of this resolution and the application of such provision to other persons or circumstances shall not be affected thereby. If any action or inaction contemplated under this resolution is determined to be contrary to the requirements of applicable law, such action or inaction shall not be necessary for the purpose of issuing of the Bonds, and the validity of the Bonds shall not be adversely affected.

**Sec. 17. Compliance with public approval requirement.**

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2635; 26 U.S.C. § 147(f)), and section 490(k) of the Home Rule Act, for the Project to be financed, refinanced, or reimbursed with the proceeds of the Bonds. This resolution approving the issuance of the Bonds for the Project has been adopted by the Council after a public hearing held at least 14 days after publication of notice in a newspaper of general circulation in the District.

**Sec. 18. Transmittal.**

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

**Sec. 19. 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. 20. Effective date.**

This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-474

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to amend section 47-2844 of the District of Columbia Official Code to enable the Mayor to suspend or revoke the business license of any business engaged in the buying or selling of a synthetic drug and to enable the Chief of Police to seal a business licensee's premises for up to 96 hours for the buying or selling of a synthetic drug; and to amend the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 to designate the sale of a synthetic drug as a per se imminent danger to the health or safety of District residents and provide for an administrative hearing after the sealing of a business licensee's premises.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "Sale of Synthetic Drugs Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to amend section 47-2844 of the District of Columbia Official Code to enable the Mayor to suspend or revoke the business license of any business engaged in the buying or selling of a synthetic drug and to enable the Chief of Police to seal a business licensee's premises for up to 96 hours for the buying or selling of a synthetic drug; and to amend the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 to designate the sale of a synthetic drug as a per se imminent danger to the health or safety of District residents and provide for an administrative hearing after the sealing of a business licensee's premises.

(b) On June 30, 2015, the Council of the District of Columbia passed the Sale of Synthetic Drugs Emergency Amendment Act of 2015, effective July 10, 2015 (D.C. Act 21-100; 62 DCR 9689). This emergency legislation expired on October 8, 2015.

(c) The Council passed identical temporary legislation, the Sale of Synthetic Drugs Temporary Amendment Act of 2015, effective October 21, 2015 (D.C. Law 21-34; 62 DCR 10898), on July 14, 2015. This temporary legislation will expire on June 2, 2016.

(d) The permanent version of this legislation, the Sale of Synthetic Drugs Amendment Act of 2015, as introduced on July 18, 2015 (Bill 21-0261), is pending in the Committee on the Judiciary. The Committee held a hearing on the bill on September 16, 2015.

(e) In order to prevent a gap in the law before the permanent legislation moves forward, it is

**ENROLLED ORIGINAL**

necessary to pass this identical emergency and temporary legislation.

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 Sale of Synthetic Drugs Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-479

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to amend the Legalization of Marijuana for Medical Treatment Initiative of 1999 to allow any applicant that received notification on July 25, 2014, that its medical marijuana cultivation center was eligible for registration to modify its application, to allow a holder of a cultivation center registration that owns or has a valid lease for the real property adjacent to its existing cultivation center to expand its facility into that adjacent real property for purposes of increasing production of marijuana plants, not to exceed the authorized limit, and to increase the number of living plants a cultivation center may possess at any time to 1,000.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Medical Marijuana Cultivation Center Expansion Emergency Declaration Resolution of 2016”.

Sec. 2. (a) This emergency is necessary to allow holders of cultivation center registrations that own or have valid leases for the real property immediately adjacent to, and located within the same physical structure as, their existing cultivation centers to expand their facilities into that adjacent real property for purposes of increasing production not to exceed the authorized limit. This emergency will also increase the number of living plants medical marijuana cultivation centers may possess at any time to 1,000.

(b) Pursuant to the Medical Marijuana Expansion Emergency Amendment Act of 2014, effective July 29, 2014 (D.C. Act 20-396; 61 DCR 8255), and the Medical Marijuana Expansion Temporary Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-163; 61 DCR 10753), the District increased the number of plants that a cultivation center could possess from 95 to 500 plants.

(c) To accommodate this growth, the District’s cultivation centers must increase production, which for some registrants may necessitate expanding the physical size of their facilities, and for all facilities will require the ability to possess more than the current allotment of 500 living plants at any time.

**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 Medical Marijuana Cultivation Center Expansion Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-480

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to amend section 103 of Title 18 of the District of Columbia Municipal Regulations to repeal the requirement that every person who has never been issued a driver license must provide documentation that they have successfully completed an approved course of driver instruction before issuance of a provisional permit or driver license.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Mandatory Driver Instruction Regulation Emergency Declaration Resolution of 2016”.

Sec. 2. (a) In January 2016, the Department of Motor Vehicles (“DMV”) announced its intention to implement rules on May 1, 2016, mandating that “before receiving their first driver license, all new drivers, regardless of age, must successfully complete a DC DMV approved course in driver education that consists of 30 hours of classroom instruction and eight hours of behind-the-wheel instruction.”

(b) The DMV has approved 15 private companies to provide the driver instruction courses in the District, with rates that range from \$375 to \$499 for 10 hours of instruction – amounting to approximately \$1,000 for the total 30 or more mandated hours of driving instruction -- resulting in high costs to District residents seeking to obtain a provisional permit or driver license.

(c) 20% of District residents make less than \$23,000 a year, meaning that a low-income resident would have to spend more than half a month’s income on driver instruction.

(d) Until 2009, public schools in the District provided driver instruction funded in part by a fee added to driver license applications, but there is currently no low-cost or free option for a District resident seeking driver instruction.

(e) By not providing a low-cost or free option, the DMV’s mandatory driver instruction rules will effectively prevent many low-income District residents from having equal access to provisional permits or driver licenses.

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 Mandatory Driver Instruction Regulation Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-481

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to approve Task Order 4 of Contract No. CFOPD-15-C-046A with Bert Smith & Company to continue to provide auditing services for Medicaid healthcare providers to the Office of the Chief Financial Officer on behalf of the Department of Healthcare Finance 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. CFOPD-15-C-064A Extension Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Task Order 4 of Contract No. CFOPD-15-C-064A with Bert Smith & Company to continue to provide auditing services for Medicaid healthcare providers to the Office of the Chief Financial Officer on behalf of the Department of Healthcare Finance and to authorize payment for the services received and to be received under the contract.

(b) On September 18, 2015, the Office of the Chief Financial Officer executed Task Order 1 under Contract No. CFOPD-15-C-064A in the amount of \$399,584. On April 4, 2016, the amount of Task Order 1 was reduced to \$306,055.

(c) On November 27, 2015, the Office of the Chief Financial Officer executed Task Order 2 under Contract No. CFOPD-15-C-064A in the amount of \$401,064.

(d) On April 5, 2016, the Office of the Chief Financial Officer executed Task Order 3 under Contract No. CFOPD-15-C-064A in the amount of \$285,840.

(e) Proposed Task Order 4 is in the amount of \$1,376,791.

(f) Council approval is necessary because proposed Task Order 4 is in excess of \$1 million and it increases the overall expenditures under Contract No. CFOPD-15-C-064A to more than \$1 million during a 12-month period. Council approval is further necessary to allow the continuation of these vital services and to allow Bert Smith & Company to continue performance under the contract.



**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 Contract No. CFOPD-15-C-064A Extension 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

21-482

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to amend Chapter 7 of Title 25 of the District of Columbia Official Code to clarify the penalties for sale to minors violations and the failure to ascertain the legal drinking age violations.

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

Sec. 2. (a) The current language in D.C. Official Code §§ 25-781(f) and 25-783(c) needs to be amended to eliminate existing confusion among licensed establishments cited for selling alcoholic beverages to a minor or for failing to check identification to clarify how the Board determines the penalties for subsequent sale to a minor and the failure to check identification violations.

(b) Emergency legislation is needed to immediately clarify the law for licensed establishments and to avoid any adverse impact on the Alcoholic Beverage Control Board when it imposes a penalty on an establishment that has violated 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 Sale to Minors Penalty Clarification Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

21-483

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to approve the Human Care Agreement RM-15-HCA-SATS-008-FCM-BY4-CPS between the Department of Behavioral Health and the Foundation for Contemporary Mental Health for methadone maintenance and counseling treatment services to eligible District residents and to authorize payment for the services received and to be received under the agreement.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Human Care Agreement RM-15-HCA-SATS-008-FCM-BY4-CPS Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the Human Care Agreement RM-15-HCA-SATS-008-FCM-BY4-CPS between the Department of Behavioral Health (“DBH”) and the Foundation for Contemporary Mental Health (“Foundation”) for methadone maintenance and counseling treatment services to eligible District residents.

(b) DBH anticipates an influx of about 400 new clients due to the unanticipated end of services by a current methadone provider in May. In addition, unexpected technical glitches in the electronic medical record and billing and claims system prevent a determination of Medicaid eligibility for enrolled clients and jeopardize the confidentiality of medical records as required by law during transfer of clients. This will delay the projected federal Medicaid reimbursements to support local dollars. To maintain continuity of care, the cost of the Human Care Agreement RM-15-HCA-SATS-008-FCM-BY4-CPS ending September 30, 2016, must be increased to \$1,060,000, thereby necessitating Council approval.

(c) Approval of Human Care Agreement RM-15-HCA-SATS-008-FCM-BY4-CPS is required to allow methadone maintenance and counseling treatment services to continue uninterrupted and to avoid disruption in care from transferring about 700 clients now served by the Foundation to other methadone treatment providers.

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 Human Care Agreement RM-15-HCA-SATS-008-FCM-BY4-CPS 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

21-484

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to approve the Human Care Agreement RM-15-HCA-SATS-002- UPO-BY4-CPS between the Department of Behavioral Health and United Planning Organization for methadone maintenance and counseling treatment services to eligible District residents and to authorize payment for the services received and to be received under the agreement.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Human Care Agreement RM-15-HCA-SATS-002-UPO-BY4-CPS Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve the Human Care Agreement RM-15-HCA-SATS-002-UPO-BY4-CPS between the Department of Behavioral Health (“DBH”) and United Planning Organization for methadone maintenance and counseling treatment services to eligible District residents.

(b) DBH anticipates an influx of about 400 new clients due to the unanticipated end of services by a current methadone provider in May. In addition, unexpected technical glitches in the electronic medical record and billing and claims system prevent a determination of Medicaid eligibility for enrolled clients and jeopardize the confidentiality of medical records as required by law during transfer of clients. This will delay the projected federal Medicaid reimbursements to support local dollars. To maintain continuity of care, the cost of the Human Care Agreement RM-15-HCA-SATS-002-UPO-BY4-CPS ending September 30, 2016, was increased to \$1,060,000, thereby necessitating Council approval.

(c) Approval of the Human Care Agreement RM-15-HCA-SATS-002-UPO-BY4-CPS is required to allow methadone maintenance and counseling treatment services to continue uninterrupted and to avoid disruption in care from transferring about 400 clients now served by UPO to other methadone treatment providers.

**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 Human Care Agreement RM-15-HCA-SATS-002-UPO-BY4-CPS 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

21-485

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to approve Change Order Nos. 001 through 004 to Contract No. DCAM-15-CS-0112 with District Veterans Contracting, Inc. for the renovation of the Wilson Building, and to authorize payment in the aggregate amount of \$2,465,608.64 for the goods and services received and to be received under the change orders.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Change Order Nos. 001 through 004 to Contract No. DCAM-15-CS-0112 Approval and Payment Authorization Emergency Declaration Resolution of 2016".

Sec. 2. (a) There exists an immediate need to approve Change Order Nos. 001 through 004 to Contract No. DCAM-15-CS-0112 with District Veterans Contracting, Inc. for the renovation of the Wilson Building, and to authorize payment in the aggregate amount of \$2,465,608.64 for the goods and services received and to be received under the change orders.

(b) The underlying contract was previously deemed approved by the Council on November 23, 2015 (CA21-0238). The Department of General Services issued Change Order No. 001 (\$0), Change Order No. 002 (\$519,263.83), and Change Order No. 003 (\$201,345.81). The aggregate value of those change orders was less than \$1 million; thus, Change Order Nos. 001 through 003 did not require Council approval.

(c) Change Order No. 004 will cause the aggregate value of the change orders to exceed the \$1 million threshold pursuant to section 451(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)).

(d) In addition, Change Order No. 004 will cause Contract No. DCAM-15-CS-0112 to become a multiyear contract that requires Council approval pursuant to section 451(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)).

(e) Approval of Change Order Nos. 001 through 004 in the aggregate amount of \$2,465,608.64 is necessary to compensate District Veterans Contracting Inc. for work completed and to be completed pursuant to the change orders.

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 Change Order Nos. 001 through 004 to Contract No. DCAM-15-CS-0112 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

21-486

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to approve Contract No. DCKT-2016-C-0016 with BCI, Inc. dba Butler Company to provide goods and services to the District during a declared state of emergency, and to authorize payment for the goods and services received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. DCKT-2016-C-0016 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Contract No. DCKT-2016-C-0016 with BCI, Inc. dba Butler Company to provide goods and services to the District during a declared state of emergency, and to authorize payment for the goods and services received under the contract.

(b) The Office of the Mayor declared a state of emergency in Mayor’s Order 2016-006 for the period from January 21, 2016, through February 5, 2016, because of a storm system which was expected to have serious widespread effects. The City Administrator, in consultation with the Homeland Security and Emergency Management Agency (“HSEMA”), was authorized to implement such measures as may be necessary or appropriate to protect persons and property in the District from the conditions caused by the snow storm. Section 5(b)(2) of the District of Columbia Public Emergency Act of 1981, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code §7-2304(b)(2)), authorized the District to procure any goods or services without regard to established operating procedures related to entering into contracts.

(c) Upon authorization by HSEMA of the need for goods or services, the Office of Contracting and Procurement obtained the vital goods and services from BCI, Inc. dba Butler Company.

(d) Council approval is necessary because the expenditures under the contract are in excess of \$1 million during a 12-month period.

(e) Approval is necessary to allow payment for these vital services. Without this approval, BCI, Inc. dba Butler Company cannot be paid for the goods and services provided in excess of \$1 million for the contract period of January 21, 2016, through February 5, 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 Contract No. DCKT-2016-C-0016 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

21-487

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to approve Contract No. CW42754 to provide goods and services to the District during a declared state of emergency, and to authorize payment for the goods and services received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. CW42754 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Contract No. CW42754 with Capitol Paving of D.C., Inc., to provide goods and services to the District during a declared state of emergency, and to authorize payment for the goods and services received under the contract.

(b) The Office of the Mayor declared a state of emergency in Mayor’s Order 2016-006 for the period from January 21, 2016, through February 5, 2016, because of a storm system which was expected to have serious widespread effects. The City Administrator, in consultation with the Homeland Security and Emergency Management Agency (“HSEMA”), was authorized to implement such measures as may be necessary or appropriate to protect persons and property in the District from the conditions caused by the snow storm. Section 5(b)(2) of the District of Columbia Public Emergency Act of 1981, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2304(b)(2)), authorized the District to procure any goods or services without regard to established operating procedures related to entering into contracts.

(c) Upon authorization by HSEMA of the need for goods or services, the Office of Contracting and Procurement obtained the vital goods and services from Capitol Paving of D.C., Inc.

(d) Council approval is necessary because the expenditures under the contract are in excess of \$1 million during a 12-month period.

(e) Approval is necessary to allow payment for these vital services. Without this approval, Capitol Paving of D.C., Inc. cannot be paid for the goods and services provided in excess of \$1 million for the contract period of January 21, 2016, through February 5, 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 Contract No. CW42754 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

21-488

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the existence of an emergency with respect to the need to approve Contract No. CW42752 with Fort Myer Construction Corporation to provide goods and services to the District during a declared state of emergency, and to authorize payment for the goods and services received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. CW42752 Approval and Payment Authorization Emergency Declaration Resolution of 2016”.

Sec. 2. (a) There exists an immediate need to approve Contract No. CW42752 with Fort Myer Construction Corporation to provide goods and services to the District during a declared state of emergency, and to authorize payment for the goods and services received under the contract.

(b) The Office of the Mayor declared a state of emergency in Mayor’s Order 2016-006 for the period from January 21, 2016, through February 5, 2016, because of a storm system which was expected to have serious widespread effects. The City Administrator, in consultation with the Homeland Security and Emergency Management Agency (“HSEMA”), was authorized to implement such measures as may be necessary or appropriate to protect persons and property in the District of Columbia from the conditions caused by the snow storm. Section 5(b)(2) of the District of Columbia Public Emergency Act of 1981, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2304(b)(2)), authorized the District to procure any goods or services without regard to established operating procedures related to entering into contracts.

(c) Upon authorization by HSEMA of the need for goods or services, the Office of Contracting and Procurement obtained the vital goods and services from Fort Myer Construction Corporation.

(d) Council approval is necessary because expenditures under the contract are in excess of \$1 million during a 12-month period.

(e) Approval is necessary to allow payment for these vital services. Without this approval, Fort Myer Construction Corporation cannot be paid for the goods and services provided in excess of \$1 million for the contract period of January 21, 2016, through February 5, 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 Contract No. CW42752 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

21-194

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To honor and celebrate the 75<sup>th</sup> birthday of Mrs. Beatrice E. Davis-Williams, the founder of the Davis Center, and to recognize her contributions to the dance community.

WHEREAS, Mrs. Beatrice E. Davis-Williams was born in Washington, D.C. on May 23, 1941;

WHEREAS, Mrs. Davis-Williams received a bachelor's degree from Federal City College; a Master's Degree in Physical Education and an Advanced Certificate in Education Administration from Howard University; and has earned substantial credits towards a Ph.D. in Educational Psychology from Howard University;

WHEREAS, in 1969, Mrs. Davis-Williams founded the Davis Center, a dance center located at 6218 3<sup>rd</sup> Street, N.W., that teaches both classical and contemporary dance forms to students ranging from 2-years-old to young adulthood;

WHEREAS, Mrs. Davis-Williams has exposed her dance students to numerous educational and cultural experiences, including taking her students to Senegal and Gambia in West Africa, where these students took a master class from members of the Senegalese National Ballet and performed concerts showcasing American forms of artistic dance;

WHEREAS, students at the Davis Center participate in charitable activities that help residents in Ward 4, across the District, and internationally, including collecting and distributing food, clothing, toys, school supplies, and monetary donations to local families and families living abroad, and performing charitable dance shows for residents living in nursing homes, hospitals, and churches across the Washington, D.C. metropolitan region;

WHEREAS, Mrs. Davis-Williams is an active member of her community, including serving as Chair of the Dance Program at Howard University; a commissioner on the D.C. Commission for the Arts and Humanities; a dance consultant to the District of Columbia Public Schools; dance therapist at the Oak Hill Youth Detention Center; Chairperson of the Advisory Board of the Washington Center for Aging Services; Chairperson of the Arts and Humanities Committee of the Washington, D.C. Chapter of the Continental Societies, Inc.; National Youth Coordinator of the Lambda Kappa Mu Business and Professional Women's Sorority, Inc.; and as a board member for the Erika Thimey Dance & Theatre, Inc. and the Sutradhar Dance Institute;

**ENROLLED ORIGINAL**

WHEREAS, Mrs. Davis-Williams is an active member of the Theta Chapter, Lambda Kappa Mu Sorority, Inc.; the Washington, D.C. Chapter of the Continental Societies, Inc.; the Washington, D.C. Alumnae Chapter of Delta Sigma Theta Sorority, Inc.; the Otero B. Tymous Chapter of Daughters of the King, Church of Our Savior, Washington, D.C.; and is a Fellow in the prestigious Cecchetti Council of America;

WHEREAS, throughout her career Mrs. Davis-Williams has received numerous awards and recognitions for her work, including, the “Living Legend Award” from the Pastor’s Aid Society of Second Baptist Church (2005); the Greater Washington Urban League's Whitney M. Young, Jr. Community Service Award (2001); the American Business Women’s Association Community Volunteer Service Award (1997); the District of Columbia Alliance for Health, Physical Education, Recreation and Dance Award (1977); the Howard University Institute of Urban Affairs and Research International Women’s Year and Bicentennial Celebrations Awards (1976); and

WHEREAS, Mrs. Davis-Williams, who is an artist, educator, and instructor and has contributed greatly to the dance community, will celebrate her 75<sup>th</sup> birthday on May 23, 2016.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Beatrice E. Davis-Williams 75<sup>th</sup> Birthday Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia honors and celebrates Mrs. Beatrice E. Davis-Williams on her 75<sup>th</sup> birthday.

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

21-195

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize and honor Mr. Martin G. Murray for his educational and civic contributions to the District of Columbia.

WHEREAS, Martin Murray was born in Brooklyn, New York, on April 13, 1956, the son of James Murray, a MTA bus driver who as a young man had immigrated to America from Ireland, and Margaret McGowan Murray, herself the daughter of 2 Irish immigrants;

WHEREAS, Martin Murray graduated from New York City's Our Lady of Mt. Carmel – St. Benedicta Elementary School and was awarded a Bachelor of Arts degree in economics from Rutgers University;

WHEREAS, Martin Murray began 34 years of service to the public as a federal employee at the Commodity Futures Trading Commission and his work for the Commodity Futures Trading Commission brought him to Washington, D.C.;

WHEREAS, Martin Murray is a recognized volunteer instructor of English as a second language at Sacred Heart Adult Education Center;

WHEREAS, Martin Murray served with distinction as the President of the Woodley Park Community Association;

WHEREAS, Martin Murray remains a long-standing and active member of the Gertrude Stein Democratic Club, the District's largest political LGBTQ civil rights organization;

WHEREAS, Martin Murray served as President of the Shoreham North Condominium Association;

## ENROLLED ORIGINAL

WHEREAS, Martin Murray is the founder and President of the ‘Washington Friends of Walt Whitman’, an organization that has performed an exemplary job of educating and enlightening the public about the great American poet Walt Whitman and his association with our nation’s capital;

WHEREAS, Martin Murray is the author of numerous books and articles on Walt Whitman and Washington, D.C., has lectured on this topic both at home and abroad at the invitation of foreign governments, and has led fascinating and insightful walking tours through our great city of Washington, D.C. to sites associated with Walt Whitman;

WHEREAS, through Martin Murray’s advocacy, in 2005, the Council of the District of Columbia symbolically designated F Street, N.W., between 7th and 8th Streets, N.W., as “Walt Whitman Way”; and

WHEREAS, on April 15th, 2016, friends and family of Martin Murray will gather to celebrate his 60th birthday at the Arts Club of Washington, in the historic former residence of President James Monroe, and the Council of the District of Columbia joins Martin’s family and friends to express wishes for a very happy 60th birthday.

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

Sec. 2. The Council of the District of Columbia recognizes Mr. Martin Murray and his contributions to the District as a community leader.

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



ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-196

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare May 2016 as “Exercise is Medicine Month” in the District of Columbia.

WHEREAS, nearly half of American youth between the 12 and 21 years of age are not vigorously active on a regular basis;

WHEREAS, only one in 3 children are physically active every day;

WHEREAS, nearly 45% of children living in poverty are overweight or obese compared with 22% of children living in households with incomes 4 times the poverty level;

WHEREAS, about 14% of young people report no recent physical activity with inactivity more common among females than males and among black females than white females;

WHEREAS, regular exercise has proven effective to lower blood pressure and cholesterol, decrease rates of obesity and support the prevention of heart disease;

WHEREAS, heart disease is the leading cause of death in the District of Columbia and African American adults experience the highest rates of heart disease in the District of Columbia;

WHEREAS, in 2010, 22.4% of the District of Columbia population reported as obese;

WHEREAS, physically active children perform better in school and are less prone to colds, allergies, and diseases, including cancer and Type 2 diabetes;

WHEREAS, diabetes is the sixth-leading cause of death in the District of Columbia and the highest prevalence is found in Wards 5, 7, and 8 and the death rate among residents with diabetes is highest in Ward 7;

**ENROLLED ORIGINAL**

WHEREAS, exercise decreases anxiety, reduces depression, and improves mood, sleep quality, and outlook in children; and

WHEREAS, research shows that regular physical activity in adults reduces the risk of Type 2 diabetes and metabolic syndrome, reduces the risk of certain cancers, helps relieve arthritis-related pain, strengthens bones, improves mood and mental health, and reduces the risk of dying early from preventable chronic diseases.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Exercise is Medicine Month Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes the innumerable health benefits associated with regular physical activity, promotes healthy living for all residents in the District of Columbia, and declares May 2016 as “Exercise is Medicine Month” 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

21-197

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize Laura L. Nuss for her remarkable service to the residents of the District of Columbia, and her contributions to the advancement of intellectual and developmental disabilities services.

WHEREAS, since 2007, Ms. Nuss has epitomized the essence of public service in her dedication to improving the quality of life for people with disabilities in the District of Columbia in her capacity as the Deputy Director of the Department on Disability Services for the Developmental Disabilities Administration, and the Director of the Department on Disability Services;

WHEREAS, Ms. Nuss has had the vision and passion to transform the systems of disability services in the District of Columbia, benefiting all people with disabilities, their families, employers, and friends in all neighborhoods in the District of Columbia;

WHEREAS, Ms. Nuss is a nationally recognized expert in the field of employment for people with disabilities and has introduced best practices in employment to the residents and employers in the District of Columbia;

WHEREAS, Ms. Nuss has instilled concepts and best practices in person-centered thinking throughout the intellectual and developmental disabilities service system;

WHEREAS, during her tenure, Ms. Nuss led the District of Columbia’s efforts to position itself to conclude *Evans v. Bowser*, a 40-year class action lawsuit; and

WHEREAS, today, family, friends, and colleagues gather to commend Laura Nuss for her dedication and achievements in the field of disability services.

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

**ENROLLED ORIGINAL**

Sec. 2. The Council of the District of Columbia recognizes Ms. Laura L. Nuss for her distinguished service and contribution to the residents of the District, and honors her leadership in the advancement of disability services.

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

21-198

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize and honor the importance of jazz music, and to declare April as “Jazz Appreciation Month” and April 30<sup>th</sup> as “International Jazz Day” in the District of Columbia.

WHEREAS, jazz is a music genre that originated from African American communities during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries;

WHEREAS, jazz music has produced some of America’s most innovative artistry and has inspired countless other types of artists;

WHEREAS, the International Jazz Day brings together populations, schools, artists, historians, scholars, and jazz enthusiasts all over the world to celebrate and learn about jazz and its roots and future;

WHEREAS, International Jazz Day is the culmination of Jazz Appreciation Month, which draws public attention to jazz and its extraordinary heritage throughout April;

WHEREAS, Washington, D.C., has been named the International Jazz Day 2016 Global Host City;

WHEREAS, as International Jazz Day celebrates its 5th anniversary, the nation’s capital will host a multitude of jazz performances, community service initiatives, and education programs in schools, libraries, hospitals, community centers, and arts venues across the city;

WHEREAS, Washington, D.C., is the birthplace of the great jazz pianist and bandleader Duke Ellington, and the city has enjoyed a thriving jazz scene for the past century;

WHEREAS, on April 30, 2016, Washington, D.C., will join with towns, cities, and villages in over 190 countries on all 7 continents to observe International Jazz Day through thousands of performances and programs;

WHEREAS, Jazz Appreciation Month honors the powerful role and influence women play in jazz; and

**ENROLLED ORIGINAL**

WHEREAS, Jazz Appreciation Month and International Jazz Day will honor the musicians and lovers of jazz from the past, and the musicians and lovers of jazz for the future.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Jazz Appreciation Month and International Jazz Day Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes, honors, and celebrates Jazz music and Jazz musicians for their contributions to the District of Columbia, and declares April as “Jazz Appreciation Month” and April 30 as “International Jazz 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

21-199

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize the Washington, D.C. Dragon Boat Festival of 2016 for its many contributions to the cultural life of the city and to honor the Chinese Women’s League of Washington, D.C. on its organization of the 15<sup>th</sup> Washington Dragon Festival.

WHEREAS, the sport of dragon boat racing has its roots in ancient China, where the first dragon boat races were held more than 2500 years ago, along the banks of the Yangtze River;

WHEREAS, since then, the sport has often been heralded as the fastest-growing water sport in the United States and one of the fastest-growing corporate team-building activities in the country;

WHEREAS, the Washington D.C. Dragon Boat Festival celebrates its 15<sup>th</sup> year with a 2-day festival held along the Potomac River, complete with cultural exhibitions, craft demonstrations, and the dragon boat race;

WHEREAS, the Washington D.C. Dragon Boat Festival kicks off May 21<sup>st</sup> with an Eye Dotting Ceremony to awaken the sleeping dragons and resuscitate the dragon boats with good spirits;

WHEREAS, there are all together 50 teams, with 20-22 persons per boat and 1,000 paddlers registered to participate; and

WHEREAS, the Washington D.C. Dragon Boat Festival not only fosters teamwork but also promotes cultural exchange and awareness.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “15<sup>th</sup> Annual Washington, D.C. Dragon Boat Festival Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia honors, congratulates, and commends the Chinese Women’s League of Washington, D.C. on its work and sponsorship of the 15<sup>th</sup> Dragon Boat Festival and appreciates its ongoing work to promote Chinese culture through the sport of dragon boat racing.

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

ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-200

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize the National Retail Federation's instrumental role in bolstering and honoring retail's entrepreneurial spirit by officially declaring May 4, 2016, as "Retail's Night Out" in Washington, D.C.

WHEREAS, the National Retail Federation is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and Internet retailers from the United States and more than 45 other countries;

WHEREAS, retail is the nation's largest private sector employer and acts as a daily barometer for the nation's economy, supporting one in four U.S. jobs – 42 million working Americans – and contributing \$2.6 billion to annual gross domestic product;

WHEREAS, Retail's Night Out celebrates retail's entrepreneurial spirit, the vitality of national and local brands, and the flourishing creativity and resilience of small business;

WHEREAS, the National Retail Federation's This is Retail campaign highlights the industry's opportunities for lifelong careers, how retailers strengthen communities, and the critical role that retail plays in driving innovation;

WHEREAS, the National Retail Federation's advocacy in the interests of retailers everywhere by actively participating in the political system of the national government features its commitment to the continuation of ingenuity and salesmanship in the business world;

WHEREAS, Retail's Night Out promotes the retail industry by capturing the economic impact of the community's diversity, innovation, and passion; and

WHEREAS, the National Retail Federation urges District of Columbia residents to understand and support the vital work small businesses provide in sustaining economic growth.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Retail's Night Out Recognition Resolution of 2016".



**ENROLLED ORIGINAL**

Sec. 2. The Council of the District of Columbia recognizes and honors the National Retail Federation's commitment to the representation and advocacy of the retail industry and thanks the retail sector for its significance in building the national economy by declaring May 4, 2016, as "Retail's Night Out" 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

21-201

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize and congratulate Allen Iverson on a legendary basketball career at both Georgetown University and in the NBA, and for his well-deserved election into the Naismith Memorial Basketball Hall of Fame.

WHEREAS, Allen Iverson was born on June 7, 1975 in Hampton, Virginia;

WHEREAS, from 1994-1996, Allen Iverson established himself as one of the greatest Georgetown University Hoyas basketball players during his 2 seasons at the "Hilltop", averaging 23 points per game, 3.6 rebounds per game, 4.6 assists per game, and 3.2 steals per game;

WHEREAS, at Georgetown University, Allen Iverson was named Big East Rookie of the Year his freshman year, First Team All-American his sophomore year, and Big East Defensive Player of the Year both seasons;

WHEREAS, under the tutelage of former Head Coach John Thompson Jr., Allen Iverson led Georgetown University to consecutive Sweet 16 appearances in the NCAA tournament, reaching the Elite 8 his sophomore year;

WHEREAS, Allen Iverson's 925 points during the 1995-96 season were the most by a Hoya in a single season, and he remains the Hoyas' all-time leader in career scoring average at 22.9 points per game and steals average at 3.17 steals per game;

WHEREAS, Allen Iverson was selected with the first overall pick in the 1996 NBA draft by the Philadelphia 76ers, and at 6 feet tall, he became the shortest first overall pick ever;

WHEREAS, Allen Iverson averaged 23.5 points per game, 7.5 assists per game, and 2.1 steals per game during the 1996-97 season, his rookie season, and was named the NBA Rookie of the Year;

WHEREAS, in 2001, Allen Iverson was named the NBA Most Valuable Player;

WHEREAS, Allen Iverson officially retired from the National Basketball Association in October 2013, ending a career that spanned 15-years, during which he won the 2001 MVP

**ENROLLED ORIGINAL**

award, won 4 scoring titles, made 11 NBA All-Star appearances, was twice the All-Star Game MVP, and was a member of the 2004 United States Men's Olympic Basketball Team;

WHEREAS, on March 1, 2014, the Philadelphia 76ers officially retired Allen Iverson's number 3;

WHEREAS, on April 4, 2016, Allen Iverson was elected to the Naismith Memorial Basketball Hall of Fame, becoming the 5th Hoyas basketball player to achieve such honor;

WHEREAS, at of the time of the announcement of his Hall of Fame induction, Allen Iverson ranked 43rd in NBA history in assists, 13th in steals, 23rd in points, 7th in points per game, and 4th in minutes per game;

WHEREAS, on September 9, 2016, Allen Iverson will be enshrined in the Naismith Memorial Basketball Hall of Fame; and

WHEREAS, Allen Iverson has contributed greatly to the rich basketball tradition at Georgetown University, the NBA, and across the world.

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

Sec. 2. The Council of the District of Columbia recognizes and honors Allen Iverson on a legendary basketball career at both Georgetown University and in the NBA, and for his well-deserved election into the Naismith Memorial Basketball Hall of Fame.

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

## ENROLLED ORIGINAL

## A CEREMONIAL RESOLUTION

21-202

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To declare the second full week in May to be “Women’s Lung Health Week” in the District of Columbia and to urge all citizens to recognize the importance of women’s lung health.

WHEREAS, every 5 minutes, a woman in the U.S. is told she has lung cancer;

WHEREAS, lung cancer is the No. 1 cancer killer of women in the U.S.;

WHEREAS, lung cancer claims more lives than breast, prostate, and colon cancers combined;

WHEREAS, the lung cancer death rate in women has almost doubled over the past 37 years;

WHEREAS, lung cancer is the second-most-common cancer among white women, American Indian women, and Alaska Native women, and the third-most-common cancer among Black, Asian-Pacific Islander, and Hispanic women;

WHEREAS, advocacy and increased awareness will result in more and better treatment for women with lung cancer and other lung diseases and will ultimately save lives; and

WHEREAS, LUNG FORCE is the national movement led by the American Lung Association, with the mission of making lung cancer history—uniting women to stand together with a collective strength and determination to lead the fight against lung cancer and for lung health.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Women’s Lung Health Week Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia declares the second full week in May as “Women’s Lung Health Week” in the District of Columbia and urges citizens to learn more about the detection and treatment of lung cancer.

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

21-203

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To posthumously recognize Howard Lenwood Lanier III for his service to the residents of the District of Columbia.

WHEREAS, Howard Lanier served as Manager for Government and External Affairs for Amerihealth Caritas District of Columbia, a Medicaid managed care organization serving more than 100,000 residents in the District;

WHEREAS, after obtaining a B.A. in Health/Pharmaceutical Marketing and Management in 2007 and an MBA in 2010 from the University of the Sciences, Mr. Lanier began his career in health care management, serving the needs of low-income residents;

WHEREAS, Howard Lanier was extremely helpful to the Council, and in particular to members of the Health Committee, in providing timely and useful information regarding the operation of the Medicaid program in the District, and was appreciated for his professionalism, enthusiasm, and his positive manner;

WHEREAS, Mr. Lanier also made volunteerism a high priority, serving as a Member of the Board of Directors of the Boys and Girls Club of Chester (Pennsylvania) and the United Way’s Project Next Leadership Team;

WHEREAS, Howard Lanier died suddenly and unexpectedly on March 30, 2016, at 31 years of age; and

WHEREAS, the Council of the District of Columbia wishes to extend its deepest sympathies to the family and friends of Howard Lenwood Lanier III, including his wife Tesha and his parents, Howard and Ethel Lanier, Jr.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Howard Lenwood Lanier III Recognition Resolution of 2016”.

**ENROLLED ORIGINAL**

Sec. 2. The Council of the District of Columbia recognizes the significant contributions of Howard Lenwood Lanier III throughout his brief but fruitful career in serving the Medicaid population of 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

21-204

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize and honor Mr. Gregory Baldwin and Helping Hands, Inc. for remarkable service to the citizens of Ward 8 and the District of Columbia.

WHEREAS, Helping Hands, Inc. is located in Ward 8 on Martin Luther King Avenue, S.E.;

WHEREAS, Helping Hands, Inc. was incorporated in 2006;

WHEREAS, Helping Hands, Inc. has been serving the underserved community in Ward 8 and the District of Columbia for 9 years;

WHEREAS, Helping Hands, Inc. provides food and clothing to District of Columbia shelters;

WHEREAS, Helping Hands, Inc. has devoted itself to helping the youth of the District with anti-drug and violence efforts;

WHEREAS, Helping Hands, Inc. urges the community and the Council to increase youth programming for at-risk youth;

WHEREAS, Helping Hands, Inc. consistently supports the needs of the community in Ward 8 and the District of Columbia through their efforts;

WHEREAS, on May 6, 2016, Helping Hands, Inc. will be holding an event for mothers who have lost a child to violence in the District of Columbia;

WHEREAS, on June 18, 2016, Helping Hands, Inc. will feed the homeless men at 801 East Shelter with Councilmember LaRuby May;

WHEREAS, Heling Hands Inc. has donated winter clothes, summer clothes, beverages, food, and a host of other items to give back to the Ward 8 community;

**ENROLLED ORIGINAL**

WHEREAS, organizations like Helping Hands, Inc. are model groups for citizens who want to make a direct impact in our Ward 8 community, by offering services and resources to assist those residents who may be struggling and need extra help; and

WHEREAS, Helping Hands, Inc. has made a difference in many lives already and will continue to change lives as it grows and expands.

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

Sec. 2. The Council of the District of Columbia recognizes, honors, and celebrates the work of Mr. Gregory Baldwin and Helping Hands, Inc., for distinguished service and contributions to 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

21-205

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize and honor the Goodman Basketball League and Commissioner Miles Rawls for their remarkable service to Ward 8 and the District of Columbia.

WHEREAS, the Goodman Basketball League has been in existence for 36 years;

WHEREAS, the Goodman Basketball League runs all summer and the games are played at the Barry Farms Dwellings basketball courts, located at Firth Sterling Avenue, S.E., Washington, D.C.;

WHEREAS, the league began in 1975 with the assistance of Mr. Ervin Brady, Mr. Carlton Reed, and Mr. Morty Hammonds;

WHEREAS, the league was first titled the Barry Farms Community Basketball League;

WHEREAS, the name was changed to the Goodman Basketball League in the early 1980s in honor of the late George Goodman;

WHEREAS, Mr. Goodman was a lifelong Barry Farms resident and a community leader;

WHEREAS, the league is extremely popular throughout the Washington, D.C. metropolitan area;

WHEREAS, the league features current and former NBA players, college players, high school players, and participants from various communities.

WHEREAS, the league is currently headed by Miles Rawls, Commissioner and commentator;

WHEREAS, Commissioner Miles Rawls celebrates 20 years as the Commissioner of the Goodman Basketball League;

WHEREAS, the league is also known as “The Gates” or “The Farms” to the Washington, D.C. community;

**ENROLLED ORIGINAL**

WHEREAS, the league attracts hundreds of fans;

WHEREAS, once Commissioner Rawls arrives, the “Big Show” begins;

WHEREAS, the Goodman Basketball League is the No.1 summer league in the nation;

WHEREAS, the Goodman Basketball League continues to bring the community together and continues to be a place of peace for many Ward 8 residents; and

WHEREAS, the Goodman Basketball League represents the Washington, D.C. culture.

**RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Goodman Basketball League and Commissioner Rawls Recognition Resolution of 2016”.**

Sec. 2. The Council of the District of Columbia recognizes, honors, and celebrates the Goodman Basketball League and Commissioner Rawls for distinguished service and contributions to Ward 8 and 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

21-206

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize and honor DC SCORES on its 20th year of providing extraordinary service to students in Ward 4 schools.

WHEREAS, in 1994, DC SCORES was founded in a public school in Washington, D.C. by Julie Kennedy, a District of Columbia Public Schools teacher who believed that teamwork and leadership inspired students to act as agents of change in their communities;

WHEREAS, DC SCORES runs the only public soccer leagues for both elementary and middle school-aged children in the District of Columbia that combine art and service-learning with soccer;

WHEREAS, DC SCORES uses poetry to teach its students how to write creatively and perform spoken word so that by the end of the program every student has written at least 5 original poems and performs in the annual DC SCORES Poetry Slam;

WHEREAS, through DC SCORES, students collaborate and develop service-learning plans to address issues identified in their schools and communities, including service plans for community cleanups, awareness campaigns, and fundraisers for homeless charities;

WHEREAS, in addition to its after-school programming, DC SCORES runs a 6-week nutrition and soccer program; and holds free summer camps focused on soccer and the arts;

WHEREAS, DC SCORES has received numerous awards and recognitions for its programming, including winning the “Raise DC Data Spotlight Award” for the 2015-2016 season, and being a finalist for the Mayor’s Arts Awards in the “Outstanding Contribution to Arts Education” category during the 2014-2015 season;

WHEREAS, DC SCORES expanded its program to several schools throughout Washington, D.C., and currently serves 2,000 students;

WHEREAS, in 1999, DC SCORES expanded beyond Washington, D.C. and became America SCORES, which operates 14 programs in cities across the United States and Canada, including Boston, Chicago, Cleveland, Dallas, Denver, Los Angeles, Milwaukee, New York, Portland, St. Louis, Seattle, and Vancouver;

**ENROLLED ORIGINAL**

WHEREAS, DC SCORES has been serving the Ward 4 community since 1996, and currently serves 614 students in 7 schools, including: Barnard Elementary School, Brightwood Education Campus, Capital City Public Charter School, LaSalle-Backus Education Campus, Powell Elementary School, Raymond Education Campus, and Truesdell Education Campus; and

WHEREAS, DC SCORES has contributed greatly to the Ward 4 community and has been providing arts programming and physical instruction to students for 20 years.

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

Sec. 2. The Council of the District of Columbia honors and celebrates DC SCORES on its 20th year of providing extraordinary service to students in Ward 4 schools.

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

21-207

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To posthumously recognize and honor Jerry N. Clark as a longtime public servant to the District of Columbia who selflessly committed himself to improving the lives of District residents and tirelessly championed bringing full representation to the District of Columbia through statehood.

WHEREAS, Jerry Clark moved to the Adams Morgan neighborhood in 1973 after earning a bachelor's degree from Princeton University, a law degree from the University of Chicago, and a doctoral degree in Political Science from the University of Minnesota;

WHEREAS, Jerry began his career in the federal government as a legal assistant at the Department of Justice and soon transitioned to the United Mine Workers of America Health and Retirement Funds, where he served as its executive director for the majority of his career;

WHEREAS, Jerry dedicated countless hours outside of work to supporting social justice and political organizations across the District, advocating for LGBTQ rights and gun prevention, and pushing forward District efforts to achieve statehood;

WHEREAS, Jerry was a fierce advocate for ensuring District residents received their full democratic rights and founded the D.C. Statehood Coalition in 2012, acting as chair until 2016;

WHEREAS, Jerry was one of the most active members of D.C. for Democracy, where he was appointed political director, later served as chair, expanded the organization's commitment to economic justice and good governance, and focused on electoral campaigns, most significantly Senator Barack Obama's historic presidential run during which he was elected an Obama delegate to the 2008 Democratic National Convention;

WHEREAS, Jerry was an integral board member of the Coalition to Stop Gun Violence and passionately fought to keep the District's gun laws intact and free from congressional interference, linking the necessity for full democratic rights to gun violence prevention;

WHEREAS, Jerry served on the board of directors for the then National Gay and Lesbian Task Force for 13 years, including 4 terms as co-chair of the board of directors, and provided

**ENROLLED ORIGINAL**

critical leadership through massive changes in the LGBTQ movement, including anti-violence work, the pursuit of non-discrimination laws, and the work for marriage equality;

WHEREAS, Jerry devoted himself to equality for all and was an active member of the Democratic National Committee's Gay and Lesbian Leadership Council, a member of the Gertrude Stein Democratic Club, and a 2014 recipient of the D.C. Gay and Lesbian Activists Alliance's Distinguished Service Award;

WHEREAS, Jerry also served as co-chair of the Whitman-Walker Health spring gala, served as a trustee for the Law and Society Association, and was appointed in 2013 to the Mayor's Committee on the Fiftieth Anniversary of the 1963 March on Washington;

WHEREAS, under Jerry's leadership, the organizations and individuals with whom he worked increased their commitments to economic justice and good governance, being influenced by Jerry's sophisticated political acumen, relationships with political leaders at the national and local level, and enormous commitments of energy, effort, and time;

WHEREAS, Jerry played a key role in connecting broad and diverse groups of stakeholders in the city and, even in disagreement, was respected by numerous elected officials and community leaders across the District of Columbia; and

WHEREAS, Jerry Clark will be remembered as the quintessential example of a grassroots activist and citizen-advocate—one who was an equal opportunity fundraiser and promoter of justice nationally and in the District of Columbia, with millions of people benefitting from his activism and service.

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

Sec. 2. The Council of the District of Columbia recognizes Jerry Clark for his unwavering service to the residents of the District of Columbia and cherishes his legacy.

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

21-208

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To celebrate and acknowledge the contributions and success of Girls on the Run–DC as the organization celebrates its 10<sup>th</sup> anniversary in the District of Columbia.

WHEREAS, Girls on the Run (“GOTR”) is a nonprofit organization established in 1996 in Charlotte, North Carolina that empowers young girls through a running-based curriculum;

WHEREAS, the GOTR–DC chapter was founded in 2006 with the mission of equipping District girls with lifelong skills to help them develop into strong, healthy, joyful, and confident young women;

WHEREAS, GOTR–DC began with a single team of 13 girls in Ward 3, but quickly expanded to include teams in all 8 wards at the elementary and middle school level;

WHEREAS, since 2006, 10,000 girls have participated in GOTR-DC programming that focuses on mentor-based character, fitness, and healthy-living education with an emphasis on empowering girls to make a meaningful contribution to our community and society;

WHEREAS, GOTR–DC provides between 60-70% of participants with financial assistance, making it a national leader in serving girls who come from underserved communities;

WHEREAS, GOTR–DC annually engages an average of 1,200 volunteers who, in their roles as team coaches, peer evaluators, buddy runners, and race-day volunteers, help shape the lives of the girls who participate and strengthen ties within the community;

WHEREAS, the work of the volunteers is the equivalent of over \$500,000 of in-kind labor and expertise;

WHEREAS, GOTR–DC fosters positive peer groups for the participants and creates a healthy and supportive community organization for women of all ages and backgrounds to serve as role models;

**ENROLLED ORIGINAL**

WHEREAS, the positive influence of GOTR in the areas of self-worth, body image, and behavioral and emotional functioning have been corroborated by numerous independent studies; and

WHEREAS, one such study conducted by the University of Minnesota revealed statistically measurable increases in all areas surveyed, including a 50% rise in physical activity, a 27% rise in personal character, and 31% rise in confidence.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Girls on the Run DC Recognition Resolution of 2016”.

Sec. 2. The District of Columbia is grateful for Girls on the Run DC’s dedication to the District and the betterment of the lives on the young women who reside here.

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

21-209

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize Rudy Schreiber, Jr. for becoming an Eagle Scout.

WHEREAS, Rudy Schreiber, Jr. has been a Ward 7 resident since 2002;

WHEREAS, Rudy Schreiber, Jr. has been an involved community member of Ward 7 by regularly participating in community events to improve community parks and gardens, and attending community meetings of the Penn-Branch Citizens Civic Association;

WHEREAS, Rudy Schreiber, Jr. is a Scout at Troop 500 housed at the Capitol Hill Presbyterian Church, and has served as the Troop’s Senior Patrol Leader, Assistant Senior Patrol Leader, and Patrol Leader;

WHEREAS, Rudy Schreiber, Jr. led 2 high adventure trips as a Boy Scout, a 7-day sailing trip beginning at Sea Base Islamorada Florida and sailing from Key West to Key Largo of the Florida Keys, and a 9-day hiking trip at elevations above 9,000 feet in New Mexico at the Philmont Scout Ranch;

WHEREAS, Rudy Schreiber, Jr. participated in a 9-day high adventure canoeing trip in the Adirondacks and another Sea Base high adventure trip in the Florida Keys;

WHEREAS, Rudy Schreiber, Jr. completed his Eagle Scout project benefitting Fort Davis Park in Ward 7 by creating an education garden adjacent to the park offices, refurbishing an existing accessible garden at the East end of the park, and painting blazes for an unmarked trail in the park;

WHEREAS, Rudy Schreiber, Jr. has participated in numerous Boy Scout community service projects, including scouting for food and the winter coat drive, as well as 2 other Eagle projects that benefited Ward 7 park lands;

WHEREAS, Rudy Schreiber, Jr. has been elected to the Order of the Arrow, the Boy Scout Honor Society;

**ENROLLED ORIGINAL**

WHEREAS, Rudy Schreiber, Jr. continues to contribute to scouting by volunteering as an adult leader; and

WHEREAS, Rudy Schreiber, Jr. has earned the highest rank in Boy Scouts, Eagle Scout, and he will be awarded the medal on June 11, 2016, at the Mason’s Naval Lodge on Capitol Hill.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Rudy Schreiber, Jr. Eagle Scout Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia congratulates Rudy Schreiber, Jr. on the occasion of his having earned the highest rank in Boy Scouts, Eagle Scout.

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

21-210

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize the importance of DC Black Pride to the community and to welcome visitors from this region, across the country, and around the world to the DC Black Pride festival and associated events.

WHEREAS, May 24, 2016 through May 30, 2016 marks the 26<sup>th</sup> annual DC Black Pride celebration;

WHEREAS, DC Black Pride is the oldest and one of the largest Black Pride events in the world, drawing thousands of visitors from around the globe;

WHEREAS, the mission of DC Black Pride is to increase awareness of, and pride in, the diversity of the lesbian, gay, bisexual, and transgender African American community, as well as support organizations that focus on health disparities, education, youth, and families;

WHEREAS, DC Black Pride is led by a volunteer advisory board that assists Earl D. Fowlkes, Jr. and Kenya Hutton with the coordination, planning, and execution of this annual event, and that consists of Andrea Woody-Macko, Shannon Garcon, Genise Chambers-Woods, Re'ginald Shaw-Richardson, and Gladece Knight;

WHEREAS, as the very first Black Pride festival, DC Black Pride fostered the beginning of the Center for Black Equity (formerly known as the International Federation of Black Prides, Inc. and the "Black Pride Movement," which now consists of 40 Black Prides on 4 continents;

WHEREAS, DC Black Pride 2016 is a multi-day festival featuring an awards reception, HIV/AIDS and other community town hall meetings, educational workshops, the Black Pride Film Festival and Poetry Slam, faith services throughout the community, performances by musicians, dancers, and other artists, and the DC Black Pride Health and Wellness Expo, sponsored by the DC Black Pride Has Talent Contest and hosted by Frenchie Davis;

WHEREAS, DC Black Pride remains one of the world's preeminent Black Pride celebrations, drawing more than 30,000 people to the nation's capital from across the United States as well as Canada, the Caribbean, South Africa, Great Britain, France, Germany, the Netherlands, and other countries; and

**ENROLLED ORIGINAL**

WHEREAS, the theme for this year’s celebrations is DC Black Pride 2016: “I AM U. U R ME. WE ARE PRIDE!”.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “DC Black Lesbian & Gay Pride Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia hereby honors the hard work of all those involved in organizing the 26<sup>th</sup> Annual DC Black Pride Celebration. The Council of the District of Columbia welcomes visitors from this region and across the country and the world to the 2016 DC Black Pride Festival and associated events.

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

21-211

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To acknowledge the District's investment and interest in cycling as a means of transportation, to recognize the significant health and environmental benefits of commuting to work by bicycle, and to declare May 20, 2016 as "National Bike to Work Day" in the District of Columbia.

WHEREAS, regular cycling has been shown to reduce an individual's annual health care costs, decrease absenteeism from work, and increase productivity during the day;

WHEREAS, bicycle commuting is an effective means to improve air quality, reduce traffic congestion and noise pollution, and conserve energy;

WHEREAS, the Sustainable DC Plan has set a goal of having 25% of all commutes occur via bicycle and walking by 2032, and the current rate is 16%;

WHEREAS, since 2007, the number of everyday bike commuters in the District of Columbia has nearly doubled, totaling 3.5% of commuters;

WHEREAS, the District Department of Transportation will install 6 new miles of bikeways in 2016 to include cycle tracks, bike lanes, and climbing lanes across the District;

WHEREAS, between 2004 and 2012, as the bike lane network increased in the District by 300%, the number of cyclists counted along prominent corridors during morning and evening rush hours increased by 175%;

WHEREAS, 2015's Bike to Work Day garnered a record breaking 17,500 participants in the District of Columbia, Maryland, and Virginia, which represented a 4% increase from the previous year; and

WHEREAS, Bike to Work Day is free for participants and encourages first-time bike commuters to participate by organizing commuter convoys and buddy riders.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "National Bike to Work Day Recognition Resolution of 2016".

**ENROLLED ORIGINAL**

Sec. 2. The Council of the District of Columbia encourages cycling as a viable mode of transportation and supports the expansion of biking infrastructure. Recognizing that cycling on a regular basis is a benefit to one's health and contributes to the sustainability of the District, the Council declares May 20, 2016 as "National Bike to Work 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

21-212

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To posthumously recognize and honor Albrette “Gigi” Ransom for her decades of public service and tireless advocacy to the District of Columbia.

WHEREAS, Gigi Ransom was born in Manhattan, New York on November 23, 1952;

WHEREAS, Gigi Ransom attended New York City Elementary Schools and graduated from Brandeis High School in the Upper West Side in 1971;

WHEREAS, Gigi Ransom moved to the District of Columbia shortly after to attend the Federal City College, now known as the University of the District of Columbia, and graduated with a Bachelor’s of Arts in Political Science;

WHEREAS, Gigi Ransom was an exceptionally talented basketball player, dominating the courts for the Federal City College’s first Women’s Basketball Team;

WHEREAS, Gigi Ransom and the Federal City College Women’s Basketball Team were one of 5 teams selected for diplomacy through sport, playing against the women’s team from the People’s Republic of China ahead of President Gerald Ford’s visit to that country, at the Cole Field House at the University of Maryland;

WHEREAS, Gigi Ransom loved her newfound home of the District of Columbia and wanted to make a positive impact on its residents, leading to a life filled with activism and advocacy throughout the District;

WHEREAS, Gigi Ransom’s pursuit of advocacy compelled her to serve for 3 2-year terms on Advisory Neighborhood Commission 6B from 1992 through 1996, served again on ANC 5C from 2008 through 2010, and on ANC 5A in 2012;

WHEREAS, Gigi Ransom was dedicated to public safety and service all the way up to her death, serving most recently as a Safety Inspector for the District of Columbia Taxicab Commission, where she was highly regarded and respected by her peers for her attention to detail and safety;

**ENROLLED ORIGINAL**

WHEREAS, Gigi Ransom was a familiar face in the John A. Wilson Building, always making time to stop by Council offices to leave smiles on peoples' faces; and

WHEREAS, Gigi Ransom passed away on February 20, 2016 at 63 years of age, leaving behind her brothers Colin, Payton, sister-in-law Andrea, and a city eternally grateful for her community activism.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Albrette 'Gigi' Ransom Recognition Resolution of 2016".

Sec. 2. The Council of the District of Columbia extends condolences to the family of Gigi Ransom and thanks her for her many years of tireless advocacy and activism for the District of Columbia that stayed true up until her death.

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

21-213

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

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

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

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

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

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

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

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

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

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

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

**ENROLLED ORIGINAL**

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

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

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

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reverend Dr. Morris L. Shearin, Sr. Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia recognizes and honors Reverend Dr. Morris L. Shearin, Sr., for his commitment and dedication to District of Columbia residents.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

21-214

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 3, 2016

To recognize and congratulate the champions of the District of Columbia State Athletic Association’s 2015-2016 fall and winter seasons.

WHEREAS, the District of Columbia State Athletic Association (“DCSAA”), under the authority of the Office of the State Superintendent of Education, was founded to serve member schools and student-athletes by providing leadership and support for interscholastic athletic programming;

WHEREAS, the DCSAA’s several sports programs help promote and develop a sense of sportsmanship among its student-athletes;

WHEREAS, the DCSAA hosted championship tournaments for schools in the District of Columbia in the Fall of 2015 through the Winter of 2016 for soccer, volleyball, cross country, football, and basketball;

WHEREAS, the 2015 DCSAA Champion for Girls Soccer was Wilson High School in Ward 3;

WHEREAS, the 2015 DCSAA Champion for Boys Soccer was St. Alban’s School in Ward 3;

WHEREAS, the 2015 DCSAA Champion for Volleyball was St. John’s College High School in Ward 4;

WHEREAS, the 2015 DCSAA Champion for Boys Cross Country was Sidwell Friends School in Ward 3;

WHEREAS, the 2015 DCSAA Champion for Girls Cross Country was Georgetown Day School in Ward 3;

WHEREAS, the 2015 DCSAA Champion for Class A Football was Sidwell Friends School in Ward 3;

**ENROLLED ORIGINAL**

WHEREAS, the 2015 DCSAA Champion for Class AA Football was Gonzaga College High School in Ward 6.

WHEREAS, the 2016 DCSAA Champion for Boys Basketball was H.D. Woodson High School in Ward 7; and

WHEREAS, the 2016 DCSAA Champion for Girls Basketball was St. John’s College High School in Ward 4.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia State Athletic Association’s 2015-2016 Champions Recognition Resolution of 2016”.

Sec. 2. The Council of the District of Columbia joins the community of the District of Columbia State Athletic Association, their talented student-athletes, and the residents of the District of Columbia in congratulating the several champions of the 2015 and 2016 tournaments for soccer, volleyball, cross country, basketball, indoor track, and football.

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****PROPOSED RESOLUTIONS**

PR21-705 Board of Industrial Trades Council Garth Grannum Confirmation Resolution of 2016

Intro. 5-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR21-706 Board of Funeral Directors Ms. Essita Duncan Confirmation Resolution of 2016

Intro. 5-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR21-707 Board of Funeral Directors Mr. Randolph Horton Confirmation Resolution of 2016

Intro. 5-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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- PR21-708 Board of Funeral Directors Mr. John McGuire Confirmation Resolution of 2016  
Intro. 5-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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- PR21-709 Board of Funeral Directors Ms. Asanti Williams Confirmation Resolution of 2016  
Intro. 5-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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- PR21-710 District of Columbia Commission on Human Rights Dr. Alberto Figueroa-Garcia Confirmation Resolution of 2016  
Intro. 5-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary
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- PR21-711 District of Columbia Commission on Human Rights Genora Reed Confirmation Resolution of 2016  
Intro. 5-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary
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- PR21-712 District of Columbia Commission on Human Rights Dr. John D. Robinson Confirmation Resolution of 2016  
Intro. 5-2-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary
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- PR21-715 Board of Professional Engineering Mr. Barry Lucas Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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- PR21-716 Board of Professional Engineering Ms. Mary Jean Pajak Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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- PR21-717 Board of Professional Engineering Mr. Paul Rich Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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- PR21-718 Board of Professional Engineering Mr. Samuel Wilson Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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- PR21-719 Rental Housing Commission Michael Spencer Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Community Development
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- PR21-720 Rental Housing Commission Diana Epps Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Community Development
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- PR21-721 Real Estate Commission Kirk Adair Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs
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- PR21-722 Public Charter School Board Donald Soifer Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education
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PR21-723 Public Charter School Board Saba Bireda Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education

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PR21-724 Commission on African-American Affairs Adjoa B. Asamoah Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Community Development

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PR21-725 Commission on African-American Affairs LeGrande Baldwin Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Community Development

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PR21-726 Commission on African-American Affairs Camille Smith Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Community Development

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PR21-727 Commission on African-American Affairs Sondra Phillips-Gilbert Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Community Development

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PR21-728 Commission on African-American Affairs Gregory Jefferson Confirmation Resolution of 2016  
Intro. 5-4-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Community Development

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PR21-729 Health Carrier Assessment Rulemaking Approval Resolution of 2016  
Intro. 5-5-16 by Chairman Mendelson at the request of the Health Benefit Exchange Authority and referred to the Committee on Health and Human Services

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

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REVISED AND ABBREVIATED

**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**

Monday, May 23, 2016  
at 10:00 a.m.  
in Room 500 of the  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

On Monday, May 23, 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 10:00 a.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 May 26, 2016.

**This hearing notice has been revised and abbreviated to reflect that the date of the hearing has been changed from May 12<sup>th</sup> to May 23<sup>rd</sup>.**

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON EDUCATION  
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT  
NOTICE OF OVERSIGHT HEARING**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**COMMITTEE ON EDUCATION and  
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT**

**ANNOUNCE AN OVERSIGHT HEARING**

on

**Lead Testing in Public Facilities**

on

**Wednesday, June 22, 2016  
10:00 a.m., Hearing Room 500, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Councilmember David Grosso, chairperson of the Committee on Education, and Councilmember Mary Cheh, chairperson of the Committee on Transportation and the Environment, announce the scheduling of a joint public oversight hearing on lead testing in public facilities. The hearing will be held at 10:00 a.m. on Wednesday, June 22, 2016 in Hearing Room 500 of the John A. Wilson Building.

Over the past few months, the Council has asked many questions about the environmental safety of public buildings, especially schools, libraries, and recreation centers. Lead testing of every water source for every DCPS school building, public charter school, and recreation center is currently underway. The purpose of this oversight hearing is to discuss the protocol and results of the most recent round of testing; plans for remediation, if necessary; and future lead testing and communications protocol as it pertains to public facilities in the District of the Columbia.

Those who wish to testify may sign-up online at <http://bit.do/educationhearings> or call the Committee on Education at (202) 724-8061 by 5:00pm Monday, June 20. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, July 6, 2016.

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

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE**

**ANNOUNCE A PUBLIC OVERSIGHT ROUNDTABLE**

on

**“PR 21-593, LGBTQ Homeless Youth Rules Approval Resolution of 2016”**

on

**Thursday, May, 19, 2016  
1:30 p.m., Council Chamber, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces the scheduling of a roundtable of the Committee of the Whole on “PR 21-593, LGBTQ Homeless Youth Rules Approval Resolution of 2016.” The oversight roundtable will be held on Thursday, May 19, 2016, at 1:30 p.m. in the Council Chamber of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of PR 21-593 is to approve rules to implement the LGBTQ Homeless Youth Rules. The purpose of this roundtable is to elicit public comment on the Mayor’s proposed regulations, which were drafted in accordance with the LGBTQ Homeless Youth Reform Act of 2014, effective May 3, 2014 (D.C. Law 20-100).

Those who wish to testify are asked to contact the Committee of the Whole via telephone at (202) 724-8196, or via email at [cow@dccouncil.us](mailto:cow@dccouncil.us), and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, May 17, 2016. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Tuesday, May 17, 2016, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Friday, May 20, 2016.

**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 21-660, the “International Spy Museum Revenue Bonds Project Approval Resolution of 2016”  
PR 21-689, the “Integrated Design and Electronics Academy Public Charter School Revenue Bonds  
Project Approval Resolution of 2016”**

**Wednesday, May 18, 2016**

**10:00 a.m.**

**Room 120 - John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Wednesday, May 18, 2016 at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 21-660, the “International Spy Museum 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 \$52 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist International Spy Museum 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 includes acquiring a new museum facility of approximately 110,000 square feet to be located at 900 L’Enfant Plaza, S.W.

PR 21-689, the “Integrated Design and Electronics Academy Public Charter School Revenue Bonds Project Approval Resolution of 2016”, would authorize for the issuance, sale, and delivery in an aggregate principal amount not to exceed \$7.5 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist Integrated Design and Electronics Academy Public Charter School 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 includes a public charter high school campus located at 1027 45<sup>th</sup> Street, N.E.

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 10:00 a.m. on Tuesday, May 17, 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  
COMMITTEE OF THE WHOLE  
NOTICE OF PUBLIC ROUNDTABLE**  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
ANNOUNCES A PUBLIC ROUNDTABLE**

on

**In Re: Bill 21-714, Modifications to Contract Number CW25390 Approval and Payment  
Authorization Emergency Act of 2016**

on

**Thursday, May 19, 2016  
8:00 a.m., Room 500, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Council Chairman Phil Mendelson announces a public roundtable before the Committee of the Whole in regard to Bill 21-714, "Modifications to Contract Number CW25390 Approval and Payment Authorization Emergency Act of 2016." The roundtable will be held at 8:00 a.m. on Thursday, May 19, 2016 in the Council Chamber of the John A. Wilson Building.

The stated purpose of Bill 21-714 is to approve, on an emergency basis, Modifications M0004, M0005, and M0007, and proposed Modification M0008 to Contract Number CW25390 to provide school bus maintenance services and to authorize payment for the services received and to be received under the modification. This contract for services relates to school bus maintenance for the Office of the State Superintendent for Education. It was sent to the Council as a "tipping" action pursuant to Council rules. An option year of the contract was previously exercised for less than \$1 million, but because of changes, is now anticipated to go above \$1 million. This now requires approval of the option year – which is almost complete – retroactively by the Council. Had the option year been exercised for the same amount as the base year, which was also increased over \$1 million through a tipping action, it could have been sent to the Council for prospective passive approval last June.

Those who wish to testify are asked to email the Committee of the Whole at [cow@dccouncil.us](mailto:cow@dccouncil.us), or call Evan Cash, Committee Director at (202) 724-8196, and to provide your name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, May 17, 2016. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on May 17, 2016 the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. A copy of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council's office or on <http://lims.dccouncil.us>.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on June 2, 2016.

<p style="text-align: center;"><b>COUNCIL OF THE DISTRICT OF COLUMBIA</b> <b>EXCEPTED SERVICE APPOINTMENTS AS OF APRIL 30, 2016</b></p>
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**NOTICE OF EXCEPTED SERVICE EMPLOYEES**

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

<b>COUNCIL OF THE DISTRICT OF COLUMBIA</b>			
<b>NAME</b>	<b>POSITION TITLE</b>	<b>GRADE</b>	<b>TYPE OF APPOINTMENT</b>
Johnson, LaShawn	Constituent Services Specialist	1	Excepted Service - Reg Appt

**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. 21-186:** Request to reprogram \$1,694,197 of Fiscal Year 2016 Special Purpose Revenue funds budget authority within the Office of Cable Television, Film, Music, and Entertainment (OCTFME) was filed in the Office of the Secretary on May 9, 2016. This reprogramming will ensure that OCTFME will be able to upgrade broadcasting equipment in Council Hearing Rooms; upgrade data lines for the radio station; increase security services; support marketing and sponsorship activities; provide employee training; and cover projected overtime costs.

RECEIVED: 14 day review begins May 10, 2016

**Reprog. 21-187:** Request to reprogram \$1,651,730 of Fiscal Year 2016 Local funds budget authority within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on May 9, 2016. This reprogramming is needed to ensure that DCPS can procure contractual services to support DC Net WAN, internet services, sustainability initiatives, and travel expenses.

RECEIVED: 14 day review begins May 10, 2016



**Reprog. 21-188:** Request to reprogram \$105,000 of Pay-As-You-Go (Paygo) Capital Funds budget authority and allotment from the Office of the Chief Technology Officer (OCTO) to the Local funds budget of OCTO was filed in the Office of the Secretary on May 9, 2016. This reprogramming will support the required first-year maintenance cost of the Capital Assets Replacement Scheduling System (CARSS) software license.

RECEIVED: 14 day review begins May 10, 2016

**Reprog. 21-189:** Request to reprogram \$750,000 of Pay-As-You-Go (Paygo) Capital Funds budget authority and allotment from the Department of General Services (DGS) to the Local funds budget of DGS was filed in the Office of the Secretary on May 9, 2016. This reprogramming will support the cost and installation of items which have been deemed ineligible for capital and must be funded with operating budget.

RECEIVED: 14 day review begins May 10, 2016

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: May 13, 2016  
Petition Date: June 27, 2016  
Hearing Date: July 11, 2016  
Protest Hearing: September 14, 2016

License No.: ABRA-098584  
Licensee: Ima Pizza Store 12, LLC  
Trade Name: & Pizza  
License Class: Retailer’s Class “C” Restaurant  
Address: 705 H Street, N.W.  
Contact: Paul Pascal: (202) 544-2200

WARD 2

ANC 2C

SMD 2C01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14<sup>th</sup> Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 4:30pm on September 14, 2016.

**NATURE OF OPERATION**

New Restaurant to prepare and sell pizza and pizza products. Total Occupancy Load is 99 seats.

**HOURS OF OPERATON AND ALCOHOLIC BEVERAGE**

**SALES/SERVICE/CONSUMPTION**

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**\*\*CORRECTION**

Posting Date: May 6, 2016  
Petition Date: June 20, 2016  
Hearing Date: July 5, 2016  
Protest Hearing Date: September 14, 2016

License No.: ABRA-102759  
Licensee: BB DC 1, LLC  
Trade Name: Bareburger  
License Class: Retailer’s Class “C” Restaurant  
Address: 1647 20th Street, N.W.  
Contact: Kevin Lee: (703) 941-3133

WARD 2                      ANC 2B                      SMD 2B03

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

**NATURE OF OPERATION**

A restaurant providing a variety of burgers and drinks. Total number of seats: 48. Total Occupancy Load: 65. Total number of Sidewalk Cafe seats: 72.

**\*\*HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR THE PREMISES AND SIDEWALK CAFÉ**

**\*\*Sunday 10 am- 12 am, Monday through Friday 11 am- 12 am, Saturday 10am – 12 am**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**\*\*RESCIND**

Posting Date: May 6, 2016  
Petition Date: June 20, 2016  
Hearing Date: July 5, 2016  
Protest Hearing Date: September 14, 2016

License No.: ABRA-102759  
Licensee: BB DC 1, LLC  
Trade Name: Bareburger  
License Class: Retailer’s Class “C” Restaurant  
Address: 1647 20th Street, N.W.  
Contact: Kevin Lee: (703) 941-3133

WARD 2                      ANC 2B                      SMD 2B03

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

**NATURE OF OPERATION**

A restaurant providing a variety of burgers and drinks. Total number of seats: 48. Total Occupancy Load: 65. Total number of Sidewalk Cafe seats: 72.

**\*\*HOURS OF OPERATION FOR THE PREMISES AND SIDEWALK CAFÉ**

\*\*Sunday 10 am- 11 pm Monday through Friday 11 am- 11pm Saturday 10am – 11pm

**\*\*HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE FOR THE PREMISES AND SIDEWALK CAFÉ**

\*\*Sunday through Saturday 12 pm- 11 pm

**ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION  
ON  
4/15/2016**

**\*\*CORRECTION**

Notice is hereby given that:

License Number: ABRA-101583

License Class/Type: C Restaurant

Applicant: Bohemian Restaurants, LLC

Trade Name: Bistro Bohem

ANC: 6E02

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

**1840 6th 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:	7 am - 2 am	10 am -2 am
Monday:	7 am - 2 am	11:30 am - 2 am
Tuesday:	7 am - 2 am	11:30 am - 2 am
Wednesday:	7 am - 2 am	11:30 am - 2 am
Thursday:	7 am - 2 am	11:30 am - 2 am
Friday:	7 am - 3 am	11:30 am - 3 am
Saturday:	7 am - 3 am	10am - 3 am

**\*\*ENDORSEMENTS: Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION  
ON  
4/15/2016**

**\*\*RESCIND**

Notice is hereby given that:

License Number: ABRA-101583

License Class/Type: C Restaurant

Applicant: Bohemian Restaurants, LLC

Trade Name: Bistro Bohem

ANC: 6E02

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

**1840 6th 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:	7 am - 2 am	10 am -2 am
Monday:	7 am - 2 am	11:30 am - 2 am
Tuesday:	7 am - 2 am	11:30 am - 2 am
Wednesday:	7 am - 2 am	11:30 am - 2 am
Thursday:	7 am - 2 am	11:30 am - 2 am
Friday:	7 am - 3 am	11:30 am - 3 am
Saturday:	7 am - 3 am	10am - 3 am

**\*\*ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 13, 2016
Petition Date: June 27, 2016
Hearing Date: July 11, 2016
Protest Date: September 14, 2016

License No.: ABRA-102733
Licensee: Cordial Wharf, LLC
Trade Name: Cordial Fine Wine & Spirits
License Class: Retailer's Class "A" Liquor Store
Address: 690 Water Street, S.W.
Contact: Erin Sharkey: (202) 686-7600

WARD 6

ANC 6D

SMD 6D04

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 14, 2016 at 1:30pm.

NATURE OF OPERATION

A neighborhood liquor store serving alcoholic beverages and offering tastings on premise.

HOURS OF OPERATION/ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 7:00 am- 2:00 am, Friday and Saturday 8:00 am – 3:00 am

**ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION  
ON**

**\*\*5/13/2016**

**\*\*READVERTISEMENT**

Notice is hereby given that:

License Number: ABRA-098818 License Class/Type: C Restaurant

Applicant: Desta Ethiopian Restaurant, LLC

Trade Name: Desta Ethiopian Restaurant

ANC: 4A06

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

**6128 Georgia AVE NW**

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

**\*\*6/27/2016**

**A HEARING WILL BE HELD ON:**

**\*\*7/11/2016**

**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	10 am -12 am
Monday:	10 am - 12 am	10 am - 12 am
Tuesday:	10 am - 12 am	10 am - 12 am
Wednesday:	10 am - 12 am	10 am - 12 am
Thursday:	10 am - 2 am	10 am - 2 am
Friday:	10 am - 2 am	10 am - 2 am
Saturday:	10 am - 2 am	10 am - 2 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION**

**ON**

**\*\*4/15/2016**

**\*\*RESCIND**

Notice is hereby given that:

License Number: ABRA-098818

License Class/Type: C Restaurant

Applicant: Desta Ethiopian Restaurant, LLC

Trade Name: Desta Ethiopian Restaurant

ANC: 4A06

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

**6128 Georgia AVE 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 - 12 am	10 am -12 am
Monday:	10 am - 12 am	10 am - 12 am
Tuesday:	10 am - 12 am	10 am - 12 am
Wednesday:	10 am - 12 am	10 am - 12 am
Thursday:	10 am - 2 am	10 am - 2 am
Friday:	10 am - 2 am	10 am - 2 am
Saturday:	10 am - 2 am	10 am - 2 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

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

Posting Date: May 13, 2016  
Petition Date: June 27, 2016  
Hearing Date: July 11, 2016

License No.: ABRA-015698  
Licensee: Eritrean Cultural Center  
Trade Name: Eritrean Cultural & Civic Center  
License Class: Retailer's Class "C" Multipurpose Facility  
Address: 1214 18<sup>th</sup> Street, N.W.  
Contact: Jeff Jackson: 202 251-1566

WARD 2

ANC 2B

SMD 2B06

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 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.

**NATURE OF SUBSTANTIAL CHANGE:**

Transferring from 600 L Street, N.W. to a new location located at 1214 18<sup>th</sup> Street, N.W. Members and their guest only. Total Occupancy Load is 354.

**HOURS OF OPERATON AND ALCOHOLC BEVERAGE****SALES/SERVICE/CONSUMPTION**

Sunday through Thursday 9 am – 2 am, Friday and Saturday 9 am – 3 am

**HOURS OF LIVE ENTERTAINMENT**

Sunday through Thursday 6 pm – 2 am, Friday and Saturday 6 pm – 3 am

**ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION  
ON  
4/1/2016**

**\*\*RESCIND**

Notice is hereby given that:

License Number: ABRA-101370

License Class/Type: C Restaurant

Applicant: Bhujn, LLC

Trade Name: \*\*Heritage Restaurant and Bar

ANC: 1C07

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

**2305 18TH ST NW 20009**

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

**5/16/2016**

**A HEARING WILL BE HELD ON:**

**5/31/2016**

**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 - 1 am	11:30 am - 1 am
Monday:	11:30 am - 1 am	11:30 am - 1 am
Tuesday:	11:30 am - 1 am	11:30 am - 1 am
Wednesday:	11:30 am - 1 am	11:30 am - 1 am
Thursday:	11:30 am - 1 am	11:30 am - 1 am
Friday:	10 am - 2 am	10 am - 2 am
Saturday:	10 am - 2 am	10 am - 2 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
4/29/2016**

**\*\*RESCIND**

Notice is hereby given that:

License Number: ABRA-101370

License Class/Type: C Restaurant

Applicant: Bhujn, LLC

Trade Name: Heritage Restaurant and Bar

ANC: 1C07

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

**2305 18TH ST NW**

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

**6/13/2016**

**A HEARING WILL BE HELD ON:**

**6/27/2016**

**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 - 1 am	11:30 am - 1 am
Monday:	11:30 am - 1 am	11:30 am - 1 am
Tuesday:	11:30 am - 1 am	11:30 am - 1 am
Wednesday:	11:30 am - 1 am	11:30 am - 1 am
Thursday:	11:30 am - 1 am	11:30 am - 1 am
Friday:	10 am - 2 am	10 am - 2 am
Saturday:	10 am - 2 am	10 am - 2 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION  
ADMINISTRATION  
ON  
4/1/2016**

**\*\*CORRECTION**

Notice is hereby given that:

License Number: ABRA-101370

License Class/Type: C Restaurant

Applicant: Bhujn, LLC

Trade Name: \*\* Himalayan Heritage Restaurant and Bar

ANC: 1C07

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

**2305 18TH ST NW 20009**

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

**5/16/2016**

**A HEARING WILL BE HELD ON:**

**5/31/2016**

**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 - 1 am	11:30 am - 1 am
Monday:	11:30 am - 1 am	11:30 am - 1 am
Tuesday:	11:30 am - 1 am	11:30 am - 1 am
Wednesday:	11:30 am - 1 am	11:30 am - 1 am
Thursday:	11:30 am - 1 am	11:30 am - 1 am
Friday:	10 am - 2 am	10 am - 2 am
Saturday:	10 am - 2 am	10 am - 2 am

**ENDORSEMENTS:**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-095030

License Class/Type: C Restaurant

Applicant: INDIA GET RESTAURANT, INC.

Trade Name: India Gate

ANC: 2B02

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

**2020 P ST NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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 an - 12 am
Saturday:	11:30 am - 12 am	11:30 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

## ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

## NOTICE OF PUBLIC HEARING

Posting Date: May 13, 2016  
Petition Date: June 27, 2016  
Hearing Date: July 11, 2016

License No.: ABRA-000259  
Licensee: Mr. Henry's, Inc.  
Trade Name: Mr. Henry's  
License Class: Retailer's Class" C" Restaurant  
Address: 601 Pennsylvania Avenue, S.E.  
Contact: Mary Quillian Helms: (202) 258-6343

WARD 6

ANC 6B

AMD 6B02

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 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.

**LICENSEE REQUESTS THE FOLLOWING SUBSTANTIAL CHANGE TO ITS NATURE OF OPERATIONS:**

Applicant requests a Change of Hours of Live Entertainment.

**CURRENT HOURS OF OPERATION**

Sunday through Saturday 10 am – 1:30 am

**CURRENT HOURS OF LIVE ENTERTAINMENT**

Sunday through Thursday No Entertainment, Friday 8 pm – 12 am, Saturday No Entertainment

**PROPOSED HOURS OF LIVE ENTERTAINMENT**

Sunday 6pm – 11 pm, Monday none, Tuesday through Friday 8 pm – 12 am, Saturday 7 pm – 12 am

## ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

## NOTICE OF PUBLIC HEARING

Posting Date: May 13, 2016  
Petition Date: June 27, 2016  
Hearing Date: July 11, 2016

License No.: ABRA-097981  
Licensee: E & K Real LLC  
Trade Name: Nido  
License Class: Retailer's Class "C" Tavern  
Address: 2214 Rhode Island Avenue, N.E.  
Contact: Karl M. Leopold: 202-360-9202

WARD 5

ANC 5C

SMD 5C07

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 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.

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requests a Sidewalk Café with seating for 10 patrons.

**CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE**

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

**PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUMPTION FOR SIDEWALK CAFE**

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



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-086210

License Class/Type: C Restaurant

Applicant: TBM Holdings LLC

Trade Name: Driftwood Kitchen

ANC: 6C05

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

**400 H ST NE**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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 - 2am	10am - 2am
Monday:	7am - 2am	8am - 2am
Tuesday:	7am - 2am	8am - 2am
Wednesday:	7am - 2am	8am - 2am
Thursday:	7am - 2am	8am - 2am
Friday:	7am - 3am	8am - 3am
Saturday:	7am - 3am	8am - 3am

**ENDORSEMENT(S): Entertainment Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-095178

License Class/Type: C Restaurant

Applicant: Micherie, LLC

Trade Name: Cheerz

ANC: 4B01

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

**7303 GEORGIA AVE NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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:	Closed -	Closed -
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 - 11 pm	11 am - 11 pm
Saturday:	11 am - 11 pm	11 am - 11 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-023533

License Class/Type: C Restaurant

Applicant: HML Rose Inc.

Trade Name: Lindys Bon Appetit

ANC: 2A08

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

**2040 I ST NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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

**ENDORSEMENT(S): Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-001133

License Class/Type: C Restaurant

Applicant: Restaurant Associates Inc.

Trade Name: Restaurant Associates

ANC: 2A04

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

**2700 F ST NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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 - 12 am	8 am - 12 am
Saturday:	8 am - 12 am	8 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-097558

License Class/Type: D Restaurant

Applicant: Gobind, LLC

Trade Name: Toscana Cafe

ANC: 6C04

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

**601 2ND ST NE**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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 - 12 am	11 am - 12 am
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 am	11 am - 12 am
Friday:	11 am - 12 am	11 am - 12 am
Saturday:	11 am - 12 am	11 am - 12 am

**ENDORSEMENT(S): Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-098593

License Class/Type: C Restaurant

Applicant: RMP D.C. LLC

Trade Name: RPM Italian/Café 110

ANC: 6E05

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

**601 MASSACHUSETTS AVE NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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:	7AN - 2AM	8AM - 2am
Monday:	7AM - 2AM	8am - 2am
Tuesday:	7AM - 2AM	8am - 2am
Wednesday:	7AM - 2AM	8am - 2am
Thursday:	7AM - 2AM	8am - 2am
Friday:	7AM - 3AM	8am - 3am
Saturday:	7AM - 3AM	8am - 3am

**ENDORSEMENT(S): Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-026517

License Class/Type: C Hotel

Applicant: 900 F Street Associates, LLC

Trade Name: Courtyard By Marriott

ANC: 2C01

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

**900 F ST NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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:	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	8 am - 2 am
Friday:	6:30 am - 3 am	8 am - 3 am
Saturday:	7 am - 3 am	8 am - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-000793

License Class/Type: C Club

Applicant: National Democratic Club Inc.

Trade Name: National Democratic Club

ANC: 6B01

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

**30 IVY ST SE**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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:	-	-
Monday:	11:30 am - 1 am	11:30 am - 1 am
Tuesday:	11:30 am - 1 am	11:30 am - 1 am
Wednesday:	11:30 am - 1 am	11:30 am - 1 am
Thursday:	11:30 am - 1 am	11:30 am - 1 am
Friday:	11:30 am - 1 am	11:30 am - 1 am
Saturday:	-	-

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-090464

License Class/Type: C Restaurant

Applicant: THIRTEENTH STEP, LLC

Trade Name: Kitty O'Shea's DC

ANC: 3E03

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

**4624 WISCONSIN AVE NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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 - 3 am	8 am - 3 am
Saturday:	8 am - 3 am	8 am - 3 am

**ENDORSEMENT(S): Cover Charge Dancing Entertainment Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-078960

License Class/Type: C Hotel

Applicant: HLT DC Owner LLC

Trade Name: Embassy Suites Downtown

ANC: 2A06

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

**1250 22ND ST NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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 am	11 am - 11 pm
Monday:	11 am - 1 am	11 am - 11 pm
Tuesday:	11 am - 1 am	11 am - 11 pm
Wednesday:	11 am - 1 am	11 am - 11 pm
Thursday:	11 am - 1 am	11 am - 11 pm
Friday:	11 am - 2 am	11 am - 11 pm
Saturday:	11 am - 2 am	11 am - 11 pm

**ENDORSEMENT(S): Entertainment**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-024105

License Class/Type: C Restaurant

Applicant: Grill Concepts-DC, Inc.

Trade Name: Daily Grill

ANC: 2B06

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

**1200 18TH ST NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-075950

License Class/Type: C Hotel

Applicant: Federal Center Hotel Associates, LLC

Trade Name: Holiday Inn (Capitol)

ANC: 6D01

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

**550 C ST SW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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 pm - 2 am

**ENDORSEMENT(S): Dancing Entertainment Sidewalk Cafe**

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-015387

License Class/Type: C Restaurant

Applicant: Escobar Rincon Inc.

Trade Name: La Lomita Dos

ANC: 6B01

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

**308 PENNSYLVANIA AVE SE**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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:	4 pm - 10 pm	4 pm - 10 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:	12 pm - 11 pm	12 pm - 11 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

**License Number: ABRA-089510 License Class/Type: C Hotel**  
**Applicant: 2120 P STREET ASSOCIATES, LLC/ZODIAC 2120 P, LLC**  
**Trade Name: Marriott Residence Inn/Crios**  
**ANC: 2B02**

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

**2120 P ST NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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

**ENDORSEMENT(S): Entertainment Sidewalk Cafe**

**FOR FURTHER INFORMATION CALL: (202) 442-4423**

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

Posting Date: May 13, 2016  
Petition Date: June 27, 2016  
Hearing Date: July 11, 2016  
Protest Date: September 14, 2016

License No.: ABRA-102765  
Licensee: Rite Aid of Washington, DC, Inc.  
Trade Name: Rite Aid #6734  
License Class: Retailer's Class "A"  
Address: 2255 Wisconsin Avenue, N.W.  
Contact: Stephen O'Brien: (202) 625-7700

WARD 3

ANC 3B

SMD 3B02

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 14, 2016 at 4:30pm.

**NATURE OF OPERATION**

A neighborhood store serving alcoholic beverages.

**HOURS OF OPERATION**

Sunday through Saturday 12am - 12am (24 hour operations)

**HOURS OF ALCOHOLIC BEVERAGE SALES**

Sunday through Saturday 8:00 am- 12:00 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: May 13, 2016  
Petition Date: June 27, 2016  
Hearing Date: July 11, 2016  
Protest Hearing: September 14, 2016

License No.: ABRA-102597  
Licensee: Roti Square 54, LLC  
Trade Name: Roti Mediterranean Grill  
License Class: Retailer’s Class “C” Restaurant  
Address: 2221 I Street, N.W.  
Contact: Michael R. Strong: 703 204-2040

WARD 2

ANC 2A

SMD 2A07

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

**NATURE OF OPERATION**

New Restaurant. Rotisserie and grilled salad/sandwich items. Total Occupancy Load is 98. Summer Garden.

**HOURS OF OPERATON AND ALCOHOLIC BEVERAGE**

**SALES/SERVICE/CONSUMPTION FOR PREMISES AND SUMMER GARDEN**

Saturday and Sunday 11 am – 10 pm, Monday through Friday 10:30 am – 10 pm



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 13, 2016
Petition Date: June 27, 2016
Hearing Date: July 11, 2016
Protest Hearing: September 14, 2016

License No.: ABRA-102598
Licensee: Roti 1311 F Street, LLC
Trade Name: Roti Mediterranean Grill
License Class: Retailer's Class "C" Restaurant
Address: 1311 F Street, N.W.
Contact: Michael R. Strong: 703 204-2040

WARD 2

ANC 2C

SMD 2C01

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

NATURE OF OPERATION

New Restaurant. Rotisserie and grilled salad/sandwich items. Total Occupancy Load is 157.

HOURS OF OPERATON AND ALCOHOLIC BEVERAGE

SALES/SERVICE/CONSUMPTION

Monday through Friday 10:30 am – 9 pm, Closed Saturday & Sunday

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Posting Date: May 13, 2016  
Petition Date: June 27, 2016  
Hearing Date: July 11, 2016  
Protest Date: September 14, 2016

License No.: ABRA-102486  
Licensee: Sip and Dry Bar, LLC  
Trade Name: Sip and Dry Bar  
License Class: Retailer’s Class “C” Tavern  
Address: 2004 Hecht Avenue, N.E.  
Contact: Keith Lively: (202) 589-1834

WARD 5

ANC 5D

SMD 5D01

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

**NATURE OF OPERATION**

A new retailer class “C” tavern with 25 seats and a Total Occupancy Load of 40.

**HOURS OF OPERATION**

Sunday through Saturday 6 am – 2 am

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

Sunday through Saturday 8 am – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May, 13, 2016
Petition Date: June 27, 2016
Hearing Date: July 11, 2016
Protest Date: September 14, 2016

License No: ABRA-102578
Licensee: Soapstone Market, LLC
Trade Name: Soapstone Market
License Class: Retailer's Class "B" Full-Service Grocery Store
Address: 4465 Connecticut Avenue, N.W.
Contact: Tracy Stannard: 202-409-8960

WARD 3

ANC 3F

SMD 3F04

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on September 14, 2016 at 4:30 pm.

NATURE OF OPERATION:

Grocery store with prepared food and deli also containing an eat-in café. Beer and wine available for on and off premises consumption. Tasting Endorsement.

HOURS OF OPERATON

Sunday through Saturday 6am – 12am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Saturday 8am – 12am

## ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

## NOTICE OF PUBLIC HEARING

Posting Date: May, 13, 2016  
Petition Date: June 27, 2016  
Hearing Date: July 11, 2016  
Protest Date: September 14, 2016

License No: ABRA-102580  
Licensee: Soapstone Market, LLC  
Trade Name: Soapstone Market  
License Class: Retailer's Class "D" Restaurant  
Address: 4465 Connecticut Avenue, N.W.  
Contact: Tracy Stannard: 202-409-8960

WARD 3

ANC 3F

SMD 3F04

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14<sup>th</sup> Street, N.W., 400 South, Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled on September 14, 2016 at 4:30 pm.

**NATURE OF OPERATION:**

Restaurant-style food such as sandwiches, salads, and entrees made-to-order in a counter-service, grab-n-go style within a full-service grocery store. Beer and wine available for on premise consumption. Tasting Endorsement and Sidewalk Café seating 40 patrons. Total Occupancy Load of 100. Seating for 60 inside premises.

**HOURS OF OPERATON FOR PREMISES AND SIDEWALK CAFE**

Sunday through Saturday 7am – 12am

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

Sunday through Saturday 8am – 12am

**HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, CONSUMPTION FOR SIDEWALK CAFÉ**

Sunday through Saturday 11am – 12am

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

Posting Date: May 13, 2016  
Petition Date: June 27, 2016  
Hearing Date: July 11, 2016  
Protest Date: September 14, 2016

License No.: ABRA-102026  
Licensee: Coffee House Holding, Inc.  
Trade Name: Starbucks Coffee #2748  
License Class: Retailer's Class "D" Restaurant  
Address: 1600 K Street, N.W.  
Contact: Stephen O'Brien: (202) 625-7700

WARD 2

ANC 2B

SMD 2B05

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 14, 2016 at 4:30pm.

**NATURE OF OPERATION**

A coffee shop that offers 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

**\*\*READVERTISEMENT\*\***

Posting Date: \*\*May 13, 2016  
Petition Date: \*\*June 27, 2016  
Hearing Date: \*\*July 11, 2016

License No.: ABRA-095107  
Licensee: The Pitch, LLC  
Trade Name: The Pitch  
License Class: Retailer’s Class “C” Tavern  
Address: 4015 Georgia Avenue, N.W.  
Contact: Jeff Jackson: (202) 251-1566

WARD 4

ANC 4C

SMD 4C07

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 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.

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requested a Summer Garden endorsement with seating for 20.

**CURRENT HOURS OF OPERATION ON PREMISE**

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

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE**

Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

**PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUMPTION FOR SUMMER GARDEN**

Monday through Thursday 8 am – 10 pm, Friday and Saturday 8 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**\*\*RESCIND\*\***

Posting Date: \*\*April 29, 2016  
Petition Date: \*\*June 13, 2016  
Hearing Date: \*\*June 27, 2016

License No.: ABRA-095107  
Licensee: The Pitch, LLC  
Trade Name: The Pitch  
License Class: Retailer’s Class “C” Tavern  
Address: 4015 Georgia Avenue, N.W.  
Contact: Jeff Jackson: (202) 251-1566

WARD 4

ANC 4C

SMD 4C07

Notice is hereby given that this licensee has applied for a Substantial Change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 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.

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requested a Summer Garden endorsement with seating for 20.

**CURRENT HOURS OF OPERATION ON PREMISE**

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

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE**

Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

**PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALE/SERVICE/CONSUMPTION FOR SUMMER GARDEN**

Monday through Thursday 8 am – 10 pm, Friday and Saturday 8 am – 12 am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
5/13/2016**

Notice is hereby given that:

License Number: ABRA-025750

License Class/Type: C Multipurpose

Applicant: The Studio Theatre, Inc.

Trade Name: The Studio Theatre

ANC: 2F02

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

**1333 P ST NW**

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

**6/27/2016**

**A HEARING WILL BE HELD ON:**

**7/11/2016**

**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	10 am - 12 am
Monday:	9 am - 12 am	10 am - 12 am
Tuesday:	9 am - 12 am	10 am - 12 am
Wednesday:	9 am - 12 am	10 am - 12 pm
Thursday:	9 am - 12 am	10 am - 12 am
Friday:	9 am - 12 am	10 am - 1 am
Saturday:	9 am - 12 am	10 am - 1 am

FOR FURTHER INFORMATION CALL: (202) 442-4423



**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
TUESDAY, JUNE 28, 2016  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

**TIME: 9:30 A.M.**

**WARD THREE**

19285            **Application of The Marital Trust U/Sheaffer Family Trust and Glover**  
ANC-3C           **Park Developers, LLC, on behalf of the District of Columbia,** pursuant  
to 11 DCMR § 3104.1, for a special exception from the emergency shelter  
requirements under § 220.1, to establish a short-term family housing facility in  
the R-1-B District at premises 2619 Wisconsin Avenue N.W. (Square 1935, Lots  
44 and 812).

**WARD SEVEN**

19287            **Application of DGS of DC,** pursuant to 11 DCMR §§ 3103.2 and 3104.1, for  
ANC-7E           variances from the limitation of number of stories requirements under § 400.1,  
the FAR requirements under § 402.4, the lot occupancy requirements under §  
403.2, the rear yard requirements under § 404.1, the side yard requirements under  
§ 405.9, and the parking requirements under § 2101.1, and a special exception  
from the emergency shelter requirements under § 360.1, to establish a short-term  
family housing facility in the R-5-A District at premises 5004 D Street S.E.  
(Square 5322, Lot 32).

**WARD EIGHT**

19288            **Application of DGS of DC,** pursuant to 11 DCMR §§ 3103.2 and 3104.1, for  
ANC-8D           variances from the limitation of number of stories requirements under § 400.1,  
the off-street parking requirements under §§ 2101.1 and 2116.4, and the loading  
berth requirements under § 2201.1, and a special exception from the emergency  
shelter requirements under § 360.1, to establish a short-term family housing  
facility in the R-5-A District at 4200 (assumed) 6th Street S.E. (Square 6207,  
Lots 53-56).

## BZA PUBLIC HEARING NOTICE

JUNE 28, 2016

PAGE NO. 2

WARD FOUR

19289            **Application of 5th Street Partners LLC, on behalf of the District of**  
ANC-4D           **Columbia**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the  
height requirements under § 770.1, the FAR requirements under § 771.2, and the  
non-conforming structure requirements under § 2001.3, and a special exception  
from the community-based residential facilities requirements under § 732.1, to  
establish a short-term family housing facility in the C-2-A District at premises  
5505 5th Street N.W. (Square 3260, Lot 54).

WARD FIVE

19290            **Application of Jemal's Tony LLC, on behalf of the District of**  
ANC-5C           **Columbia**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the  
emergency shelter location requirements under § 802.28(c), and a special  
exception from the emergency shelter requirements under § 802.28, to establish a  
short-term family housing facility in the C-M-2 District at premises 2266 25th  
Place N.E. (Square 4258, Lot 35).

**PLEASE NOTE:**

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

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

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.**\* This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: [www.dcoz.dc.gov](http://www.dcoz.dc.gov). All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

*\*Note that party status is not permitted in Foreign Missions cases.*

BZA PUBLIC HEARING NOTICE

JUNE 28, 2016

PAGE NO. 3

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202)  
727-6311.

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



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

**How to participate as a party.**

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

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

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

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

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

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

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

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

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

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PUBLIC HEARING**

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

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 15-32 (1126 9th ST NW, LLC – Consolidated PUD & Related Map Amendment @ Square 369, Lot 880)**

**THIS CASE IS OF INTEREST TO ANC 2F**

On November 30, 2015, the Office of Zoning received an application from 1126 9th ST NW, LLC (the “Applicant”). The Applicant is requesting approval of a planned unit development (“PUD”) and related Zoning Map amendment. The Office of Planning provided its report on February 19, 2016, and the case was set down for hearing on February 29, 2016. The Applicant provided its prehearing statement on April 12, 2016.

The property that is the subject of this application consists of approximately 7,610 square feet of land area and is located at 1126 9<sup>th</sup> Street, N.W. (Square 369, Lot 880) (the “Property”). The Property is split-zoned between the DD/C-2-C and DD/C-2-A Zone Districts. The Property currently contains a surface parking lot and a one- to two-story commercial building.

The Applicant proposes a PUD-related map amendment to rezone an approximately 6,408 square foot portion of the site from the DD/C-2-A Zone District to the DD/C-2-C Zone District and include it in Housing Priority Area “A”. Such rezoning and PUD would allow for the construction of a mixed-use building containing residential units and ground floor commercial uses. The DD/C-2-C Zone District permits a maximum height of 110 feet and no maximum floor area ratio (“FAR”) for residential uses. The proposed structure will contain a floor area of approximately 40,290 gross square feet (“GSF”), an overall density of approximately 5.3 FAR, approximately 33 new residential units, and approximately 3,723 GSF of ground floor commercial use. The project will have a maximum height of 100 feet. Along the 9<sup>th</sup> Street façade, the project will step back from the street before rising to the full 100 feet, allowing the existing structure to be solely expressed within such setback area. Most of the existing structure will be retained and incorporated into the project. The project will have a height of approximately 51 feet, eight inches, with two sixth floor loft areas rising to approximately 61 feet, four inches along the M Street façade. Two permanent non-conforming parking spaces and loading facilities will be accessible via the alley.

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

**How to participate as a witness.**

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

**How to participate as a party.**

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

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

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

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

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

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

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



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

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

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## 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 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 Section 1916, entitled “In-Home Supports 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 in-home supports 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(a)(8)(E) (2014 Repl. & 2015 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

In-home supports services are essential to ensuring that persons enrolled in the ID/DD Waiver continue to receive services and supports in the comfort of their own homes or family homes. The current Notice of Final Rulemaking for 29 DCMR § 1916 (In-Home Supports Services) was published in the *D.C. Register* on January 1, 2016, at 63 DCR 000043. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on February 5, 2016, at 63 DCR 001389, which amended the previously published final rulemaking by increasing the rates, using the approved rate methodology, to reflect the \$.04 increase in the D.C. Living Wage, effective January 1, 2016, 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.)). The emergency rulemaking was adopted on January 28, 2016, and became effective on that date, and remains in effect until May 27, 2016, or until publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. DHCF received no comments to the emergency and proposed rulemaking and no changes have been made.

The Director of DHCF adopted these rules as final on April 29, 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:**

**Subsection 1916.18 of Section 1916, IN-HOME SUPPORTS SERVICES, is amended to read as follows:**

1916.18 In-home supports services, including those provided in the event of a temporary emergency, shall be billed at the unit rate. The reimbursement rate shall be twenty-three dollars and thirty-six cents (\$23.36) per hour, billable in units of fifteen (15) minutes at a rate of five dollars and eight-four cents (\$5.84), and shall not exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act), effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a) and 38-1202.06)(3),(13) (2012 Repl. & 2015 Supp.)), hereby gives notice of the adoption of amendments to Chapter 7 (Admissions and Academic Standards) of Title 8 (Higher Education), Subtitle B (University of the District of Columbia), of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rule is to adopt a single fee structure for all University components and to adjust the fees to be charged by the College beginning in the fall semester of 2016. The substance of the rules adopted herein was published in the *D.C. Register* on January 8, 2016 at 63 DCR 387, for a period of public comment of not less than thirty (30) days, in accordance with D.C. Official Code § 2-505(a) (2012 Repl.). No public comment was received by the Board within the public comment period.

The rules were adopted as final on February 9, 2016, and will become effective upon publication of this notice in the *D.C. Register*.

**Chapter 7, ADMISSIONS AND ACADEMIC STANDARDS, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended as follows:**

**Section 728, TUITION AND FEES: DEGREE-GRANTING PROGRAMS, Subsection 728.8, is amended to read as follows:**

728.8

(a) Each semester and summer of enrollment, each full-time and part time undergraduate and graduate student, full-time and part time law school student, and full-time and part time community college student, shall pay the following mandatory fees:

- (1) Activity Fee: \$35.00 per semester
- (2) Athletic/Recreation Fee: \$105.00 per semester
- (3) Health Services Fee: \$25.00 per semester
- (4) Technology Fee: \$75.00 per semester
- (5) Student Center Fee: \$140.00 per semester

(6) Career and Professional Fee \$40.00 per semester

(7) Sustainability Fee \$10.00 per semester

(b) In addition to the fees listed above, each law school student shall pay the following mandatory fees:

(1) Law School Student Activity Fee: \$210.00 per year

(2) Law School Materials/Technology: \$85.00 per semester.

## OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF SECOND PROPOSED RULEMAKING

The State Superintendent of Education (“State Superintendent”), pursuant to the authority set forth in Sections 3(b)(11) and (15) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b) (11) and (15) (2012 Repl. & 2015 Supp.)); and Section 301 of the Special Education Procedural Protections Expansion Act of 2014 (the “Act”), effective March 10, 2015 (D.C. Law 20-194, D.C. Official Code § 38-2573.01) (2012 Repl. & 2015 Supp.)), hereby gives notice of intent to amend Chapter 30 (Special Education) in Subtitle E (Original Title 5) of Title 5 (Education) of the District of Columbia Municipal Regulations (“DCMR”), in not less than fourteen (14) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the proposed rules is to comply with Section 301 of the Act, which requires the Office of the State Superintendent of Education (“OSSE”) to issue rules implementing Section 104(a) of the Act by July 1, 2016. Section 104(a) requires that OSSE establish a procedure to determine when rights accorded to parents under the Individuals with Disabilities Education Act (IDEA) shall not transfer to a child with a disability who has reached the age of majority because the child with a disability does not have the ability to provide informed consent for purposes of educational decision-making and to appoint another adult to represent the educational interests of the child with a disability.

A Notice of Proposed Rulemaking was published in the *D.C. Register* for a thirty (30) day public comment period on July 24, 2015, at 62 DCR 10013. In addition, OSSE held two public hearings, on August 5, 2015 and on August 20, 2015. The comment period officially closed on August 24, 2015, with OSSE having received numerous comments from advocates and members of the regulated community regarding Section 3023, “Transfer of Rights,” in the Notice of Proposed Rulemaking. OSSE carefully considered all of the comments and made a number of the requested non-substantive amendments. Additionally, this proposed rulemaking also includes the substantive amendments requested by commenters, as described below.

First, OSSE received several comments requesting that the proposed regulations emphasize supported decision-making over appointing an educational representative whenever possible. To that end, a commenter also requested more guidance in the proposed regulations for local education agencies (LEAs) on how to implement the concept of supported decision making. In addition, OSSE received a comment that requested that the proposed regulations also emphasize the supported decision-making model in conjunction with the student’s right to power of attorney so that the student remains engaged in the decision making process with their designee.

Accordingly, to clarify and address those comments, OSSE has reorganized the substance of Section 3023, “Transfer of Rights” in the Notice of Proposed Rulemaking into three separate sections, (1) Section 3034, “Transfer of Rights: General Provisions and Supportive Decision-Making”; (2) Section 3035, “Transfer of Rights: Exceptions”; and (3) Section 3036, “Transfer of Rights: Notice”. In addition, OSSE has further emphasized supported decision-making by including a definition for “supported decision-making” and providing that appointment of an

educational representative should be sought only where supported decision making is not appropriate. In addition, the new Section 3034, "Transfer of Rights: General Provisions and Supportive Decision-Making," includes documentation requirements to assist LEAs in implementing the supported decision-making provisions and clarifies that the student is the decision-maker. OSSE did not revise the regulations to support use of the supported decision-making model in the case where a student transfers educational decision-making by designation of an agent to have power of attorney. The Act provides for use of supported decision-making where there has not been a transfer of rights.

In addition, OSSE received several comments requesting the proposed rulemaking to clarify the standard of "informed consent" to determine whether an adult student is able to make education decisions. OSSE has considered these comments and agrees with the need to clarify the standard of "informed consent" and its use throughout the proposed rulemaking. Accordingly, OSSE strikes the phrase "informed consent" wherever it appears and replaces it with the term "informed consent regarding educational decisions." Further, OSSE has amended the standard of "informed consent" to align more closely with the standard for incapacity to make informed health-care decisions under the District's "Health Care Decisions Act" (D.C. Official Code § 21-2011(11A)).

Further, OSSE received several comments requesting the proposed rulemaking align the understanding of the word "incompetent" with the definition of "incapacitated individual" in District's law regarding guardianship, D.C. Official Code § 21-2011(11). OSSE agrees with the need to clarify the definition of "incompetent" under District law in the proposed rulemaking. Although Section 104(a) of the Act uses the word "incompetent" in alignment with the IDEA Transfer of Parent Rights at the Age of Majority provisions, 34 C.F.R. § 300.520, OSSE has determined that IDEA's requirement of a determination as "incompetent under state law" actually aligns with a determination as an "incapacitated individual" under the District's law regarding guardianship. OSSE, therefore, strikes the use of the word "incompetent" throughout the proposed rulemaking and replaces it with the phrase "incapacitated individual." OSSE has also added a definition for "incapacitated individual" that aligns with D.C. Official Code § 21-2011(11).

OSSE also considered other comments and made clarifying language revisions in the provisions on appointment of an educational representative and deleted documentation requirements in the certification process regarding the inability to provide informed consent in response to comments that the documentation requirements were burdensome.

Relevant advocates and stakeholders have participated in the comment process and it is not expected that there will be any further comment on these proposed rules. Therefore, there is good cause to shorten the comment period for this round of proposed rulemaking. Consequently, final rulemaking action to adopt the amendments shall be taken in not less than fourteen (14) days from the date of publication of this notice in the *D.C. Register*.

This notice is being circulated throughout the District for a fourteen (14) day period, including an opportunity to submit written comments and attend public hearings on these proposals. Two (2) public hearings have been scheduled for May 20, 2016, starting at 3:00 p.m. and ending when

public comments conclude or at 4:00 p.m., whichever is earlier; and May 26, 2016, starting at 4:00 p.m. and ending when public comments conclude or at 5:00 p.m., whichever is earlier. They will take place at the Office of the State Superintendent of Education, 810 1<sup>st</sup> Street N.E., Washington, D.C. 20002, as detailed and under conditions set forth at the end of this Notice.

**Chapter 30, SPECIAL EDUCATION, of Title 5-E DCMR, ORIGINAL TITLE 5, is proposed to be amended as follows:**

**Section 3001, DEFINITIONS, is amended by adding the following definitions to Subsection 3001.1:**

**Educational Representative** – an adult appointed by OSSE to represent the educational interests of a child with a disability who upon reaching eighteen (18) years of age is determined under this chapter to be unable to provide informed consent for educational purposes.

**Incapacitated Individual** – shall have the same meaning as the term is defined in D.C. Official Code § 21-2011(11).

**Supported Decision-Making** - supports, services, and accommodations that help a child with a disability make his or her own decisions, by using adult friends, family members, professionals, and other people he or she trusts to help understand the issues and choices, ask questions, receive explanations in language he or she understands, and communicate his or her own decisions to others.

**Section 3023, TRANSFER OF RIGHTS, is deleted in its entirety and is amended to read:**

**3023 [RESERVED]**

**A new Section 3034, TRANSFER OF RIGHTS: GENERAL PROVISIONS AND SUPPORTED DECISION-MAKING, is added to read as follows:**

**3034 TRANSFER OF RIGHTS: GENERAL PROVISIONS AND SUPPORTED DECISION-MAKING**

3034.1 In accordance with D.C. Official Code § 46–101 and IDEA, a child with a disability (“student”) who has reached the age of eighteen (18) shall be presumed to be competent, and all rights under IDEA and local law governing the delivery of special education and related services shall transfer to the child with a disability (“student”), unless one of the exceptions in Subsection 3025.1 is met.

3034.2 Any student who has reached eighteen (18) years of age and to whom all IDEA rights afforded parents under the IDEA have transferred, may voluntarily choose to receive support from his or her parents, family members, or another willing adult to aid the student with educational decision-making. The student’s decisional choice shall prevail any time that a disagreement exists between the



student and the other adult providing support in this manner and the student may withdraw his or her decision to receive support at any time.

- 3034.3 Supported decision-making arrangements shall be documented in writing and include the name, contact information, relationship to the student, and the extent to which the student grants the identified adult access to his or her education records pursuant to District and federal law. The student may change this arrangement and/or revoke access to education records at any time.

**A new Section 3035, TRANSFER OF RIGHTS: EXCEPTIONS, is added to read as follows:**

**3035 TRANSFER OF RIGHTS: EXCEPTIONS**

- 3035.1 In accordance with D.C. Official Code § 46–101 and IDEA, all rights accorded to parents under IDEA and local law governing the delivery of special education and related services shall transfer to the child with a disability (“student”) at the age of eighteen (18), unless one of the following exceptions is met:

- (a) The student is declared a legally incapacitated individual, as defined in this chapter, by a court of competent jurisdiction and a legal guardian or representative has been appointed by the court to make decisions for the student, including educational decisions.
- (b) The student has designated by power of attorney or similar legal document another adult to be the student’s agent to:
  - (1) Make educational decisions;
  - (2) Receive notices; and
  - (3) Participate in meetings and all other procedures related to the student’s educational program.
- (c) The student has been determined, in accordance with Subsection 3035.9, to not have the ability to provide informed consent regarding educational decisions and another adult has been appointed by OSSE to represent the educational interests of the student.

- 3035.2 An adult student who has executed a power of attorney or similar legal document transferring his or her right to make educational decisions to another to be his or her agent in accordance with Subsection 3035.1(b) may terminate the power of attorney at any time and assume the right to make decisions regarding his or her education. An LEA or responsible public agency shall keep a copy of any written power of attorney in the student’s special education record and shall rely on it

until the power of attorney has been revoked by the student in writing or the power of attorney has been superseded by a court order.

3035.3 OSSE shall appoint an educational representative for a student who has reached the age of eighteen (18) only after the following documents have been submitted:

- (a) A written request for the appointment of an educational representative signed by the parent, legal guardian, or other interested adult, and made on an OSSE-issued form available on the OSSE website or, upon request, in hard copy; and
- (b) Two signed professional certifications that meet all of the requirements of this section.

3035.4 Appointment of an educational representative should be sought only where necessary and where supported decision-making is not appropriate.

3035.5 OSSE will provide written confirmation that all submission requirements have been met and, absent extenuating circumstances, will appoint an educational representative within ten (10) business days of OSSE's receipt of a complete written request with all required information and certifications. A written request shall not be considered complete unless all requested information has been provided in the required manner.

3035.6 The professional certifications shall be completed by two different licensed professionals, one (1) meeting the requirements of (a) and one (1) meeting the requirements of (b):

- (a) A licensed professional who is any of the following:
  - (1) Licensed medical doctor;
  - (2) Physician assistant, if authorized by a supervising licensed medical doctor; or
  - (3) Certified nurse practitioner.
- (b) A licensed professional who is any of the following:
  - (1) Licensed medical doctor;
  - (2) Licensed psychiatrist;
  - (3) Clinical psychologist; or
  - (4) Licensed independent clinical social worker.

- 3035.7 The professional certifications shall meet the following requirements:
- (a) The professional has conducted a personal examination of or interview with the student within one (1) calendar year of the certification;
  - (b) Based on the professional's knowledge and expertise and upon clear evidence, the professional determined that the student is unable to provide informed consent regarding educational decisions as described in this section provided, however, that a finding that the student is unable to make educational decisions shall not be based solely on the fact that the student has been voluntarily or involuntarily hospitalized for a mental illness or has a diagnosis of an intellectual disability;
  - (c) The professional has informed the student in writing of the determination; and
  - (d) Confirmation that the professional is not employed by the LEA or responsible public agency currently serving the student and does not have a personal conflict of interest with the student or the adult seeking appointment as the student's educational representative. A personal conflict of interest includes, without limitation, being related by blood or marriage to the student or adult seeking appointment as the educational representative.
- 3035.8 A student shall be deemed unable to provide informed consent regarding educational decisions if two (2) qualified professionals each independently determine at least one (1) of the following:
- (a) The student is unable to understand, on a continuing or consistent basis, the nature, extent, and probable consequences of an educational decision or proposed educational program;
  - (b) The student is unable to evaluate the benefits or disadvantages of an educational decision or a proposed educational program as compared with alternative options on a continuing or consistent basis; or
  - (c) The student is unable to communicate understanding verbally, in writing, or in the mode of communication used by the student to communicate his or her decisions, an understanding of or an evaluation of the benefits or disadvantages of an educational decision or proposed educational program.
- 3035.9 Professional certifications may be submitted as early as ninety (90) calendar days prior to the student's eighteenth (18<sup>th</sup>) birthday but shall not be reviewed by OSSE

until all of the required documentation have been met, and shall not take effect prior to the student's eighteenth (18<sup>th</sup>) birthday.

- 3035.10 Upon confirming receipt of the required professional certifications, OSSE shall appoint the parent of the student to act as the student's educational representative. For a student who has already reached the age of eighteen (18), parent means the individual who acted as the parent for purposes of special education before the student reached age eighteen (18). If the parent is unavailable or does not wish to serve as the student's educational representative, OSSE, with notice to the parent or legal guardian seeking the certification, shall appoint another adult relative willing to act as the student's educational representative. If no adult relative is available to serve as the student's educational representative, OSSE, with notice to the parent or legal guardian seeking the certification, shall appoint a person trained as an educational surrogate parent to serve as the student's educational representative.
- 3035.11 The term of appointment for an educational representative shall expire when the student is no longer eligible for special education services, or graduates with a regular high school diploma, whichever occurs first.
- 3035.12 A determination that a student is unable to provide informed consent for educational purposes shall not be construed as a finding of incompetence or incapacity for any other purpose or as relevant or precedential evidence in any future court or legal action seeking to remove decision-making authority for the student.
- 3035.13 OSSE shall provide notice of the appointment to the educational representative, parent, student, and LEA or responsible public agency. The notice shall include the steps a student may take to challenge the appointment of an educational representative and shall direct the student's LEA or responsible public agency to deliver a hard copy of the appointment to the student and to inform the student of the appointment verbally, or in the manner of communication with which the student is most comfortable.
- 3035.14 The student may challenge the certification of the student as unable to provide informed consent for educational purposes or appointment of an educational representative in accordance with this section at any time, in accordance with the following requirements:
- (a) A challenge made under this section shall be made in writing to OSSE, except that OSSE shall assist a student who is unable to provide a written challenge to document a verbal challenge in writing and may refer the student to a community organization for assistance.
  - (b) OSSE shall notify the student, the responsible LEA or public agency, any current appointed educational representative, and the person who

submitted the request for the appointment of an educational representative (if different), of any such challenge in writing no later than two (2) business days from the receipt of the challenge.

3035.15 If the certification of a student is challenged by the student, the existing certification is invalidated, and all educational rights transfer back to the student.

**A new Section 3036, TRANSFER OF RIGHTS: NOTICE, is added to read as follows:**

**3036 TRANSFER OF RIGHTS: NOTICE**

3036.1 No later than one (1) year before a child with a disability (“student”) reaches eighteen (18) years of age, the LEA or responsible public agency shall notify the parents and student, in writing, that adult students with disabilities are presumed competent, and that all rights under IDEA will transfer to the student when he or she reaches eighteen (18) years of age, unless the student or parent pursues one of the exceptions described in Subsection 3025.1. The notice shall also describe the supported decision-making provisions of this section and the necessary procedures to pursue the exceptions described in Section 3035 related to educational decisions.

Persons desiring to comment on this proposed rulemaking may attend the public hearings scheduled to be held at OSSE, 810 1<sup>st</sup> St. N.E., Washington D.C., 20002, on May 20, 2016, starting at 3:00 p.m. on the 3rd Floor in the Grand Hall and ending when public comments conclude or at 4:00 p.m., whichever is later; and May 26, 2016, starting at 4:00 p.m. on the 8<sup>th</sup> Floor in Room 806B and ending when public comments conclude or at 5:00 p.m., whichever is later; individuals wishing to testify at the hearing should contact Christie Weaver-Harris, Policy Analyst, at 202-741-0470 by e-mail at [Christie.Weaver-Harris@dc.gov](mailto:Christie.Weaver-Harris@dc.gov). Individuals representing themselves and presenting testimony will be limited to five (5) minutes; individuals representing an organization will be limited to a total presentation time of seven (7) minutes at each public hearing.

Persons may also file comments in writing by email at [osse.publiccomment@dc.gov](mailto:osse.publiccomment@dc.gov) or by postal mail or hand delivery to the Office of the State Superintendent of Education, Attn.: Elisabeth Morse re: Special Education Rulemaking, 810 First Street, N.E., 8<sup>th</sup> Floor, Washington D.C. 20002, not later than fourteen (14) days after the date of publication of this notice in the *D.C. Register*. 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).

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA****PUBLIC NOTICE ERRATUM****RM27-2016-01, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT**

By this Public Notice Erratum, the Public Service Commission of the District of Columbia ("Commission") corrects an error in the Commission's address in the Public Notice printed in the May 6, 2016 edition of the *D.C. Register* regarding this rulemaking.<sup>1</sup> All persons interested in filing comments and reply comments on the subject matter of the NOPR first published on April 15, 2016<sup>2</sup> shall file these comments and reply comments with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C. 20005. As indicated in the May 6, 2016 Public Notice, comments are due June 27, 2016 and reply comments are due July 11, 2016.

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<sup>1</sup> Published at 63 DCR 7024 (May 6, 2016), to extend the thirty (30) day comment period.

<sup>2</sup> Published at 63 DCR 5771 (April 15, 2016), to amend Chapter 27, "Regulation of Telecommunications Service Providers" of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR").

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA****PUBLIC NOTICE ERRATUM****RM27-2016-02, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE RULES GOVERNING LOCAL EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE DISTRICT**

By this Public Notice Erratum, the Public Service Commission of the District of Columbia ("Commission") corrects an error in the Commission's address in the Public Notice printed in the May 6, 2016 edition of the *D.C. Register* regarding this rulemaking.<sup>1</sup> All persons interested in filing comments and reply comments on the subject matter of the NOPR first published on April 15, 2016<sup>2</sup> shall file these comments and reply comments with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington D.C. 20005. As indicated in the May 6, 2016 Public Notice, comments are due June 27, 2016 and reply comments are due July 11, 2016.

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<sup>1</sup> Published at 63 DCR 7025 (May 6, 2016), to extend the thirty (30) day comment period.

<sup>2</sup> Published at 63 DCR 5773 (April 15, 2016), to amend Chapter 27, "Regulation of Telecommunications Service Providers" of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR").

## OFFICE OF THE SECRETARY

NOTICE OF PROPOSED RULEMAKING

The Secretary of the District of Columbia (Secretary), pursuant to the authority set forth in Section 558 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1189, ch. 854, § 558; D.C. Official Code §§ 1-1201 *et seq.* (2012 Repl.)), as amended by An Act to authorize the Commissioners of the District of Columbia to appoint notaries public, approved December 16, 1944 (58 Stat. 810, ch. 597, § 1); Regulation No. 73-13, approved May 24, 1973 (19 DCR 1147 (June 11, 1973)); the Notaries Public Fees Increase Act of 1983, effective June 22, 1983 (D.C. Law 5-14; 30 DCR 2632 (June 3, 1983)); the Notaries Public Fee Act of 1983, effective March 8, 1984 (D.C. Law 5-52; 30 DCR 5931 (November 18, 1983)); the Notaries Public Authentications and License Fee Amendment Act of 2010, effective September 24, 2010 (D.C. Law 18-223; 57 DCR 6242 (July 23, 2010)); Section 3(k) of Mayor's Order 97-177, dated October 9, 1997; and Mayor's Order 2016-031, dated March 1, 2016; hereby gives notice of the intent to adopt the following amendments to Chapter 24 (Notaries Public) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to make changes to the Office of Notary Commissions and Authentications regulations to conform to the office's current operations. The rulemaking also makes editorial amendments to enhance readability and consistency within and across chapters.

The Secretary also gives notice of the intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 24, NOTARIES PUBLIC, of Title 17, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is deleted in its entirety and replaced with the following new Chapter 24:**

**CHAPTER 24 NOTARIES PUBLIC****2400 APPOINTMENT OF NOTARIES**

- 2400.1 New appointments of notaries public shall be made to serve the needs and convenience of members of the public, the bar, financial institutions, and other fiduciary bodies.
- 2400.2 The District of Columbia Office of the Secretary, Office of Notary Commissions and Authentications Section, may appoint citizens of the United States who are residents of the District of Columbia or whose sole place of business or employment is located in the District.
- 2400.3 Any person requesting an appointment as a notary public in the District of Columbia shall be at least eighteen (18) years of age.



- 2400.4 Each person requesting an appointment as a notary public shall indicate to the Office of Notary Commissions and Authentications (ONCA) the hours during which he or she will be available at a designated place of business in the District or if a residential notary the hours he or she will be available in the residence.
- 2400.5 Requests for an appointment as a notary public by a privately employed or self-employed person shall be made by the employer or an official of the company or business in which the applicant is employed. The employer's letterhead must have a District of Columbia physical address and phone number.
- 2400.6 Request for an appointment as a notary public by a government employee shall be made by the employer or an official of the government office in which the applicant is employed.
- 2400.7 An individual requesting a residential appointment as a notary public must submit the request in writing on his or her official letterhead. The letterhead must have a District of Columbia address and phone number.
- 2400.8 Applications for dual commissions (business and residential), shall include a both a letter from the employer and a letter from the individual.
- 2400.9 A letter requesting an appointment of a notary public shall include:
- (a) For business notaries, the reasons the business or government needs the individual to serve as a notary and how that will improve the service to the customers, public and others; and
  - (b) For residential notaries, the individual should state how they intend to use their commission to serve the public, their community and others.
- 2400.10 Letters requesting appointment shall be sent to the Office of Notary Commissions and Authentications, 441 4<sup>th</sup> Street N.W., Suite 810 South, Washington D.C. 20001.

## **2401 GOVERNMENT EMPLOYEES**

- 2401.1 A person employed in an executive department or other government office shall not be appointed or reappointed a notary public to function for the government business unless his or her appointment is requested by the head of the department or office or designee to facilitate the transaction of government business.
- 2401.2 The commission of a government employee shall be terminated when the employee leaves government service. The notary must notify ONCA and return his or her official notary seal to the ONCA office (see Section 2409 on the Expiration of Commission).

- 2401.3 Government employees who desire to exercise notarial powers other than in connection with their government work, or in addition to that work, may be granted a separate residential commission upon submission of an application and upon compliance with the appointment requirements.
- 2401.4 Government employees who have dual commissions (business and residential) may not charge any fee for notarial service performed during hours of active duty as a government employee.

## **2402 APPLICATION AND ORIENTATION; REAPPOINTMENT**

- 2402.1 Application shall be made on the form furnished by the Office of Notary Commissions and Authentications at 441 4<sup>th</sup> Street N.W., Suite 810 South, Washington D.C. 20001, or online at <http://os.dc.gov/service/notary-commissions>.
- 2402.2 Each application shall include the names, addresses, phone number, and email address of two (2) individuals who can attest to the character of the applicant. The references may not include family members or the employer submitting the letter of request.
- 2402.3 Each candidate applying for a new appointment, or applying for reappointment after more than twelve (12) months, shall be required to attend an orientation session provided by ONCA.
- 2402.4 District notary publics are appointed for a renewable five (5)-year term, and may apply for reappointment at the end of the term.
- 2402.5 A notary public applying for reappointment shall submit the reappointment application, furnished by ONCA, by the deadline indicated by ONCA. A reappointment only applies to those who have been a notary in the District of Columbia within twelve (12) months of commission expiration. A notary whose commission has been expired for more than twelve (12) months must apply as a new applicant.
- 2402.6 A notary in another jurisdiction must apply as a new applicant.

## **2403 COMMISSION FEES, OATH, AND SURETY BOND REQUIREMENTS**

- 2403.1 Each notary public, before obtaining his or her commission, and for each renewal of his or her commission, shall pay to the District of Columbia Treasurer an application fee of seventy-five dollars (\$75.00). District and federal government employees whose notarial duties are confined solely to official government business are exempt from the application fee.

- 2403.2 Before entering upon the duties of the office, each notary public will take the Oath of Office administered by an official of ONCA. The names and business addresses of all approved notary publics will be published in the *D.C. Register*.
- 2403.3 Before entering upon the duties of the office, each notary public shall give bond to the District of Columbia in the sum of two thousand dollars (\$2,000), with security, to be approved by ONCA, for the faithful discharge of the duties of the office.
- 2403.4 District of Columbia Government employees whose notarial duties are confined solely to government official business are not required to obtain an individual surety bond, but may be covered by bond obtained by the Mayor of the District of Columbia. Federal government employees are required to obtain an individual surety bond.

#### **2404 SIGNATURES AND SEALS**

- 2404.1 Each notary public commissioned in the District shall file his or her official signature and an impression of his or her official seal with ONCA.
- 2404.2 A notary shall keep an official seal that is the exclusive property of the notary. When not in use, the seal shall be kept secure and accessible only to the notary. In addition:
- (a) A business notary who no longer is employed by that business may take his or her commission with him or her upon the approval of the business. If the business does not consent to the continuation of the commission, the commission shall be terminated.
  - (b) Upon termination of a commission, a notary shall return the notary seal to ONCA.
- 2404.3 The seal shall not be possessed or used by any other person, nor be used for any purpose other than performing lawful notarizations.
- 2404.4 An official notary seal shall include the following elements:
- (a) The notary's name at the top, exactly as indicated on the commission;
  - (b) The words "Notary Public" in the center
  - (c) The words "District of Columbia" at the bottom
  - (d) The expiration date in the center

- (e) A border in a circular shape no larger than one and three-quarters inches (1.75 in.) surrounding the required words.

2404.5 A notary public shall affix his or her official signature and official seal on every document notarized, at the time the notarial act is performed.

2404.6 A seal impression inker shall be used in conjunction with the official seal, making the impression legible, permanent, and photographically reproducible.

2404.7 In the case that the document being notarized is made of a non-porous material, such as Mylar or a similar material to which standard ink will not adhere, an embossed seal shall be used alone or in conjunction with a non-porous, permanent ink that dries through evaporation, which will adhere without smearing.

2404.8 Notaries public commissioned prior to December 15, 2010, may use an official seal that does not comply with Subsection 2404.4 provided that seal is made visible with a seal impression inker and coupled with an expiration stamp on all notarizations.

2404.9 Notaries public commissioned on or after December 15, 2010, must obtain a seal impression inker that complies with Subsection 2404.4 upon being newly- or re-appointed.

## **2405 NOTARY SIGN**

2405.1 Each notary public must exhibit a sign.

2405.2 The provisions of this section do not apply to notaries functioning in the government service.

## **2406 NOTARY PUBLIC PROCEDURES AND FEES**

2406.1 Each notary public shall have the authority as follows:

- (a) To take and to certify the acknowledgement or proof of powers of attorney, mortgages, deeds, and other instruments of writing;
- (b) To take depositions;
- (c) To administer oaths and affirmations;
- (d) To take affidavits to be used before any court, judge, or officer within the District;
- (e) To demand acceptance and payment of foreign bills of exchange, and to protest the same for non-acceptance and nonpayment;

- (f) To demand acceptance of inland bills of exchange and payment thereof, and of promissory notes and checks, and may protest the same for non-acceptance and nonpayment;
- (g) To exercise such other powers and duties notary publics are authorized by the law of nations and according to commercial usages; and
- (h) To exercise such other powers and duties notary publics are authorized by the law of any state or territory of the United States, or any foreign government in amity with the United States;

2406.2 Fees. Notary publics may not charge more than \$2.00 per notarial act.

2406.3 Any notary public who shall take a higher fee than is prescribed by Subsection 2409.2 shall pay a fine of \$100 and be removed from office.

2406.4 A notary is prohibited from a notarial act in matters in which the notary is a signatory; employed as counsel, attorney, or agent; or in any way directly interested in the matter.

## **2407 NOTARY PUBLIC RECORDS**

2407.1 Each notary public shall keep a fair record of all official acts performed, and when required, provide a certified copy of any record in his office to any person upon payment of the fees incurred. Based on national standard practices, the Office of Notary Commissions and Authentications recommends that each notary's log include the:

- (a) Name: The name and address of each person appearing before the notary;
- (b) Date: The date they appeared before the notary;
- (c) Identification: The method by which each person was identified to the notary;
- (d) Document Type: The type of document involved;
- (e) Fee: The fee charged; and
- (f) Signature: The signature(s) of person(s) signing the document(s).

2407.2 The certificate of a notary public, under hand and seal of office, drawn from the notary public's record, stating the protest and the facts recorded in the record, shall be accepted as evidence of the facts in like manner as an original protest.

2407.3 The log may be kept by hard copy or electronically, but if electronically, a record of the signature of the person who had the document notarized should be saved. All signatures must be completed in person. No electronic signatures shall be accepted.

## **2408 CHANGES IN NAME, ADDRESS, OR OFFICE HOURS**

2408.1 Each notary shall inform ONCA promptly of any change in name, address, or phone number. No fees will be charged for a change of name or address.

2408.2 If a notary changes a place of business, the individual should provide a letter from the new employer providing the name, physical address, and phone number of the new place of employment. If a notary changes his or her name, the individual shall provide ONCA with a copy of the legal document showing the change of name and shall come into the office to provide a new impression of their seals.

2408.3 Notaries should also inform the surety bond company of the change of name or address; order new seal(s); and provide a new impression of the seal with ONCA.

## **2409 EXPIRATION OF COMMISSION**

2409.1 Notary commissions expire at the end of the five year term or upon resignation of the commission. (See Section 2402 on Reappointment). Notaries who no longer reside in the District or who cease to be employed in a business physically located in the District must resign their commission by notifying ONCA, in writing, at: Secretary of the District of Columbia Attention: Office of Notary Commissions and Authentications, 441 4th Street N.W., Suite 810 South, Washington D.C. 20001. Notification may also be sent by email to: [notary@dc.gov](mailto:notary@dc.gov).

## **2410 DENIAL OR REVOCATION OF COMMISSION**

2410.1 The Office of Notary Commissions and Authentications may refuse to issue a commission to an applicant or may remove a notary public from office upon determining that the action is necessary in view of the conditions and restrictions as provided in this chapter and by law, as well as upon written complaints received by the Secretary of the District of Columbia.

- (a) Denials. A notary commission may be denied if there is probable cause to believe that an applicant fails to meet the qualifications of a notary or if the application was not submitted according to the code, regulation or policies set forth by ONCA. If the application incomplete, it will be returned and may be re-submitted.
- (b) Revocations. A notary commission may be revoked if a notary fails to discharge fully and faithfully any of the duties or responsibilities required

of a notary public, or otherwise commits misconduct that substantially relates to the duties or responsibilities of a notary public.

2410.2 A notice, in writing, of a determination to deny or revoke a commission shall be given by ONCA to the person concerned.

2410.3 The notice of determination shall explain the following:

- (a) The nature of and grounds for the action;
- (b) The right of the person concerned to be heard on the matter; and
- (c) The finality of the decision to deny or revoke a commission unless the person concerned requests a hearing on the matter by filing a petition for review with the Office of Administrative Hearings.

2410.4 Applicants denied a notary commission or removed from office may file a petition for review of the decision. The petition for review will be governed by the Office of Administrative Hearings Rules of Practice and Procedure as set forth in 1 DCMR Chapter 28.

#### **2411 FILING A PETITION FOR REVIEW OF ADVERSE NOTARY COMMISSION DECISION**

2411.1 A petition for review shall be sent to the Office of Administrative Hearings (OAH), pursuant to 1 DCMR § 2808, within twenty (20) days after service of the notice to deny or revoke a license.

2411.2 The petition for review may be delivered as follows:

- (a) By certified letter to the Office of Administrative Hearings, 441 Fourth Street, N.W., Suite 450 North, Washington D.C. 20001;
- (b) By email, pursuant to the procedures in 1 DCMR § 2841;
- (c) By fax, to (202) 442-4789.

2411.3 To file any paper at OAH, a person must bring, mail, fax, or have the paper delivered to the Clerk's office during regular business hours from 9:00 a.m. to 5:00 p.m. on a business day. A paper is filed on the day the Clerk's office receives it during business hours, except as provided in Subsections 2411.4 and 2411.5.

2411.4 The filing date of a fax transmission will be determined as follows:

- (a) The filing date is the date on which the fax is received in the Clerk's office between the hours of 9:00 a.m. and 5:00 p.m. If a paper is received on a date or at a time when the Clerk's office is not open, the paper shall be deemed to have been filed when the Clerk's office is next open.
- (b) A party filing a paper by fax is responsible for delay, disruption, interruption of electronic signals, and legibility of the paper, and accepts the risk that the paper may not be filed.
- (c) Any incomplete or illegible fax will not be considered received unless a hard copy of the fax is filed or a complete and legible fax is received within three (3) calendar days of the first transmission. In a response to a motion, the Administrative Law Judge may extend this time.

2411.5 The filing date for an e-mail filing received between 9:00 a.m. and 5:00 p.m. on any OAH business day will be the date it is received in the correct OAH electronic mailbox. The filing date for an e-mail filing received at other times will be the next day that the Clerk's Office is open for business. The date and time recorded in the correct OAH electronic mailbox shall be conclusive proof of when it was received.

2411.6 The petition for review shall be signed by the petitioner and shall follow the guidance for requesting a hearing with the Office of Administrative Hearings pursuant to 1 DCMR § 2808, include the following:

- (a) A request for review of the decision of ONCA;
- (b) A statement of why the petitioner believes the decision of ONCA was in error;
- (c) A copy of the notice denying or revoking the notary commission;
- (d) The petitioner's full name, address, telephone numbers, and email address, if available; and
- (e) If the petitioner will be represented by legal counsel, the name, address, email address, and telephone number of that legal counsel.

2411.7 OAH shall, after receipt of the petition of review, notify the petitioner concerned of the time and place of a hearing. Hearings shall be governed by OAH Rules of Practice and Procedure, as set forth in 1 DCMR Chapter 28.

## **2412 CERTIFICATION (AUTHENTICATIONS) OF NOTARIES PUBLIC AND CERTIFICATION OF RECORDS**

2412.1 The Secretary of the District of Columbia shall issue certifications (authentications) of seals and signatures of notaries appointed in the District of



Columbia pursuant to Section 588 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1279; D.C. Official Code § 1-1201), and this chapter.

- 2412.2 The Secretary of the District of Columbia shall issue certifications of the signatures of the District of Columbia governmental officials who are required to sign documents of public records. The certifications shall be as follows:
- (a) A Certificate: For documents that will be used within the United States, generally for interstate commerce.
  - (b) Department Head Certificate: For documents that require the signature of an agency head (or his or her designee) and the official seal of the agency.
  - (c) Apostille: For documents destined for countries that are parties to the Hague Convention.
  - (d) Foreign Certificate: For documents destined for countries that are not parties to the Hague Convention.
- 2412.3 A fee of fifteen dollars (\$15.00) per certificate shall be charged for the issuance of District certifications under this section. The certifications will be issued through the Office of Notary Commissions and Authentications.
- 2412.4 For procedures on obtaining notarizations in other state or foreign jurisdictions that will be recognized in the District of Columbia, please see D.C. Official Code §§ 42-141 *et seq.*

## 2499 DEFINITIONS

When used in this chapter, the following terms and phrases shall have the meanings ascribed as follows:

**Business Notary** - A business notary public is an individual who is employed by a business physically operating in the District of Columbia, but who may or may not reside in the District, and exercises notarial functions on behalf of his or her employer.

A person may also apply to be a “government” notary public if they obtain a business commission in their role as a government employee, providing the agency is physically located in the District of Columbia. The notarial functions may only be exercised on behalf of the government employer. The application is submitted to ONCA as a Business application, but no fee is required.

**District** – The District of Columbia

**Dual Commission** - A District of Columbia resident who desires to exercise notarial functions from his/her personal residence in the District in addition to their business commission may apply for a dual commission. A letter from the individual and the business must be submitted with the application, but only one fee is required.

**ONCA** – The Office of Notary Commissions and Authentications

**Residential Notary** - A residential notary public resides in and performs notarial functions from his/her personal residence in the District of Columbia. The notary must submit a Residential Letter of Request that sets forth the need for the notary's commission to be issued for use in the community and in his/her personal residence.

Comments on these proposed rules may be submitted, in writing, to Judi Gold, Notary & Authentication Officer, Office of Notary Commissions and Authentications, 441 4<sup>th</sup> Street N.W., Suite 810 South, Washington D.C. 20001, or email at [notary@dc.gov](mailto:notary@dc.gov), no later than thirty (30) days of the date of publication of this notice in the *D.C. Register*. Questions may be directed to (202) 727-3117. Copies of this rulemaking may be obtained at [www.dcregs.dc.gov](http://www.dcregs.dc.gov) or are available, at cost, from the address above.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF THIRD 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. & 2015 Supp.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Sections 1901-1902, 1904-1909, 1911-1912, 1937, and 1999, and new Section 1938, 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 third emergency and proposed rules establish general standards for the services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; 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 Notice of Final Rulemaking for amendments to 29 DCMR §§ 1901-1902, 1904-1909, 1911-1912, and 1937, was published in the *D.C. Register* on May 2, 2014, at 61 DCR 004406. A Notice of Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on September 25, 2015, at 62 DCR 012777, was adopted on September 12, 2015, became effective when CMS approved the ID/DD Waiver amendment on September 24, 2015, and remained in effect until January 8, 2016. The first emergency and proposed rules amended the previously published final rules by making comprehensive changes to 29 DCMR §§ 1901-1902, 1904-1909, 1911-1912, 1937, and 1999, and creating a new 29 DCMR § 1938. Specifically, the first emergency and proposed rules amended these provisions by: (1) changing the name of Art Therapies to Creative Arts Therapies; (2) adding Companion to the list of covered services; (3) deleting Shared Living from the list of covered services; (4) clarifying the eligibility requirements related to intellectual disability; (5) allowing a waiver of the requirement that the owner/operator have a specific degree and years of experience; (6) requiring that providers of residential and day/ vocational services show evidence of fiscal and organization accountability; (7) modifying training requirements for a provider staff person who works exclusively as a driver; (8) requiring providers to participate and cooperate with the reporting requirements pursuant to, the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act

of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.01 *et seq.* (2012 Repl.)); (9) modifying requirements for Cardio Pulmonary Resuscitation and First Aid certification; (10) clarifying the educational requirements for Direct Support Professionals who were educated outside of the United States; (11) requiring that a Direct Support Professional be acceptable to the person for whom they are providing services; (12) requiring that providers report all reportable incidents to the Department on Disability Services; (13) adding support plan to the list of required records; (14) clarifying the requirements for daily progress notes; (15) amending Section 1937 on cost reports and audits; (16) adding a new Section 1938 entitled Home and Community-Based Setting (HCBS) Requirements; (17) amending Subsection 1909.1 to clarify that DHCF and or its designees shall have access to all waiver provider locations, including access to the people receiving supports and all records in any form, and clarifying the meaning of “records” for purposes of this section; (18) adding certain definitions including definitions for Group Home for a Person with an Intellectual Disability, Living Wage, and SMARTER Goals; and (19) clarifying the requirements for Intellectual Disability and Qualified Development Disabilities Professional.

DHCF did not receive any comments to the first emergency and proposed rules. A Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on February 5, 2016, at 63 DCR 001364, was adopted on January 28, 2016, became effective immediately, and will remain in effect until May 27, 2016, or publication of a superseding final or emergency and proposed rulemaking in the *D.C. Register*, whichever occurs first. The second emergency and proposed rules continued the changes reflected in the first emergency and proposed rules described above and further amended the rules by (1) requiring participation and cooperation with the National Core Indicators surveys or its successors; (2) indicating a timeframe where terminated or withdrawn providers may not re-enroll in the Waiver program; (3) requiring service coordinators to upload all documents pertaining to the service rule to the Department of Disability Service, Developmental Disabilities Administration’s MCIS database system or its successor; (4) requiring certain choices for a person receiving supports in some HCBS settings; and (5) requiring Provider Human Rights Committees to address certain questions before deviations from HCBS Requirements are made to a person’s supports.

DHCF received four comments to the second emergency and proposed rules related to 29 DCMR § 1904.5 (encouraging use of public transportation), § 1907.10 (annual commitment hearings conflict with individual rights), § 1909.2(m)(4) (use of electronic signatures), and § 1938.2(d)(3) (access to personal funds). These comments did not prompt DHCF to make any substantive changes to the second emergency and proposed amendments related to 29 DCMR §§ 1902, 1905-1908, 1911-1912, 1937, and 1999.

This third emergency and proposed rulemaking retains changes from the first and second emergency and proposed rules for 29 DCMR §§ 1901, 1904 and 1909, and new 29 DCMR § 1938, and makes additional changes as follows: (1) 29 DCMR § 1901 (Covered Services and Rates) was further amended to include the specific title for the implementing rule for each covered service, to reference the applicable DCMR section for each covered service, and to permit rates for each of the covered services to be published in a Medicaid fee schedule which will be published online and a notice published in the *D.C. Register*; (2) 29 DCMR § 1904 (Provider Qualifications) was further amended to reflect that Board members should be

representative of the community, to require certain providers to conduct and report on annual customer satisfaction surveys, and to encourage the use of community-based transportation options per the public comment; (3) 29 DCMR § 1909 (Records and Confidentiality of Information) was further amended to acknowledge the use of electronic signatures per the public comment, to include reference to recommended tools, and to further define teaching strategies in a new subsection 1909.11; and (4) new 29 DCMR § 1938 (Home and Community-Based Setting Requirements) was further amended to clarify the use of community services, to ensure access to personal funds and bank accounts (though not responsive to the public comment), and to clarify privacy rights. The entire texts of 29 DCMR §§ 1901, 1904, 1909 and 1938, which comprise all of the changes, are included in this third emergency and proposed rulemaking.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of ID/DD Waiver participants who are in need of ID/DD Waiver services. The ID/DD Waiver serves some of the District's most vulnerable residents. As discussed above, these amendments implement new requirements and clarify certain existing requirements that assist in preserving the health, safety and welfare of ID/DD Waiver participants.

The emergency rulemaking was adopted on April 29, 2016, and became effective immediately. The emergency rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until August 27, 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 1901, COVERED SERVICES AND RATES, is deleted in its entirety and amended to read as follows:**

**1901 COVERED SERVICES AND RATES**

1901.1 Services available under the Waiver shall include the following:

- (a) Creative Arts Therapies Services, 29 DCMR § 1918;
- (b) Behavioral Support Services, 29 DCMR § 1919;
- (c) Companion Services, 29 DCMR § 1939;
- (d) Day Habilitation Services, 29 DCMR § 1920;
- (e) Dental Services, 29 DCMR § 1921
- (f) Employment Readiness Services, 29 DCMR § 1922;
- (g) Environmental Accessibility Adaptation Services, 29 DCMR § 926;
- (h) Family Training Services, 29 DCMR § 1924;
- (i) Host Home without Transportation Services, 29 DCMR § 1915;
- (j) Individualized Day Supports Services, 29 DCMR § 1925;
- (k) In-Home Supports Services, 29 DCMR § 1916;

- (l) Occupational Therapy Services, 29 DCMR § 1926;
- (m) One-Time Transitional Services, 29 DCMR § 1913;
- (n) Personal Care Services, 29 DCMR § 1910;
- (o) Personal Emergency Response System (PERS) Services, 29 DCMR § 1927;
- (p) Physical Therapy Services, 29 DCMR § 1928;
- (q) Residential Habilitation Services, 29 DCMR § 1929;
- (r) Respite Services, 29 DCMR § 1930;
- (s) Skilled Nursing Services, 29 DCMR § 1931;
- (t) Speech, Hearing and Language Services, 29 DCMR § 1932;
- (u) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 1933;
- (v) Supported Living Services, 29 DCMR § 1934;
- (w) Vehicle Modification Services, 29 DCMR § 1914; and
- (x) Wellness Services, 29 DCMR § 1936.

1901.2 For dates of services beginning November 20, 2016, which aligns with Waiver Year 5, the Medicaid provider reimbursement rate(s) to be paid for the Waiver services identified in Subsection 1901.1 shall be posted on the District of Columbia 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) for Waiver services.

**Subsections 1902.1 and 1902.4, of Section 1902, ELIGIBILITY REQUIREMENTS, are amended to read as follows:**

- 1902.1 Any person eligible to receive Waiver services shall be a person who currently receives services from DDS/DDA and meets all of the following requirements:
- (a) Has a special income level up to three hundred percent (300%) of the SSI federal benefit or be aged and disabled with income up to one hundred percent (100%) of the federal poverty level or be medically needy as set forth in 42 C.F.R. §§ 435.320, 435.322, 435.324 and 435.330;
  - (b) Has an intellectual disability as defined in D.C. Official Code § 7-1301.03(15A), which, when establishing qualifying intelligence quotient (IQ), includes consideration of the standard error of measurement associated with the particular IQ test, and requires adaptive deficits across at least two of the following three domains: conceptual, practical, and social;
  - (c) Is eighteen (18) years of age or older;
  - (d) Is a resident of the District of Columbia as defined in D.C. Official Code § 7-1301.03(22);

- (e) Has a Level of Care (LOC) determination that the person requires services furnished in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or be a person with related conditions pursuant to the criteria set forth in § 1902.4; and
- (f) Meets all other eligibility criteria applicable to Medicaid recipients including citizenship and alienage requirements.

...

1902.4 A person shall meet the LOC determination set forth in § 1902.1(e) if one of the following criteria has been met, taking into consideration the standard error of measurement for the IQ test:

- (a) The person's primary disability is an intellectual disability with an intelligence quotient (IQ) of fifty-nine (59) or less;
- (b) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has at least one (1) of the following additional conditions:
  - (1) Mobility deficits;
  - (2) Sensory deficits;
  - (3) Chronic health problems;
  - (4) Behavior problems;
  - (5) Autism;
  - (6) Cerebral Palsy;
  - (7) Epilepsy; or
  - (8) Spina Bifida.
- (c) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has severe functional limitations in at least three (3) of the following major life activities:
  - (1) Self-care;
  - (2) Understanding and use of language;
  - (3) Functional academics;
  - (4) Social skills;
  - (5) Mobility;
  - (6) Self-direction;
  - (7) Capacity for independent living; or
  - (8) Health and safety.
- (d) The person has an intellectual disability, has severe functional limitations in at least three (3) of the major life activities as set forth in § 1902.4(c)(1) through § 1902.4(c)(8), and has one (1) of the following diagnoses:

- (1) Autism;
- (2) Cerebral Palsy;
- (3) Prader Willi; or
- (4) Spina Bifida.

**Section 1904, PROVIDER QUALIFICATIONS, is deleted in its entirety and amended to read as follows:**

**1904 PROVIDER QUALIFICATIONS**

1904.1 HCBS Waiver provider agencies shall complete an application to participate in the Medicaid Waiver program and shall submit to DDS both the Medicaid provider enrollment application and the following organizational information:

- (a) A resume and three (3) letters of reference demonstrating that the owner(s)/operator(s) have a degree in the Social Services field or a related field with at least three (3) years of experience of working with people with intellectual and developmental disabilities; or a degree in a non-Social Services field with at least five (5) years of experience working with people with intellectual and developmental disabilities, unless waiver by the Department on Disability Services Deputy Director for the Developmental Disabilities Administration;
- (b) Documentation proving that the program manager of the HCBS Waiver provider agency has a Bachelor's degree in the Social Services field or a related field with at least five (5) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities or a Master's degree in the Social Services field or a related field with at least three (3) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities;
- (c) A copy of the business license issued by the Department of Consumer and Regulatory Affairs (DCRA);
- (d) A description of ownership and a list of major owners or stockholders owning or controlling five percent (5%) or more outstanding shares;
- (e) A list of Board members representing a diverse spectrum of the respective community and their affiliations;
- (f) A roster of key personnel, with qualifications, resumes, background checks, local license, if applicable, and a copy of their position descriptions;



- (g) A copy of the most recent audited financial statements of the agency performed by a third-party Certified Public Accountant or auditing company (not applicable for a new organization);
- (h) A copy of the basic organizational documents of the provider, including an organizational chart, and current Articles of Incorporation or partnership agreements, if applicable;
- (i) A copy of the Bylaws or similar documents regarding conduct of the agency's internal affairs;
- (j) A copy of the certificate of good standing from the DCRA;
- (k) Organizational policies and procedures, such as personnel policies and procedures required by DDS and available at:  
<http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1>;
- (l) A continuous quality assurance and improvement plan that includes community integration and person-centered thinking principles and values as intentional outcomes for persons supported;
- (m) A copy of professional/business liability insurance of at least one million dollars (\$1,000,000) prior to the initiation of services, or more as required by the applicable Human Care Agreements;
- (n) A sample of all documentation templates, such as progress notes, evaluations, intake assessments, discharge summaries, and quarterly reports;
- (o) For providers of Supported Living, Supported Living with Transportation, Host Homes, and Residential Habilitation, a Continuity of Operations Plan;
- (p) For providers, of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, evidence fiscal and organizational accountability; and
- (q) Any other documentation deemed necessary to support the approval as a provider.

1904.2 Professional service provider applicants who are in private practice as an independent clinician and are not employed by an enrolled HCBS Waiver provider agency of residential or day/vocational services or a Home Health

Agency, shall complete and submit to DDS the Medicaid provider enrollment application and the following:

- (a) Documentation to prove ownership or leasing of a private office, even if services are always furnished in the home of the person receiving services;
- (b) A copy of a professional license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided; and
- (c) A copy of the insurance policy verifying at least one million dollars (\$1,000,000) in liability insurance.

1904.3 Home Health Agencies shall complete and submit to DDS the Medicaid provider enrollment application and the following documents:

- (a) A copy of the Home Health Agency license pursuant to 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.*), and implementing rules; and
- (b) If skilled nursing is utilized, a copy of the registered nurse or licensed practical nurse license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided.

1904.4 In order to provide services under the Waiver and qualify for Medicaid reimbursement, DDS approved HCBS Waiver providers shall meet the following requirements:

- (a) Maintain a copy of the approval letter issued by DHCF;
- (b) Maintain a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for services under the Waiver;
- (c) Obtain a National Provider Identification (NPI) number from the National Plan and Provider Enumeration System website;
- (d) Comply with all applicable District of Columbia licensure requirements and any other applicable licensure requirements in the jurisdiction where services are delivered;

- (e) Maintain a copy of the most recent Individual Support Plan (ISP) and Plan of Care that has been approved by DDS for each person;
- (f) Maintain a signed copy of a current Human Care Agreement with DDS for the provision of services, if determined necessary by DDS;
- (g) Ensure that all staff are qualified, properly supervised, and trained according to DDS policy;
- (h) Ensure that a plan is in place to provide services for non-English speaking people pursuant to DDA's Language Access Policy available at: <http://dds.dc.gov/publication/language-access-policy>;
- (i) Offer the Hepatitis B vaccine to all employees with potential exposure;
- (j) Ensure that staff are trained in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), as set forth in 29 C.F.R. § 1910.1030;
- (k) Ensure compliance with the provider agency's policies and procedures and DDS policies such as, reporting of unusual incidents, human rights, language access, employee orientation objectives and competencies, individual support plan, most integrated community based setting, health and wellness standards, behavior management, and protection of the person's funds, available at: <http://dds.dc.gov/page/policies-and-procedures-dda>;
- (l) For providers of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, complete mandatory training in Person-Centered Thinking, Supported Decision-Making, Supporting Community Integration, and any other topics as determined by DDS;
- (m) Provide a written staffing schedule for each site where services are provided, if applicable;
- (n) Maintain a written staffing plan, if applicable;
- (o) Develop and implement a continuous quality assurance and improvement system, that includes person-centered thinking, community integration, and compliance with the HCBS Settings Rule, to evaluate the effectiveness of services provided;
- (p) Ensure that a certificate of occupancy is obtained, if applicable;

- (q) Ensure that a certificate of need is obtained, if applicable;
- (r) Obtain approval from DDS for each site where residential, day, employment readiness, and supported employment services are provided prior to purchasing or leasing property;
- (s) Ensure that, if services are furnished in a private practice office space, spaces are owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice;
- (t) Ensure that a sole practitioner shall individually supervise assistants and aides employed directly by the independent practitioner, by the partnership group to which the independent practitioner belongs, or by the same private practice that employs the independent practitioner;
- (u) Complete the DDA abbreviated readiness process, if applicable;
- (v) Participate, and support willing waiver recipients to participate, in the National Core Indicators surveys, or successors surveys, as requested by DDS and/ or its assigned contractors; and
- (w) Adhere to the specific provider qualifications in each service rule.

1904.5 Each service provider under the Waiver for which transportation is included or otherwise provided shall:

- (a) Ensure that each vehicle used to transport a person has valid license plates;
- (b) Ensure that each vehicle used to transport a person has at least the minimum level of motor vehicle insurance required by law;
- (c) Present each vehicle used to transport a person for inspection by a certified inspection station every six (6) months, or as required in the jurisdiction where the vehicle is registered, and provide proof that the vehicle has passed the inspection by submitting a copy of the Certificate of Inspections to DDS upon request, except in circumstances where transportation is not included in the Waiver service;
- (d) Ensure that each vehicle used to transport a person is maintained in safe, working order;
- (e) Ensure that each vehicle used to transport a person meets the needs of the person;

- (f) Ensure that each vehicle used to transport a person has seats fastened to the body of the vehicle;
- (g) Ensure that each vehicle used to transport a person has operational seat belts;
- (h) Ensure that each vehicle used to transport a person can maintain a temperature conducive to comfort;
- (i) Ensure that each vehicle used to transport a person is certified by the Washington Metropolitan Area Transit Commission, except in circumstances where transportation is not included in the Waiver service;
- (j) Ensure that each person is properly seated when the vehicle is in operation;
- (k) Ensure that each person is transported to and from each appointment in a timely manner;
- (l) Ensure that each person is provided with an escort on the vehicle, when needed;
- (m) Ensure that each vehicle used to transport a person with mobility needs is adapted to provide safe access and use;
- (n) Ensure that each staff/employee/contractor providing services meets the requirements set forth in § 1906 of these rules, except that a staff/employee/ contractor who works exclusively as a driver is exempt from § 1906.1(h), but must be trained on use of the vehicle safety restraints and any specific safety needs of the person being transported; and
- (o) Ensure that each staff/employee/contractor providing services be certified in Cardiopulmonary Resuscitation (CPR) and First Aid.
- (p) Encourage the use of community-based transportation, as appropriate and described in the ISP.

**Subsection 1905.10 of Section 1905, PROVIDER ENROLLMENT PROCESS, is amended to read as follows:**

1905.10 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR; to the provider certification standards established by DDS, currently known as the Provider Certification Review process; to all policies and procedures promulgated by DDS that are applicable to providers during the provider's participation in the Waiver program; and to participation and

cooperation in the reporting requirements pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by the Superior Court of the District of Columbia.

- 1905.11 Each provider who has been terminated or has voluntarily withdrawn from the Waiver program may not reapply to the Waiver program for a period of no less than one (1) year.

**Section 1906, REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS, is deleted in its entirety and amended to read as follows:**

**1906 REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS**

- 1906.1 The basic requirements for all employees and volunteers providing direct services are as follows:
- (a) Be at least eighteen (18) years of age;
  - (b) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;
  - (c) Possess a high school diploma, general educational development (GED) certificate, or, if the person was educated in a foreign country, its equivalent;
  - (d) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;
  - (e) Complete pre-service and in-service training as described in DDS policy;
  - (f) Have the ability to communicate with the person to whom services are provided;
  - (g) Be able to read, write, and speak the English language;
  - (h) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and
  - (i) Have proof of compliance with 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.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002

(D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*) for the following employees or contract workers:

- (1) Individuals who are unlicensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code, who assist licensed health professionals in providing direct patient care or common nursing tasks;
- (2) Nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides; and
- (3) Housekeeping, maintenance, and administrative staff who may foreseeably come in direct contact with Waiver recipients or patients.

(j) Be acceptable to the person for whom they are providing supports.

1906.2 Volunteers who work under the direct supervision of an individual licensed pursuant to Chapter 12 of Title 3 of the D.C. Official Code shall be exempt from the unlicensed personnel criminal background check requirement set forth in § 1906.1(i).

**Section 1907, INDIVIDUAL SUPPORT PLAN (ISP), is deleted in its entirety and amended to read as follows:**

**1907 INDIVIDUAL SUPPORT PLAN (ISP)**

1907.1 The ISP is the plan that identifies the supports and services to be provided to the person and the evaluation of the person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met, based on what is important to and for the person, specifically including identifying the person's interest in employment, identifying goals for community integration and inclusion, and determining the most integrated setting available to meet the person's needs.

1907.2 The ISP shall include all Waiver and non-Waiver supports and services the person is receiving or shall receive consistent with his or her needs.

1907.3 The ISP shall be developed by the person and his or her support team using Person-Centered Thinking and Discovery tools and skills.

1907.4 At a minimum, the composition of the support team shall include the person being served, his or her substitute decision maker, if applicable, the DDS Service Coordinator and other individuals chosen by the person.

- 1907.5 The ISP shall be reviewed and updated annually by the support team. The ISP shall be updated more frequently if there is a significant change in the person's status or any other significant event in the person's life which affects the type or amount of services and supports needed by the person or if requested by the person.
- 1907.6 The Plan of Care shall be derived from the ISP and shall describe the frequency and types of services to be provided to the person, and the providers of those services.
- 1907.7 The provider shall:
- (a) Ensure that the service provided is consistent with the person's ISP and Plan of Care;
  - (b) Participate in the annual ISP and Plan of Care meeting or Support Team meetings when indicated; and
  - (c) Develop the documents described under § 1909.2(i), including goals and objectives, within thirty (30) days of the initiation of services, which shall address how the service will be delivered to each person, after notification by DDS that a service has been authorized.
- 1907.8 DHCF shall not reimburse a provider for services that are not authorized in the ISP, not included in the Plan of Care, furnished prior to the development of the ISP, furnished prior to receiving a service authorization from DDS, or furnished pursuant to an expired ISP.
- 1907.9 Each provider shall submit to the person's DDS Service Coordinator a quarterly report which summarizes the person's progress made toward achieving the desired goals and outcomes and identification and response to any issue relative to the provision of the service.
- 1907.10 Each provider shall submit to the DDS Court Liaison and to the person's DDS Service Coordinator an annual court status report not less than fifteen (15) business days prior to the annual review hearing for the person, pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by the Superior Court of the District of Columbia. Each provider shall provide the annual court status report to the person's court appointed attorney not less than ten (10) business days prior to the annual review hearing of the person. Each provider shall cooperate with DDS to ensure that any necessary corrections to the annual court status report are made and submitted promptly and prior to the annual review hearing for the person.



**Section 1908, REPORTING REQUIREMENTS, is deleted in its entirety and amended to read as follows:**

**1908 REPORTING REQUIREMENTS**

- 1908.1 Each Waiver provider shall submit quarterly reports to the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.
- 1908.2 For purposes of reporting, the first quarter shall begin on the effective date of a person's ISP.
- 1908.3 Each Waiver provider shall submit assessments, quarterly reports as set forth in § 1909.2(n), documents as described in § 1909.2(i), and physician orders, if applicable, to the DDS Medicaid Waiver unit for the authorization of services.
- 1908.4 Each Waiver provider shall complete all documents required for the service(s) as set forth in each service rule and upload the documents into DDS' MCIS system, ninety (90) days prior to the person's ISP meeting.
- 1908.5 Failure to submit all required documents may 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. The date of the authorization of services shall be the date of receipt of the required documents by the Medicaid Waiver Unit, if the documents are submitted after the effective date of the ISP.
- 1908.6 Each Waiver provider shall report on a quarterly basis to the person served, his or her family, as applicable, guardian and/or surrogate decision maker and the DDS Service Coordinator about the programming and support provided to fulfill the objectives and outcomes identified in the ISP and Plan of Care, and any recommended revisions to the ISP and Plan of Care, when necessary, to promote continued skill acquisition, no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.
- 1908.7 Each Waiver provider shall report all reportable incidents and all serious reportable incidents to DDS pursuant to the timelines established under DDA's Incident Management and Enforcement Policy and Procedures, available at: <http://dds.dc.gov/page/policies-and-procedures-dda>.

**Subsections 1909.1, 1909.2 and 1909.5 of Section 1909, RECORDS AND CONFIDENTIALITY OF INFORMATION, are amended, and new Subsections 1909.10 and 1909.11 are added, to read as follows:**

- 1909.1 Each Waiver provider shall allow appropriate personnel of DHCF, DDS and other authorized agents of the District of Columbia government or of other jurisdictions where services are provided, and the federal government full access, whether the visit is announced or unannounced, to all waiver provider locations, including access to the people receiving supports and all records, in any form. For purposes of this section, the term 'records' includes, but is not limited to, all information relating to the provider, the services and supports being provided, and the people for whom services are provided; any information which is generated by or in the possession of the provider; the information required by D.C. Law 2-137; and any information required by the regulations implementing the HCBF waiver program.
- 1909.2 Each Waiver provider entity shall maintain the following records, if applicable, for each person receiving services for monitoring and audit reviews:
- (a) General information including each person's name, Medicaid identification number, address, telephone number, date of birth, sex, name and telephone number of emergency contact person, physician's name, address and telephone number, and the DDS Service Coordinator's name and telephone number;
  - (b) A copy of the most recent DDS approved ISP and Plan of Care indicating the requirement for and identification of a provider who shall provide the services in accordance with the person's needs;
  - (c) A record of all service authorization and prior authorizations for services;
  - (d) A record of all requests for change in services;
  - (e) The person's medical records;
  - (f) A discharge summary;
  - (g) A written staffing plan, if applicable;
  - (h) A back-up plan detailing who shall provide services in the absence of staff when the lack of immediate care poses a serious threat to the person's health and welfare;
  - (i) Documents which contain the following information:
    - (1) The results of the provider's functional analysis for service delivery;
    - (2) A schedule of the person's activities in the community, if applicable, including strategies to execute goals identified in the

- ISP and the date and time of the activity, The staff as identified in the staffing plan;
- (3) Teaching strategies utilized to execute goals in the ISP and the person's response to the teaching strategy as further described in Subsection 1909.11; and
  - (4) A support plan with SMARTER goals and outcomes using the information from the DDS approved person-centered thinking and discovery tools, the functional analysis, the ISP, Plan of Care, and other information as appropriate to assist the person in achieving their goals;
- (j) Any records relating to adjudication of claims;
  - (k) Any records necessary to demonstrate compliance with all rules and requirements, guidelines, and standards for the implementation and administration of the Waiver;
  - (l) An annual supervision plan for each staff member who is classified as a Direct Support Professional (DSP), developed and implemented by a provider designated staff member, containing the following information:
    - (1) The name of the DSP and date of hire;
    - (2) The DSP's place of employment, including the name of the provider entity or day services provider;
    - (3) The name of the DSP's supervisor who shall have at least two (2) years' experience working with persons with intellectual and developmental disabilities;
    - (4) A documentation of performance goals for the DSP;
    - (5) A description of the DSP's duties and responsibilities;
    - (6) A comment section for the DSP's feedback;
    - (7) A statement of affirmation by the DSP's supervisor confirming statements are true and accurate;
    - (8) The signature, date, and title of the DSP; and
    - (9) The signature, date, and title of the DSP's supervisor.
  - (m) Progress notes, as set forth in each service rule, containing the following information:

- (1) The progress in meeting the specific goals in the ISP and Plan of Care that are addressed on the day of service and relate to the provider's scope of service;
  - (2) The health or behavioral events or change in status that is not typical to the person;
  - (3) Evidence of all community integration and inclusion activities attended by the person and related to the person's ISP goals and for each, a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?" DDS recommends the use of the Person Centered Thinking Learning Log for recording this information;
  - (4) The start time and end time of any services received including the DSP's signature (Note that, where progress notes are written using an electronic record system, an electronic signature meets the requirement for signature.); and
  - (5) The matters requiring follow-up on the part of the Waiver service provider or DDS.
- (n) Reports on a quarterly basis, containing the following information (DDS recommends use of the Person Centered Thinking 4+1 Tool for recording this information.):
- (1) An analysis of the goals identified in the ISP and Plan of Care and monthly progress towards reaching the goals;
  - (2) The service interventions provided and the effectiveness of those interventions;
  - (3) A summary analysis of all habilitative support activities that occurred during the quarter;
  - (4) For providers of Supported Living, Supported Living with Transportation, Host Homes, Residential Habilitation, In Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, the quarterly report shall include information on the person's employment, including place of employment, job title, hours of employment, salary/hourly wage, information on fringe benefits, and current checking, savings and burial fund balances, as applicable; and

- (5) Any modifications or recommendations that may be required to be made to the documents described under § 1909.2(i), ISP, and Plan of Care from the summary analysis.

- 1909.5 Each Waiver provider shall ensure the person's privacy including securing service records for each person in a locked room or file cabinet and limiting access only to authorized individuals; and shall not post mealtime protocols, clinical therapy schedules, or any other health information.
- 1909.10 DHCF shall retain the right to conduct audits at any time. Each Waiver provider shall allow access, during on site audits or review by DHCF or U.S. Department of Health and Human Services auditors, to relevant financial records.
- 1909.11 For purposes of Subsection 1909.2(i)(3), the teaching strategy used to execute goals in the ISP should include enough information so that any provider staff member or DSP could step in to assist the person in completing the goal. At minimum, the teaching strategy shall contain:
- (a) The goal statement;
  - (b) The purpose of the goal/measurable outcome;
  - (c) The materials needed to implement the goal;
  - (d) The preferred learning/teaching style for the person;
  - (e) The learning steps (*i.e.* individual actions that need to be completed for success); and
  - (f) The method for measuring success.

**Section 1911, INDIVIDUAL RIGHTS, is deleted in its entirety and amended to read as follows:**

**1911 INDIVIDUAL RIGHTS**

- 1911.1 Each Waiver provider shall develop and adhere to policies which ensure that each person receiving services has the right to the following:
- (a) Be treated with courtesy, dignity, and respect;
  - (b) Direct the person-centered planning of his or her supports and services;
  - (c) Receive treatment, care, and services consistent with the ISP;

- (d) Receive services by competent personnel who can communicate with the person;
- (e) Refuse all or part of any treatment, care, or service and be informed of the consequences;
- (f) Be free from mental and physical abuse, neglect, and exploitation from staff providing services;
- (g) Be assured that for purposes of record confidentiality, the disclosure of the contents of his or her personal records is subject to all the provisions of applicable District and federal laws and rules;
- (h) Voice a complaint regarding treatment or care, lack of respect for personal property by staff providing services without fear of retaliation;
- (i) Have access to his or her records; and
- (j) Be informed orally and in writing of the following:
  - (1) Services to be provided, including any limitations;
  - (2) The amount charged for each service, the amount of payment received/authorized for him or her and the billing procedures, if applicable;
  - (3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third party source;
  - (4) Acceptance, denial, reduction, or termination of services;
  - (5) Complaint and referral procedures including how to file an anonymous complaint;
  - (6) The name, address, and telephone number of the provider;
  - (7) The telephone number of the DDS customer complaint line;
  - (8) How to report an allegation of abuse, neglect and exploitation;
  - (9) For people receiving residential supports, the person's rights as a tenant, and information about how to relocate and request new housing.

**Subsections 1912.1 and 1912.6 of Section 1912, INITIATING, CHANGING, OR TERMINATING ANY APPROVED SERVICE, are amended to read as follows:**

1912.1 A provider shall hold a support team meeting and provide each person receiving Waiver services at least thirty (30) calendar days advance written notice of intent to initiate, suspend, reduce, or terminate services and shall offer a meeting to explain the notice. A copy of the notice shall also be provided to DDS and DHCF. If DDS intends to suspend, reduce or terminate services, DDS shall also provide written notice which complies with the requirements set forth in this section.

1912.6 In the event of a person's death, a provider shall comply with all written notice requirements and any policies established by DDA in accordance with DDA's Incident Management and Enforcement Policy and Procedures available at: <http://dds.dc.gov/page/policies-and-procedures-dda>.

**Subsection 1937.1 of Section 1937, COST REPORTS AND AUDITS, is amended to read as follows:**

1937.1 **Beginning October 1, 2015**, each waiver provider of residential habilitation, host home, supported living, supported living with transportation, day habilitation, in-home supports, individualized day supports, respite, employment readiness and supported employment services shall report costs to DHCF no later than ninety (90) days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting purposes, unless DHCF has approved an exception, on request. Such cost reporting will be for the purpose of informing rate setting parameters to be the most cost-effective for the government and to reimburse allowable costs for the providers. All cost reports shall cover a twelve (12) month cost reporting period. DHCF shall provide a cost report template.

**A new Section 1938, HOME AND COMMUNITY-BASED SETTING REQUIREMENTS, is added to read as follows:**

**1938 HOME AND COMMUNITY-BASED SETTING REQUIREMENTS**

1938.1 All Supported Living, Supported Living with Transportation, Host Home, Respite Daily, Residential Habilitation, Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment and Employment Readiness settings must:

- (a) Be chosen by the person from HCBS settings options including non-disability settings;
- (b) Ensure people's right to privacy, dignity, and respect, and freedom from coercion and restraint;
- (c) Be physically accessible to the person and allow the person access to all common areas;

- (d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;
- (e) Provide opportunities for the person to seek employment and meaningful non-work activities in the community;
- (f) Provide information on individual rights;
- (g) Optimize the person's initiative, autonomy and independence in making life choices including but not limited to, daily activities, physical environment, and with whom to interact;
- (h) Facilitate the person's choices regarding services and supports, and who provides them;
- (i) Create individualized daily schedules for each person receiving supports, that includes activities that align with the person's goals, interests and preferences, as reflected in his or her ISP;
- (j) Provide opportunities for the person to engage in community life;
- (k) Provide opportunities to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS;
- (l) Control over his or her personal funds and bank accounts; and
- (m) Allow visitors at any time.

1938.2 All Supported Living, Supported Living with Transportation, Host Home, Residential Habilitation, and Respite Daily, settings must:

- (a) Be integrated in the community and support access to the greater community;
- (b) Allow full access to the greater community;
- (c) Be leased in the names of the people who are being supported. If this is not possible, then the provider must ensure that each person has a legally enforceable residency agreement or other written agreement that, at a minimum, provides the same responsibilities and protections from eviction that tenants have under relevant landlord/tenant law. This applies equally to leased and provider owned properties.



- (d) Develop and adhere to policies which ensure that each person receiving services has the right to the following:
  - (1) Privacy in his or her personal space, including entrances that are lockable by the person (with staff having keys as needed);
  - (2) Freedom to furnish and decorate his or her personal space (with the exception of Respite Daily);
  - (3) Privacy for telephone calls, texts and/or emails; or any other form of electronic communication, *e.g.* FaceTime or Skype; and
  - (4) Access to food at any time.

1938.3 All Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment and Employment Readiness settings must develop and adhere to policies which ensure that each person receiving services has the right to the following:

- (a) Privacy for personal care, including when using the bathroom;
- (b) Access to snacks at any time;
- (c) Privacy for telephone calls, texts and/or emails; or any other form of electronic communication, *e.g.* FaceTime or Skype; and
- (d) Meals at the time and place of a person's choosing.

1938.4 Any deviations from the requirements in §§ 1938.1(l) and (m), 1938.2(d) and § 1938.3 must be supported by a specific assessed need, justified in the person's person-centered Individualized Support Plan, and reviewed and approved as a restriction by the Provider's Human Rights Committee (HRC). There must be documentation that the Provider's HRC review included discussion of the following elements:

- (a) What the person's specific individualized assessed need is that results in the restriction;
- (b) What prior interventions and supports have been attempted, including less intrusive methods;
- (c) Whether the proposed restriction is proportionate to the person's assessed needs;
- (d) What the plan is for ongoing data collection to measure the effectiveness of the restriction;

- (e) When the HRC or the person's support team will review the restriction again;
- (f) Whether the person, or his or her substitute decision-maker, gives informed consent; and
- (g) Whether the HRC has assurance that the proposed restriction or intervention will not cause harm.

**Section 1999, DEFINITIONS, is deleted in its entirety and amended to read as follows:**

**1999            DEFINITIONS**

When used in this chapter, the following terms and phrases shall have the meaning ascribed:

**Abbreviated Readiness Process** - A process that assures that existing providers that have been approved as HCBS Waiver providers possess and demonstrate the capability to effectively serve people with disabilities and their families by providing the framework for identifying qualified providers ready to begin serving people in the Waiver and assisting those providers already in the DDS/DDA system who may need to improve provider performance.

**Archive** – Maintenance and storage of records.

**Group Home for a Person with an Intellectual Disability** - Shall have the same meaning as Group Home for Mentally Retarded Persons and shall meet the definitions and licensure requirements as set forth in 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.*), and implementing rules.

**HCBS Settings Rule** – The Centers for Medicare & Medicaid Services (CMS) issued a final rule effective March 17, 2014, that contains a new, outcome-oriented definition of home and community-based services (HCBS) settings. The purpose of the federal regulation, in part, is to ensure that people receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree as people who do not receive HCBS. The HCBS Settings Rule is available at 79 Fed. Reg. 2947 (January 16, 2014).

**Home Health Agency** - Shall have the same meaning as "home care agency" and shall meet the definitions and licensure requirements 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.*), and implementing rules.

**Individual Support Plan (ISP)** - Identifies the supports and services to be provided to the person and the evaluation of the person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met.

**Intellectual Disability** - Means a substantial limitation in capacity that manifests before eighteen (18) years of age and is characterized by significantly below-average intellectual functioning, existing concurrently with two (2) or more significant limitations in adaptive functioning as defined in D.C. Official Code § 7-1301.03(15A). The determination of intellectual functioning includes consideration of the standard error of measurement associated with the particular intelligence quotient (IQ) test. The adaptive functioning deficits must cross at least two of the following three domains: conceptual, practical, and social.

**Intermediate Care Facility for Individuals with Intellectual Disabilities** - Shall have the same meaning as an "Intermediate Care Facility for Individuals with Mental Retardation" as set forth in Section 1905(d) of the Social Security Act.

**Living Wage** - Living Wage refers to minimum hourly wage requirements as set forth in Title I of the Living Wage Act of 2006, effective June 9, 2006 (D.C. Law 16-18; D.C. Official Code §§ 2-220.01 to .11). The law provides that District of Columbia government contractors and recipients of government assistance (grants, loans, tax increment financing) in the amount of one hundred thousand dollars (\$100,000) or more shall pay affiliated employees wages no less than the current living wage rate.

**Qualified Intellectual Disabilities Professional (QIDP)** - Also known as Qualified Developmental Disabilities Professional or QDDP, is someone who oversees the initial habilitative assessment of a person; develops, monitors, and review ISPs; and integrates and coordinates Waiver services.

**Plan of Care** - A written service plan that meets the requirements set forth in Subsection 1907.6 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

**Provider** - Any entity that meets the Waiver service requirements, has signed a Medicaid Provider Agreement with DHCF to provide those services, and is enrolled by DHCF to provide Waiver services.

**Registered Nurse** - An individual who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), as amended, or licensed as a registered nurse in the jurisdiction where services are provided.

**Service Coordinator** – The DDS staff responsible for coordinating a person’s services pursuant to their ISP and Plan of Care.

**Serious Reportable Incident** - Events that due to severity require immediate response, notification to, and investigation by DDS in addition to the internal review and investigation by the provider agency. Serious reportable incidents include death, allegations of abuse, neglect or exploitation, serious physical injury, inappropriate use of restraints, suicide attempts, serious medication errors, missing persons, and emergency hospitalization.

**Skilled Nursing** - Health care services that are delivered by a registered or practical nurse acting within the scope of their practice and shall meet the definitions and licensure requirements as set forth in 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.*), as amended, and implementing rules.

**SMARTER Goals** – Means goals that are: Specific, Measureable, Attainable, Relevant and Time-Bound, Evaluated and Revisable.

**Waiver** - Shall mean the HCBS Waiver for Individuals with Intellectual and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and CMS, as may be further amended and approved by the Council and CMS.

Comments on these third 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 these third emergency and proposed rules may be obtained from the above address.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) 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 91, entitled “Medicaid Reimbursement for Adult Substance Abuse Rehabilitative Services,” of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

Since the original implementation of the Adult Substance Abuse Rehabilitation Services (ASARS) program in the District, the responsibility for development and promulgation of inspection, monitoring, and certification standards of all substance use disorder (SUD) treatment and recovery providers in the District transitioned from the Department of Health to the Department of Behavioral Health (referred to in this Chapter as “DBH”). These emergency and proposed rules amend the previously published rules to: (1) identify DBH as having the authority to authorize and monitor Medicaid-reimbursable SUD services; (2) require providers of ASARS to comply with certification requirements set forth by DBH; and (3) require that providers be subject to administrative actions pursuant to Chapter 13 of Title 29 DCMR, and comply with screening and enrollment requirements pursuant to Chapter 94 of Title 29 DCMR, record retention, and audit and recoupment requirements.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of District residents with SUD by: 1) ensuring that care is maintained in SUD treatment facilities and by providers that serve vulnerable individuals that require Medicaid-reimbursable SUD treatment; and 2) ensuring a smooth transition for Medicaid beneficiaries receiving SUD treatment services in accordance with the new rules promulgated by DBH governing the delivery of SUD treatment in the District. On September 28, 2012, a Notice of Final Rulemaking was published in the *D.C. Register* at 59 DCR 11144. These rules amend the September 28, 2012 rulemaking consistent with the corresponding State Plan for Medicaid Assistance (State Plan) governing the delivery of Medicaid-reimbursable SUD treatment in the District. The State Plan amendment has been approved by the Council of the District of Columbia through the “Medicaid Adult Substance Abuse Rehabilitative Services State Plan Amendment Approval Resolution of 2015” on April 3, 2015, and the Centers for Medicare and Medicaid Services (CMS) on July 23, 2015.

The emergency rulemaking was adopted on April 28, 2016 and shall become effective for services rendered on or after that date. The emergency rules will remain in effect for one hundred and twenty (120) days, or until August 26, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt this emergency and proposed rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 91 of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety, and amended to read as follows:

**CHAPTER 91            MEDICAID REIMBURSEMENT FOR ADULT SUBSTANCE ABUSE REHABILITATIVE SERVICES**

**9100            GENERAL PROVISIONS**

9100.1            The purpose of this chapter is to establish requirements governing Medicaid reimbursement for Adult Substance Abuse Rehabilitative Services (ASARS).

9100.2            In order to be eligible for treatment in the ASARS program, beneficiaries shall be subject to the following:

- (1)    Medicaid eligibility requirements set forth in Chapter 95 of Title 29 of the District of Columbia Municipal Regulations (DCMR); and
- (2)    Substance Use Disorder (SUD) treatment eligibility factors set forth in § 6301 of Title 22-A DCMR.

9100.3            The Department of Behavioral Health (DBH) shall be responsible for establishing standards for determining each adult Medicaid beneficiary's eligibility for treatment under the ASARS program pursuant to the requirements set forth in Chapter 63 of Title 22-A DCMR.

**9101            PROVIDER CERTIFICATION**

9101.1            Each ASARS treatment provider shall be certified and comply with the certification requirements set forth by DBH pursuant to Chapter 63 of Title 22-A of the DCMR.

**9102            PROVIDER SCREENING AND ENROLLMENT**

9102.1            Prior to enrolling in Medicaid, each ASARS treatment provider shall first be certified by DBH in accordance with § 9101.1 of this chapter. Once certified, each ASARS treatment provider shall:

- (a)    Be screened and enrolled in Medicaid pursuant to Chapter 94 of Title 29 DCMR in order to be eligible for reimbursement under the Medicaid program; and
- (b)    Include proof of certification in the application for enrollment in Medicaid.

**9103            ADMINISTRATIVE ACTIONS**

9103.1 Each Medicaid-enrolled ASARS treatment provider shall be subject to the administrative actions set forth under Chapter 13 of Title 29 DCMR.

#### **9104 REIMBURSEMENT**

9104.1 ASARS shall be reimbursed according to a fee schedule rate for ASARS services included in an approved treatment plan, as described in Chapter 63 of Title 22-A DCMR. The fee schedule shall be published on the DHCF's website at [www.dc-medicaid.com](http://www.dc-medicaid.com).

#### **9105 RECORDS**

9105.1 Each Medicaid-enrolled ASARS provider shall maintain beneficiary records and individual treatment plans in a manner that will render them amenable to audit and review by the U.S. Department of Health and Human Services, the Department of Health Care Finance (DHCF), DBH, and their authorized designees or agents.

9105.2 Each Medicaid-enrolled ASARS provider shall maintain, and make available complete financial records covering its operations upon request by the U.S. Department of Health and Human Services, DHCF, DBH and their authorized designees or agents.

9105.3 All required financial and treatment records and information shall be maintained in accordance with requirements set forth under Chapter 63 of Title 22-A DCMR.

#### **9106 AUDITS AND REVIEWS**

9106.1 This section sets forth the requirements for audits and reviews of ASARS services. DHCF shall perform regular audits of ASARS providers to ensure that Medicaid payments are consistent with efficiency, economy and quality of care, and made in accordance with federal and District conditions of payment. The audits shall be conducted at least annually and when necessary to investigate and maintain program integrity. DHCF may delegate the authority for audits and reviews described herein to DBH pursuant to a written memorandum of agreement. Any written memorandum of agreement shall require that DBH comply with the provisions of this section as DHCF's designee.

9106.2 DHCF shall perform routine audits of claims, by statistically valid scientific sampling, to determine the appropriateness of ASARS services rendered and billed to Medicaid to ensure that Medicaid payments can be substantiated by documentation that meets the requirements set forth in this rule, and made in accordance with federal and District rules governing Medicaid.

- 9106.3 If DHCF determines that claims are to be denied, DHCF shall recoup those monies erroneously paid to an ASARS provider for denied claims, following the period of Administrative Review as set forth in this rule.
- 9106.4 DHCF shall issue a Proposed Notice of Medicaid Overpayment Recovery (PNR) to the ASARS provider, which sets forth the reasons for the recoupment, the amount to be recouped, and the procedures and timeframes for requesting an Administrative Review of the PNR.
- 9106.5 The ASARS provider shall have thirty (30) calendar days from the date of the PNR to request an Administrative Review. The provider shall submit documentary evidence and/or written argument against the proposed action to DHCF in the request for an Administrative Review. If the provider fails to respond within thirty (30) calendar days, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNR), which shall include the procedures and timeframes for requesting an appeal.
- 9106.6 DHCF shall review the documentary evidence and/or written argument submitted by the ASARS provider against the proposed action described in the PNR. After this review, DHCF may cancel its proposed action, amend the reasons for the proposed recoupment and/or adjust the amount to be recouped. DHCF shall issue a FNR, which shall include the procedures and timeframes for requesting an appeal.
- 9106.7 Within fifteen (15) calendar days from date of the FNR, the ASARS provider may appeal the FNR by filing a written notice of appeal from the determination of recoupment with the Office of Administrative Hearings. The written notice requesting an appeal shall include a copy of the FNR, description of the item to be reviewed, the reason for review of the item, the relief requested, and any documentation in support of the relief requested.
- 9106.8 In lieu of the off-set of future Medicaid payments, the ASARS provider may choose to send a certified check made payable to the District of Columbia Treasurer in the amount of the funds to be recouped.
- 9106.9 Filing an appeal shall not stay any action to recover any overpayment.
- 9106.10 Each Medicaid-enrolled ASARS provider shall allow access during an onsite audit or review to DHCF, its designee, DBH, other authorized District of Columbia government officials, the Centers for Medicare and Medicaid Services (CMS), and representatives of the United States Department of Health and Human Services, to relevant records and program documentation.
- 9106.11 Each Medicaid-enrolled ASARS provider shall facilitate audits and reviews by maintaining the required records and by cooperating with the authorized personnel assigned to perform audits and reviews.



Comments on these rules should be submitted in writing to Claudia Schlosberg, J.D, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4<sup>th</sup> Street, NW, Suite 900, Washington D.C. 20001, via telephone at (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.

**DISTRICT OF COLUMBIA TAXICAB COMMISSION****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The District of Columbia Taxicab Commission (“Commission”), pursuant to the authority set forth in Sections 8(c) (2), (7), (19) and (20), 14, and 20l, of the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97), as amended by the Vehicle-for-Hire Innovation Amendment Act of 2014 (“Vehicle-for-Hire Act”), effective March 10, 2015 (D.C. Law 20-197; D.C. Official Code §§ 50-307(c) (2), (7), (19) and (20), 50-313, and 50-329 (2014 Repl. & 2015 Supp.)), hereby gives notice of its intent to adopt amendments to Chapter 7 (Enforcement) and Chapter 16 (Dispatch Services and District of Columbia Taxicab Industry Co-op) of Title 31 (Taxicabs and Public Vehicles For Hire) of the District of Columbia Municipal Regulations (DCMR).

This proposed rulemaking would amend Chapter 16 to establish a new requirement in § 1605 that all digital dispatch services (DDSs) provide the Office of Taxicabs with a bond to secure the payments to the District of taxicab surcharges and one percent (1%) of gross receipts, required by § 1604.7 and the Establishment Act, which are vital to support the operations of the Commission and the Office. The Commission finds it necessary to impose this requirement after two incidents in which businesses obligated to make payments of surcharges or one percent (1%) of gross receipts failed to do so. In one incident, a payment service provider (PSP) ceased operations in the District without paying all owed taxicab surcharges, but, because it had provided the Office with a bond pursuant to Chapter 4 of Title 31 DCMR, the Office was able to recover a substantial portion of the unpaid surcharges. In a more recent incident, a DDS for private sedans ceased operations while still owing a payment for one percent (1%) of gross profits. Because DDSs are not required under the current rules in Chapter 16 to provide a bond, when the DDS ceased operations, there was no bond available cover its outstanding payment. To prevent a recurrence, the new bond requirement would apply to all DDSs, including all those which are currently registered with the Office. The rulemaking would also amend Chapter 7 to add an enforcement provision allowing the Office to suspend the registration of a registered digital dispatch service that fails to provide a bond within the time required under the new rules in § 1605.

The Commission finds there is an immediate need to preserve and promote the safety and welfare of District residents by ensuring that bonds be provided to the Office by all DDSs to secure the payments of taxicab surcharges and one percent of gross receipts, as required by § 1604.7 and the Establishment Act, to reduce the possibility that the District will fail to receive a required payment.

This emergency rulemaking was adopted by the Commission on February 10, 2016, and took effect immediately. The emergency rules shall remain in effect for one hundred and twenty (120) days after the date of adoption (expiring June 9, 2016), unless earlier superseded by an amendment or repeal by the Commission, or the publication of final rulemaking, whichever occurs first.

The Commission also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice of proposed rulemaking in the *D.C. Register*. Directions for submitting comments may be found at the end of this notice.

**Chapter 7, ENFORCEMENT, of Title 31 DCMR, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:**

**A new Section 720 is added to read as follows:**

**720 IMMEDIATE SUSPENSION OF A DIGITAL DISPATCH SERVICE REGISTRATION**

720.1 In addition to any other enforcement action available under this chapter, a digital dispatch service registered with the Office under § 1605 which fails to comply with § 1605.6 shall be subject to the immediate suspension of its registration until it provides the Office with a bond that meets the requirements of § 1605.5(c).

**Chapter 16, DISPATCH SERVICES AND DISTRICT OF COLUMBIA TAXICAB INDUSTRY CO-OP, is amended as follows:**

**Section 1605, DIGITAL DISPATCH SERVICES – REGISTRATION, is amended as follows:**

**Subsection 1605.5 is amended to read as follows:**

1605.5 Each registration application form filed under § 1605.3 shall be:

- (a) Executed under oath by an individual with authority to complete the filing;
- (b) Accompanied by a filing fee of five hundred dollars (\$500) regardless of the number of vehicle-for-hire services dispatched by the digital dispatch service; and
- (c) Accompanied by a bond payable to the District of Columbia to secure payment of the amount(s) owed to the District pursuant to the § 1604.7 which shall be valid for the licensing period and one (1) year thereafter, which shall be in the amount of one hundred thousand dollars (\$100,000) for taxicabs, and two hundred fifty thousand dollars (\$250,000) for each additional public or private vehicle-for-hire service dispatched by the digital dispatch service, and which shall comply with any applicable administrative issuance.

**A new Subsection 1605.6 is added to read as follows:**

1605.6 Not later than thirty (30) days after the effective date of these regulations, each digital dispatch service registered with the Office shall provide a bond to the Office which meets the requirements of § 1605.5(c).

**Existing Subsections 1605.6 through 1605.9 are renumbered as Subsections 1605.7 through 1605.10.**

**A new Subsection 1605.11 is added to read as follows:**

1605.11 A bond provided by a digital dispatch service pursuant to § 1605.5(c) may be forfeited in whole or in part to satisfy an obligation of the digital dispatch service under § 1604.7 that remains unpaid for more than thirty (30) days. The Office shall give written notice of its intent to forfeit a bond not less than ten (10) days prior to taking the action.

Copies of this proposed rulemaking can be obtained at [www.dcregs.dc.gov](http://www.dcregs.dc.gov) or by contacting Secretary to the Commission, District of Columbia Taxicab Commission, 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to [dctc@dc.gov](mailto:dctc@dc.gov) or by mail to the DC Taxicab Commission, 2235 Shannon Place, S.E., Suite 3001, Washington, D.C. 20020, Attn: Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C. Register*.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2016-077  
May 02, 2016


**SUBJECT:** Delegation of Authority - Department of Motor Vehicles; Learner Permit, Provisional Permit, Driver License and Driving Privileges


**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2014 Repl.), and pursuant to the District of Columbia Traffic Act, 1925, approved March 3, 1925, 43 Stat. 1119; D.C. Official Code Title 50 *passim*, it is hereby **ORDERED** that:

1. The Director of the Department of Motor Vehicles is delegated the authority vested in the Mayor under:
  - a. Section 6(a)(2), (3), and (4), (d), and (j)(2) and (3)(E) of the District of Columbia Traffic Act, 1925 (D.C. Official Code § 50-2201.03(a)(2)(B), (3), and (4), (d), and (j)(2) and (3)(E)), which includes the authority to make, modify, repeal, and enforce rules relating to and concerning vehicle inspections, the equipment of vehicles, the registration and titling of vehicles, the issuance of operator permits (driver licenses), operating privileges, and the authority to determine the fair market value of vehicles and trailers;
  - b. Sections 7 and 7a of the District of Columbia Traffic Act, 1925 (D.C. Official Code §§ 50-1401.01 and 50-1401.01a), which include authority related to operator permits, provisional permits, learner permits, driving instructors and driving schools and "motor vehicle" registration;
  - c. Section 8 of the District of Columbia Traffic Act, 1925 (D.C. Official Code § 50-1401.02), which includes authority related to reciprocity stickers and reciprocal agreements and arrangements; and
  - d. Sections 8a, 8b, and 8c of the District of Columbia Traffic Act, 1925 (D.C. Official Code §§ 50-1401.03, 50-1401.04, and 50-1401.05), which include authority related to the issuance of driver licenses, special identification cards, and limited purposes driver licenses, permits, and identification cards, and the seizure of suspect documents.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
MURIEL BOWSER  
MAYOR

ATTEST:   
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**


Mayor's Order 2016-078  
May 2, 2016

**SUBJECT:** Delegation — Authority to the Director of the Department of General Services to Convey Easements to the District of Columbia Water and Sewer Authority

**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22 (2014 Repl.), it is hereby **ORDERED** that:

1. The Director of the Department of General Services (**DGS**) is delegated the authority to execute and convey easements to the District of Columbia Water and Sewer Authority for property either owned by or under the jurisdiction of the District of Columbia ("**Properties**") for the purpose of providing water and sewer service to the Properties, and all other documents necessary to effectuate the provision of water and sewer service to the Properties.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.




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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 2016-079  
May 3, 2016

**SUBJECT:** Reappointments and Appointments — Health Information Exchange  
Policy Board

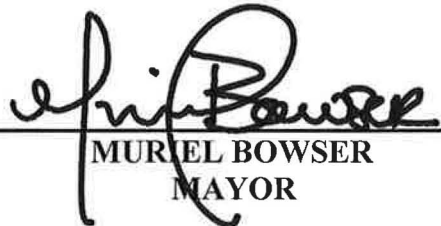
**ORIGINATING AGENCY:** Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act of 1973, approved December 24, 1973 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2014 Repl.), and in accordance with Mayor's Order 2016-035, dated March 10, 2016, it is hereby **ORDERED** that:

1. The following persons are reappointed as members of the Health Information Exchange Policy Board ("Board") and shall serve at the pleasure of the Mayor:
  - a. **CHRISTIAN BARRERA** as the employee of the Office of the Deputy Mayor for Health and Human Services, who shall be a non-voting member of the Board.
  - b. **CLAUDIA SCHLOSBERG** as the employee of the Department of Health Care Finance.
2. **KELLY CRONIN** is appointed as a public member with health care or information technology experience, with a term to end June 25, 2019;
3. The following persons are appointed as members of the Board for terms to end June 25, 2018:
  - a. **DR. AARON HETTINGER** as an individual who works for a provider organization that provides primary care and/or specialty care services), replacing Robin Newton;
  - b. **MARY JONES-BRYANT** as the representative of the District of Columbia Nurses Association, replacing Brenda King;
  - c. **DR. ELIOT SOREL** as the representative of the District of Columbia Medical Society, replacing Barry Lewis;



- d. **PETE STOESSEL** as a representative from a health plan (from AmeriHealth Caritas), replacing Wayne McOwen and
  - e. **WILLIAM WARD** as a medical provider who provides primary care or specialty care services (from the Catholic Charities), replacing Bernie Galla.
4. The following persons are appointed as members of the Board and shall serve at the pleasure of the Mayor:
- a. **CHRISTOPHER BOTTS** as an employee of the Department of Health Care Finance, replacing Shelly Ten Napel.
  - b. **SAKINA THOMPSON** as the employee of the Department of Human Services, replacing Marina Havan.
  - c. **ARCHANA VEMULAPALLI** as the employee of the Office of the Chief Technology Officer, replacing Tony Pillai.
5. **DR. VICTOR FREEMAN** is reappointed as a public member who is a representative for beneficiaries of the Board for a term to end June 25, 2018.
6. **CHRISTOPHER BOTTS** is appointed as Chair of the Board and shall serve in that capacity at the pleasure of the Mayor.
7. **EFFECTIVE DATE:** This Order shall be effective immediately.

  
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 MURIEL BOWSER  
 MAYOR

ATTEST:   
 \_\_\_\_\_  
 LAUREN C. VAUGHAN  
 SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

## ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2016-080  
May 4, 2016

**SUBJECT:** Appointment — Interstate Commission on the Potomac River Basin


**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 Article I of the Potomac River Basin Compact, approved September 25, 1970, 84 Stat. 856, Pub. L. 97-407, D.C. Official Code § 8-1602 (2013 Repl.), it is hereby **ORDERED** that:

1. The following persons are appointed as alternate members to the Interstate Commission on the Potomac River Basin, to serve at the pleasure of the Mayor:
  - a. **KIMBERLY JONES**, replacing John Wennersten;
  - b. **TIFFANY POTTER**, replacing Vincent R. Nathan; and
  - c. **ANNEMARGARET CONNOLLY**, filling a vacant position.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
MURIEL BOWSER  
MAYOR

ATTEST:

  
LAUREN C. VAUGHAN  
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, MAY 18, 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

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 16-CMP-00090;** F&A, Inc., t/a Anacostia Market, 1303 Good Hope  
Road SE, License #86470, Retailer B, ANC 8A  
**No ABC Manager on Duty, Failed to Maintain Books and Records**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00513;** MPE Hotel I (Georgetown), LLC, t/a Ritz Carlton  
Georgetown, 3100 South Street NW, License #60660, Retailer CH, ANC 2E  
**No ABC Manager on Duty, Failed to Post License Conspicuously in the  
Establishment, Failed to Post Pregnancy Sign, Failed to Post Legal  
Drinking Age Sign**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00915;** American City Diner, Inc., t/a American City Diner  
5532 Connecticut Ave NW, License #94922, Retailer DR, ANC 3G  
**No ABC Manager on Duty**

**Show Cause Hearing (Status)** **9:30 AM**  
**Case # 15-CMP-00869;** Yetenbi, Inc., t/a Noble Lounge, 1915 9th Street NW  
License #85258, Retailer CT, ANC 1B  
**Interfered with an Investigation, Operating After Board Approved Hours,  
No ABC Manager on Duty, Failed to Post License Conspicuously in the  
Establishment**

**Fact Finding Hearing\*** **9:30 AM**  
Pub Crawl, Applicant: Dustin Mantell, Date of Event: October 29, 2016  
Event: PubCrawls.com -( Pre-Halloween Pub Crawl), Neighborhood: Multiple  
Licensed Premises, Size of Event: 1000-1500

Board's Calendar

May 18, 2016

**Fact Finding Hearing\***

**9:30 AM**

Pub Crawl; Applicant: Kevin Kirk, Date of Event: June 4, 2016, Event: Nivek Events - (90's Day Bar Crawl), Neighborhood: Multiple Licensed Premises  
Size of Event: 2000-5000

**Show Cause Hearing\***

**10:00 AM**

**Case # 14-CMP-00903**; 6220 Georgia, LLC, t/a Victor Liquors, 6220 Georgia Ave NW, License #88173, Retailer A, ANC 4A  
**No ABC Manager on Duty**

**Show Cause Hearing\***

**11:00 AM**

**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**

**BOARD RECESS AT 12:00 PM**  
**ADMINISTRATIVE AGENDA AT 1:00 PM**

**Show Cause Hearing\***

**1:30 PM**

**Case # 15-251-00176**; Acott Ventures, t/a Shadow Room, 2131 K Street NW  
License #75871, Retailer CN, ANC 2A  
**Failed to Follow Security Plan**

**Fact Finding Hearing\***

**2:30 PM**

**Case # 15-CMP-00976**; Andy Lee Liquors., t/a New H Wine & Spirits, 914 H Street NE, License #93550, Retailer A, ANC 6A  
**Operating under New Ownership Without Board Approval, Interfered with an Investigation, No ABC Manager on Duty**

**Fact Finding Hearing\***

**3:00 PM**

**Case # Unlicensed Establishment**; D.C. Dragons Martial Arts Training Center  
1731 Rhode Island Ave NE, **Operated without Obtaining an ABC License or One Day Temporary License**

**Show Cause Hearing\***

**3:30 PM**

**Case # 15-CMP-00751**, M & M Beer & Wine, Inc., t/a M & M Market, 3544 East Capitol Street NE, License #78461, Retailer B, ANC 7F  
**Sold Go-Cups**

**\*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  
CANCELLATION AGENDA

WEDNESDAY, MAY 18, 2016  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below:

ABRA-000741 – **The Washington Club** – Retail – C – Multipurpose – 15 DUPONT CIRCLE  
NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-010299 – **River Club** – Retail – C – Restaurant – 3223 K STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-012457 – **Sushi Ko** – Retail – C – Restaurant – 2309 WISCONSIN AVENUE NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-021784 – **New Orleans Café** – Retail – C – Restaurant – 2412 18<sup>th</sup> STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-060371 – **Restaurant Tropical** – Retail – C – Restaurant – 3566 14<sup>th</sup> STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-074433 – **Dahlak Restaurant** – Retail – C – Restaurant – 1771 U STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-074742 – **Aria** – Retail – C – Restaurant – 1300 PENNSYLVANIA AVENUE NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-075703 – **Rugby Café** – Retail – C – Restaurant – 1065 WISCONSIN AVENUE NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-075733 – **Grace Bamboo** – Retail – C – Restaurant – 3206 GRACE STREET NW

[Safekeeping] [Licensee did not Renew.]

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ABRA-076125 – **Sisy's** – Retail – C – Restaurant – 3911 14<sup>th</sup> STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-081606 – **Johnny Rockets** – Retail – C – Restaurant – 3131 M STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-083216 – **Fasika** – Retail – D – Restaurant – 4422 GEORGIA AVENUE NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-084571 – **Il Capo di Capitol Hill** – Retail – C – Restaurant – 1129 PENNSYLVANIA AVENUE SE  
[Safekeeping] [Licensee did not Renew.]

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ABRA-086876 – **Bistro 18** – Retail – C – Restaurant – 2420 18<sup>th</sup> STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-087727 – **Gin Rummy** – Retail – C – Restaurant – 3522 12<sup>th</sup> STREET NE  
[Safekeeping] [Licensee did not Renew.]

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ABRA-091036 – **Menu MKB** – Retail – C – Restaurant – 405 8th STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-092491 – **Fino** – Retail – C – Restaurant – 3011 M STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-092970 – **Papa Razzi** – Retail – C – Restaurant – 1064 – 1066 WISCONSIN AVENUE NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-093536 – **Blush n Brush** – Retail – D – Multipurpose – 3210 GRACE STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-078642 – **The Scene** – Retail – C – Multipurpose – 2221 ADAMS PLACE NE  
[Safekeeping] [Licensee did not Renew.]

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ABRA-001847 – **Aroma Indian Restaurant** – Retail – C – Restaurant – 1919 I STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-093151 – **Noodles & Company** – Retail – C – Restaurant – 1140 19<sup>th</sup> STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-096758 – **Mimosa Restaurant** – Retail – C – Restaurant – 1915 18<sup>th</sup> STREET NW  
[Safekeeping] [Licensee did not Renew.]

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ABRA-060726 – **La Salle Liquors** – Retail – A – Liquor Store – NO LOCATION  
[Safekeeping] [Licensee did pay 2nd year payment.]

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
INVESTIGATIVE AGENDA

WEDNESDAY, MAY 18, 2016  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On May 18, 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-CC-00041 Prego Again, 1617 17TH ST NW, Retailer B Retail - Grocery , License#: ABRA-060741

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2. Case#16-CC-00040 Metro Wine & Spirits, 1726 COLUMBIA RD NW, Retailer A Retail - Liquor Store , License#: ABRA-060602

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3. Case#16-CC-00039 Marvelous Market, 2424 PENNSYLVANIA AVE NW, Retailer B Retail - Grocery , License#: ABRA-078414

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4. Case#16-CC-00042 Papa's Liquors, 3703 MACOMB ST NW, Retailer A Retail - Liquor Store, License#: ABRA-026226

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5. Case#16-CMP-00339 Touchdown, 1334 U ST NW, Retailer C Tavern , License#: ABRA-086233

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6. Case#16-CMP-00328 Ted's Bulletin, 505 8th ST SE, Retailer C Restaurant , License#: ABRA-082569

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7. Case#16-CC-00047 Calvert Woodley Wine & Liquor, 4339 CONNECTICUT AVE NW, Retailer A Retail - Liquor Store, License#: ABRA-003730

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8. Case#16-CC-00044 Shadow Room, 2131 K ST NW, Retailer C Nightclub , License#: ABRA-075871

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, MAY 18, 2016 AT 1:00 PM  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request for Change of Hours. *Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:* Sunday 11am to 2am, Monday-Thursday 4pm to 2am, Friday-Saturday 11am to 3am. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:* Sunday- Thursday 11am to 2am, Friday-Saturday 11am to 3am. ANC 2D. SMD 2D02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *McClellan's Retreat*, 2031 Florida Avenue NW, Retailer CT, License No. 076726.

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2. Review Application for Sidewalk Café with seating for 8 patrons. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Sidewalk Café:* Sunday-Thursday 9am to 2am, Friday-Saturday 9am to 3am. ANC 2B. SMD 2B01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *French Bistro Bistro B Lounge*, 1727 Connecticut Avenue NW, Retailer CR, License No. 081479.

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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.**

**CARLOS ROSARIO PUBLIC CHARTER SCHOOL****REQUEST FOR QUOTES****Summer Reading Books**

Carlos Rosario International Public Charter School seeks bids to supply the School with approx. 2,300 books for students. The book titles are to be selected by the School from a variety of publishers. The supplier must have strong existing relationships with publishers of adult education books in the fields of English as a Second Language, GED, Citizenship, Culinary Arts, Nurse Aide training, Computer Literacy, and Computer Support Specialist training. The supplier must have the ability to supply the required titles at short notice and in a timely manner, and at reasonable cost. A proven track record working with an educational organization is critical. For more details, please respond to Christyann Helm [chelm@carlosrosario.org](mailto:chelm@carlosrosario.org) or call 202-797-4700. Responses are due by 5:00pm, Thursday May 19th, 2016.

**CENTER CITY PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

Center City Public Charter School is soliciting proposals from qualified vendors for the following:

**Center City PCS would like to engage one furniture representative to meet school furniture needs.**

To obtain copies of full RFPs, please visit our website: [www.centercitypcs.org/contact/request-for-proposal](http://www.centercitypcs.org/contact/request-for-proposal). The full RFPs contain guidelines for submission, applicable qualifications, and deadlines.

Contact Person:

Natasha Harrison  
[nharrison@centercitypcs.org](mailto:nharrison@centercitypcs.org)

**E.L. HAYNES PUBLIC CHARTER SCHOOL****INVITATION FOR BID****Food Management Services**

E.L. Haynes PCS is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or Child and Adult Care Food Program (CACFP) supper meals to children enrolled at the school for the 2015-2016 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 by requesting the full RFP on or after **5/13/2016** from: Kristin Yochum at [kyochum@elhaynes.org](mailto:kyochum@elhaynes.org)

Proposals will be accepted **in person only** at 4501 Kansas Ave NW – Washington DC 20011 **by 5 pm on June 8, 2016**. No proposals submitted electronically or after 5 pm will be accepted.

**All bids not addressing all areas as outlined in the IFB will not be considered.**

**E.L. HAYNES PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Summer Projects: Construction, Landscaping, Playground Installation, Signage, and Office Cubicles**

E.L. Haynes Public Charter School (“ELH”) is seeking proposals for completing a variety of tasks to prepare our interior and exterior facilities for the coming school year. Tasks are related to light indoor construction, playground landscaping and installation, outdoor leveling and landscaping, outdoor signage and electrical, and office cubicles, at our facilities located at 4501 Kansas Avenue, NW and 3600 Georgia Ave, NW. Applicants may respond to any or all portions of the request for proposals.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, May 28, 2016. The RFP with bidding requirements can be obtained by contacting:

Kristin Yochum  
E.L. Haynes Public Charter School  
Phone: 202.667-4446 ext 3504  
Email: [kyochum@elhaynes.org](mailto:kyochum@elhaynes.org)

**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:

David P. Belt  
Single-Member District 7F01

## DEPARTMENT OF ENERGY &amp; ENVIRONMENT

**ABBREVIATED NOTICE OF SOLICITATION OF PUBLIC COMMENT****District's Draft Annual Ambient Air Monitoring Network Plan for 2017**

Notice is hereby given that the District of Columbia's (District) Draft Annual Ambient Air Monitoring Network Plan for 2017 is open for public comment before submittal to the U.S. Environmental Protection Agency (EPA) on July 1, 2016.

The Clean Air Act mandates that ambient air quality surveillance systems in state and local jurisdictions, including the District, meet requirements specified in Title 40 of the Code of Federal Regulations (C.F.R.), Part 58. Regulations require state and local monitoring agencies to conduct a periodic assessment of ambient air monitoring networks and propose any changes in an annual ambient air monitoring network plan. EPA established National Ambient Air Quality Standards (NAAQS) for six pollutants: ozone (O<sub>3</sub>), carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), lead (Pb), and particulate matter less than 10 microns aerodynamic diameter (PM<sub>10</sub>) and less than 2.5 microns (PM<sub>2.5</sub>). These are commonly known as the "criteria" pollutants. When air quality does not meet the NAAQS, the area is said to be in "non-attainment" with the NAAQS. For more information on air quality and the federal NAAQS, please visit EPA's website, <http://www.epa.gov/air/criteria.html> or DOEE's website, <http://doee.dc.gov/air>.

In the District's Annual Ambient Air Network Plan (Network Plan) for calendar year 2017, DOEE proposes to remove carbon monoxide (CO) monitors at the Verizon Center and River Terrace stations to avoid redundancy and remove the Lead (Pb) monitor at the McMillan station. Pollutant concentrations at all of these monitors are low, and the changes comply with monitoring requirements that were revised in April 2016. Finally, the Federal Reference Monitors (FRMs) at the McMillan, River Terrace, and Hains Point stations will be replaced with continuous Federal Equivalent Method (FEM) monitors. The rest of the existing network will be maintained.

The District of Columbia's Draft Annual Ambient Air Monitoring Network Plan for 2017 is available for review. A person may obtain a copy of the Plan by any of the following means:

**Download** from the Department's website, at [www.doee.dc.gov](http://www.doee.dc.gov), under the "Laws & Regulations" and "Public Notices & Hearings" tab;

**Email** a request to [khinsann.thaung@dc.gov](mailto:khinsann.thaung@dc.gov) with "Request copy of Draft Annual Ambient Air Monitoring Network Plan for 2017" in the subject line;

**Pick up a copy in person** from the Department reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. Call Khin Sann Thaug at (202) 535-2600 to make an appointment and mention this Plan by name;

**Write** the Department at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Draft Annual Ambient Air Monitoring Network Plan for 2017" on the outside of the envelope.

The Department is committed to considering the public's comments while finalizing this Plan. Interested persons may submit written comments on the draft Plan, which must include the person's name; telephone number; affiliation, if any; mailing address; a statement outlining their concerns; and any facts underscoring those concerns. **All comments must be submitted by Monday, June 6, 2016.**

Comments should be clearly marked "Draft Annual Ambient Air Monitoring Network Plan for 2017" and either:

- 1) Mailed or hand-delivered to the Department of Energy and Environment, Air Quality Division, 1200 First Street, NE, 5th Floor, Washington, DC 20002, Attention:, or
- 2) E-mailed to [khinsann.thaung@dc.gov](mailto:khinsann.thaung@dc.gov).

The Department will consider all timely received comments before finalizing the Plan. All comments will be treated as public documents and will be made available for public viewing on the Department's website. 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 email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Department's website. If the Department cannot read a comment due to technical difficulties, and the email address contains an error, the Department may not be able to contact the commenter for clarification and may not be able to consider the comment.



## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FILING OF A  
VOLUNTARY CLEANUP ACTION PLAN

**713, 735, 785 Lamont Street; 724, 726 Morton Street; and 3320 Georgia Avenue NW**

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 713, 735, 785 Lamont Street; 724, 726 Morton Street; and 3320 Georgia Avenue NW, Washington, DC 20010, is Arcadia Holladay LLC, 3400 Idaho Avenue NW, Suite 500, Washington, DC 20016. The application identifies the presence of dry cleaning solvents and petroleum hydrocarbons in soil and groundwater. The applicant intends to redevelop the property into multi-story residential multi-family buildings.

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-1A) for the area in which the property is located.

Please refer to Case No. VCP2016-039 in any correspondence related to this notice.

**DEPARTMENT OF HEALTH****PUBLIC NOTICE**

The District of Columbia Board of Audiology and Speech-Language Pathology (“Board”) hereby gives notice of a change in its regular meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.).

The Board’s next quarterly meeting will be changed from Monday, June 20, 2016, to Monday, June 6, 2016, from 9:15 AM to 12:15 PM. The meeting will be open to the public from 9:15 AM until 10:15 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, D.C. Law 18-350, the meeting will be closed from 10:15 AM to 12:15 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Health Professional Licensing Administration website at <http://doh.dc.gov/events> and to view additional information and agenda.

**DEPARTMENT OF HEALTH****MARIJUANA PRIVATE CLUB TASK FORCE****NOTICE OF TASK FORCE MEETING**

Pursuant to Mayor's Order 2016-032, dated March 3, 2016, the Director of the Department of Health, as Chairperson of the Marijuana Private Club Task Force (Task Force), will hold its next monthly meeting to provide a report making recommendations regarding the potential licensing and operation of venues at which marijuana may be consumed that are within the lawful parameters for the possession, use, and transfer of marijuana set forth in section 401(a)(1) of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-904.01(a)(1)). The meeting will be held on Friday, May 20, 2016, at 10:00 a.m. at 899 North Capitol Street, N.E., 2<sup>nd</sup> Floor, Room 216, Washington, D.C. 20002.

The Task Force consists of the Directors of the Department of Health, Department of Consumer and Regulatory Affairs, and Alcoholic Beverage Regulation Administration, the Chief of the Metropolitan Police Department, the Attorney General, two members of the Council of the District of Columbia, or their designees. The agenda for the meeting is as follows:

1. Review of Current Marijuana Use in the District of Columbia
2. Defining a Private Club in the District of Columbia
  - What does it mean to be a Private Club?
  - How is membership defined; what are the criteria for membership?
  - Identify agencies with a role in licensure/enforcement of these entities.
3. Identifying agencies with regulatory authority over Private Clubs and understanding their regulatory mandate
4. Review of Private Clubs in other jurisdictions
5. Next Meeting Agenda

The Task Force will not be preparing an annual schedule of its meetings because its mandate is to provide a report of recommendations to the Council within 120 days after first convening.

**DEPARTMENT OF HEALTH (DOH)  
HIV/AIDS, HEPATITIS, STD & TB ADMINISTRATION (HAHSTA)  
NOTICE OF FUNDING AVAILABILITY (NOFA)  
RFA # HAHSTA\_IDMV052716**

**IMPACT DMV HIV PROGRAM**

The Government of the District of Columbia, Department of Health (DOH) HIV/AIDS, Hepatitis, STD and TB Administration (HAHSTA) is soliciting proposals from organizations in the District of Columbia, Suburban Maryland and Northern Virginia to participate in the IMPACT DMV program. IMPACT DMV is a regional public, private, and health department collaborative demonstration project to develop through a health department–led, culturally sensitive and competent community collaboration a comprehensive model of service delivery.

This model is designed to provide a holistic health and wellness system that strengthens and supports Men who have Sex with Men of color and Transgender persons of color in healthy decision making, ensuring equitable access to screening, care and treatment, behavioral health, economic opportunity, peer supports, and other supportive services.

Up to **\$600,000** will be made available through a grant received from the U.S. Centers for Disease Control and Prevention (CDC) for Fiscal Year 2016. This funding aims to increase the capacity and provision of services to the focus populations among three initial program domains: Pre-Exposure Prophylaxis (PrEP) implementation, community wellness (addressing self-efficacy), and behavioral health (related to substance use and mental health). DOH is soliciting proposals for up to 15 awards to support the following program areas:

<b>PrEP</b>	<b>Community Wellness</b>	<b>Behavioral Health</b>
<ul style="list-style-type: none"> <li>• Outreach/Awareness</li> <li>• PrEP Adherence Counseling and Support Services</li> <li>• Integration of PrEP and hormone therapy</li> </ul>	<ul style="list-style-type: none"> <li>• Mandate wellness model</li> <li>• Sexual Health Learning Community</li> </ul>	<ul style="list-style-type: none"> <li>• Rewriting Inner Scripts (RISE) model</li> <li>• Other promising behavioral health interventions for MSM and transgender persons of color.</li> </ul>

**The release date for RFA # HAHSTA\_IDMV052716 is Friday, May 27, 2016.** The RFA will be available for pick up at 899 North Capitol Street, NE, 4th Floor, Washington, DC and on the website at <http://opgs.dc.gov/page/opgs-district-grants-clearinghouse> under the District Grants Clearinghouse on Friday, May 16, 2016. Submission deadline is **Monday, June 13, 2016 no later than 4:45 p.m.**

The Pre-Application meeting will be held in the HAHSTA offices on **Thursday, June 2, 2016** from 2:30pm – 4:00pm. Please contact Kenneth Pettigrew at [Kenneth.Pettigrew@dc.gov](mailto:Kenneth.Pettigrew@dc.gov) or (202) 741-0797 for additional information.

**DISTRICT OF COLUMBIA  
HISTORIC PRESERVATION REVIEW BOARD**

**NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS**

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following property as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

**Designation Case No. 15-12: Control Point Virginia Tower**

Southeast corner of 2<sup>nd</sup> Street and Virginia Avenue SW

Designated March 24, 2016

**Designation Case No. 15-05: Kelsey Temple Church of God in Christ**

1435 Park Road NW (Square 2676, Lot 813)

Designated April 28, 2016

**Designation Case No. 15-13: Palisades Playground**

5200 Sherier Place NW (Square 1415-S, Lot 802)

Designated April 28, 2016

**Designation Case No. 15-24: Glenwood Cemetery**

2219 Lincoln Road NW (Square 3505, Lot 802)

Designated April 28, 2016

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
NOTICE OF FUNDING AVAILABILITY**

Polly Donaldson, Director, Department of Housing and Community Development (DHCD), announces a Notice of Funding Availability (NOFA) for funding under the Community Development Block Grant (CDBG) program, and some limited local funds. The funds for this NOFA are being made available from anticipated FY 2017 DHCD budget funds. This NOFA is being conducted pursuant to the FY 2016 (October 1, 2015 to September 30, 2016) Consolidated Action Plan prepared for submission to the U.S. Department of Housing and Urban Development (HUD). **Housing Counseling, Storefront Facade Improvement, and Small Business Technical Assistance will be funded under this NOFA.**

The District will provide funding to community based non-profit organizations to provide counseling services and training for homeownership, home preservation, tenants, and tenant groups. These services will support several DHCD housing programs and initiatives, including, but not limited to the Home Purchase Assistance Program (HPAP), Single Family Residential Rehabilitation Program, Lead Safe Washington, Affordable Dwelling Units, and Inclusionary Zoning. In addition, grantees provide credit counseling, foreclosure counseling, tenant education, eviction counseling, as well as other housing services. The District also will provide funding to community based non-profit organizations for DHCD's Storefront Facade Improvement and Small Business Assistance programs. In the Façade Improvement Program, non-profits will be selected to implement storefront improvement projects in targeted commercial areas. In the Small Business Technical Assistance Program, non-profits will be selected to provide small business support services in targeted commercial areas that are intended to empower businesses and create jobs.

**All competitive Requests for Applications (RFAs) will be released on May 13, 2016. The RFA packages, including all application materials, will be available in CD format and can be obtained at DHCD, 1800 Martin Luther King Jr. Avenue, S.E., Washington, D.C. 20020, 1st floor reception desk daily from 8:15 am until 4:45 pm. This material also will be available from the DHCD website, [www.dhcd.dc.gov](http://www.dhcd.dc.gov), on or about May 13, 2016.**

**Completed applications for Housing Counseling, Façade Improvement, or Small Business Assistance must be delivered on or before 4:00 p.m., Eastern Time, June 10, 2016, to DHCD, 1800 Martin Luther King Jr. Avenue, S.E., 1st floor reception desk, Washington, D.C., 20020.**

**No applications will be accepted after the submission deadline.**

**Muriel Bowser, Mayor  
Government of the District of Columbia**

**Brian T. Kenner, Deputy Mayor for Planning and Economic Development**

**Polly Donaldson, Director  
Department of Housing and Community Development**

**IDEA PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

The IDEA Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for the following services:

- **General Contracting Services**
- **IT Support**

Please go to [www.ideapcs.org/requests-for-proposals](http://www.ideapcs.org/requests-for-proposals) to view a full RFP offering.  
Please direct any questions to [bids@ideapcs.org](mailto:bids@ideapcs.org).

Proposals shall be received no later than 5:00 P.M., Friday, May 20, 2016.

**INSPIRED TEACHING PUBLIC CHARTER SCHOOL****NOTICE OF INTENT TO ENTER INTO A SOLE SOURCE CONTRACT**

The Inspired Teaching Demonstration Public Charter School intends to enter into a Sole Source Contract with Center for Inspired Teaching to select, place, and train Teaching Residents in its classrooms. As outlined in its charter, the Inspired Teaching School serves as a training site for teachers in Center for Inspired Teaching's Inspired Teacher Certification Program; the Teaching Residents are a critical component of the school's mission and academic program. The cost of the contract for 2016-17 is expected to be \$300,000 for fourteen (10) Teaching Residents.



**KIPP DC PUBLIC CHARTER SCHOOLS****REQUEST FOR PROPOSALS****Event Catering Services**

KIPP DC is seeking a vendor to provide catering services for approximately 750 people for an event on Friday, July 22, 2016. Interested vendors should be able to fulfill all catering and event support needs. Proposals will be accepted until 6:00pm EST on Friday, May 20, 2016. Visit [www.kippdc.org/procurement](http://www.kippdc.org/procurement) to view the RFP and submit proposals, and contact [joseph.hassine@kippdc.org](mailto:joseph.hassine@kippdc.org) with any questions.

**NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Curriculum Kits**

KIPP DC intends to enter into a sole source contract with Lake Shore for Tools of the Mind Curriculum Kits. The decision to sole source is due to the fact that the instructional model is built on this curriculum. The cost of the contract will be approximately \$30,750.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-01**

October 16, 2015

VIA ELECTRONIC MAIL

Mr. Patrick Kabat, Esq.

RE: FOIA Appeal 2016-01

Dear Mr. Kabat:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on behalf of your client, the Reporters Committee for Freedom of the Press ("RCFP"). In your appeal, you assert that the Metropolitan Police Department ("MPD") has failed to respond to a request the RCFP submitted to the MPD.

Background

On April 21, 2015, the RCFP submitted a request to the MPD seeking: (1) contracts pertaining to body worn camera ("BWC") hardware and software; (2) requests for proposals and other communications related to MPD's efforts to find vendors for BWC software and hardware; (3) requests for proposals and other communications related to MPD's efforts to find vendors or software for redacting BWC videos; and (4) records, including proposals, communications, contracts, and invoices related to the redaction of MPD videos posted on YouTube and MPD's website.

On October 2, 2015, you appealed to this Office MPD's failure to produce any records, arguing that in the 5 months since RCFP's original request, not a single document has been released, despite numerous assurances by MPD that a review has been underway and that responsive documents would be released on a rolling basis. Moreover, you argue that a public hearing is scheduled for October 21, 2015, on a topic that directly relates to RCFP's FOIA request, and that MPD's lengthy period of noncompliance will inhibit RCFP's ability to fully participate in that hearing.

We notified the MPD of your appeal on October 6, 2015, when we received it. Generally, an agency has 5 business days to provide this Office with a response; however, section 412.6 of Title 1 of the District of Columbia Municipal Regulations (1 DCMR § 412.6) provides that an agency may request an extension. On October 14, 2015, the MPD requested a 5-day extension to respond to your appeal. In correspondence to this Office on the same date, you submitted a formal opposition to the granting of an extension. You argue that MPD's request for an extension is untimely and inappropriate given MPD's failure to produce any records.

### Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of your appeal is MPD’s failure to provide any documents responsive to a request RCFP submitted in April 2015. RCFP’s request seeks two categories of documents: (1) procurement records related to providers of BWC hardware and software, and invoices pertaining to redactions of MPD videos; and (2) communications related to MPD’s efforts to find vendors for BWC software and hardware. With respect to the first category of records, an MPD FOIA officer notified your client in an email dated April 30, 2015, that for “actual contracts and RFPs for BWC hardwar[e] and software, you should submit a FOIA request with the Office of Contracting and Procurement (OCP) as OCP provides contracting services to MPD.”<sup>1</sup> It appears that RCFP has not requested this information from OCP in the intervening months. As a courtesy, in light of the BWC hearing scheduled for October 21, 2015, this Office contacted OCP and asked it to produce the contracting records you seek on an expedited basis. OCP has already provided this Office with the solicitation, offer, and award to Taser International Inc., which we will provide to you under separate cover.

With respect to the second category of records RCFP requested, MPD has indicated in previous correspondence with you/ your client that it has completed its search and identified approximately 40,000 pages of documents. MPD has further indicated that it has been reviewing these documents to release them to RCFP on a rolling basis.

### Conclusion

Based on the circumstances here, and specifically the nearly 6-month delay in producing any documents to RCFP, we will forego our normal practice of permitting an agency to invoke an extension to respond to an appeal. We direct MPD to immediately begin releasing the non-procurement documents in its possession that are responsive to RCFP’s requests.

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<sup>1</sup> *See* Exhibit G of your appeal.

**Mr. Patrick Kabat  
Freedom of Information Act Appeal 2016-01  
October 16, 2016  
Page 3**

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-02**

October 19, 2015

Dr. Martin Jones

RE: FOIA Appeal 2016-02

Dear Dr. Jones:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Department of Disability Services (“DDS”) improperly withheld records you requested under the DC FOIA.

Background

On June 4, 2014, you submitted a request to the DDS seeking records pertaining to an investigation you believe DDS conducted that led to your termination from employment.

The DDS responded to your request on August 5, 2015, stating, “A diligent search of [DDS] files did not uncover any documents responsive to your request.”

On October 1, 2015, you appealed the DDS’s decision, asserting that you found the response letter to be “very disappointing.” You further stated your belief that “it appears someone is masking the results of those formal interviews[,]” and that you have “reason to believe that [Eleanor Holmes-Norton’s] office therefore forwarded the request to DDS and DDS decided not to respond . . .”

The DDS responded to your appeal in a letter to this Office dated October 19, 2015. In its response, the DDS reasserted that it conducted a reasonable search and found no documents responsive to your request.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

Under the DC FOIA, an agency is required to disclose materials only if they are “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is whether DDS conducted an adequate search for the documents you requested, and your belief that records exist despite DDS's representation to the contrary. DC FOIA requires only that a search conducted in response to a FOIA request be reasonably calculated to produce relevant documents. The test is not whether any documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to establish the adequacy of a search,

'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must make reasonable determinations as to: (1) the location of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68).

DDS provided this Office with specific information as to the search it conducted to respond to your request. DDS's FOIA officer described the search as follows:

As part of my investigation I inquired with the District's Office of the Chief Technology Officer ("OCTO") for any emails that contained Mr. Jones' name for the timeframe at issue from the individuals Mr. Jones indicated may have been involved in the "investigation." OCTO provided me with the results of the query, none of which contained emails that related to any "investigation" or allegations resulting [sic] Mr. Jones' termination from DDS. Though I did not limit my query, when I received OCTO's response, I focused on locating any emails between these people and DDS administrators and human capital employees that might constitute an "investigation" related to Mr. Jones' termination. I was unable to find any such emails.

I likewise asked DDS's Chief of Staff and DDS's Human Capital Administrator to review their files and provide me with information related to any investigation conducted by the agency resulting in Mr. Jones' termination. Upon review of their files, there were no investigative documents responsive to Mr. Jones' request.

Dr. Martin Jones  
Freedom of Information Act Appeal 2016-02  
October 19, 2015  
Page 3

In light of DDS's description of the search it conducted, we conclude that DDS complied with the applicable standard under DC FOIA; that is, DDS made a reasonable determination as to the locations of the records you requested and searched for the records in those locations. We therefore accept DDS's position that no responsive documents exist.

Conclusion

Based on the foregoing, we affirm the DDS's decision and hereby dismiss your appeal. This constitutes the final decision of this office.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Jason Botop, Assistant General Counsel, DDS (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-03**

October 21, 2015

VIA ELECTRONIC MAIL

Mr. Ryan Greenlaw

RE: FOIA Appeal 2016-03

Dear Mr. Greenlaw:

This letter responds to your above-captioned administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the District’s Office of Unified Communications (“OUC”) failed to respond to a request you submitted under the DC FOIA.

Background

On August 3, 2015, you sent a FOIA request to the OUC via certified mail seeking records for “all 911 calls between 8:00 pm and 9:00 pm on Thursday, August 30, that resulted in police dispatch to a location in the First Police District, Service Area 107.” Your request was further limited to specific enumerated criteria (e.g., police dispatch for trespassing, harassment, and vandalism). According to the United States Postal Service’s tracking system, your FOIA request was delivered to the OUC on August 5, 2015. Having not received a response from OUC, on September 11, 2015, you submitted a follow-up request on the DC FOIA website and received a case number. You submitted your appeal to the Mayor on the grounds that as of the date of your appeal, you had not received a response from OUC pertaining to either your initial or follow-up requests within statutory timeframe under D.C. Official Code § 2-532(c).

Pursuant to D.C. Official Code § 2-532(e), the OUC’s failure to timely respond to your request can be deemed a denial. Under D.C. Official Code § 2-532(e), you are also deemed to have exhausted your administrative remedies; however, you have chosen to exercise your right to an administrative appeal as provided under D.C. Official Code § 2-537. On appeal you assert that 9-1-1 calls responsive to your request should be disclosed except for redactions made pursuant to D.C. Official Code § 2-532(a)(2) (“Exemption 2”)<sup>1</sup> for personal information such as names, phone numbers, addresses, and other identifying characteristics of the persons involved. Further, you assert that there exists a public interest in disclosure to shed light on police response to persons with perceived or actual mental illness based on descriptions of 9-1-1 callers.

Upon receipt of your appeal, this Office notified the OUC and asked the agency to formally respond. OUC responded to this office on October 14, 2015, with an explanation as to why your

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<sup>1</sup> Exemption 2 prevents disclosure for “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”



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FOIA request should be denied.<sup>2</sup> The OUC also provided this office with the “Background Event Chronology” pertaining to the audio recording of the 9-1-1 call at issue and a copy of the audio recording itself for our *in camera* review.

The OUC asserts that it contacted you for clarification of the enumerated “protocol numbers” listed in your request and that you agreed to provide clarification as to your request but never did. The OUC further asserts that it conducted a search in response to your request, and the search returned only one 9-1-1 call resulting in dispatch to Patrol Service Area 107 on August 30, 2015, from 8:00 PM to 9:00 PM.<sup>3</sup> The OUC claims that this call is not responsive to your request because it pertains to a burglary alarm; therefore, it is outside the scope of the enumerated “protocol numbers” you specified. The OUC cites case law in support of its decision to limit its response to the scope of your request as drafted. *Miller v. Casey*, 730 F.2d 773, 777 (D.C. Cir.1984) (“The agency [is] bound to read it as drafted, not as either agency officials or [the requester] might wish it was drafted.”).

The OUC asserts that even if the call is considered responsive, the OUC would disclose only a “Background Event Chronology” for the call and a description of the recording with a *Vaughn* index because the recording of the 9-1-1 call itself is protected from disclosure under Exemption 2, citing *New York Times Co. v. Nat’l Aeronautics and Space Admin.* 920 F.2d 1002 (C.A. D.C. 1990). The OUC raises two arguments against your assertion that public interest favors disclosure of the recording: (1) your appeal focuses on the public interest of police conduct, but the OUC’s records would not shed light on activity of the Metropolitan Police Department, which is a separate agency; and (2) you argue that there is a public interest in police response to descriptions of actual or perceived mental illness; however, “the only record obtained as a result of the search of OUC records does not involve any suspects or persons that could possibly be deemed as mentally ill . . . The police located no persons on the premises.”

### Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to inspect a public record, however, is subject to exemptions. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989). Because you filed your appeal before OUC explained its reason for denying your request, we base our analysis on the arguments you raised in the appeal as well as those we anticipate you would have raised had you received OUC’s substantive denial. As a result, we shall address

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<sup>2</sup> A copy of the OUC’s response is attached hereto.

<sup>3</sup> See signed statement of acting FOIA Officer, which is attached hereto.

whether OUC conducted an adequate search in response to your request, whether the result of the OUC's search is responsive, and whether the OUC may withhold the 9-1-1 recording at issue under Exemption 2.

DC FOIA requires that a search be reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. United States DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation unsupported by any factual evidence that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States DOJ*, 578 F.2d 261 (9th Cir. 1978).

To establish the adequacy of a search,

'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

In conducting an adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). The determinations as to likely locations of records would involve knowledge of the agency's record creation and maintenance practices. See *Pub. Emps. for Env'tl. Responsibility v. U.S. Section Int'l Boundary and Water Comm'n.*, 839 F. Supp. 2d 304, 317-18 (D.D.C. 2012). Generalized and conclusory allegations cannot suffice to establish an adequate search or the availability of exemptions. See *In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).

Here, OUC has indicated that its search was conducted by an acting FOIA officer who is knowledgeable about OUC's record creation and maintenance practices. This individual identified and searched the database where the responsive information would be located, and the search resulted in finding one 9-1-1 call within the timeframe and geographic area specified in your request. Based on the OUC's description of the search, we find that it was adequate under the DC FOIA.

The OUC maintains that although it located one 9-1-1 recording that took place within the timeframe and geographic area you requested, this call does not match the enumerated "protocol numbers" that you specified in your request. The OUC states that the 9-1-1 call was made in response to a suspected burglary, which is not one of the "protocols" you list. Even if a request "is not a model of clarity," an agency should carefully consider the nature of each request and give a reasonable interpretation to its terms and overall content. *LaCedra v. EOUSA*, 317 F.3d 345, 347-48 (D.C. Cir. 2003) (concluding that agency failed to "liberally construe" request for "all documents pertaining to [plaintiff's] case" when it limited that request's scope to only those

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records specifically and individually listed in request letter, because “drafter of a FOIA request might reasonably seek all of a certain set of documents while nonetheless evincing a heightened interest in a specific subset thereof” (citing *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995)).

Since the “protocol numbers” you provided in your request do not match the OUC’s categorization methods, the acting FOIA officer at the OUC contacted you in attempt to obtain additional information about the records you were seeking. This employee states that you advised her that you would provide her with this information but you never did.<sup>4</sup> Nevertheless, under the guidance of *LaCedra*, the call at issue should be considered responsive because a heightened interest in a specific subset of records does not override the more general request. In addition, the call is responsive under a narrower interpretation. One of the enumerated “protocol numbers” of your request was for trespass. Trespass is a necessary element of burglary. *See* D.C. Official Code § 22–801 (defining burglary). The call at issue involved a potential burglary; therefore, it involves trespass. As a result, we find that the call is responsive to your request as drafted.

The OUC states that if the 9-1-1 call it located is determined to be responsive, the OUC would release a “Background Event Chronology” and descriptive *Vaughn* index pertaining to the recording but would withhold the audio recording itself under Exemption 2. Therefore, we consider whether the recording may be withheld in its entirety pursuant to Exemption 2. Under Exemption 2, determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989).

The first part of the analysis is to determine whether a sufficient privacy interest exists. *Id.* A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep’t of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). The OUC cites *New York Times Co. v. Nat’l Aeronautics and Space Admin.*, 920 F.2d 1002, for the proposition that records of 9-1-1 calls are exempt from disclosure in their entirety as personal records. *New York Times* does not involve recorded 9-1-1 calls, but rather the final intercom recordings of the crew of the 1986 Challenger space shuttle disaster. *New York Times Co.*, 920 F.2d at 1004. Based on the specific facts and circumstances of the case, the court in *New York Times* found that the voices and vocal inflections of the crew immediately before their deaths were exempt because disclosure would constitute a clearly unwarranted invasion of personal privacy of the crew and their surviving family members. *Id.* at 1009-10.

We do not find that the *New York Times* case provides a blanket exemption for recordings of all 9-1-1 calls.<sup>5</sup> After reviewing the audio of the 9-1-1 call, which was initiated by a security

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<sup>4</sup> *See* signed statement of the acting FOIA Officer, attached hereto.

<sup>5</sup> Privacy interests may prevent disclosure for 9-1-1 calls made by victims or witnesses at a time of heightened fear and vulnerability when the vocal inflection, the words chosen, and the manner of delivery pose a substantial likelihood of presenting one in an embarrassing or humiliating light. *See* FOIA Appeal 2011-61. Those factors are not present here.

monitoring company employee in response to the activation of an automated security alarm, we find that the only related privacy interests are those involving personally identifiable information. In general, there is a sufficient privacy interest in personal identifying information.

Information protected under Exemption 6 [the equivalent of Exemption (2) under the federal FOIA] includes such items as a person's name, address, place of birth, employment history, and telephone number. *See Nat'l Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989); *see also Gov't Accountability Project v. U.S. Dep't of State*, 699 F.Supp.2d 97, 106 (D.D.C. 2010) (personal email addresses); *Schmidt v. Shah*, No. 08–2185, 2010 WL 1137501, at \*9 (D.D.C. Mar. 18, 2010) (employees' home telephone numbers); *Schwanner v. Dep't of the Army*, 696 F.Supp.2d 77, 82 (D.D.C. 2010) (names, ranks, companies and addresses of Army personnel); *United Am. Fin., Inc. v. Potter*, 667 F.Supp.2d 49, 65–66 (D.D.C.2009) (name and cell phone number of an “unknown individual”).

*Skinner v. United States DOJ*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011).

Information such as names, phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994) (“An individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.”). As a result, we find that there is a sufficient privacy interest in the personally identifiable information in the 9-1-1 call.

The second part of a privacy analysis examines whether the public interest in disclosure outweighs the individual privacy interest. The Supreme Court has stated that the analysis must be conducted with respect to the purpose of FOIA, which is “to open agency action to the light of public scrutiny.” *Department of Air Force v. Rose*, 425 U.S. 352, 372 (1976). The public interest argument you raise in your appeal is not relevant to the call at issue. Our *in camera* review of the recording confirms the OUC’s representation that the conversation between the caller and the 9-1-1 operator contains neither a description of nor an interaction with an individual with actual or perceived mental illness. In the absence of a relevant countervailing public interest, we find that personally identifiable information in the call (i.e., the names, personal phone numbers, employee identification number, and address) is protected from disclosure pursuant to Exemption 2.

D.C. Official Code § 2-534(b) requires an agency to produce “[a]ny reasonably segregable portion of a public record . . . after deletion of those portions” that are exempt from disclosure; however, cases have held that records may be withheld in their entirety if an agency lacks the technological capacity to remove exempt portions of a record.<sup>6</sup> In prior FOIA appeal decisions,

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<sup>6</sup> *Milton v. United States DOJ*, 842 F. Supp. 2d 257, 259-61 (D.D.C. 2012) (explaining that segregability analysis focuses on “the agency’s current technological capacity” and holding that responsive telephone conversations were not reasonably segregable because an agency did not possess technological capacity to segregate non-exempt portions of requested records); *see also*

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the OUC has been found to lack the technical capacity to redact audio recordings.<sup>7</sup> The OUC did not indicate in its response to your appeal whether it currently has the technical capacity to redact audio recordings. If OUC has this capability, it shall disclose the audio recording of the 9-1-1 call at issue, with redactions made to personally identifiable information. If the OUC still lacks the technical capacity to redact the recording, the recording is exempt from disclosure in its entirety.

### Conclusion

Based on the foregoing, we affirm in part, and remand it in part the OUC's decision. The OUC shall, within 5 business days of the date of this decision, disclose a "Background Event Chronology" redacted in accordance with the DC FOIA, as well as a descriptive *Vaughn* index pertaining to the 9-1-1 call discussed in this decision. In addition, if the OUC has the technical capacity to redact the audio recording, it shall disclose the recording with redactions made in accordance with the DC FOIA.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

/s John A. Marsh\*

John A. Marsh  
Legal Fellow  
Mayor's Office of Legal Counsel

cc: Kelly Brown, FOIA Officer, OUC (via email)

\*Admitted in Maryland; license pending in the District of Columbia; practicing under the supervision of members of the D.C. Bar

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*Mingo v. United States DOJ*, 793 F. Supp. 2d. 447, 454-55 (D.D.C. 2011) (concluding that nonexempt portions of recorded telephone calls are inextricably intertwined with exempt portions because an agency "lacks the technical capability" to segregate information that is digitally recorded); *Antonelli v. BOP*, 591 F. Supp. 2d 15, 27 (D.D.C. 2008) (same); *Swope v. United States DOJ*, 439 F. Supp. 2d 1, 7 (D.D.C. 2006) (same).

<sup>7</sup> See, e.g., FOIA Appeal 2010-08.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-04**

October 16, 2015

VIA E-MAIL

Mr. Ryan Greenlaw

RE: FOIA Request 2016-04

Dear Mr. Greenlaw:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") failed to respond to your request for certain reports and forms created on July 30, 2015, in the First Police District.

It is our understanding that you initially submitted a request to MPD regarding an incident on July 30, 2015, which MPD denied. Subsequently, you refined your request and resubmitted it on August 18, 2015; however, MPD inadvertently regarded it as duplicative of your first request and did not respond to you. On September 10, 2015, you contacted MPD to inquire as to the status of your refined request, whereupon MPD realized that the request had erroneously been filed as a duplicate of your first request. At that point, MPD informed you that your refined request would be processed. To date, you have not received a response, despite MPD's obligation under D.C. Official Code § 2-532(c) to answer your request within 15 business days.<sup>1</sup>

Pursuant to D.C. Official Code § 2-532(e), MPD's failure to timely respond to your request can be construed as a denial, and you have accordingly exercised your right to administratively appeal said denial. MPD has been aware of your request since at least September 10, 2015, when it realized that the request was erroneously regarded as a duplicate. MPD advised this Office that your request was delayed after September 10, 2015, due to administrative error.<sup>2</sup> Although this Office acknowledges your right to file an administrative appeal because your request has been constructively denied, MPD has informed us that your request is in fact currently being processed.

Based on the foregoing, we direct the MPD to provide a response to your August 18, 2015, request within 5 business days from the date of this decision. We dismiss your appeal because it is not ripe for a substantive analysis of MPD's determination; however, you may assert any challenge, by separate appeal, to the response MPD provides you within 5 business days.

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<sup>1</sup> An agency may also request an extension of an additional 10 business days to respond under D.C. Official Code § 2-532(d), but MPD does not appear to have made such a request here; rather, MPD reassigned your request to several different individuals and kept re-starting the 15-day response period.

<sup>2</sup> A copy of MPD's response is attached.

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If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-05**

November 2, 2015

Mr. Christopher Kutner

RE: FOIA Appeal 2016-05

Dear Mr. Kutner:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Department of Insurance, Securities and Banking (“DISB”) improperly withheld records your client requested under the DC FOIA.

Background

On August 31, 2015, your client submitted a request under the DC FOIA to the DISB seeking a copy of the health insurance contracts issued to your client from 2003 to present by CareFirst, an insurance company, along with “any amendments, riders or supplemental provisions that describe [your client’s] benefits, applicable co-insurance, deductible, out-of-pocket maximums, etc.”<sup>1</sup>

DISB’s FOIA coordinator responded to the request on September 11, 2015, by enclosing your client’s 2014 and 2015 contracts with CareFirst. The FOIA coordinator noted that “both documents were not in DISB’s files, but were submitted to us by CareFirst.” You responded to DISB on September 14, 2015, inquiring why policies, riders, and other related documents prior to 2013 were not included. DISB’s FOIA coordinator replied that FOIA does not require agencies to do research or create records to respond to a request. She further stated that “[a] search of the DISB’s Compliance Analysis Division program files . . . confirms that neither the electronic or paper based files contained or created any government or public documents. Nor did either file contain knowledge of the existence of such a document.” According to DISB, the 2014 and 2015 contracts it provided you were “not in DISB’s files, as they were not public records relating to the affairs of government and the official acts of officials or employees, but were submitted to [DISB] by CareFirst. It has been determined that . . . DISB has no records [of] responsive documents.”

You appealed DISB’s decision on October 13, 2015, arguing that CareFirst “has deliberately withheld the subject policy,” that you believe the insurance company<sup>2</sup> “may have destroyed

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<sup>1</sup> Your appeal refers to “six (6) years of requests to CareFirst and the DISB,” but provides no further details or documentation. Therefore, the scope of this appeal is limited to the FOIA request submitted to DISB on August 31, 2015.

<sup>2</sup> We note that CareFirst is not a public agency and is therefore not subject to FOIA or this Office’s jurisdiction.



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evidence” and that DISB “may be in possession of other documents that were not released to us, like the policies, riders and description of benefits dated prior to 2013.”

DISB responded to your appeal in an October 22, 2015 email to this Office reiterating that “DISB does not have documents responsive to the request.” DISB further claimed that it had no obligation to do research to compile data that would be responsive to the FOIA request. Upon request from this Office, DISB provided a subsequent response that contained a short declaration describing the search it conducted for the records at issue.

### Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is the adequacy of the search and your belief that more records exist. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government’s search for responsive documents was adequate. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

To conduct a reasonable and adequate search, an agency must: (1) make a reasonable determination as to the locations of records requested; and (2) search for the records in those locations. *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). This first step may include a determination of the likely electronic

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databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files that the agency maintains. *Id.*

An agency can demonstrate that these determinations have been made by a “reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched . . . .” *Id.* Conducting a search in the record system most likely to be responsive is not by itself sufficient; “at the very least, the agency is required to explain in its affidavit that no other record system was likely to produce responsive documents.” *Id.* (internal quotations omitted).

Here, in response to your FOIA request, the DISB provided two documents: CareFirst contracts pertaining to your client for the years 2014 and 2015. DISB indicated that CareFirst submitted these contracts to DISB, but it is unclear whether the contracts were submitted to DISB in response to this FOIA request or in another context. In any event, the fact that CareFirst provided the documents to DISB is ostensibly the reason why DISB claims it “does not have documents responsive to the request.”

When this Office asked DISB to describe the search that led to its disclosure of your clients’ 2014 and 2015 contracts, DISB provided a declaration from Robley Backus, director of DISB’s Compliance Analysis Division. Mr. Backus described the search he conducted, in which he reviewed DISB’s complaint database “using the name ‘Hollander’ . . . . All complaints are logged into this database . . . . Since hard copy files are typically destroyed after six (6) months to twelve (12) months, the only place to find documents [] relating to a complaint over a year old is the complaint database.” Mr. Backus further indicated that he found one document responsive to your request – a “Scope of Coverage” document issued by CareFirst to your client, effective March 1, 2010. According to Mr. Backus, he forwarded this document to DISB’s FOIA officer on September 8, 2015. Notwithstanding this declaration, DISB made no reference to the 2010 scope of coverage in its correspondence to you or to this Office, to which it claimed that it possessed no documents responsive to your request.

We also find flaws with respect to the search Mr. Backus conducted. In his undated declaration, Mr. Backus states that he searched DISB’s complaint database for responsive records; however, your August 31, 2015 FOIA request did not ask for records pertaining to a complaint. Requests must be construed as drafted and not as how the requester or agency wishes they had been drafted. *Miller v. Casey*, 730 F.2d 773, 774 (D.C. Cir. 1984). The requested records were “the contract, insurance policy, summary and schedule of benefits.” It is unclear why the search was limited to complaints. DISB’s declaration does not indicate whether it determined the universe of possible record depositories where the insurance contracts might be located. Instead, DISB limited its search to a single database, using one search term - the requester’s last name.

DISB has paradoxically stated in its response to your appeal that despite having sent you two contracts, “DISB does not have documents responsive to the request.” It appears that DISB has taken the position that documents that were not originally drafted by a government employee, but that are retained by government agency are not public records subject to FOIA. This is an incorrect interpretation of D.C. Official Code § 2-502(18), which defines “public record” as:

Mr. Christopher Kutner  
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all books, papers, maps, photographs, cards, tapes, recordings, vote data (including ballot-definition material, raw data, and ballot images), or other documentary materials, regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Public records include information stored in an electronic format.

D.C. Official Code § 2-502(18).

Mere possession of a document by an agency makes it, subject to exemption, a public record; there is no authorship requirement for a record to be considered public. As a result of DISB producing two documents, it is unclear if the agency relied on its interpretation of the definition of public records in asserting that “DISB does not have documents responsive to the request.”

Here, based on DISB’s declaration and its responses to you and to our Office, we conclude that the search DISB conducted was not reasonable pursuant to its obligations under DC FOIA.

### Conclusion

Based on the foregoing, we hereby remand your appeal. Within five (5) business days, DISB shall conduct a new search and provide you with: (1) the 2010 contract identified in the Backus declaration, subject to appropriate redactions; (2) an affidavit or declaration describing the new search conducted; and (3) all responsive records located, subject to appropriate redaction.

In conducting its second search, DISB shall:

- Identify all possible repositories likely to contain a responsive document;
- Search for the requested records, and not limit the search to complaints;
- Apply more search terms than the requester’s last name (e.g, requester’s policy number, the department file number); and
- Apply to its search the definition of public documents set forth in D.C. Official Code § 2-502(18).

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director

cc: J. Carl Wilson, Acting General Counsel, DISB (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-06**

October 20, 2015

VIA ELECTRONIC MAIL

Moxila A. Upadhyaya, Esq.

RE: FOIA Request 2016-06

Dear Ms. Upadhyaya:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act on behalf of your clients, Mr. and Mrs. Chukwulete Ukeekwe. In the appeal, you assert that the Department of Energy and Environment (“DOEE”) failed to respond to a request that was submitted on August 12, 2015, for records pertaining to property located at 1251 Saratoga Avenue, N.E.

The DOEE advised this Office that it responded to your clients’ request on October 5, 2015, but discovered that the file size may have prevented electronic delivery of the records. As a result, the DOEE sent the records again in a different electronic format on October 19, 2015.

Based on the foregoing, we consider your appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the DOEE’s response.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director

cc: Norah Hazelton, DOEE (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-07**

November 3, 2015

VIA ELECTRONIC MAIL

Ms. Lisa Burton

RE: FOIA Request 2016-07

Dear Ms. Burton:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act ("DC FOIA"). In your appeal, you assert that the University of the District of Columbia ("UDC") failed to respond to your request for records related to UDC's investigation into your Equal Employment Opportunity complaint and UDC's selection process for supervisory police officers and a police chief.

You submitted the request at issue on July 23, 2015. In your appeal, you include a chronology of your interactions with UDC related to your FOIA request. Under D.C. Official Code § 2-532(c), agencies are required to answer FOIA requests within 15 business days.<sup>1</sup> Prior filing your appeal, UDC did not provide you with an answer or a clear denial in response to your request. Pursuant to D.C. Official Code § 2-532(e), UDC's failure to respond to your request within the statutory timeframe can be deemed a denial, and you accordingly exercised your right to an administrative appeal in accordance with D.C. Official Code § 2-537.

Subsequent to the filing of your appeal, on November 2, 2015, UDC provided you with responsive records, some of which were redacted. According to UDC, the redactions were made pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption 2") and D.C. Official Code § 2-534(a)(4) ("Exemption 4"). UDC provided you with the statutory definitions for Exemptions 2 and 4. Exemption 2 may be asserted to protect personal privacy, and Exemption 4 is most often asserted to protect the deliberative process but has been construed to protect any privileges available during litigation. Further, UDC identified the applicable exemption in each portion of the records that it redacted.

Since the crux of your appeal concerned UDC's failure to respond to your request, we consider your appeal to be moot now that UDC has provided you with a complete response. Although we dismiss your appeal on these grounds, you may assert any challenge to UDC's response by submitting a new appeal.

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<sup>1</sup> An agency may also request an extension of an additional 10 business days to respond under D.C. Official Code § 2-532(d), which UDC requested here; however, UDC did not answer your request within the timeframe of the extension either.

Ms. Lisa Burton  
Freedom of Information Act Appeal 2016-07  
November 3, 2015  
Page 2

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Stacie Y.L. Mills, Assistant General Counsel, UDC (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-08**

November 9, 2015

VIA ELECTRONIC MAIL

Lucas M. Barnekow, Esq.

RE: FOIA Appeal 2016-08

Dear Mr. Barnekow:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that the Department of Health ("DOH") improperly withheld records the Public Defender Service for the District of Columbia ("PDS") requested under the DC FOIA.

Background

On August 21, 2015, Carolyn Slenska, an employee of the PDS, submitted a request to the DOH for a copy of any and all records, files and information in DOH's possession or control pertaining to the licensure of a particular physician, including her application for license, credentials, and other specified records. On September 28, 2015, the DOH responded to Ms. Slenska, stating that DOH had conducted a search of its records and could not find any information concerning the named physician in its files. Ms. Slenska inquired how this was possible since the named physician is licensed in the District through the year 2015 according to the medical license directory on the DOH's website. DOH's senior assistant general counsel responded, "[a]fter having checked with everyone connected with the licensing file for [the named physician], it has been determined that such file was either misplaced or lost, most likely in the move of DOH to its current location several years ago." DOH further indicated that the physician is licensed until December 31, 2016, and any disciplinary action taken against her would be posted on DOH's website.

On appeal, you challenge the DOH's response to the PDS' request, contending that DOH failed to establish that it made a reasonable or adequate search for the licensing file of the physician specified in the request and failed to consider whether any responsive records may be located somewhere other than the physician's licensing file.<sup>1</sup> The PDS also argued that the disciplinary action database on DOH's website contains records from 2009 to the present and does not satisfy PDS' FOIA request because it does not include "records, files or other such information pertaining to the complaints or investigations that precipitated any such disciplinary actions, nor

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<sup>1</sup> DOH's response to the appeal referenced a second named physician for whom you had requested information and for which you submitted a FOIA appeal. While this Office never received the appeal concerning the second physician, this decision applies equally to that request and appeal.

Mr. Lucas Barnekow  
Freedom of Information Act Appeal 2016-08  
November 9, 2015  
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does it include records, files or other information about complaints or investigations that did not result in a public order of disciplinary action taken.”

This Office asked the DOH to describe its search for the physician’s records. The DOH provided responded on November 5, 2015,<sup>2</sup> describing its search of an electronic database, on-site file room, and off-site storage facility for the physician’s records. After multiple efforts on the part of DOH, on or around November 5, 2015, records for the physician were located at an off-site storage facility. The DOH stated that once it received the records, the records would be reviewed and disclosed subject to redactions for applicable exemptions under DC FOIA. On November 6, 2015, the DOH sent a follow-up response to clarify aspects of its search and plan for disclosure.<sup>3</sup> In its follow-up response, the DOH stated that in addition to records from the storage facility the DOH also located records related to licensure. The DOH attached both redacted and unredacted versions of the documents for this Office’s *in camera* review and reiterated that it would disclose to you records from the storage facility and from the electronic database subject to redactions for applicable exemptions under DC FOIA.

### Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *See e.g.* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is the adequacy of the search and your belief that more records exist. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the

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<sup>2</sup> A copy of the DOH’s response is attached.

<sup>3</sup> A copy of the DOH’s follow-up response is attached.



Mr. Lucas Barnekow  
Freedom of Information Act Appeal 2016-08  
November 9, 2015  
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'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

To make a reasonable and adequate search, an agency must make reasonable determinations as to (1) the location of records requested, and (2) the search for the records in those locations. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008) (citing *Oglesby*, 920 F.2d at 68). Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *Id.*

An agency can demonstrate that these determinations have been made by a "reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched . . ." *Id.* Conducting a search in the record system most likely to be responsive is not by itself sufficient; "at the very least, the agency is required to explain in its affidavit that no other record system was likely to produce responsive documents." *Id.* (internal quotations omitted).

In this matter, the DOH has adequately identified the locations for the requested records specifying the electronic database, file room, and storage facility where the responsive records could be located. Prior to the filing of your appeal the DOH did not adequately search those locations. After your appeal was filed, however, the DOH conducted a more thorough search and records were located in the storage facility and electronic database. As a result, we find that the DOH ultimately conducted searches that were adequate. The DOH has represented that it will disclose the responsive records discovered, subject to redactions made under applicable exemptions to the DC FOIA.

### Conclusion

Based on the foregoing, we find that your appeal is on moot on the grounds that DOH ultimately conducted an adequate search in connection with your FOIA request. Although we shall dismiss this appeal, you are free to assert any challenge to DOH's disclosure by separate appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director

cc: Edward Rich, Senior Assistant General Counsel, DOH (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-09**

November 3, 2015

VIA U.S. MAIL

Mr. George Fadero

RE: FOIA Appeal 2016-09

Dear Mr. Fadero:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). In your appeal, you assert that records you requested pertaining to a named police officer were improperly withheld by the Metropolitan Police Department ("MPD") and the Office of Police Complaints ("OPC").

Background

Based on the attachments you included in your appeal, it appears that you submitted requests under the DC FOIA to both the OPC and MPD for complaints or cases against a specific named officer of the MPD. On August 1, 2014, the OPC denied your request, stating that without admitting or denying the existence of the requested records, the disclosure thereof would constitute an unwarranted invasion of personal privacy. In its denial, the OPC cited D.C. Official Code § 2-534(a)(2) ("Exemption 2") and D.C. Official Code § 2-534(a)(3)(C) ("Exemption 3(C)") as grounds for exempting any existing records from disclosure. On August 20, 2014, the MPD sent you a similar denial letter citing Exemption 2.

On appeal you challenge the decisions of both agencies, asserting that the requested information is necessary to prove you have been wrongfully convicted of a crime. You state that the records would allow you the opportunity to show the lack of credibility of the police officer and exonerate you.

Both the OPC and the MPD sent this Office responses to your appeal on November 2, 2015. The OPC reaffirmed its earlier position asserting authority from cases, statutes, and prior FOIA appeal determinations to support its decision that the records would be exempt under Exemption 2 and Exemption 3(C).<sup>1</sup> Similarly, the MPD reaffirmed its denial under Exemption 2, citing case law and a prior FOIA appeal determination in support of its position that privacy interests can preclude the disclosure of complaints against police officers under the DC FOIA.<sup>2</sup> Additionally,

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<sup>1</sup> A copy of the OPC's response is attached to this determination.

<sup>2</sup> A copy of the MPD's response is attached to this determination.

both the OPC and the MPD provide further support for their use of a “Glomar” response, neither confirming nor denying the existence of the records sought.

### Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Exemptions 2 and 3(C) of the DC FOIA relate to personal privacy. Exemption 2 applies to “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Exemption 3(C) provides an exemption for disclosure for “[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy.” While Exemption 2 requires that the invasion of privacy be “clearly unwarranted,” the word “clearly” is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption 2. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

Records pertaining to investigations conducted by the MPD and OPC are exempt from disclosure under Exemption 3(C) if the investigations focus on acts that could, if proven, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep’t of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). *See also Rugiero v. United States Dep’t of Justice*, 257 F.3d 534, 550 (6th Cir. 2001) (The exemption “applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well.”). Since the records you seek relate to investigations that could result in civil or criminal sanctions, Exemption 3(C) applies to your request.

Determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of one’s individual privacy interests against the public interest in disclosing the disciplinary files. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 756. On the issue of privacy interests, the D.C. Circuit has held:

[I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose

of Exemption 7(C)<sup>3</sup>. “The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.”

*Stern v. FBI*, 737 F.2d 84, 91-92 (D.C. Cir. 1984) (quoting *Bast v. United States Dep’t of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981)).

Here, we find that there is a sufficient privacy interest associated with a police officer who is being investigated for wrongdoing based on allegations. “[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under [(3)(C)].” *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). An agency is justified in not disclosing documents that allege wrongdoing even if the accused individual was not prosecuted for the wrongdoing, because the agency’s purpose in compiling the documents determines whether the documents fall within the exemption, not the ultimate use of the documents. *Bast*, 665 F.2d at 1254.

As discussed above, the D.C. Circuit in the *Stern* case held that individuals have a strong interest in not being associated with alleged criminal activity and that protection of this privacy interest is a primary purpose of the investigatory records exemption. We find that the same interest is present with respect to civil disciplinary sanctions that could be imposed on an MPD officer. The records you seek may consist of mere allegations of wrongdoing, the disclosure of which could have a stigmatizing effect regardless of accuracy.

We say “may consist” because the MPD and OPC have maintained that they will neither confirm nor deny whether complaint records exist relating to the MPD officer about whom you seek records. This type of response is referred to as a “Glomar” response, and it is warranted when the confirmation or denial of the existence of responsive records would, in and of itself, reveal information exempt from disclosure. *Wilner v. Nat’l Sec. Agency*, 592 F.3d 60, 68 (2nd Cir. 2009). Here, the Glomar response is justified because if a written complaint or subsequent investigation against the officer you have named exists, identifying the written record would likely result in the harm that the DC FOIA exemptions were intended to protect.

With regard to the second part of the privacy analysis under Exemption 3(C), we examine whether the public interest in disclosure is outweighed by the individual privacy interest at issue. On appeal, you argue that disclosure of the records could allow you establish your innocence and exonerate you from a wrongful conviction. The public interest in the disclosure of a public employee’s disciplinary files was addressed by the court in *Beck v. Department of Justice, et al.*, 997 F.2d 1489 (D.C. Cir. 1993). In *Beck*, the court held:

The public’s interest in disclosure of personnel files derives from the purpose of the [FOIA]--the preservation of “the citizens’ right to be informed about what

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<sup>3</sup> Exemption 7(C) under the federal FOIA is the equivalent of Exemption 3(C) under the DC FOIA.

their government is up to.” *Reporters Committee*, 489 U.S. at 773 (internal quotation marks omitted); *see also Ray*, 112 S. Ct. at 549; *Rose*, 425 U.S. at 361. This statutory purpose is furthered by disclosure of official information that “sheds light on an agency’s performance of its statutory duties.” *Reporters Committee*, 489 U.S. at 773; *see also Ray*, 112 S. Ct. at 549. Information that “reveals little or nothing about an agency’s own conduct” does not further the statutory purpose; thus the public has no cognizable interest in the release of such information. *See Reporters Committee*, 489 U.S. at 773. The identity of one or two individual relatively low-level government wrongdoers, released in isolation, does not provide information about the agency’s own conduct.

*Id.* at 1492-93.

In the instant matter, disclosing the records at issue would not shed light on either MPD’s or OPC’s performance of their statutory duties and would constitute an invasion of the individual police officer’s privacy interests under Exemptions 3(C) and (2) of the DC FOIA.<sup>4</sup>

### Conclusion

Based on the forgoing we affirm the decisions issued by the MPD and the OPC and dismiss your appeal.

This shall constitute the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director

/s John A. Marsh\*

John A. Marsh  
Legal Fellow

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<sup>4</sup> We also note that any public interest that would be served by disclosing the wrongdoings of police officers might be served by the Office of Police Complaints’ (“OPC”) annual, redacted, online report of all sustained findings of misconducts, along with extensive data regarding the type of allegations made and the demographics of complainants. *See Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). OPC’s annual reports may be found at <http://policecomplaints.dc.gov/page/annual-reports-for-OPC>

Mr. George Fadero  
Freedom of Information Act Appeal 2016-09  
November 3, 2015  
Page 5

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)  
Michael G. Tobin, Executive Director, OPC (via email)  
Nykisha, Cleveland, Public Affairs Specialist, OPC (via email)

\*Admitted in Maryland; license pending in the District of Columbia; practicing under the supervision of members of the D.C. Bar

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-10

October 28, 2015

VIA REGULAR MAIL

Toby Evans

RE: FOIA Appeal 2016-10

Dear Mr. Evans:

I am writing in response to the appeal you sent to the Mayor under the Freedom of Information Act, in which you indicate that the D.C. Superior Court has failed to respond to your request for documents. Under the District of Columbia Freedom of Information Act ("D.C. FOIA"), the Mayor is authorized to review public records determinations made by a public body, with the exception of the Council of the District of Columbia. *See* D.C. Official Code § 2-537(a). The term "public body" means the Mayor, a District agency, or the Council of the District of Columbia. D.C. Official Code § 2-502. Accordingly, the D.C. Superior Court is not subject to the D.C. FOIA, and the Mayor has no jurisdiction to review your appeal.

Based on the foregoing, we hereby dismiss your appeal. This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker  
Associate Director

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-11**

November 24, 2015

VIA ELECTRONIC MAIL

Zenia Sanchez Fuentes

RE: FOIA Appeal 2016-11

Dear Ms. Fuentes:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Department of Health Care Finance (“DHCF”) improperly withheld records you requested under the DC FOIA.

Background

On August 5, 2015, you sent four requests to DHCF for “documents related to transportation assistance under the Early and Periodic, Diagnostic and Treatment Services (EPSDT) services program of Medicaid provided by DHCF’s contractor, Health Services for Children with Special Needs, Inc. (“HSCSN”). . . .” On September 16, 2015, DHCF granted in part and denied in part your requests. In specific, DHCF withheld fifteen (15) records as trade secrets protected under D.C. Official Code § 2-534(a)(1) (“Exemption 1”).<sup>1</sup>

On appeal, you challenge DHCF’s withholding of responsive records. You contend that Exemption 1 is not applicable because the requested documents are related to government contracts, government policy manuals, and oversight documentation regarding the administration of a public service. Further, you argue that even if Exemption 1 were applicable, DHCF should have reasonably segregated the withheld documents.

DHCF provided this office with a memorandum in response to your appeal on November 13, 2015, reaffirming its decision to withhold records under Exemption 1.

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that

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<sup>1</sup> Exemption 1 exempts from disclosure “trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would results in substantial harm to the competitive position of the person from whom the information was obtained.”



Ms. Zenia Sanchez Fuentes  
Freedom of Information Act Appeal 2016-11  
November 24, 2015  
Page 2

policy, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to inspect a public record, however, is subject to exemptions. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The instant matter involves the protection of proprietary interests from public disclosure. To withhold responsive records under Exemption 1, DHCF must show that the information: (1) is a trade secret or commercial or financial information; (2) was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Official Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, “as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms “commercial” and “financial” used in the federal FOIA should be accorded their ordinary meanings. *Id.* at 1290.

Exemption 1 has been “interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury.” *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *see also, Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, “actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply.” *Essex Electro Eng’rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). *See also McDonnell Douglas Corp. v. United States Dep’t of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption “does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would ‘likely’ do so. [citations omitted]”). The passage of time can reduce the likelihood of competitive harm. *See Teich v. FDA*, 751 F. Supp. 243, 253 (D.D.C. 1990) (rejecting competitive harm claim based partly upon fact that documents were as many as twenty years old). *But see Ctr. for Auto Safety v. Nat’l Highway Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000) (declaring that “[i]nformation does not become stale merely because it is old”).

Generally, records are “commercial” as long as the submitter has a “commercial interest” in them. *See Baker & Hostetler LLP v. U.S. Dep’t of Commerce*, 473 F.3d 312, 319 (D.C. Cir. 2006). *But see Chicago Tribune Co. v. FAA*, 1998 U.S. Dist. LEXIS 6832, \*6 (N.D. Ill. May 5, 1998) (finding that chance events that happened to occur in connection with a commercial operation were not commercial information regarding documentation of medical emergencies during commercial fights). Although it is unnecessary to engage in a “sophisticated economic analysis of the likely effects of disclosure, conclusory and generalized allegations of substantial competitive harm are unacceptable and cannot support an agency’s decision to withhold requested documents.” *Watkins v. United States Bureau of Customs*, 643 F.3d 1189, 1195 (9th

Cir. 2011). Instead, a court may make a determination of economic harm by considering the cost of obtaining the withheld information, and the possible windfall to competition that would result from its release, such as whether:

a competitor could use the content of the [records] affirmatively to wreak competitive harm on Pfizer by acquiring records that, according to Pfizer and undisputed by the plaintiff, show what is and is not working in companies' marketing from the perspective of its customers. *See id.* . . . In applying the *National Parks* test, the D.C. Circuit noted that when commercial information “is freely or cheaply available from other sources ... it can hardly be called confidential and agency disclosure is unlikely to cause competitive harm.” *Id.* at 51. Nevertheless, when “competitors can acquire the information only at considerable cost, agency disclosure may well benefit the competitors at the expense of the submitter.” *Id.*

*Pub. Citizen v. United States Dep't of Health & Human Servs.*, 66 F. Supp. 3d 196, 213 (D.D.C. 2014)

#### Documents 1-14

Your overarching contention on appeal is that records you seek pertaining to the contracts between HSCSN and subcontractors are required to be disclosed under D.C. Official Code § 2-361.04.<sup>2</sup> This argument is unpersuasive for two reasons. First, the withheld records are not contracts between a public body and a private entity. Rather, the records consist of or relate to contracts between private parties - HSCSN and its subcontractors. While D.C. Official Code § 2-361.04 mandates the disclosure of contracts in which the District is a party, it is unclear whether this statute applies to subcontracts in which the District is not a party. As a result, it is unclear whether contracts, contract reviews, policy books, customer satisfaction surveys, or vehicle inspections carried out between a government contractor and private subcontractors can be considered “determinations [,] findings, contract modifications, change orders, solicitations, or amendments associated with the contract” under D.C. Official Code § 2-361.04. The statute provides that “The [Chief Procurement Officer] shall establish and maintain . . . publicly-available information regarding District procurement.” Here, the District had no involvement in the procurement at issue in the withheld records. We are therefore not convinced that this provision of the Procurement Practices Reform Act mandates disclosure of the records that DHCF withheld.

Second, assuming, *arguendo*, that subcontracts and documents related to subcontracts should be disclosed in accordance with D.C. Official Code § 2-361.04, these records may still be subject to redaction under the DC FOIA. The crux of this matter is whether HSCSN’s subcontracting process, reflected in Documents 1-14, constitutes commercial information. This Office

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<sup>2</sup> D.C. Official Code § 2-361.04 provides, in relevant part, that the following should be publicly available for contracts in excess of \$100,000: “a copy of the contract and any determinations and findings, contract modifications, change orders, solicitations, or amendments associated with the contract, including those made by District agencies exempt from the authority of the [Chief Procurement Officer] . . .”

conducted an *in camera* review of the fifteen documents that DHCF withheld. Documents 1-14 include subcontracting agreements, amendments to agreements, internal policy, review of the subcontracts by the prime contractor, and extensive customer satisfaction surveys. The process of selecting, managing, reviewing, and analyzing subcontractors is conducted at a cost to HSCSN. Releasing information about this process would amount to a windfall to HSCSN's competitors and could limit HSCSN's ability to competitively vie for future similar contracts. *See Pub. Citizen*, 66 F. Supp. 3d at 213.

Based on DHCF's representations and our *in camera* review of the documents, it is evident that the documents contain commercial and financial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. We agree with DHCF's claim that actual competition exists from HSCSN and that disclosure of the information would allow competitors to see HSCSN's strategy for monitoring and managing its subcontractors and take potential clients and business. Therefore, we find that the commercial and financial information in Documents 1-14 was properly withheld under Exemption 1. *McDonnell Douglas Corp. v. U.S. Dep't of the Air Force*, 375 F.3d 1182, 1190 (D.C. Cir. 2004) ("release of prices for certain CLINs composed predominantly of the costs of materials and services it procures from other vendors would enable its competitors to derive the percentage . . . by which McDonnell Douglas marks up the bids it receives from subcontractors."); *see also GAO Protest of Richen Management, LLC*, B-406750, B-406850 (July 31, 2012) (The Government Services Administration ("GSA") received FOIA requests seeking, among other things, copies of contract amounts, staffing, and a list of subcontractors for the incumbent contracts covered by these RFPs. The GSA responded to the requests by stating that subcontractor information was being withheld under exemption 4 of the federal FOIA since release would reveal to competitors commercially sensitive information concerning the incumbent contractor's internal operations and business practices.)

Under DC FOIA, even when an agency establishes that it has properly withheld a document under an exemption, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). "To demonstrate that it has disclosed all reasonably segregable material, 'the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Judicial Watch, Inc. v. U.S. Dep't of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F. Supp. 2d 106, 120 (D.D.C. 2010)).

Regarding the segregability of Documents 1-14, we find that the entire documents are protected from disclosure under Exemption 1. The numerical values in the documents are clearly protected information showing HSCSN's subcontractors commercial and financial pricing. Additionally, the categories and descriptions in the documents reveal HSCSN's commercial and financial strategy in managing and analyzing subcontractors. This information, if disclosed, could cause substantial competitive harm to HSCSN by providing a windfall to its competitors.

#### Document 15

Ms. Zenia Sanchez Fuentes  
Freedom of Information Act Appeal 2016-11  
November 24, 2015  
Page 5

Document 15 consists of a document titled "DC Vehicle Inspection Record." It appears to be an inspection report of a vehicle bearing a Maryland license plate, and it contains some personally identifiable information (e.g., driver's license and VIN numbers). Because it is unclear how this document constitutes a trade secret or commercial information, we remand the record to DHCF. DHCF shall either: (1) release the document subject to appropriate redactions; or (2) provide a more detailed explanation as why the document should be withheld.

### Conclusion

Based on the foregoing, we affirm DHCF's decision in part and remand it in part. Within seven (7) business days from the date of this decision, DHCF shall, in accordance with the guidance provided in this determination, reconsider its withholding of Document 15.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Kevin O'Donnell, Attorney Advisor, DHCF (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-12**

November 13, 2015

VIA U.S. MAIL

Mr. Ronald L. Legg

RE: FOIA Appeal 2016-12

Dear Mr. Legg:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Metropolitan Police Department (“MPD”) improperly withheld records you requested under the DC FOIA.

Background

On September 24, 2015, you submitted a FOIA request to the MPD seeking “any information pertaining to the duty character of” a named officer along with “any information on the special training which accompanied [the named officer’s] performance of duties, and sponsors names of that training.”

On October 2, 2015, the MPD responded to your request, stating that any responsive records would be exempt from disclosure under D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C) because producing them would constitute an unwarranted invasion of the officer’s personal privacy.

In your appeal, you assert that the requested information would help show the named officer’s “character of duty” and that there is a public interest in the information because it relates to “police work product,” justice, and ethics. Lastly, you raise a private interest argument, asserting that you were wrongly convicted of a crime as a result of the named officer’s actions, therefore the release of any disciplinary files pursuant to the request “does not constitute an unwarranted invasion of privacy.”

In response to your appeal, the MPD sent this office a letter on November 13, 2015, reaffirming its position that disclosing investigative reports, citations, and disciplinary files of identified police officers, if they existed, would constitute an unwarranted invasion of an officer’s personal privacy. MPD asserted, for the first time, that it could neither admit nor deny whether any complaints or investigations had been filed regarding the named officers, a so-called “Glomar” response. Nevertheless, MPD notes that a search of MPD’s human resources office determined that no records exist relating to the named officer, suggesting that MPD never employed him.

Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to inspect public records is subject to various exemptions that may form the basis for a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute may be examined to construe the local law.

The crux of this matter is that it appears that the named officer has never worked for the MPD.<sup>1</sup> As a result, MPD has not withheld any records because none exist. This Office will therefore not consider the applicability of MPD’s asserted arguments related to D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C) or the propriety of a Glomar response to this appeal.

Had MPD originally responded to your request with a Glomar response (a refusal to admit or deny the existence of a record), such a response may have been appropriate because neither admitting nor denying the existence of a disciplinary file is permissible to avoid the unwarranted privacy harm of associating a public employee with alleged, unproven misconduct. Unfortunately, MPD chose to deny your request by asserting that the non-existent records were exempt from disclosure under D.C. Official Code §§ 2-534(a)(2) and (a)(3)(C), prompting this appeal. We suggest that in response to similar future FOIA requests, the MPD should make an initial determination as to whether a named individual was employed by the MPD before denying records that definitively do not exist.

Conclusion

Based on the foregoing, we uphold the MPD’s decision and hereby dismiss your appeal. Because the named officer appears to have never been employed by the MPD, no responsive documents are being withheld, and no privacy interests need to be protected.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

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<sup>1</sup> A cursory internet search conducted by this Office indicates that the named officer may have worked for the Metro Transit Police Department, as opposed to the Metropolitan Police Department.

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-13**

December 15, 2015

VIA ELECTRONIC MAIL

Nicholas Soares

RE: FOIA Appeal 2016-13

Dear Mr. Soares:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Department of Health Care Finance (“DHCF”) improperly withheld records you requested under the DC FOIA.

Background

On August 25, 2015, you a sent twelve (12) part FOIA request to DHCF for “documents related to the provision of case management services for children under the Early and Periodic, Screening, Diagnostic and Treatment (“EPSDT”) services program of Medicaid, which are provided under DHCF contract by Health Services for Children with Special Needs, Inc.” On October 9, 2015, DHCF granted in part and denied in part your requests. In specific, DHCF withheld 21 records as trade secrets protected under D.C. Official Code § 2-534(a)(1) (“Exemption 1”).<sup>1</sup>

On appeal, you challenge DHCF’s withholding of responsive records. You assert four primary objections to the withholding: (1) the records are inherently public material according to D.C. Official Code § 2-536; (2) the records were generated pursuant to a contract and are therefore inherently public according to D.C. Official Code § 2-532(a-3); (3) the records sought are not commercially valuable because HSCSN is not engaged in a competition for its contract and the only reason the information could possibly harm HSCSN is if HSCSN were violating its contractual obligations; and (4) DHCF’s statements are “not credible[.]” because the records “are squarely within the authority of the District of Columbia government.” Further, you argue that even if Exemption 1 were applicable, DHCF should have reasonably segregated the withheld documents.

DHCF provided this office with a memorandum in response to your appeal on December 3, 2015, reaffirming its decision to withhold records under Exemption 1.

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<sup>1</sup> Exemption 1 exempts from disclosure “trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would results in substantial harm to the competitive position of the person from whom the information was obtained.”



Discussion

It is the public policy of the District of Columbia government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to inspect a public record, however, is subject to exemptions. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The instant matter involves the protection of proprietary information from public disclosure. To withhold responsive records under Exemption 1, DHCF must show that the information: (1) is a trade secret or commercial or financial information; (2) was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Official Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, “as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms “commercial” and “financial” used in the federal FOIA should be accorded their ordinary meanings. *Id.* at 1290.

Exemption 1 has been “interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury.” *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *see also*, *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, “actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply.” *Essex Electro Eng’rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). *See also* *McDonnell Douglas Corp. v. United States Dep’t of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption “does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would ‘likely’ do so. [citations omitted]”). The passage of time can reduce the likelihood of competitive harm. *See Teich v. FDA*, 751 F. Supp. 243, 253 (D.D.C. 1990) (rejecting competitive harm claim based partly upon fact that documents were as many as twenty years old). *But see Ctr. for Auto Safety v. Nat’l Highway Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000) (declaring that “[i]nformation does not become stale merely because it is old”).

Generally, records are “commercial” as long as the submitter has a “commercial interest” in them. *See Baker & Hostetler LLP v. U.S. Dep’t of Commerce*, 473 F.3d 312, 319 (D.C. Cir. 2006). *But see Chicago Tribune Co. v. FAA*, 1998 U.S. Dist. LEXIS 6832, \*6 (N.D. Ill. May 5, 1998) (finding that chance events that happened to occur in connection with a commercial

operation were not commercial information regarding documentation of medical emergencies during commercial fights). Although it is unnecessary to engage in a “sophisticated economic analysis of the likely effects of disclosure, conclusory and generalized allegations of substantial competitive harm are unacceptable and cannot support an agency's decision to withhold requested documents.” *Watkins v. United States Bureau of Customs*, 643 F.3d 1189, 1195 (9th Cir. 2011). Instead, a court may make a determination of economic harm by considering the cost of obtaining the withheld information, and the possible windfall to competition that would result from its release, such as whether:

a competitor could use the content of the [records] affirmatively to wreak competitive harm on [the company at issue] by acquiring records that, according to [the company] and undisputed by the plaintiff, show what is and is not working in companies' marketing from the perspective of its customers. *See id.* . . . In applying the *National Parks* test, the D.C. Circuit noted that when commercial information “is freely or cheaply available from other sources ... it can hardly be called confidential and agency disclosure is unlikely to cause competitive harm.” *Id.* at 51. Nevertheless, when “competitors can acquire the information only at considerable cost, agency disclosure may well benefit the competitors at the expense of the submitter.” *Id.*

*Pub. Citizen v. United States Dep't of Health & Human Servs.*, 66 F. Supp. 3d 196, 213 (D.D.C. 2014).

This Office shall address your four principal objections in connection with the above-cited case law regarding Exemption 1.

#### *Objection 1*

Your first objection is premised on the notion that records responsive to Requests 1 and 4 are inherently public documents under District law, therefore DCHF's withholding of these documents was improper. In support of this argument, you cite to provisions of D.C. Official Code § 2-536(a), which mandate disclosure of:

(2) Administrative staff manuals and instructions to staff that affect a member of the public; . . . (4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by a public body; (5) Correspondence and materials referred to therein, by and with a public body, relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party . . .

Objection 1 lacks merit because FOIA exemptions apply to information that must be made public under D.C. Official Code § 2-536. The first sentence of the statute provides: “Without limiting the meaning of other sections of this subchapter . . .” Thus, although specific categories of information are deemed public under § 2-536, certain portions of this information may be

protected under DC FOIA.<sup>2</sup> Moreover, even if § 2-536 provided for mandatory disclosures of documents notwithstanding FOIA exemptions, this Office concludes that the withheld documents, with the exception of Documents 2 and 3, are not of the types of documents described in § 2-536(a).<sup>3</sup>

### *Objection 2*

Your second objection consists of a similar argument that certain records are inherently public under the language of D.C. Official Code § 2-532(a-3), which states, “A public body shall make available for inspection and copying any record produced or collected pursuant to a contract with a private contractor to perform a public function . . .” This objection is also meritless, as it too fails to take into account the plenary applicability of § 2-534, which exempts certain matters from disclosure under the subchapter containing both statutes (Subchapter II of Title V of the D.C. Official Code). In other words, although a contract with a private contractor to perform a public function is generally considered a public record under § 2-532, it is also subject to applicable exemptions under § 2-534.

### *Objection 3*

Your third objection is your stated belief that HSCSN is not engaged in competition and that the release of any of the withheld documents could not harm HSCSN unless HSCSN is failing to comply with its obligations under its contract with DHCF.

The crux of this matter is whether HSCSN’s withheld records, reflected in Documents 1-21, constitute commercially valuable information. This Office conducted an *in camera* review of the 21 documents that DHCF withheld and shall analyze each in turn under Exemption 1 (with the exception of Document 11, which is analyzed under Exemption 2).

### Document 1

DHCF withheld Document 1, “Authorization of Health Services,” under the claim that it contains trade secrets, which are protected under Exemption 1. This document appears to be incidental to a contract between the District and a private party for the performance of a public function. As a result, it appears that its disclosure is mandated under D.C. Official Code § 2-532 (a-3) unless a DC FOIA exemption applies. Here, DHCF has described this document as containing trade secrets, requiring it to be withheld to prevent competitive harm. This Office disagrees. Unlike the facts in a related appeal, FOIA Appeal 2016-11, this contract at issue here is between the government and a private company - not between two private parties. As a result

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<sup>2</sup> Your citation to 1 D.C.M.R. § 400.4 is equally inapplicable, as that regulation allows for disclosure “as a matter of discretion.” By withholding the records, DHCF has exercised its discretion. As a result, 1 D.C.M.R. § 400.4 has no bearing on whether DHCF is compelled to produce the withheld records.

<sup>3</sup> The applicability and effect of § 2-536(a) on Documents 2 and 3 are discussed below in the Objection 3 analysis.

of its public nature, this document cannot be described as proprietary. Therefore, Document 1 should be disclosed.

#### Document 2

DHCF withheld Document 2, "Case Management policies," under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. This document (or rather, collection of documents) appears to be a set of agreed upon policies made between the District and a private party for the performance of a public function. As a result, it appears that disclosure is mandated under D.C. Official Code § 2-536 (a)(4), unless a DC FOIA exemption directly applies. DHCF has described this document as containing trade secrets, requiring it to be withheld to prevent competitive harm. This Office disagrees. The policies outlined in this lengthy document reflect the private body's understanding of its duties in performing a public function on behalf of the public. The document does not explain *how* HSCSN meets its duties; it merely articulates *what* those duties are. Moreover, to the extent that Document 2 represents a process or plan, it is not one made and closely held solely by HSCSN. Any process or plan contained in Document 2 is the result of an understanding with the District government as to the full extent of the public function being assumed by HSCSN. Document 2 is not a trade secret or commercial information and therefore should be disclosed.

#### Document 3

DHCF withheld Document 3, "Care Management Compliance Training," under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. Document 3 contains two parts: (1) an October 22, 2014 Powerpoint presentation; (2) and a two-page set of training scenario hypothetical exercises. The scenarios appear to be originally written hypotheticals for training, and the PowerPoint presentation appears to be an answer key. The October 22, 2014 PowerPoint presentation consists entirely of citations to the public contract, with short snippets describing which provisions of the public contract are relevant to the hypothetical.

Document 3 reveals HSCSN's proprietary training process. The training process revealed in these documents was created at a cost to HSCSN. Releasing information about this process would amount to a windfall to HSCSN's competitors and could limit HSCSN's ability to competitively vie for future similar contracts by allowing competitors to mimic HSCSN's training strategies. *See Pub. Citizen*, 66 F. Supp. 3d at 213. Document 3 was therefore properly withheld.

#### Document 4

DHCF withheld Document 4, "Working with People with Special Needs: A Self-Study Guide for Care Managers," under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. Page 2 of Document 4 states that "[p]ermission is granted for photocopying of this guide providing it is not altered or credited in any way and provided that an appropriate credit line is given. Credit line: 'From Working with People with Special Needs, a Self-Study Guide for Care Managers, Cardea Institute, 2012.'" In light of the plain language of this

document, we do not consider it to be a secret, trade or otherwise. Document 4 should therefore be disclosed.

#### Documents 5-10

DHCF withheld Documents 5-10, “PACE Application – Job Description[s],” under the claim that they contain trade secrets, which are protected under Exemption 1. Documents 5-10 include what appears to be a screenshot from an internal database for tracking job descriptions. Documents 5-10 include both the subjective factors HSCSN seeks in employees, as well as the weighting HSCSN assigns to these factors. The specific hiring philosophy and process evident in these documents was created at a cost to HSCSN. Releasing information about this process would amount to a windfall to HSCSN’s competitors and could limit HSCSN’s ability to competitively vie for future similar contracts by mimicking HSCSN’s hiring strategies. *See Pub. Citizen*, 66 F. Supp. 3d at 213.

Based on DHCF’s representations and our *in camera* review of the documents, it is evident that the documents contain commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. We agree with DHCF that actual competition exists from HSCSN and that disclosure of the information would provide competitors insight into HSCSN’s strategy for hiring, thereby allowing the recruitment of HSCSN’s employees. Accordingly, we find that the commercial and financial information in Documents 5-10 was properly withheld under Exemption 1. *See Venetian Casino Resort, L.L.C. v. EEOC*, 530 F.3d 925, 927 (2008) (“Venetian’s particular concern was that competitors and labor unions would obtain confidential information regarding its hiring practices, which information they would use to its economic detriment.”).

#### Document 11

DHCF withheld Document 11, which is titled “SAMPLE,” under a claim of trade secrets under Exemptions 1 and a claim of personal privacy under Exemption 2. Having reviewed the spreadsheet document *in camera*, this Office concludes that the document contains personally identifiable medical information, including patient names, Medicaid IDs, and birthdates. Releasing this information would constitute a clearly unwarranted invasion of personal privacy under Exemption 2 of the DC FOIA.<sup>4</sup> Further, reasonable segregability is not possible with regard to the document, as it is a spreadsheet in which essentially every column of information is protected. Disclosure of the non-exempt provisions of the spreadsheet would amount to an unintelligible document. Since this document was properly withheld under Exemption 2, an analysis under Exemption 1 is not necessary.

#### Documents 12-17

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<sup>4</sup> Exemption 2 of DC FOIA provides that “Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy” may be exempt from disclosure. D.C. Official Code § 2-534(a)(2).

Documents 12-17 are HSCSN's Customer Satisfaction Surveys for 2013-2014, which DHCF withheld under a claim of trade secrets under Exemption 1. For the reasons discussed in FOIA Appeal 2015-11, the Customer Satisfaction Surveys are commercially valuable information, the release of which could cause HSCSN competitive harm by amounting to a windfall for competition. Based on DHCF's representations and our *in camera* review of the documents, it is evident that the documents contain commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. We agree with DHCF's claim that actual competition exists from HSCSN and that disclosure of the information would provide competitors with insight into how HSCSN administers its customer surveys and analysis. Therefore, we find that the commercial and financial information in Documents 12-17 was properly withheld under Exemption 1.

#### Documents 18

DHCF withheld Document 18, "FOIA REQUEST CARE MANAGEMENT (Response # 7a-c)," under a claim of trade secrets under Exemption 1. Based on its title, this document appears to have been generated to respond to this FOIA request, as opposed to in connection with a commercially valuable process created in the ordinary course of business. Generally, an agency has no duty to create a document in response to a FOIA request. *See Forsham v. Harris*, 445 U.S. 169, 186 (1980) (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975)); *accord Yeager v. DEA*, 678 F.2d 315, 321, (D.C. Cir. 1982) ("It is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request."). Nevertheless, if the chart is somehow responsive to the request at issue, it should be disclosed since it does not contain any commercially valuable information.

#### Documents 19 and 20

DHCF withheld Documents 19 and 20, which are quality and performance improvement evaluations for 2013 and 2014, under a claim of trade secrets under Exemption 1. Documents 19-20 include what appears to be data collected by HSCSN, along with a detailed analysis of that data as it relates to the performance of HSCSN in providing care. Documents 19 and 20 essentially amount to HSCSN's process of self-evaluation for the purpose of improving its product. The process revealed in these documents was created at a cost to HSCSN. Releasing information about this process would amount to a windfall to HSCSN's competitors and could limit HSCSN's ability to competitively vie for future similar contracts by mimicking HSCSN's hiring strategies. *See Pub. Citizen*, 66 F. Supp. 3d at 213.

Based on DHCF's representations and our *in camera* review of the documents, it is evident that they contain commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. We agree with DHCF that HSCSN has actual business competition and that disclosure of the information contained in Documents 19 and 20 would allow competitors insight into HSCSN's management strategy to analyze and improve its services. Therefore, we find that the commercial and financial information in Documents 19 and 20 was properly withheld under Exemption 1.

#### Document 21

DHCF withheld Document 21, “EUT.CCA 100 Clinical Care Advance Overview Assessment,” under a claim of trade secrets under Exemption 1. Unlike Document 4, almost every page of this document has a disclaimer stating the information is subject to copyright and that the document is “Confidential and Proprietary – Restricted Information / Provided for Internal Use only – Do Not Distribute To Any Third Parties . . .” The document appears to be a comprehensive, step-by-step guide, with annotated screenshots, explaining how to use proprietary software.

Based on DHCF’s representations and our *in camera* review of the documents, it is evident that Document 21 contains commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. The third party at issue here created Document 21 as a guide to train HSNCS in the use of proprietary software. We agree with DHCF that the third party has actual business competition. Disclosure of the information would damage both HSNCS by providing its competitors with valuable training at no cost, and the third party, which developed the training and has intellectual property rights associated with it. Exemption 1 was therefore properly invoked, and Document 21 was properly withheld.

#### *Objection 4*

The fourth general argument that you raise on appeal is that “documents that contain information about the policies, procedures, and outcomes of HSCSN’s case management program are squarely within the authority of the District of Columbia government.” For the reasons discussed above, notwithstanding the fact that HSCSN performs a public function pursuant to a contract with the District, some of the documents at issue in your request are exempt from public disclosure under the DC FOIA. For that reason, as well as the reasons discussed in the Exemption 1 analysis above, this Office does not find Objection 4 to be persuasive.

#### Reasonable Segregability

Under DC FOIA, even when an agency establishes that it has properly withheld a document under an asserted exemption, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). “To demonstrate that it has disclosed all reasonably segregable material, ‘the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” *Judicial Watch, Inc. v. U.S. Dep’t of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F. Supp. 2d 106, 120 (D.D.C. 2010)).

With respect to Documents 3, 5-17, 19, 20 and 21, we find that they are not segregable and are protected in their entirety from disclosure under Exemption 1. The categories and descriptions in the documents reveal HSCSN’s commercial and financial strategy in hiring, managing, and self-evaluation. This information, if disclosed, could cause substantial competitive harm to HSCSN by providing a windfall to its competitors.

With respect to Documents 1, 2, 4, and 18, we have concluded as described above that they should be released; therefore, we need not address their segregability.

Conclusion

Based on the foregoing, we affirm DHCF's decision in part and remand it in part. Within seven (7) business days from the date of this decision, DHCF shall release Documents 1, 2, 4, and 18 in accordance with the guidance provided in this determination.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Kevin O'Donnell, Attorney Advisor, DHCF (via email)



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-13R**

February 5, 2016

VIA ELECTRONIC MAIL

Kevin O'Donnell  
Attorney Advisor  
Department of Health Care Finance

RE: FOIA Appeal 2016-13R

Dear Mr. O'Donnell:

This letter responds to your request for reconsideration of the administrative appeal Mr. Soares filed with the Mayor under the District of Columbia Freedom of Information Act. In your request for reconsideration you assert that this Office erred in its December 15, 2015,<sup>1</sup> decision ordering the Department of Health Care Finance ("DHCF") to release certain withheld records. We have reviewed our decision and address each withheld document in turn.

Document 1

DHCF withheld Document 1, "Authorization of Health Services," under the claim that it contains trade secrets, which are protected under Exemption 1. In FOIA Appeal 2016-13, this Office stated that Document 1 appears to be incidental to a contract between the District and a private party to perform a public function. As a result, we concluded that disclosure of Document 1 is mandated under D.C. Official Code § 2-532(a-3) unless a DC FOIA exemption applies. DHCF has maintained that this document contains trade secrets, which must be withheld to prevent competitive harm to HSCSN. We disagreed and continue to disagree with this characterization. Document 1's content and structure borrow heavily from a public contract, and it is not clear that anything in it constitutes "commercial information," even under the very broad definition of "commercial information" in case law construing DC FOIA. Moreover, this Office is not convinced that the documents would cause competitive harm if obtained by HSCSN's competitors.

DHCF cites to section II.B.4 of Document 1 as the quintessential example of how the policy "delineate[s] with specificity the internal process implemented at HSCSN." This "process," which, if revealed to competitors would supposedly amount to a windfall, consists essentially of (1) assigning a number to a request; (2) putting the request in a system for verification; and (3) issuing an oral decision within 48 hours. This is not a commercially valuable process; this is a routine procedure in a large operation. The policy does not describe how the "HSCSN IT system" works, what it looks like, or how it integrates with other operations. The policy does not

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<sup>1</sup> FOIA Appeal 2016-13

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describe the process by which a decision is made, nor does it indicate the manner in which an oral decision should be delivered. The policy describes the public function HSCSN is performing only in the broadest of terms. Therefore, this Office disagrees that the release of this document would allow a competitor of HSCSN to gain an unfair advantage.

#### Document 2

DHCF withheld Document 2, "Case Management policies," under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. After reconsideration, for the same reasons articulated above and in FOIA Appeal 2016-13, this Office reaffirms that the release of Document 2 would not harm HSCSN's competitive position.

#### Document 4

DHCF withheld Document 4, "Working with People with Special Needs: A Self-Study Guide for Care Managers," under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. Page 2 of Document 4 states that "[p]ermission is granted for photocopying of this guide provided it is not altered or credited in any way and provided that an appropriate credit line is given. Credit line: 'From Working with People with Special Needs, a Self-Study Guide for Care Managers, Cardea Institute, 2012.'" In light of the plain language of this document, in our previous decision we did not consider it to be a secret, trade or otherwise. Upon reconsideration, however, this Office concludes that the license on the front of the document was not necessarily meant to provide for unlimited disclosure of the document to the public.

Based on DHCF's representations and our *in camera* review of the documents, we find that Document 4 contains commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. The third party at issue here created Document 4 as part of a guide to train HSNSC employees. We agree with DHCF that the third party has actual business competition. DHCF has represented on reconsideration that HSNSC paid \$100,000 to develop Document 4. As a result, disclosure of the information therein would damage HSNSC by providing its competitors with valuable training at no cost. Disclosure would also damage the third party that developed the training and has intellectual property rights associated with it. This Office therefore concludes that Exemption 1 was properly invoked, and Document 4 was properly withheld.

#### Reasonable Segregability

Under DC FOIA, even when an agency establishes that it has properly withheld a document under an asserted exemption, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep't of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). "To demonstrate that it has disclosed all reasonably segregable material, 'the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a

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withheld document to which they apply.” *Judicial Watch, Inc. v. U.S. Dep’t of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F. Supp. 2d 106, 120 (D.D.C. 2010)).

With respect to Documents 4, we find that it is not segregable and is protected in its entirety from disclosure under Exemption 1. The training manual is comprehensive and specific to HSCSN’s business strategy. The release of any information in the document could cause substantial competitive harm to HSCSN by providing a windfall to its competitors.

Since we have affirmed our decision that Documents 1 and 2 should be released in their entirety, we need not address whether they are segregable.

### Conclusion

Based on the foregoing, we affirm our previous decision in part and reverse in part. Within seven (7) business days from the date of this decision, DHCF shall release Documents 1 and 2. With respect to Document 4, we find that DHCF may continue to withhold it in accordance with Exemption 1.

This constitutes the final decision of this Office. Please be advised that in accordance with D.C. Official Code § 2-537(a)(2), if DHCF continues to withhold Documents 1 and 2, Mr. Soares may bring suit in the Superior Court of the District of Columbia to compel production.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker  
Associate Director

cc: Nicholas Soares, Esq. (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-14**

December 16, 2015

VIA ELECTRONIC MAIL

Mr. Don Padou

RE: FOIA Appeal 2016-14

Dear Mr. Padou:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) improperly withheld records you requested under the DC FOIA.

Background

On July 28, 2014, Friends of McMillan Park submitted a FOIA request to DMPED for all of the emails involving a particular DMPED employee and a list of keywords related to the development of McMillan Park. On September 9, 2014, DMPED agreed to produce approximately 3,400 pages of responsive emails but stated that several emails were being withheld for containing “‘commercial or financial information obtained from outside the government’ that will ‘result in substantial harm to the competitive position of the person from whom the information was obtained’ or attorney-client communications and internal deliberations. ... pursuant to D.C. Official Code §§2-534 (a)(1) and (4) respectively.” On October 21, 2015, DMPED produced a *Vaughn* Index listing the responsive records that were withheld in their entirety.<sup>1</sup>

On appeal, you assert that DMPED did not provide sufficient justification to withhold information under the exemptions it claimed.<sup>2</sup> You also assert that records withheld for deliberative process and attorney-client privilege were shared with the consortium of developers hired to develop McMillan Park; therefore, the exemptions are not applicable because the communications were shared outside the protective scope of the exemption.

As the *Vaughn* Index listed an extensive number of records, it is not possible for us to review and analyze all of the email messages and issue a decision in a timely manner. Therefore, we

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<sup>1</sup> The appeal and the email transmitting the *Vaughn* Index refer to documents being redacted and withheld; however, it is our understanding that no documents were redacted, and all of the documents listed in the *Vaughn* Index were withheld in their entirety.

<sup>2</sup> The appeal cites the attorney-client privilege under D.C. Official Code § 2-534(e); however, the attorney-client privilege is incorporated under D.C. Official Code §§ 2-534(a)(4).

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requested that DMPED provide our office with a sample of the documents for *in camera* review. To ensure a random and representative sample, we requested unredacted copies of the top entry from each page of the 33-page *Vaughn* Index. DMPED provided this Office with the 33 requested records on December 3, 2015. Each of the 33 records provided contained an e-mail chain, amounting to 140 pages of emails. Several emails included attachments, which increased the volume of the representative sample. The email chains typically involve multiple parties. As a result, some parts of the chain may involve only governmental parties while other portions include additional non-governmental parties.

On December 15, 2015, DMPED provided this Office with a response to your appeal, in which it reaffirmed and explained its use of exemptions for trade secrets, deliberative process, and attorney-client privilege.<sup>3</sup> Regarding the exemption for trade secrets, commercial, and financial information, DMPED asserts that there is actual competition in the real estate development market in the District and the release of the withheld information would result in competitive harm to the consortium of developers involved with McMillan Park. Regarding the deliberative process privilege, DMPED asserts that the consortium of developers entered into a Development Management Services Agreement (“DMA”) with the District. Pursuant to the DMA, there is a separation between the developers’ role acting on behalf of the District and its private interests. DMPED asserts, as a result, that emails with members of consortium of developers or its subcontractors and consultants acting on behalf of the District qualify for the deliberative process privilege. Regarding the attorney-client privilege, DMPED asserts that the records it withheld under the attorney-client privilege involve only emails between government employees seeking or receiving legal advice from government attorneys from the Office of the Attorney General (“OAG”). Finally, DMPED raises the issue of segregability, claiming that the documents were appropriately withheld in their entirety because the only nonexempt information would be the salutation and valediction of each email. DMPED claims that, as a result, the edited emails would provide little informational value and the process of redacting over 670 emails would involve significant cost, time, and use of resources by DMPED.

### Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

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<sup>3</sup> A copy of DMPED’s response is attached for your reference.

This appeal involves DMPED's assertion of D.C. Official Code § 2-534(a)(1) ("Exemption 1")<sup>4</sup> as well as the deliberative process privilege and the attorney-client privilege under D.C. Official Code § 2-534(a)(4) ("Exemption 4"). Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandums and letters which would not be available by law to a party other than an agency in litigation with the agency[.]" This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975).

### Exemption 1

To withhold records under Exemption 1, the information must be: (1) a trade secret or commercial or financial information; (2) that was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Official Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, "as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms "commercial" and "financial" used in the federal FOIA should be accorded their ordinary meanings. *Id.* at 1290.

Exemption 1 has been "interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury." *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *see also, Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, "actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply." *Essex Electro Eng'rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). *See also McDonnell Douglas Corp. v. United States Dep't of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption "does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would "likely" do so. [citations omitted]"). The passage of time can reduce the likelihood of competitive harm. *See Teich v. FDA*, 751 F. Supp. 243, 253 (D.D.C. 1990) (rejecting competitive harm claim based partly upon fact that documents were as many as twenty years old). *But see Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000) (declaring that "[i]nformation does not become stale merely because it is old").

Of the sample we reviewed, one document was withheld based on Exemption 1, the email dated 7/1/2011 with the subject "FW: Outstanding DMA items from VMP." The email contains no text but includes 8 attachments, some of which contain commercial and financial information sufficient to meet the threshold for protection under Exemption 1. Based on DMPED's

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<sup>4</sup> Exemption 1 exempts from disclosure "trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained."

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representation and our *in camera* review, we find that actual competition exists in the District's real estate development market and that disclosure of the commercial and financial information would allow competitors an unfair competitive advantage by copying or underbidding the consortium of developers who supplied the information and take potential clients and business. Therefore, we find that the commercial and financial information in the attachments may be withheld under Exemption 1.

Nevertheless, other attachments contain information that is neither commercial nor financial. For example, Exhibit F contains a list of "Key Personnel," and Exhibit H contains a list of "Designated Representatives" for the consortium of developers. These exhibits are not protected from disclosure under Exemption 1. Further, it is unclear whether Exhibit E - a blank form titled "Affidavit, Final Release and Waiver of Claims and Liens" - is protected from disclosure under Exemption 1. If Exhibit E is a valuable legal document created at the expense of the developers, its disclosure would be a windfall to competitors; however, if it is a basic form document of little to no value it would not be protected under Exemption 1. As a result, DMPED should reevaluate the documents withheld under Exemption 1 and disclose documents or redacted versions of the documents that are not protected under Exemption 1, subject to other exemptions under DC FOIA.

#### Exemption 4: Deliberative Process Privilege

Exemption 4 is commonly invoked to protect the deliberative process privilege. *See McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). A threshold issue of the deliberative process privilege is that the information must involve an inter- or intra-agency document. Therefore, the deliberative process privilege is typically limited to documents transmitted within or among government agencies. A notable exception to the inter- or intra-agency requirement is the consultant corollary exception, which applies when a party outside the government provides advice, effectively functioning as an agency employee. *See Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 10-11 (U.S. 2001) (noting that the deliberative process privilege may apply when documents provided by outside consultants "played essentially the same part in an agency's process of deliberation as documents prepared by agency personnel might have done"). The consultant corollary exception is not applicable when the outside party is acting in its own interest or seeking a government benefit at the expense of other applicants. *Id.* at 12. The District Court for the District of Columbia has held that "to be excluded from the exemption," the outside party "must assume a position that is 'necessarily adverse' to the government." *Elec. Privacy Info. Ctr. v. DHS*, 892 F. Supp. 2d 28, 45-46 (D.D.C. 2012).

The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it "reflects the give-and-take of the consultative process." *Id.*

The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected

by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

*Id.*

While the ability to pinpoint a final decision or policy may bolster the claim that an earlier document is predecisional, courts have found that an agency does not necessarily have to point specifically to an agency's final decision to demonstrate that a document is predecisional. *See e.g., Gold Anti-Trust Action Comm. Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 762 F. Supp. 2d 123, 136 (D.D.C. 2011) (rejecting plaintiff's contention that "the Board must identify a specific decision corresponding to each [withheld] communication"); *Techserve Alliance v. Napolitano*, 803 F. Supp. 2d 16, 26-27 (D.D.C. 2011).

Here, the majority of the items listed on the *Vaughn* Index have been withheld under the deliberative process privilege. Thirty of the 33 documents we reviewed *in camera* have been withheld under the deliberative process privilege. Some of the email chains exclusively involve government personnel; however, most of the email chains involve parties outside the government. Typically, these outside parties are part of the consortium of developers involved with the development of McMillan Park.

Because outside parties are involved, the deliberative process privilege is applicable only if the outside parties fall under the consultant corollary exception. DMPED asserts that the outside parties are acting on behalf of the government pursuant to a DMA. Considering that the emails span from 2011 to 2014 and the roles of the consortium of developers changed during that time, we are unable to determine whether the consultant corollary exception applies to the outside parties here. DMPED should assess the parties during the relevant time periods to determine whether the non-governmental parties are acting on behalf of the government or in a position that is adverse to the government. *See Elec. Privacy Info. Ctr.*, 892 F. Supp. 2d at 45-46.

Even if the emails meet the extended threshold as inter- or intra-agency documents, the emails may be withheld only to the extent that they contain information that is both predecisional and deliberative. Several emails contain informational statements that do not reflect the give and take process of deliberation. Further, in some cases it is not clear that the emails are predecisional. For example, the email we reviewed dated 11/25/2013 with the subject "RE: Request for Clarification Regarding Contract..." consists almost entirely of a quote posted on the Department of Consumer and Regulatory Affairs (DCRA) website. This information is not protected by the deliberative process privilege. As a result, in addition to asserting which non-governmental parties qualify for consultant corollary exception, DMPED shall disclose documents or redacted versions of the documents that are not protected under the deliberative process privilege, subject to other exemptions under DC FOIA.

Exemption 4: Attorney-Client Privilege



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The attorney-client privilege exists to protect open and frank communication between counsel and client. *See Harrison v. BOP*, 681 F. Supp. 2d 76, 82 (D.D.C. 2010). It protects “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead Data Cent. Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977); *see also Rein v. U.S. Patent and Trademark Office*, 553 F. 3d 353, 377 (4th Cir. 2009). The privilege also applies to facts divulged by a client to an attorney. *Vento v. IRS*, 714 F. Supp. 2d 137, 151 (D.D.C. 2010). In addition, it “also encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts.” *Elec. Privacy Info. Ctr. v. DHS*, 384 F. Supp. 2d 100, 114 (D.D.C. 2005).

The attorney-client privilege was listed in the *Vaughn* Index to protect two of the email chains we reviewed *in camera*. The first, an email dated 5/10/2013 with the subject “RE: McMillan PUD Forms,” involves a DMPED project manager asking a government attorney for legal advice on a procedural issue, and DMPED’s director of real estate is copied on the email. In this email, an attorney client relationship exists, and everything but the salutation, introductory sentence, and valediction is protected by the attorney-client privilege. The second email dated 4/9/14 with the subject “RE: McMillan Fence” involves a response from a government attorney to a DMPED project manager, and other DMPED employees and another government attorney are copied on the email. It is not clear that this second email contains clearly protected legal advice. Based on the sample of emails we reviewed, the attorney-client clearly applies in one instance but not in another. Moreover, in the email in which the attorney-client privilege applies, there is no justification for the withholding of the entire message, as it can be reasonably segregated and redacted. Accordingly, DMPED shall review those emails it withheld on the basis of attorney-client privilege and disclose redacted versions of the documents to the extent that they are segregable, subject to other exemptions under DC FOIA.

#### Segregability

Under D.C. Official Code § 2-534(b), even when an agency establishes that it has properly withheld a document under an exemption, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). “To demonstrate that it has disclosed all reasonably segregable material, ‘the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” *Judicial Watch, Inc. v. U.S. Dep’t of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F. Supp. 2d 106, 120 (D.D.C. 2010)). In *Judicial Watch*, the court held that “[a]lthough purely factual information is generally not protected under the deliberative process privilege, such information can be withheld when ‘the material is so inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably reveal the government’s deliberations.’” *Id.* at 28. (quoting *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997)). In these instances, factual information is protected when disclosing the information would reveal an agency’s decision-making process in a way that would have a chilling effect on discussion within the agency and inhibit the agency’s ability to perform its functions. *Id.*

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We agree with DMPED's assertion that if the only unprotected information in an email is the salutation and valediction, a redacted version of the email would produce no usable information and, as a result, the email need not be produced. During our *in camera* review, however, we found that some of the withheld emails contain sentences and phrases that can be disclosed in accordance with D.C. Official Code § 2-534(b). As for DMPED's argument that it would be unduly burdensome to review and redact over 670 emails, we note that the DC FOIA does not recognize the burden of production as a valid exemption to disclosure. The DC FOIA does allow an agency to charge fees to partially offset the costs of reviewing, processing, and producing records in accordance with D.C. Official Code § 2-532(b).

### Conclusion

Based on the foregoing, we affirm in part and remand in part this matter to DMPED. DMPED shall, within 5 business days from the date of this decision, propose a fee structure for the review of the withheld emails and the production of those it determines should be released in accordance with the guidance in this decision. Once the fee structure is agreed upon, DMPED shall review and release responsive records on a rolling basis.

This constitutes the final decision of this Office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

/s/ John A. Marsh\*

John A. Marsh  
Legal Fellow  
Mayor's Office of Legal Counsel

cc: Tsega Bekele, Special Assistant, DMPED (via email)

\*Admitted in Maryland; license pending in the District of Columbia; practicing under the supervision of members of the D.C. Bar

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2016-15**

December 21, 2015

VIA E-MAIL

Mr. Ryan Greenlaw

RE: FOIA Request 2016-15

Dear Mr. Greenlaw:

This letter responds to the above-captioned administrative appeal that you submitted to the Mayor under the District of Columbia Freedom of Information Act ("DC FOIA"). In your appeal, you assert that the Metropolitan Police Department ("MPD") improperly redacted certain reports created on July 30, 2015, in the First Police District and failed to adequately search for Crisis Intervention Tracking Forms.

This is your fourth appeal related to an incident that occurred on July 30, 2015, and involved various District agencies. In lieu of a lengthy recitation of the background and earlier related proceedings, we shall summarize your instant appeal as follows. You sought from MPD:

all information relating to the nonvoluntary detention and transport of a Black woman by six officers of the Metropolitan Police Department on Thursday, July 30, 2015, from 8:45 pm through 9:45 pm, at C St. SE and 4th St. SE in Washington, DC (across from the Exxon station), including:

- The call to which the officers were responding.
- The names of the officers involved.
- All reports regarding the incident, including any police, accident, or arrest report, or field report (including any field report with the classification "Sick Person to Hospital").
- Any forms available regarding the incident, including PD Form 251 C (Crisis Intervention Tracking Form) and Form FD12.

MPD produced two heavily redacted Incident Reports. The information remaining on the forms consists of: (1) the date and time of the incident; (2) the police district in which the incident occurred; (3) the weather conditions at the time of the incident; and (4) portions of a narrative that identifies individuals strictly in generic terms, (e.g., "C-1" and "V-1"). Almost all other aspects of the report were redacted. In its initial denial letter, MPD did not address your request for Crisis Intervention Tracking Forms. As a result, you appealed to this Office on the grounds that MPD's withholding was improper.

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The crux of this matter is whether MPD was overbroad in its application of D.C. Official Code § 2-534(a)(2)<sup>1</sup> to the two documents it disclosed to you in redacted form.

MPD provided this office with a substantive response in support of the redactions it made to the documents at issue.<sup>2</sup> MPD's primary argument is that removal of personally identifiable information is insufficient to protect privacy interests here due the nature of the potential harm.

MPD's arguments resemble those raised by the defendant in *Dept't of the Air Force v. Rose*, a FOIA case involving the propriety of withholding summaries of Air Force cadet ethical proceedings where the names of the cadets were removed. The court there held:

The argument is, in substance, that the recognition by the Court of Appeals of "the harm that might result to the Cadets from disclosure" itself demonstrates "[t]he ineffectiveness of excision of names and other identifying facts as a means of maintaining the confidentiality of persons named in government reports..." Brief for Petitioners 17-18.

This contention has no merit. First, **the argument implies that Congress barred disclosure in any case in which the conclusion could not be guaranteed that disclosure would not trigger recollection of identity in any person whatever.** But this ignores Congress' limitation of the exemption to cases of "clearly unwarranted" invasions of personal privacy. Second, Congress vested the courts with the responsibility ultimately to determine "de novo" any dispute as to whether the exemption was properly invoked in order to constrain agencies withholding nonexempt matters

*Dep't of the Air Force v. Rose*, 425 U.S. 352, 378-79 (1976) (emphasis added).

Similarly, this Office shall engage in a *de novo* analysis to determine whether a disclosure of the redacted documents in this matter would trigger a privacy interest, while keeping in mind that the privacy exemption, "does not protect against disclosure [of] every incidental invasion of privacy - only such disclosures as constitute 'clearly unwarranted' invasions of personal privacy." *Rose*, 425 U.S. at 382.

In conducting our analysis, we are mindful of the risk of identification where there is a small pool sample size. In *Citizens for Env'tl. Quality, Inc. v. United States Dep't of Agric.*, 602 F. Supp. 534, 536 (D.D.C. 1984), the court considered whether redaction would be sufficient to protect the privacy interests of an individual who was the sole subject of a medical study, in which he participated in consideration of a promise of confidentiality by the government.<sup>3</sup>

<sup>1</sup> This Exemption ("Exemption 2") provides for the withholding of "Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy[.]" D.C. Official Code 2-534(a)(2).

<sup>2</sup> A copy of this response is attached hereto.

<sup>3</sup> "Defendant alleges that it is 'publicly known' in the community where the herbicide spraying was conducted that the individual tested was a resident of Avery, Idaho. Therefore, because there were only

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Despite the alleged ease in which the sole subject of the study could be identified, the court in *Citizen* concluded that reasonable redaction would protect the individual's privacy rights under FOIA because:

the exemption applies only if the government's records on the medical condition of the subject of the USDA's test "can be identified as applying to that individual. . . ." An increased likelihood of speculation as to the subject of the test is insufficient to invoke the exception. Only the likelihood of actual identification justifies withholding the requested documents under exemption 6.

*Citizens for Env'tl. Quality, Inc. v. United States Dep't of Agric.*, 602 F. Supp. 534, 538 (D.D.C. 1984) (citations omitted).

This Office conducted an *in camera* review of the two Public Incident Reports that MPD heavily redacted in its disclosure to you. We conclude that the redacted "Public Narrative" portion of the reports does not contain information which, if disclosed, would constitute a clearly unwarranted invasion of privacy. First, all individuals are referenced in the "Public Narrative" in generic terms (e.g., "V-1"). Second, the information contained in the "Public Narrative" section does not contain what courts have identified as information that could be used to identify an individual. *Rose*, 425 U.S. at 377 (finding that examples of identifying information include "where he was born, the names of his parents, where he has lived from time to time, his high school or other school records, results of examinations, evaluations of his work performance."). At most, there appears to be "an increased likelihood of speculation as to the subject . . . .", but this is insufficient to satisfy the burden necessary to justify nondisclosure, as there appears to be no risk of actual identification. *Citizens for Env'tl. Quality, Inc.*, 602 F. Supp. at 538.

The information MPD redacted is an account of events that occurred in a public space. Further, the account does not contain enough information for the public to deduce the identity of anyone involved. *Rose*, 425 U.S. at 382 (holding the privacy exemption "does not protect against disclosure every incidental invasion of privacy - only such disclosures as constitute 'clearly unwarranted' invasions of personal privacy."). The location of the incident and the names of the subjects of the reports have already been redacted in the reports, such that the description in the "Public Narrative" section cannot be used to identify a person, and therefore cannot be considered to constitute a clearly unwarranted invasion of his or her privacy.

Lastly, we reject the *Glomar* response MPD asserts for the first time in its response to your appeal.<sup>4</sup> We have accepted *Glomar* responses in instances where a requester specifically names a

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eight Forest Service employees present during the herbicide application, only four of whom were residents of Avery, and only two of these individuals occupied the technical positions that exposed them to the herbicide, the identity of the employee tested could so readily be deduced from the facts widely known about the herbicide spraying that all identifying information pertaining to that employee as well as the actual health test results must be withheld to protect that individual's privacy, as promised when the tests were conducted." *Id.*

<sup>4</sup> The denial letter MPD sent you does not assert a *Glomar* response, and the administrative record before us lacks evidence as to whether MPD conducted a search for Crisis Intervention Tracking Forms.

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police officer and requests the officer's internal discipline records on the grounds that mere admission of the existence of such a record could be damaging to the officer's reputation. *See* FOIA Appeal 2015-82. Here, there is no such concern. Admitting the mere existence of a Crisis Intervention Tracking Form, without identifying the subject of the form, would not create a stigma or implicate any privacy interests. Furthermore, despite your request for these forms, it is unclear whether MPD conducted a search for them. Therefore, MPD shall conduct a search for responsive Crisis Intervention Tracking Forms and either: (1) release them in their entirety; (2) release them in redacted form; or (3) withhold the documents and provide a *Vaughn* index, identifying the number and title of the documents withheld.

### Conclusion

Based on the foregoing, we remand this matter to the MPD to, within 7 business days from the date of this decision: (1) provide you with a copy of the investigatory reports with the "Public Narrative" sections unredacted; (2) conduct a search for Crisis Intervention Tracking Forms responsive to your request; and (3) provide you with either appropriately redacted, responsive Crisis Intervention Tracking Forms or a *Vaughn* Index indicating the number of documents being withheld and the reason(s) for the withholding.

If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker  
Associate Director

cc: Ronald B. Harris, Deputy General Counsel, MPD (via email)

**MUNDO VERDE PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Classroom Furniture and Cubbies**

Mundo Verde PCS seeks bids for classroom furniture, including but not limited to desks, chairs, and cubbies. The RFP with bidding requirements and supporting documentation can be obtained by contacting Elle Carne at [ecarne@mundoverdepcs.org](mailto:ecarne@mundoverdepcs.org) or calling 202-750-7060. **All bids not addressing all areas as outlined in the RFP will not be considered.**

**The deadline for application submission is 12:00pm May 25, 2016.**

For further information regarding this notice contact **Elle Carne** at [ecarne@mundoverdepcs.org](mailto:ecarne@mundoverdepcs.org).

**DISTRICT OF COLUMBIA RETIREMENT BOARD**

**INVESTMENT COMMITTEE**

**NOTICE OF CLOSED MEETING**

May 19, 2016

10:00 a.m.

DCRB Board Room  
900 7<sup>th</sup> Street, N.W.  
Washington, D.C 20001

On Thursday, May 19, 2016, at 10:00 a.m., the District of Columbia Retirement Board (DCRB) will hold a closed investment committee meeting regarding investment matters. In accordance with D.C. Code §2-575(b)(1), (2), and (11) and §1-909.05(e), the investment committee meeting will be closed to deliberate and make decisions on investments matters, the disclosure of which would jeopardize the ability of the DCRB to implement investment decisions or to achieve investment objectives.

The meeting will be held in the Board Room at 900 7<sup>th</sup> Street, N.W., Washington, D.C 20001.

For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or [Deborah.Reaves@dc.gov](mailto:Deborah.Reaves@dc.gov).



## DISTRICT OF COLUMBIA RETIREMENT BOARD

## NOTICE OF OPEN PUBLIC MEETING

May 19, 2016  
1:00 p.m.

900 7<sup>th</sup> Street, N.W.  
2<sup>nd</sup> Floor, DCRB Boardroom  
Washington, D.C. 20001

The District of Columbia Retirement Board (DCRB) will hold an Open meeting on Thursday, May 19, 2016, at 1:00 p.m. The meeting will be held at 900 7<sup>th</sup> Street, N.W., 2<sup>nd</sup> floor, DCRB Boardroom, Washington, D.C. 20001. A general agenda for the Open Board meeting is outlined below.

*Please call one (1) business day prior to the meeting to ensure the meeting has not been cancelled or rescheduled.* For additional information, please contact Deborah Reaves, Executive Assistant/Office Manager at (202) 343-3200 or Deborah.reaves@dc.gov.

**AGENDA**

- |  |                    |
|--|--------------------|
| I. Call to Order and Roll Call         | Chairman Bress     |
| II. Approval of Board Meeting Minutes  | Chairman Bress     |
| III. Chairman's Comments               | Chairman Bress     |
| IV. Acting Executive Director's Report | Ms. Morgan-Johnson |
| V. Investment Committee Report         | Ms. Blum           |
| VI. Operations Committee Report        | Mr. Ross           |
| VII. Benefits Committee Report         | Mr. Smith          |
| VIII. Legislative Committee Report     | Mr. Blanchard      |
| IX. Audit Committee Report             | Mr. Hankins        |
| X. Other Business                      | Chairman Bress     |
| XI. Adjournment                        |                    |

**ROCKETSHIP DC PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Substitute Teacher Services**

Rocketship DC Public Charter School seeks a qualified Substitute Teacher Services vendor for our public charter school. For deadlines, specifications and other bid requirements pertaining to the RFP email [dleong@rsed.org](mailto:dleong@rsed.org). Deadline for submission is 5PM EST on June 10, 2017.

**OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA**  
**RECOMMENDATIONS FOR APPOINTMENTS AS NOTARIES PUBLIC**

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after June 15, 2016.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4<sup>th</sup> Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on May 13, 2016. Additional copies of this list are available at the above address or the website of the Office of the Secretary at [www.os.dc.gov](http://www.os.dc.gov).

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Recommendations for appointment as DC Notaries PublicEffective: June 15, 2016  
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Aguero	Michael	Department of Justice 601 D Street, NW	20004
Alfaro	Sandra A.	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006
Andre	Ryan L.	Williams Law + Policy 1800 K Street, NW, Suite 714	20006
Angus	Todd C	Morgan, Lewis & Bockius, LLP 1111 Pennsylvania Avenue, NW	20004
Bailey	Shermel E.	George Washington University Hospital 900 23rd Street, NW, Suite G-2036	20037
Bassey	Lasheka Brown	D.C. Office of Employee Appeals 1100 4th Street, SW, Suite 620 East	20024
Belken	Adrienne	Vanda Pharmaceuticals 2200 Pennsylvania Avenue, NW, Suite 300E	20037
Bell	Stacy Queen	Georgetown University Law Library 111 G Street, NW	20001
Bennett	Laura Angle	The Bernstein Company 3299 K Street, NW, Suite 700	20007
Brennan II	Edward G.	Public Properties, LLC 3210 Grace Street, NW, Suite 100	20007
Brown	Kelli	National Education Association 1201 16th Street, NW	20036
Calvit	Samuel	La Clinica Del Pueblo Inc. 2831 15th Street, NW	20009
Campbell	Karlene	Capital Reporting Company 1821 Jefferson Place, NW	20036
Cardone	Frances	Self 1064 Papermill Road, NW	20007

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Caskie	Dawn T.	John Deere Public Affairs 801 17th Street, NW, Suite 200	20006
Clark	Breana	B'nai B'rith International 1120 20th Street, NW, Suite 300N	20036
Collins	Michelle A.	Association of Corporate Counsel 1025 Connecticut Avenue, NW, Suite 200	20036
Conde	Marilena	Edlow International Company 1666 Connecticut Avenue, NW, Suite 201	20009
Cook	Ebony J.	Thompson Coburn, LLP 1909 K Street, NW, Suite 600	20006
Cook	Maria B.	(Self) Dual 1833 Jackson Street, NE	20018
Davis	Richard O.	Chemonics International 1717 H Street, NW	20006
Duong	Nam	Charles Schwab 1845 K Street, NW	20006
Edwards	Judy M.	Dr. Mark A Tromblay 2440 M Street, NW, Suite 601	20037
Estep	Cynthia J.	Arent Fox LLP 1717 K Street, NW	20006
Feinhaus	Vera D.	Great Jones Capital II LLC 1710 Connecticut Avenue, NW, 3rd Floor	20009
Fsahaye	Yonas	Society for Women's Health Research 1025 Connecticut Avenue, NW, Suite 601	30036
Ganthier	Gina A.	Ammengency Construction Group, LLC 22 Kennedy Street, NW	20011
Gassaway	Cory	Bank Fund Staff Federal Credit Union 1725 I Street, NW	20006
Gilbert	Angelica Aida	Hilton Grand Vacations 1250 22nd Street, NW	20037

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Goettge	Kathryn L.	Capital Caring 50 F Street, NW, Suite 3300	20001
Graziano	Elyse K.	The Headfirst Companies 2639 Connecticut Avenue, NW, Suite 250	20008
Greene	Linda I.	Self (Dual) 77 58th Street, SE	20019
Groguhet	Zekeu	Top Flite Legalization 777 7th Street, NW, Suite 710	20001
Hakil Jacinto	Sophie	Travisa 1731 21st Street, NW	20009
Haley	Monica R.	Beltway Cleaning Services DC, LLC 1731 Connecticut Avenue, NW, 2nd Floor	20009
Harper	Helena S.	Self 5111 Chillum Place, NE	20011
Hawa	Ramsey	Urgent Passport and Visa Services 1050 17th Street, NW, Suite 1000	20036
Hepner	Jordan	Evergreen Private Finance 1710 Connecticut Avenue, NW, Third Floor	20009
Holmes	Tamela	Hellmuth, Oates and Kassabaum, Inc 3223 Grace Street, NW	20007
Hutchinson	Brianne B.	Congressional Budget Office Ford House Office Building, 2nd and D Streets, SW	20515
Hyde	Katherine Eileen	Bromberg, Kohler Maya & Maschle, PLLC 2011 Pennsylvania Avenue, NW, #500	20006
Jauhar	Madeeha	JDOS International, Inc 4506 14th Street, NW	20011
Jaziri	Rania	Self (Dual) 43 K Street, NW, #613	20001

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Johnson	Bryant L.	National Gallery of Art Fourth Street and Constitution Avenue, NW	20565
Johnson	Trina S.	McDermott Will & Emery LLP 500 North Capital Street, NW	20001
Jones	Marvin L.	Bank Fund Staff Federal Credit Union 1725 I Street, NW, Suite 150	20006
Jordan	Lloyd J.	Motley Waller LLP 1155 F Street, NW, Suite 1050	20004
Larry	Minnie	Self 425 8th Street, NW, Apt. 841	20004
Leftwich	Kiristan M.	Family Matters of Greater Washington 425 Eye Street, NW	20001
Litmans	Lys	Chevy Chase-Bethesda Community Children's Center 5671 Western Avenue, NW	20015
Lynch	Caitlyn	Hilton Grand Vacations 1250 22nd Street, NW	20037
Mimi	Shieh	Avascent 1615 L Street, NW, Suite 1200	20009
Mohn	Richard A	National LGBTQ Task Force 1325 Massachusetts Avenue, NW, Suite 600	20005
Namata	Irene R.	Axinn, Veltrop & Harkrider, LLP 950 F Street, NW	20004
Nedelcovic	Maria Zelmira	Organization of American States/Federal Credit Union 1886 F Street, NW	20006
Page	Meredith C.	Department of Veterans Affairs 50 Irving Street, NW	20422

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Pendleton	Brian Wayne	Crown Agents USA, Inc 1129 20th Street, NW	20036
Pilato	Thomas G.	Chicago Title Insurance/Capitol Settlements Agent 2000 M Street, NW, #610	20036
Richardson	Jet	International Crisis Group 1629 K Street, NW, Suite 450	20006
Roach	Raquel	Self 1651 Fort Dupont Street, SE	20020
Rolle II	Christopher M.	Skadden Arps Slate Meagher & Flom, LLP 1440 New York Avenue, NW	20005
Saltibus	Jelani Sherhyse Janae	American University - AU Center 4400 Massachusetts Avenue, NW	20016
Soriano	Nancy	Aveda Institute 713 7th Street, NW	20001
Stancik	Ashley Elaine	Hogan Lovells US LLP Columbia Square 555 13th Street, NW	20004
Suissa	Jimmy	Self (Dual) 4624 Albemarle Street, NW	20016
Sullivan	Judith E.	Self 3001 Veazey Terrace, NW, Unit 1223	20008
Telliga	Lisa E.	Gelman Management Company 2120 L Street, NW	20037
Wells	William Scott	Sunlight Foundation 1818 N Street, NW, Suite 300	20036
Wetter	Jennifer	Population Institute 107 2nd Street, NE	20002
White	Zaneta T.	State Department Federal Credit Union 301 4th Street, SW	20547
Wilkins	Alphonso L.	Crescent Property Management 2647 Connecticut Avenue, NW, #200	20016



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Williams	Leandra	Dr. Mark A Tromblay 2440 M Street, NW, Suite 601	20037
Worrells	Andrea D.	Department of Agriculture Forest Service 201 14th Street, SW	20250

Acosta	Cara L.	Tobin, O'Connor & Ewing 5335 Wisconsin Avenue, NW, Suite 700	20015
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Alavijeh	Arman Shafiei	The UPS Store	
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		4401A Connecticut Avenue, NW	20877
Alford	Shannon	Akin, Gump, Strauss, Hauer & Feld, LLP 1333 New Hampshire Avenue, NW	20036
Allen	Gloria	Shapiro, Lifschitz & Schram, PC 1742 N Street, NW	20036
Allen-Williams	Debra Ann	Self 2819 32nd Street, SE	20020
Amos	Regina F.	Dentons US LLP 1301 K Street, NW, Suite 600 East Tower	20005
Anderson	Nicole M.	Ballard Spahr LLP 1909 K Street, NW, 12th Floor	20006
Anderson	Christopher	Center For Science in the Public Interest 1220 L Street, NW, Suite 300	20005
Andrews	Shannah R.	Williams & Connolly LLP 725 12th Street, NW	20005
Bahraminejad	Bahman	The UPS Store 4401A Connecticut Avenue, NW	20877
Baker	Dale Ross	Stewart Title Group 11 Dupont Circle, NW	20036
Barnhart	Linda Marie	Schagrin Associates 900 7th Street, NW, Suite 500	20001
Bateman	Kimberley D.	Paige Industrial Services, Inc 2828 10th Street, NE	20017
Beale	Amanda	TD Bank, N.A. 1489 P Street, NW	20005
Beardsley	Melissa	Fidelity Investments 1900 K Street, NW, Suite 110	20006
Beck	Taylor Dong	Bonstra Haresign Architects 1728 14th Street, NW, Suite 300	20009

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Best	Cherly L.	Crowell & Moring LLP 1001 Pennsylvania Avenue, NW LLP	20004
Blake	Debra L.	Monumentals Sports & Entertainment 601 F Street, NW	20004
Blakeslee	Elizabeth L.	Self 1325 13th Street, NW, Room 53	20005
Blitz	Karen	Polsinelli PC 1401 Eye Street, NW	20005
Boston	Camelle Jones	Ballard Spahr LLP 1909 K Street, NW, 12th Floor	20006
Boyd	Jocelyn	Bank of Georgetown 1115 30th Street, NW	20007
Brooks	Sherry Lynn	Capital Reporting Company 1821 Jefferson Place, NW	20036
Brown	Darralyn D.	Obergh and Berlin 1300 Pennsylvania Avenue, NW, Suite 700	20004
Brown Sr.	Ronald C.	Christian Love Baptist Church 818 Bladensburg Road, NE	20002
Buckman	Steven M.	Palisades Title Company/Buckman Legal PLLC 4530 Wisconsin Avenue, NW, Suite 300	20016
Bunner	Colleen	Schulte Roth & Zabel 1152 15th Street, NW, Suite 850	20005
Camejo	Rheana Keva	Children's National Medical Center 111 Michigan Avenue, NW	20010
Capotosto	Catherine J.	Cox Enterprises, Inc. 975 F Street, NW, Suite 300	20004
Carlton	Nicole	Fidelity Investments 1900 K Street, NW, Room 110	20006

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Carter	Matilda	Self 2006 E Street, NE	20002
Cho	Claire	National Geographic Society 1145 17th Street, NW	20036
Cooper	Ericia Johnson	Eckert Seamans Cherin & Mellott, LLC 1717 Pennsylvania Avenue, NW, 12th Floor	20006
Cortes	Walter	United Nations Foundations, Inc. 1750 Pennsylvania Avenue, NW	20006
Crawford	Avril	Creative Associates International 5301 Wisconsin Avenue, Suite 700	20015
Dacres	Nicole G.	RSC Electrical & Mechanical Contractors, Inc. 6035 Dix Street, NE	20019
Dickerson	Lola C.	Holland & Knight 800 17th Street, NW, Suite 1100	20006
Dorange-Edmond	Jennifer J.	Treasury Department FCU 1101 2nd Street, NE	20002
Echanique	Deanna R.	Alphatec PC 1525 18th Street, NW	20036
Edwards	Brenda D.	Sibley Memorial Hospital 5255 Loughboro Road, NW	20016
Ekekwe-Kauffman	Olekanma	Law Offices of Olekanma A. Ekekwe, PC 2426 L'Enfant Square, SE, Suite 100	20020
Englehart	Laura Jeanne	Eckert Seamans Cherin & Mellott, LLC 1717 Pennsylvania Avenue, NW	20006
Epps	Lisa Denise	Total Building Solutions Inc. 2408 Minnesota Avenue, SE	20020
Evans	Olivia J.	Williams & Connolly LLP 725 12th Street, NW	20005

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Fernandez	Elizabeth	Wingfield & Gingsburg, P.C. Attorneys at Law 700 5th Street, NW, Suite 300	20001
Fisher	Jennifer M.	The Margolius Law Firm, LLP 4201 Connecticut Avenue, NW, Suite 600	20008
Fleishell	Patricia A.	Associated Press 1100 13th Street, NW	20005
Fox	Derek	Planet Depos, LLC 1100 Connecticut Avenue, NW, Suite 950	20036
Fruscella	Stacy Leigh	OTJ Architects 1412 Eye Street, NW	20005
Gainer	Seth Allen	Self 4100 W Street, NW	20007
George	Joan Pamela	Self 2021 3rd Street, NE	20002
Glover	Jelissa	Justice Federal Credit Union 935 Pennsylvania Avenue, NW, Room 8676	20004
Gonzalez	Sonia X.	Diversified Reporting Services, Inc. 1101 16th Street, NW, 2nd Floor	20036
Gorman	Andrew A.	Self (Dual) 3110 Quebec Place, NW	20008
Gormly	Charles F.	Rosenthal Gormly, Attorney at Law 5101 Wisconsin Avenue, NW, Suite 302	20016
Green	Shaene N.	SunTrust Bank 1100 G Street, NW	20005
Haney	Danielle Marie	Three Crowns (US) LLP 2001 Pennsylvania Avenue, NW, 11th Floor	20006
Harmonson	John L.	TSG Reporting, Inc. 1875 I Street, NW, Suite 500	20006

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Harris	Karen	DC Housing Finance Agency 815 Florida Avenue, NW	20001
Henderson	Vanessa M.	The Fund for American Studies 1706 New Hampshire Avenue, NW	20009
Hess	Duane K.	Cathedral Park Condominium Association, Inc. 3100 Connecticut Avenue, NW	20008
Hood	Yvonne C.	DC Department of Employment Services 4058 Minnesota Avenue, NE, Suite 4300	20019
Horcasitas	Ana Cristina	Self 77 H Street, NW, Unit 264	20001
Hubert	Susan A.	Shapiro, Lifschitz & Schram, PC 1742 N Street, NW	20036
Jenkins	Ellen M.	JBG/COMMERICAL MGMT, LLC 955 L'Enfant Plaza North, SW, Suite 1208	20024
Jones	Dawan Sylvester	OCFO- DC Office of Tax and Revenue 1101 4th Street, SW, W550	20024
Juge	Stephen Douglas	Heenan Paris LLP 2200 Pennsylvania Avenue, NW, Suite 400E	20037
King	Kenicka	Premier Bank Inc. 1604 17th Street, NW	20009
Kinne	Vicki A.	Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates 1440 New York Avenue, NW	20005
Laing	Lorna B.	Boies, Schiller & Flexner LLP 5301 Wisconsin Avenue, NW	20015
Larson	Dawn K.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036

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Lewis	Avery	Self 2515 R Street, SE, Room 101	20020
Lewis	Kimberly D.	Cato Institute 1000 Massachusetts Avenue, NW	20001
Lobban	Christine H.	Clyde's Restaurant Group 3236 M Street, NW	20007
Madrid	Robert	Gensler 2020 K Street, NW, Suite 200	20006
Manzanarez	Rose	Wells Fargo Bank 801 Pennsylvania Avenue, NW	20004
Marsh	Alicia	American University 4400 Massachusetts Avenue, NW	20016
Mason	Darcell	TD Bank 905 Rhode Island Avenue, NE	20018
Mattingly	Peter James	Georgetown University Law Center--Criminal Justice Clinic 600 New Jersey Avenue, NW, Room 123	20001
McCrea	Sharon H.	Self 3918 S Street, SE	20020
Mckinney	Sherry	Jones Walker LLP 499 South Capitol Street, SW, Suite 600	20003
Murphy	Paula	Saul Ewing LLP 1919 Pennsylvania Avenue, NW, Suite 550	20006
Newman	Robert P.	Self 6629 13th Place, NW	20012
Nguyen-Erbacher	Monique K.	Self 1431 33rd Street, NW	20007
Noblezada	Lennie L.	NARUC 1101 Vermont Avenue, NW, Suite	20005

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		200	
Norwich	Heather	Pier Associates 2132 Wisconsin Avenue, NW	20007
Nuth	Shannon	Price Benowitz, LLP 409 7th Street, NW	20004
O'Neal	Deborah L.	Silver, Freedman, Taff & Tierman LLP 3299 K Street, NW, Suite 100	20007
Osborn	Rena L.	Klein Hornig LLP 1325 G Street, NW, Suite 770	20005
Osondu-Anyanwu	Chino	TD Bank 905 Rhode Island Avenue, NE	20018
Peters	Jennifer L.	Morris, Manning & Martin LLP 1401 Eye Street, NW, Suite 600	20005
Phillips	Bryant Kyle	Casey Trees 3030 12th Street, NE	20017
Pinzon-Martinez	Mabel	Fort Myer Construction Corporation 2237 33rd Street, NE	20018
Pomar	Trinity	Capital Reporting Company 1821 Jefferson Place, NW	20036
Pournader	Ali	Self 2425 L Street, NW, Unit 239	20037
Primo	Allister	Allister Primo State Farm 1054 31st Street, NW, Suite 417	20007
Quinn	Joeller G.	Federal Energy Regulatory Commission 888 1st Street, NE, Room 42-17	20426
Quinn	Kathleen	The Barker Adoption Foundation 1066 30th Street, NW	20007
Reed	Richard D,	Schulle Roth & Zabel, LLP 1152 15th Street, NW, Suite 850	20005
Renehan	Kelly	Three Crowns (US) LLP 2001 Pennsylvania Avenue, NW,	20006



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		11th Floor	
Rivera-Cortegana	Keyla Lupita	Creative Associates International 5301 Wisconsin Avenue, NW, Suite 700	20015
Robinson	Sherry J.	Holland and Hart, LLP 975 F Street, NW, 9th Floor	20004
Robles	Jessica	SunTrust Bank 3300 New Mexico Avenue, NW	20016
Sefko	Nancy E.	Albright Stonebridge Group 601 13th Street, NW, 10th Floor	20005
Sidbury	Johnny V.	Self 1479 Bangor Street, SE, #4	20020
Smith-Huemer	Madalene	Atlantic Council 1030 15th Street, NW, 12th Floor	20005
Streeter	Spencer	Ballard Spahr LLP 1909 K Street, NW	20006
Terrell	Drucilla V.	Treasury Department Federal Credit Union 1300 Pennsylvania Avenue, NW, Room C-1-43	20004
Thomas II	William C.	Wells Fargo Bank 1934 14th Street, NW	20009
Thompson	Joel	Highland Title & Escrow, LLC 1701 O Street, NW	20009
Thompson	Tonya	International Association of Fire Fighters 1750 New York Avenue, NW	20006
Vasquez	Iveth R.	Bank of America 722 H Street, NE	20002
Vlissides	Nicholas D.	New World Title & Escrow 888 16th Street, NW, Suite 800	20004
Vo	Diedre T.	Cuff and Company Realtors 1701 Pennsylvania Avenue, NW	20006

**D.C. Office of the Secretary  
Recommendations for appointment as DC Notaries Public****Effective: June 15, 2016  
Page 16**

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Weiss	Sadie	Peace Corps 1111 20th Street, NW	20526
Whitehead Jr.	Willie T.	DC Department of General Services/ DC Protective Services Division 64 New York Avenue, NE, 4th Floor	20009
Williams-Bonilla	Martha H.	Federal Labor Relations Authority 1400 K Street, NW	20424

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY****BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Environmental Quality and Sewerage Services Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Sewerage Services Committee will be holding a meeting on Thursday, May 19, 2016 at 9:30 a.m. The meeting will be held in the Board Room (4<sup>th</sup> floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at [www.dewater.com](http://www.dewater.com).

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or [linda.manley@dewater.com](mailto:linda.manley@dewater.com).

**DRAFT AGENDA**

- |   |  |
|---|--|
| 1. Call to Order                                  | Committee Chairperson                          |
| 2. AWTP Status Updates<br>BPAWTP Performance      | Assistant General Manager,<br>Plant Operations |
| 3. Status Updates                                 | Chief Engineer                                 |
| 4. Project Status Updates                         | Director, Engineering &<br>Technical Services  |
| 5. Action Items<br>- Joint Use<br>- Non-Joint Use | Chief Engineer                                 |
| 6. Emerging Items/Other Business                  |  |
| 7. Executive Session                              |  |
| 8. Adjournment                                    | Committee Chairperson                          |

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY****BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Finance and Budget Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, May 26, 2016 at 11:00 a.m. The meeting will be held in the Board Room (4<sup>th</sup> floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at [www.dcwater.com](http://www.dcwater.com).

For additional information please contact: Linda R. Manley, Board Secretary at (202) 787-2332 or [lmanley@dcwater.com](mailto:lmanley@dcwater.com).

**DRAFT AGENDA**

- |                                      |                              |
|--------------------------------------|------------------------------|
| 1. Call to Order                     | Chairman                     |
| 2. April 2016 Financial Report       | Director of Finance & Budget |
| 3. Agenda for June Committee Meeting | Chairman                     |
| 4. Adjournment                       | Chairman                     |

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

**BOARD OF DIRECTORS**

**NOTICE OF PUBLIC MEETING**

**Water Quality and Water Services Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Water Quality and Water Services Committee will be holding a meeting on Thursday, May 19, 2016. The meeting will be held in the Board Room (4<sup>th</sup> floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at [www.dcwater.com](http://www.dcwater.com).

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or [linda.manley@dcwater.com](mailto:linda.manley@dcwater.com).

**DRAFT AGENDA**

- |                                   |  |
|-----------------------------------|--|
| 1. Call to Order                  | Committee Chairperson                    |
| 2. Water Quality Monitoring       | Assistant General Manager, Consumer Ser. |
| 3. Action Items                   | Assistant General Manager, Consumer Ser. |
| 4. Emerging Issues/Other Business | Assistant General Manager, Consumer Ser  |
| 5. Executive Session              |  |
| 6. Adjournment                    | Committee Chairperson                    |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Order No. 18770-B of &pizza, Motion for Minor Modification of Conditions and Plans in Order Nos. 18770-A**, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to allow a fast food establishment (first floor) under section 733, and a variance from the rear yard requirements under section 774, for a one-story rear addition to an existing building in the CHC/C-2-A District at premises 405 8th Street, S.E. (Square 902, Lot 825).

<b>HEARING DATES</b> (Application No. 18770):	June 10, 2014, June 17, 2014, and September 9, 2014
<b>DECISION DATE</b> (Application No. 18770):	September 9, 2014
<b>FINAL ORDER ISSUANCE DATE</b> (No. 18770-A):	September 19, 2014
<b>MINOR MODIFICATION DECISION DATE:</b>	March 29 and April 19, 2016

**SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION**

**BACKGROUND**

The Board of Zoning Adjustment (“Board” or “BZA”) approved an application from &pizza (the “Applicant”) pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to allow a fast food establishment (first floor) under § 733, and a variance from the rear yard requirements under § 774, for a one-story rear addition to an existing building in the CHC/C-2-A District at premises 405 8th Street, S.E. (Square 902, Lot 825). The Board heard Application No. 18770 over three hearing dates: June 10, 2014; June 17, 2014; and September 9, 2014. The application was approved on September 9, 2014. An Order and a corrected Order to correct a typographical error were issued on September 19, 2014. Order No. 18770-A (the “Order”) became effective 10 days after the issuance date of September 19, 2014.

The Order included 10 conditions, including a term limit of seven years from the effective date of the Order. As described in the Order and the record, the affected Advisory Neighborhood Commission (“ANC”), ANC 6B, initially had opposed the application, citing concerns regarding how the collection and storage of trash would exacerbate an existing serious rodent problem in the neighborhood. The Applicant, with the ANC’s assent, asked for a postponement in the case to allow the Applicant time to work with the ANC and the neighbors on a solution to the issues being raised. The postponement was granted. Subsequently, after extensive meetings and negotiations between the Applicant, the ANC and the neighbors, the Office of Planning (“OP”), the Department of Health, the District Department of Transportation (“DDOT”), and experts in the areas of noise mitigation, odor mitigation, rodentology, and trash containment procedures, the ANC submitted a second report, this time in support of the application and with a consolidated, negotiated list of conditions, including indoor trash, noise mitigation, and odor control, that satisfied the ANC and the neighbors.

There also were two applications for party status in opposition from two neighbors which the Board had granted. In pursuing the underlying application, the Applicant worked with the ANC and the party-opponents and other neighbors and, as heretofore described, eventually reached agreement on a set of conditions to mitigate the anticipated adverse impacts of the Applicant's proposal. In light of that agreement, the party-opponents withdrew their opposition and changed their position to one of support.

Case No. 18770 was approved by the Board by a vote of 4-1-0 taken on September 9, 2014. The final date of Order No. 18770-A<sup>1</sup> is September 19, 2014. (See, Exhibit 44, Case No. 18770.)

### **MOTION FOR MINOR MODIFICATION**

On March 10, 2016, the Applicant submitted an application for modifications to the Board's previous approval in Application No. 18770 and also, pursuant to 11 DCMR § 3100.5, a request for a waiver of the requirement for a hearing under § 3129.7. (Exhibits 1 – 7C, 12.) Included with the request for modifications were a copy of the proposed amended conditions (Exhibit 5) and revised plans. (Exhibits 7A-7C and 12.)

#### *Preliminary Matter: Waiver of § 3129.7 To Allow Matter to be Decided Without Hearing.*

A threshold question was presented as to whether the requested changes constituted minor modifications under § 3129 so that the motion could be heard without a hearing. Subsection 3129.2 states:

“The Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested.”

Under § 3129.7, other aspects of a Board order may be modified, but require a hearing. (“A request to modify other aspects of a Board order may be made at any time, but shall require a hearing.”)

Although most of the requested modifications are proposed changes that are reflected in the plans, the reduced term and appointment of the community liaison would not be reflected in the plans. Under the Zoning Regulations, the Board may consider waiving § 3129.7, with a showing of good cause and lack of prejudice. (11 DCMR § 3100.5.)

The Board first considered the case at the Board's Public Meeting of March 29, 2016 and, at the request of the ANC, the Board postponed its decision until June 19, 2016. (Exhibits 18 and 19.) The reason for the request for a postponement was the lack of notice and transparency of the request for minor modifications and thus the ANC's lack of an opportunity to comment on the

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<sup>1</sup> A corrected Order was issued to fix a typo in Order No. 18770, which was also issued on September 19, 2014.

changes being sought to the Order. The Board granted the ANC's request for a postponement to give the ANC time to review the matter and comment on it.

At the June 19<sup>th</sup> Public Meeting, the Board waived the requirement in § 3129.7 that a minor modification deal with plans, as the proposed modification affects previously approved conditions as well as modifications to the plans, and proceeded without a hearing.

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 simply a minor modification of plans, such that it could be granted without a hearing, the Board found good cause and a lack of prejudice, as the proposed changes had been fully reviewed and agreed to with the neighborhood stakeholders and, as ultimately revised, had the support of the Office of Planning ("OP"), the District of Columbia Department of Transportation ("DDOT"), and the affected ANC. Accordingly, the Board waived the requirement to hold a public hearing on the modification.

#### *Motion for Minor Modification*

In this application, the Applicant requested to modify BZA Order No. 18770A (2014), which granted a special exception under § 733 for a fast food restaurant, and a rear yard variance under § 774 to allow construction of a one story rear yard addition. The original order (BZA Order 18770) was replaced by No. 18770A to correct a typographical error. The Applicant requested to modify conditions numbered 1, 4, 7, 3(i), and 11, and also filed revised plans reflecting these changes. (Exhibits 7A-7C, and 12.)

The change requested would reduce the term of approval from seven years to five years. According to the Applicant, the reduced term was agreed to by the ANC and others in the community who originally opposed the modifications, but ultimately agreed to the changes provided there was a shorter term. (Exhibits 3 and 4.) The other changes related to installation of a pollution control system in lieu of a ventless oven system (condition no. 4), relocating the HVAC system to the roof (condition no. 7), installation of a "trash extension" for storage of trash and recycling (condition no. 3(i)), and appointment of a liaison with the community to ensure operations in accordance with the BZA Order (condition no. 11).

In its letter requesting changes in the previous approval, the Applicant acknowledged and apologized for having begun construction without the requisite permits and not in accordance with the terms of the original BZA Order, Order No. 18770-A. The Applicant requested to modify the approved conditions of Order No. 18770-A after extensive discussions and negotiations with neighbors and the ANC and after the Applicant had first conducted two-plus months of illegal construction in violation of the conditions of the original BZA order. The Applicant stated that it met with four neighborhood stakeholders and they spent considerable time and effort to reengineer the space as it was built out before the stop work order, to address how to modify the Applicant's proposal from the approved Order.



The specific revisions included:

- I. Reducing the term from seven years to five years;
- II. Changing the oven type from the originally proposed vent-less system;
- III. Relocating the HVAC unit; and

Adding conditions:

- IV. To confirm that trash extension will be used only for storage of trash and recycling; and
- V. To appoint a representative of the Applicant to ensure compliance with conditions; and

Submitting revised plans, to reflect the above-stated revised conditions, under Exhibits 7A-C and 12.

Pursuant to § 3129.4, all requests for minor modifications must 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. ANC 6B received notice of the request for proposed modifications to BZA Order No. 18770-A on March 11, 2014. Having just met on March 8, 2016, the ANC requested a postponement of the Board's consideration of the request for proposed modifications to allow the ANC time in which to meet to consider and comment on the request. The Board granted the ANC's request that the Board postpone its deliberations at the March 29, 2016 Public Meeting, as heretofore described in the preliminary matter in this Order.

The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. An ANC report was submitted to the record, which stated that the proposed modifications were being supported "despite the fact that &pizza in concert with the owner of 405 8<sup>th</sup> Street, S.E. – Capitol Hill Investors, LLC (CHI) – conducted two and a half months of construction without construction permits and pursuant to unapproved plans that contradicted the most fundamental requirements upon which the ANC's support of the 2014 variance request and fast food exception was premised and which &pizza was ordered to comply with by the BZA in its September 2014 Order." Despite the Applicant's failures in proceeding appropriately and legally under the original Order, as negotiated with the community and ordered by this Board, the ANC, citing the Applicant's "diligent" work in the last six months to work with a group of neighbors, former ANC Commissioners, and engineers and other experts to determine how what had thus far been constructed could be modified to bring the project into line with "the spirit of the requirements of the original Order," the ANC agreed to support the modification as presented by the Applicant in its submission of April 13, 2014. The ANC's report stated that at a regularly scheduled, properly noticed meeting of April 12, 2016, at which a quorum was present, the ANC voted 8-1-0 to support the Applicant's request for modifications, provided the Applicant submitted and the Board approved modifications to conditions in the Order, to read as follows:

1. Paragraph 1 (revised). "The exception shall be for a period of five (5) years from the original September 19, 2014 date of the unmodified Order:"

2. Paragraph 3 (new "i"). "The trash enclosure shall be used only for the storage of trash and recycling;"
3. Paragraph 4 (revised). "As specified in Exhibits 7A-C, the applicant shall use a ventless oven system, install either a hood or exhaust grill over each oven stack, and remove all cooking exhaust through the specified ductwork and Pollution Control Unit (PCU) described in Exhibit 12. The PCU will exhaust through the face of the building as specified in Exhibits 7A-C. The applicant shall maintain the system in good working order, and shall enter a maintenance contract with a service provider to, among other things, regularly clean the ductwork and PCU and provide new or clean filters in order to ensure effective elimination of odors from the vented cooking exhaust for the duration of the time that the applicant operates at 405 7<sup>th</sup> (sic) S., SE."
4. Paragraph 7 (revised) "As specified in Exhibits 7A-C: the HVAC unit at the rear of the property shall be replaced with a new HVAC unit located atop the trash enclosure; a mini split to cool the trash enclosure will also be installed atop the trash enclosure; and a cooler condenser shall be installed atop the dog leg roof. These mechanicals will be soundproofed as specified in Exhibits 7A-C to meet the standards employed by ArtUSA (or similar noise control product business) at 413 8<sup>th</sup> Street, S.E. No additional mechanical equipment shall be installed on either roof or at the rear of the property."
5. Paragraph 11 (new). "The applicant shall appoint a designated individual member of its organization to ensure compliance with the provisions of this order."

The ANC noted that its support was contingent on approval of the modification to the conditions cited above and the plans at Exhibit 7A-C. Were any of the conditions or Exhibit 7A-C not agreed to by the Applicant or incorporated into the modified Order, the ANC stated that it would oppose the requested modification. The ANC took no position on whether the modifications should be deemed "minor" or not. (Exhibit 27.)

OP submitted a timely report dated March 22, 2016, recommending approval of the modifications requested by the Applicant. Further, OP stated its opinion that the proposed modifications were minor and do not change the material facts on which the Board based its original decision. (Exhibit 9.)

Letters of support for the modification application were entered into the record by Pure Barre and Metro Mutts, both of which are businesses next door to the Applicant's location. (Exhibits 13-14, 20-21.)

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 the conditions and approved plans in Case No. 18770. 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. 18770, 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 is application is hereby **GRANTED, SUBJECT TO THE PLANS AT EXHIBITS 7A-C AND 12 AND WITH THE FOLLOWING CONDITIONS:**

1. Approval shall be for a period of **FIVE (5) YEARS** from the original September 19, 2014 date of the unmodified order.
2. Hours of operation shall not exceed:
  - a. Sundays through Wednesdays, 10:00 a.m. to 11:00 p.m.;
  - b. Thursdays, 10:00 a.m. to midnight; and
  - c. Fridays and Saturdays, 10:00 a.m. to 2:00 a.m.
3. Garbage shall be collected a minimum of six days per week, and recycling a minimum of five days per week, and adhere to the following conditions:
  - a. Collections shall not occur before 7:00 a.m.;
  - b. The Applicant shall provide the garbage and recycling companies with keys to the trash enclosure;
  - c. All receptacles shall be kept within the trash enclosure only, unless being hauled to or from sanitation trucks;
  - d. All receptacles shall be secured with lids, including while within the trash enclosure and while being hauled to and from sanitation trucks. Exterior doors to the trash enclosure shall remain closed unless refuse is being hauled to sanitation trucks;
  - e. Garbage and recyclables shall be placed within receptacles within the trash enclosure only;
  - f. Garbage and recycling spills shall be cleaned as they occur;
  - g. Daily, prior to opening, the Applicant shall ensure that no debris was left within the breezeway and that the trash enclosure doors are properly shut and secure.
  - h. The trash enclosure shall be power washed weekly or more often to prevent food or grease film on the floor of the enclosure, breezeway, and receptacles; and
  - i. The trash enclosure shall be used only for the storage of trash and recycling;
  - j. The Applicant shall allow DPW, DCRA and Zoning Administrator inspectors to access the trash enclosure and breezeway.

4. As specified in Exhibits 7A-C, the Applicant shall use a ventless oven system, install either a hood or exhaust grill over each oven stack, and remove all cooking exhaust through the specified ductwork and Pollution Control Unit (PCU) described in Exhibit 12. The PCU will exhaust through the face of the building as specified in Exhibits 7A-C. The Applicant shall maintain the system in good working order, and shall enter into a maintenance contract with a service provider to, among other things, regularly clean the ductwork and PCU and provide new or clean filters in order to ensure effective elimination of odors from the vented cooking exhaust for the duration of the time that the Applicant operates at 405 8th Street, S.E.
5. No vents shall be permitted on the roof or at the rear of the property with the exception of the bathroom exhaust vents.
6. No outdoor seating shall be permitted, including the rear yard and the roof. Employees shall not be permitted to take breaks within the rear yard or the breezeway.
7. As specified in Exhibits 7A-C: the HVAC unit at the rear of the property shall be replaced with a new HVAC unit located atop the trash enclosure; a mini split to cool the trash enclosure will also be installed atop the trash enclosure; and a cooler condenser shall be installed atop the dog leg roof. These mechanicals will be soundproofed as specified in Exhibits 7A-C to meet the standards employed by ArtUSA (or similar noise control product business) at 413 8th Street, S.E. No additional mechanical equipment shall be installed on either roof or at the rear of the property.
8. The trash enclosure (as depicted in the plans in Exhibits 7A-C) shall include a trash compactor, cardboard baler (as depicted in Exhibit 40E), and odor control unit to be constructed as proposed. The trash enclosure shall comply with the recommendations contained in the rodentologist report dated May 22, 2014, (Exhibit 40D), except for nos. 12, 15, and 16, which are not applicable to this site.
9. Deliveries shall be made through the front only. No deliveries shall be made through the breezeway.
10. The Applicant shall frequently remove trash and debris from the sidewalk to the front of the property and power wash this area regularly.
11. The Applicant shall appoint a designated individual member of its organization to ensure compliance with the provisions of this order.

In all other respects, Order No. 18770-A remains unchanged.

**VOTE ON ORIGINAL APPLICATION ON SEPTEMBER 19, 2014: 4-1-0**

(Lloyd J. Jordan, Marnique Y. Heath, S. Kathryn Allen, and Jeffrey L. Hinkle, to APPROVE; Marcie I. Cohen, opposed.)

BZA APPLICATION NO. 18770-B

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**VOTE ON MINOR MODIFICATION ON APRIL 19, 2016: 5-0-0**

(Marnique Y. Heath, Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, and Robert E. Miller, to APPROVE.)

**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:** May 2, 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**

**Appeal No. 19047 of Michael Cushman** pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Department of Consumer and Regulatory Affairs (“DCRA”) in the issuance of Certificate of Occupancy 1501450 allowing seven “private parking garages” and four “open parking spaces” for a “total of 11 parking spaces” located in the R-4 District at premises 20 14th Street, N.E. (Square 1035, Lot 810).

**HEARING DATE:** July 21, 2015

**DECISION DATES:** July 21, 2015, September 15, 2015, and September 22, 2015

**DECISION AND ORDER**

This appeal was filed with the Board of Zoning Adjustment (the “Board”) on May 6, 2015, challenging DCRA’s decision to issue a certificate of occupancy (“C of O”) on March 10, 2015, allowing seven parking garages and four open parking spaces. The property owner to whom the permit was issued, Ramin Taheri, (the “Owner”) moved to dismiss the appeal. The Board conducted a public hearing, at which time it heard from the Owner, from DCRA, and from the Appellant. The Board found that, as related to the appeal of the seven parking garages, the appeal was untimely filed; however, as related to the appeal of the four open parking spaces, the appeal was timely. As a result, that portion of the appeal survived the motion to dismiss and was considered on its merits. The Board ultimately voted to sustain DCRA’s decision and deny the appeal. A full discussion of the facts and law that support this conclusion follows.

**PRELIMINARY MATTERS**

**Notice of Public Hearing**

The Office of Zoning scheduled a hearing on July 21, 2015. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, Advisory Neighborhood Commission (“ANC”) 6A (the ANC in which the subject property is located), the Owner, and DCRA.

**Parties**

The Appellant in this case is Michael Cushman who resides at 1364 East Capitol Street, N.E., in close proximity to the subject property.

The property is owned by Ramin Taheri, who is an automatic party to the appeal pursuant to 11 DCMR § 3199.1(a)(3).

BZA APPEAL NO. 19047  
PAGE NO. 1

DCRA appeared during the proceedings and was represented by Assistant General Counsel Maximilian Tondro, Esq.

ANC 6A, as the affected ANC, was automatically a party in this Appeal. However, the Board did not receive a letter from the ANC, either in support of or in opposition to the appeal. Nor did the ANC participate in the public hearing.

The Board received a letter in support of the appeal from the Capitol Hill Restoration Society (Exhibit 39) and from three nearby neighbors (Exhibits 36 and 45).

### **Motion to Dismiss**

The Owner filed a motion to dismiss prior to the hearing scheduled on July 21, 2015. (Exhibit 35.) In addition to considering the written submissions, the Board heard argument from each of the parties. As will be explained below, the Board decided that the portion of the appeal relating to the seven enclosed parking garages was untimely filed, but the portion of the appeal relating to the four parking spaces was timely filed. As a result, the Board addressed the latter challenge on its merits.

### **Decision Meeting**

At a decision meeting following the hearing on July 21, 2015, the Board deliberated on the appeal challenging the C of O for the four parking spaces. At that time, the Chair moved to deny the appeal on three alternative theories: (1) the open parking spaces were accessory to the private parking garage; (2) the open parking spaces were a separate permitted matter-of-right use; and (3) the appeal was barred by the equitable principle of estoppel. However, the vote in support of the motion was 2-0-1, resulting in the failure of the motion for lack of a majority. (At that time, the Board had two vacant seats.)<sup>1</sup> The case was continued to September 15, 2015, and again to September 22, 2015. At that time, two additional members had joined the Board. Again, the Chair moved to deny the remaining portion of the appeal, but limited his motion to the first two theories previously offered. A majority of the Board agreed with the second of these theories *i.e.* that the open parking spaces were a separate matter-of-right use on the property and the Chair's motion was approved 4-1-0.

## **FINDINGS OF FACT**

### **The Property**

1. The subject property is located at 20 14<sup>th</sup> Street, N.E. (Square 1035, Lot 810).
2. The property is an "alley lot" and is located in the Capitol Hill Historic District and the R-4 zone district.

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<sup>1</sup> Pursuant to § 3125.2 of the Regulations, "[t]he concurring vote of at least a majority of the members of the Board is necessary for any decision."

3. An alley lot is defined as “a lot facing or abutting an alley and at no point facing or abutting a street.” (*See*, 11 DCMR §199.1 (Definitions: Lot, alley).)
4. The Owner purchased the property on or about March 17, 2014. At that time there were seven existing garage stalls within a single structure at the front of the property.
5. The rear portion of the property consisted of, among other things, garbage and debris, broken concrete, and portions of a broken chain-link fence. (Exhibit 35.)

### **The Building Permit**

6. Beginning in April 2014, the Owner began the process of obtaining a building permit to renovate the existing garages and to clear and pave the rear portion of the property.
7. The Owner obtained Building Permit No. B1400387 on or about May 16, 2014, authorizing the repair of “existing 7-accessory residential garage on alley lot.” The building permit also authorized the Owner to, among other things, “[l]ay permeable pavers in [the] area behind the garage.” (Exhibit 13.)
8. In the box labelled “proposed use” the building permit stated “other (specify).” Nothing was specified.
9. The Owner made the repairs to the garage pursuant to the building permit and repaved the rear area.
10. After becoming aware of the issuance of the building permit, the Appellant indicated that he “wrote to Kathleen Beeton, Deputy Zoning Administrator and outlined the problems with the building permit.” (Exhibit 17.) The Appellant is likely referring to an email dated June 12, 2014. (Exhibit 2.)
11. In response, the Appellant received an email dated June 16, 2014 from Rohan Reid, who identified himself as the Zoning Enforcement Officer of DCRA. (Exhibit 3.)
12. Mr. Reid advised the Appellant that as to the seven parking spaces, the Appellant was “correct” that “the language of ‘accessory garages’ stated in the specific zoning approval of the building permit was done in error. It should instead read ‘parking garages on an alley lot’.” (Exhibit 3.)
13. As to the Appellant’s assertion that the rear of the property was to be used for open parking spaces, Mr. Reid assured the Appellant that the surveyor’s plat and building plans “do not show or reference parking on the open space and was not approved for parking lot use on the open space. A parking lot use in the R-4 zone would require relief from the Board of Zoning Adjustment. If at any time you become aware that the open space is being used as a parking lot, please feel free to contact me so that our office can begin enforcement procedures.” (Exhibit 3.)

### **The C of O**



14. Following the completion of the repair work and other construction work, and the required DCRA inspections, the Owner applied to DCRA for a C of O. The Owner explained to the Zoning Administrator (“ZA”) that he intended to use the rear portion of the property as “privately-leased parking spaces”. (Exhibit 35.) In response, the ZA advised the Owner that, such spaces would not be considered a parking lot because a parking lot is “open to all persons willing to pay a temporary fee.” *Id.*
15. The Owner obtained C of O No. 1501450 on or about March 10, 2015 for “private parking garages - 7; and open parking spaces - 4; total of 11 parking spaces [not a public parking lot].” (Exhibit 14.)
16. The Owner subsequently secured long-term lease agreements for the four open parking spaces authorized in the C of O. (Exhibit 35.)

### **The Instant Appeal**

17. The Appellant filed this appeal on May 16, 2015, nearly a year after the building permit was issued and approximately 56 days after the C of O was issued.
18. The Appellant challenged DCRA’s decision to issue the C of O, claiming that the seven enclosed parking uses and the four open parking spaces constitutes an unlawful “parking lot” that is allowed on an alley lot only after special exception approval by the Board pursuant to 11 DCMR § 333. (Exhibit 1.)
19. The Owner moved to dismiss the appeal on the grounds that it was untimely filed.

## **CONCLUSIONS OF LAW**

### **The Motion to Dismiss**

The rules governing the timely filing of an appeal before the Board are set forth in 11 DCMR § 3112.2. Paragraph (a) provides that an appeal must be filed within 60 days from the date the person filing the appeal first had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge, whichever is earlier.

Although the Board has concluded that this rule is not jurisdictional, *see Appeal No. 18031-C of West End Citizens Association (2014), affirmed on other grounds, W. End Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, 112 A.3d 900, 903 (D.C. 2015), if untimeliness is raised during an appeal, the Board must dismiss the case if the 60-day timeframe is not met, unless the time is extended due to “exceptional circumstances.” As will be explained, the appeal was untimely filed with respect to the seven parking garages, and no circumstances exist to allow its late filing.

Ordinarily, the building permit is the document that reflects a zoning decision about whether a proposed structure and its use conform to the Zoning Regulations. *Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356, 364 (2008), *citing, Schonberger v. District of*

*Columbia Bd. of Zoning Adjustment*, 940 A.2d 159 (2008). The Appellant does not deny that he was aware of the garages and that he knew the building permit had been issued. Indeed, the Appellant states that on June 12, 2014 (less than 30 days after the permit was issued), he wrote to the Deputy Zoning Administrator and “outlined the problems with the building permit,” Exhibit 17, and on June 18<sup>th</sup> was advised by DCRA’s enforcement officer that seven “parking garages on an alley lot” were being allowed. (Exhibit 3.) Yet, the Appellant waited nearly a year before appealing the building permit to claim that a parking lot was being permitted instead and offered no explanation as to why the appeal could not have been timely made. Therefore, the Board finds that the portion of the appeal relating to the garages is dismissed as untimely.

However, the Board finds that the building permit gave no notice as to whether any zoning decision had been made as to the four open parking spaces. As stated, the building permit merely alluded to “lay[ing] permeable pavers in [the] area behind [the] garage”. (Exhibit 13.) This language was insufficient to put the Appellant on notice as to whether DCRA had decided to permit four open parking spaces at the rear of the property. Further, the Appellant was assured by DCRA’s enforcement officer that no open parking spaces were shown on the plans and that the use of any such spaces would require a special exception.<sup>2</sup> (Finding of Fact 13.)

In contrast, the C of O clearly states that four open parking spaces were to be permitted on the property, but not as a parking lot. The Board therefore accepts the Appellant’s assertion that he first learned of a decision to allow the open parking spaces after the C of O was issued on March 10, 2015. Accordingly, the 60-day appeal period runs from that date, and the appeal filed on May 6, 2015, was timely filed as to the open parking spaces.

### **The Merits Regarding the Four Parking Spaces**

DCRA argued two alternative theories as to why the four parking spaces are matter-of-right uses that do not require special exception approval: (1) the four parking spaces are an “accessory use” to the seven parking garages pursuant to § 331.1(b); or (2) the four parking spaces are an independent principal matter-of-right use at the property. The Owner also argued that even if the four open parking spaces were not permitted, he had detrimentally relied on DCRA’s issuance of the building permit and C of O, and that the appeal is therefore barred by the equitable principle of *estoppel*.

For the reasons that follow the Board agreed with the second theory.<sup>3</sup> Subsection 3301.1 of the Zoning Regulations provides in part that “, no person shall use any structure, land, *or part of any*

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<sup>2</sup> Nevertheless, the Owner claims that DCRA was aware of his plans to use the rear portion of the property for parking prior to issuing the building permit. Reconciling the Owner’s claim with the enforcement officer’s statement would only be necessary had the Board reached the merits of the estoppel argument. For the purposes of the timeliness issue addressed in this Order, the only relevant question is what the Appellant knew and when he knew it.

<sup>3</sup> Since the Board sustained the Zoning Administrator on this ground, it was not necessary for it to consider the Owner’s estoppel defense, which is therefore preserved in the event this order is challenged before the District of Columbia Court of Appeals and is reversed.

*structure or land* for any purpose until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR (Emphasis added). It follows that a structure or land may have more than one principal use as long as one or more C of O for the uses is issued. In this, the C of O refers to two different uses, “private parking garages” and “open parking spaces”.

A private garage on an alley lot is a matter-of-right use in an R-4 zone because it is permitted in an R-1 zone. (11 DCMR §§ 201.1(o), 330.5(a).) The Zoning Regulations are silent as to whether open private parking spaces on an alley lot are a matter-of-right use. The only distinction between a private garage and a private open parking space is that the former is covered and the latter is not. To the Board, that is a distinction without a difference. In both circumstances the owner is engaging in a long term lease with a third party for the use of the space. The Zoning Administrator distinguished the situation from a parking lot, in which parking is arranged for on an hourly or daily basis. (*See* Finding of Fact No. 14 and Hearing Transcript of July 21, 2015, p. 81.) The Board therefore agrees with the Zoning Administrator that private open parking spaces on an alley lot, which are being leased on at least a monthly basis, are properly considered a distinct principal matter-of-right use. Since the open parking spaces on the subject property met those criteria, the Zoning Administrator did not err in issuing a certificate of occupancy authorizing “open parking spaces – 4.”

Vote taken on July 21, 2015 on the Motion to Dismiss:

*By Consensus* the Board GRANTED the Motion to Dismiss the portion of the Appeal concerning the seven closed parking spaces, and DENIED the Motion to Dismiss the portion of the Appeal concerning the four open parking spaces. (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, Frederick L. Hill, and Robert E. Miller participating).

Vote taken on September 22, 2015 on the Merits:

**VOTE: 4-1-0** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Frederick L. Hill to AFFIRM the ZA on the remaining portion of the Appeal; Robert E. Miller voting in opposition to the motion to affirm).

**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 29, 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.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19141 of Janis C. Gross**, as amended<sup>1</sup>, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, and the carport requirements under § 2300.8, to permit a detached carport structure in the R-2 District at premises 4608 Sargent Road, N.E. (Square 3916, Lot 8).

**HEARING DATES:** December 8, 2015, March 1, 2016, and April 26, 2016<sup>2</sup>  
**DECISION DATE:** April 26, 2016

**SUMMARY ORDER**

**REVIEW BY THE ZONING ADMINISTRATOR**

The application was accompanied by a memorandum, dated August 21, 2015, and a revised memorandum, dated February 24, 2016, from the Zoning Administrator (“ZA”), certifying the required relief. (Exhibits 8 (original) and 36 (revised).)

The Board of Zoning Adjustment (“Board”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 5A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5A, which is automatically a party to this application. The ANC voted to recommend approval of the application. The ANC’s report indicated that at a regularly scheduled, properly noticed public meeting on December 18, 2014, at which a quorum was present, the ANC voted by 5-0-0 to support the application. (Exhibit 9.)

The Office of Planning (“OP”) submitted two timely reports. In the first report, dated December 1, 2015, OP stated that it could not make a recommendation on the requested relief for a special exception under § 2300.8. That OP report indicated that OP found that the subject property is nonconforming for lot width, lot area, side yard and open court. The OP report stated that OP’s review of the original application indicated that variance relief also appeared to be required for

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<sup>1</sup> The application was amended to replace the original request for a special exception from the carport requirements under § 2300.8 with a request for variances from §§ 403.2 (lot occupancy) and 2300.8 (detached carport). See revised Zoning Administrator memo at Exhibit 36. The caption has been changed accordingly.

<sup>2</sup> This case was postponed from the public hearing of December 8, 2015, and continued from the public hearing of March 1, 2016 to April 26, 2016. At the public hearing on March 1, the Board heard testimony from the Applicant and the Office of Planning to clarify that variance relief is required, despite the information in the Zoning Administrator’s (“ZA”) original memo. The hearing was continued to allow the Applicant to submit a revised ZA memo and to repost notice on the property for the amended variance relief. The Applicant submitted a revised ZA memo (Exhibit 36) and an updated affidavit of posting (Exhibit 38).

side yard, lot occupancy, and § 2001.3, (Nonconforming Structures), for the construction of the carport. OP's report also indicated that the maximum permitted lot occupancy within the R-2 zone, in which the subject property is located, is 40% and that the application proposes a lot occupancy of 54.2%, in excess of that permitted as a matter of right and in excess of the maximum 50% the Board may grant by special exception pursuant to § 223. In addition, OP stated that, pursuant to § 405, a minimum side yard of eight feet is required on one side of the carport, but not provided. OP indicated that it attempted to resolve this issue with the Applicant and the Zoning Administrator. (Exhibit 26.) OP filed a supplemental report dated February 16, 2016, recommending approval of the amended application for variance relief from § 403, Lot Occupancy (40% permitted; 54% proposed); and § 2300.8, Private Garages and Carports (carports required to be attached to the main structure, detached carport proposed). OP stated that since the initial filing, the Applicant revised the application to include a request for a variance from lot occupancy and that DCRA determined that variance relief from side yard and nonconforming structures (§ 2001.3) is not required, as was previously suggested by OP. (Exhibit 34.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 23.)

A letter of opposition from the adjacent neighbor was submitted to the record. (Exhibit 28.) The Applicant responded to the neighbor's letter at Exhibit 35. In response to concerns raised by the neighbor, the Applicant agreed to install a motion sensor light that would illuminate the carport.

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 lot occupancy requirements under § 403.2 and the carport requirements under § 2300.8, to permit a detached carport structure in the R-2 District. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be 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 11 DCMR §§ 403.2 and 2300.8, 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.

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 6.**

**VOTE:**           **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Michael G. Turnbull, to APPROVE; Anita Butani D'Souza, 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 order.

**FINAL DATE OF ORDER:** May 4, 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. 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

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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. 19148 of Park View Condominium Ventures LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403.2, for a 12-unit apartment building in the R-4 District at premises 525 Park Road N.W. (Square 3037, Lot 55).

**HEARING DATES:** December 22, 2015, February 9, 2016, February 23, 2016, March 29, 2016, April 12, 2016, and April 19, 2016<sup>2</sup>

**DECISION DATES:** April 12, 2016 and April 19, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5 – original self-certification; Exhibit 34 – revised self-certification.) 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") 1A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a report, dated November 16, 2015, indicating that at a duly noticed and

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<sup>1</sup> The application was originally filed pursuant to 11 DCMR § 3104.1, for a special exception under § 337 for the expansion of an existing residential building into a 12-unit apartment building not meeting the requirements of § 330.7 in the R-4 District. However, on January 5, 2016, the Applicant filed a revised self-certification form changing the requested relief to a variance (See Self-Certification Form 135 at Exhibits 5 (original) and 34 (revised)), and the Applicant also filed a revised application. (See Application Form 120 at Exhibits 1 (original) and 35 (revised) filed on January 12, 2016.) The caption has been changed accordingly.

<sup>2</sup> There were multiple hearing postponements and continuances in the case. The hearing was continued from December 22, 2015 and February 9, 2016, then postponed from March 29, 2016 to April 12, 2016. (Exhibits 47 and 48.) On April 12, the Board heard the revised application, deliberated, and voted to approve this application; however, after realizing that the Board had not provided an opportunity for witnesses to testify in support or opposition at its prior hearing, the Board voted to rescind its vote and reopened the case for a further hearing on April 19, 2016. At the April 19<sup>th</sup> hearing, no one appeared to testify in support of or opposition to the application.



scheduled public meeting on November 12, 2015, at which a quorum was in attendance, the ANC voted 8-0-0 in support of the special exception application. (Exhibit 27.) ANC 1A's Chairman filed a letter dated January 27, 2016 addressing the fact that the application had been revised to request *variance* relief instead of a *special exception*, and that the BZA's hearing of February 9, 2016 would be one day before the ANC was to meet, and therefore the ANC would not meet in time to vote on the revised *variance* relief. However, The ANC Chairman's letter noted that the ANC was generally interested in "maintaining the architectural character of the surrounding community and respecting building setbacks to provide opportunities to increase the District's tree canopy" (Exhibit 38) and that these issues were discussed at their meeting in November. The letter noted the ANC's opinion that "the existing structure is inharmonious with the neighborhood and that the proposed development would have little negative impact on the community." (Exhibit 38.) Ultimately, the ANC Chairman stated that he was confident that the ANC would vote to support the project if given the opportunity to vote on it. Finally, on March 10, 2016, ANC 1A submitted an official supplemental report, noting that at a duly noticed public meeting on March 9, 2016, the ANC voted 11-0-0 to support the variance relief requested by the Applicant, noting the ANC's view that the proposed building will be compatible with the neighborhood. (Exhibit 45.)

The Office of Planning ("OP") submitted a report dated December 15, 2015 in which it indicated that OP was unable to make a recommendation because of the Applicant's need to comply with the recommendation of the Zoning Administrator and revise the application, changing the relief requested from a special exception to a variance, which had not been done at that time. (Exhibit 31.) Subsequent to the Applicant revising the application on January 12, 2016, at the February 10, 2016 hearing, OP testified that it could support the variance request based on the information provided by the Applicant. The Board encouraged the Applicant to work with OP and to strengthen the argument in support of their lot occupancy variance request<sup>3</sup> prior to the next hearing. OP filed a letter dated March 22, 2016, noting the revised relief and expressing support for the Applicant's request for postponement of the March 24, 2016 hearing. (Exhibits 47 and 48 – Applicant's postponement request letter and motion respectively; Exhibit 46 – OP's letter in support of postponement.) OP filed a supplemental report, dated April 6, 2016, recommending approval of the amended relief – a variance from § 403.2. (Exhibit 51.) At the hearing of April 12, 2016, OP was not present in the hearing room to testify. However, the Board noted that the OP report was in the record. At the hearing of April 19, 2016, the Board only called for testimony from witnesses in support or opposition, but not for further testimony from OP.

The D.C. Department of Transportation submitted a report expressing no objection to the application. (Exhibit 30.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance

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<sup>3</sup> The Applicant's counsel noted that OP recommended adding a variance from § 2001.3 non-conforming structures provision. However, the Applicant's position is that such relief is not needed because no nonconformity will be extended or increased.

from § 403.2. The only parties to the case 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 ANC and OP reports filed in this case, the Board concludes that in seeking a variance from § 403.2, 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 32 - ARCHITECTURAL PLANS AND ELEVATIONS.**

Vote taken on April 12, 2016:

**VOTE: 5-0-0** (Marnique Y. Heath, Frederick L. Hill, Robert E. Miller, Anita Butani D'Souza<sup>4</sup>, and Jeffrey L. Hinkle to APPROVE).

Vote taken on April 12, 2016:

**VOTE: 5-0-0** (Marnique Y. Heath, Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Robert E. Miller to RESCIND the prior vote to approve, and REOPEN the record, and schedule the application for a continued hearing on April 19, 2016 to receive testimony from witnesses in support or opposition.)

Vote taken on April 19, 2016:

**VOTE: 5-0-0** (Frederick L. Hill, Marnique Y. Heath, Anita Butani D'Souza, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

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<sup>4</sup> Board Member Butani D'Souza stated that she read the record to participate in the decision on this application.

**FINAL DATE OF ORDER:** April 29, 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.

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19206 of 1302 Pennsylvania Avenue SE, LLC**, pursuant to 11 DCMR § 3103.2, for variances from the FAR requirements under § 771.2, the lot occupancy requirements under § 772.1, the rear yard requirements under § 774.1, the nonconforming structure requirements under § 2001.3, and the off-street parking requirements under § 2101.1, to permit a third floor addition to an existing two-story, mixed-use building in the C-2-A District at premises 1300 Pennsylvania Avenue S.E. (Square 1043, Lot 122).

**HEARING DATES:** March 15, April 5, and April 26, 2016<sup>1</sup>  
**DECISION DATE:** April 26, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.) 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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report in support of the application, dated March 9, 2016, indicating that at a duly noticed and scheduled public meeting on March 8, 2016, at which a quorum was in attendance, the ANC voted 9-0-1 in support of the application. (Exhibit 30.) In its report, the ANC specifically noted that "the by-right FAR for a 3<sup>rd</sup> story addition would not be in keeping with the visual fabric of the neighborhood nor support citywide goals for providing additional housing."

The Office of Planning ("OP") submitted a timely report dated March 8, 2016, recommending approval of the variances from the off-street parking and nonconforming structure requirements, but recommending denial for the variances from the FAR, lot occupancy, and rear yard requirements. (Exhibit 28.) At the public hearing on March 15, 2016, the Board continued the

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<sup>1</sup> The hearing for this application was continued from March 15, 2016 and postponed, at the Applicant's request, from April 5, 2016. (Exhibit 36.)

proceedings and requested that the Applicant work with OP to address its concerns about the size and configuration of the third story addition. At the continued public hearing on April 26, 2016, OP testified that it changed its recommendation to support the variance for rear yard relief, but remains in opposition to the FAR and lot occupancy variances, despite supplemental information provided by the Applicant. The Board, however, was persuaded by the Applicant's supplemental information, including the illustrations of the alternative by-right configurations of the third floor addition. As mentioned by ANC 6B in its report, the Board also noted that these by-right configurations appeared to be out of character with the visual fabric of the street. In addition, the Board indicated that the practical difficulty of relocating the building core contributes to the Board's finding that the application meets the test for variance relief. Accordingly, the Board was not persuaded by OP's recommendation to deny variance relief for FAR and lot occupancy.

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 29.)

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 FAR requirements under § 771.2, the lot occupancy requirements under § 772.1, the rear yard requirements under § 774.1, the nonconforming structure requirements under § 2001.3, and the off-street parking requirements under § 2101.1, to permit a third floor addition to an existing two-story, mixed-use building in the C-2-A District. 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 §§ 771.2, 772.1, 774.1, 2001.3, and 2101.1, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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 37.**

**VOTE: 3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Jeffrey L. Hinkle to APPROVE; Anita Butani D'Souza and Zoning Commissioner member not participating.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

**BZA APPLICATION NO. 19206  
PAGE NO. 2**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** May 2, 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.

**BZA APPLICATION NO. 19206  
PAGE NO. 3**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19212 of 410 GooDBuddY LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to allow the construction of a flat in the R-4 District at premises 1000 Lamont Street, N.W. (Square 2845, Lot 129).

**HEARING DATE:** March 15, 2016, and April 26, 2016<sup>1</sup>  
**DECISION DATE:** April 26, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.) 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") 1A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. The ANC submitted a report in support of the application, dated February 10, 2016. The ANC's report indicated that at a duly noticed and scheduled public meeting on February 10, 2016, at which a quorum was in attendance, the ANC voted 12-0-0 in support of the application. (Exhibit 20.)

The Office of Planning ("OP") filed a timely report dated March 8, 2016 recommending approval of the parking variance and noting that three additional areas of relief may be required for the project - specifically § 400 - Height, § 411.5 - Penthouse, and § 411.18(c) - Penthouse Setback. Because these areas of relief are not included in the application, OP stated that it could not provide an analysis based on these provisions. (Exhibit 23.)

Regarding the requested parking variance relief, OP noted that to provide the required parking onsite, a curb cut would be needed, and it was unlikely that the Public Space Committee would permit such a curb cut. Therefore, there is no opportunity to provide onsite parking.

On April 12, 2016, the Applicant filed a statement and revised plans. The Applicant stated that the modified design meets the new regulations that went into effect while the project was under

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<sup>1</sup> The hearing was continued from March 15, 2016 to April 26, 2016 to give the Applicant an opportunity to meet with OP and address the need for additional zoning relief referenced in the OP report.

consideration, thereby obviating the need for the additional zoning relief referenced by OP. The new plans do not modify the relief originally requested in the application. (Exhibit 26 – statement, Exhibit 27 - revised plans.)

OP filed a supplemental report on April 19, 2016, noting that OP continues to recommend approval of the requested variance relief from § 2101.1. Finally, OP noted that with the revised plans, the Applicant has eliminated the need for any additional zoning relief. (Exhibit 28.)

The District Department of Transportation filed a report dated March 8, 2016, expressing 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 a variance from § 2101.1. The only parties to the application were the Applicant and the ANC which supported the proposal. 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 variance from § 2101.1, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. 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 27.**

**VOTE:**       **4-0-1**           (Marnique Y. Heath, Frederick L Hill, Anita Butani D’Souza, and Jeffrey L. Hinkle to APPROVE; Anthony J. Hood not participating).

**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:** May 2, 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. 19229 of FOTP, LLC**, as amended,<sup>1</sup> pursuant to 11 DCMR § 3103.2, for a variance from the court requirements under § 776, and pursuant to §§ 3104.1 and 411.11, for special exceptions from the penthouse setback requirements under §§ 411.18 and 777.1<sup>2</sup>, and pursuant to § 774.2, a special exception from the minimum rear yard requirements under § 774.1, to allow an addition to accommodate the establishment of a museum and associated offices and conference rooms in the C-4 District at premises 1503-1505 Pennsylvania Avenue, N.W. (Square 221, Lot 810).

**HEARING DATES:** March 29, 2016, April 5, 2016, and April 19, 2016<sup>3</sup>  
**DECISION DATE:** April 19, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4 - original, Exhibit 33 - revised.) 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.

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<sup>1</sup> The application was originally filed pursuant to 11 DCMR §§ 3104.1 and 411.11, for a special exception from the penthouse setback requirements under §§ 411.18 and 771.1 [sic], and pursuant to § 774.2, the minimum rear yard requirements under § 774.1, to allow an addition to accommodate the establishment of a museum and associated offices and conference rooms at the subject site. On April 1, 2016, the Applicant filed a revised self-certification (Exhibit 33) amending the application to include variance relief from the court requirements of § 776, as indicated in the caption above.

<sup>2</sup> Subsection 771.1 was apparently referenced in error in the application form (Exhibit 1) given that this section relates to floor area ratio. The subsection should be § 777.1, and it is correctly referenced in the Applicant's statement at Exhibit 6.

<sup>3</sup> At the hearing of March 29, 2016, the Board continued the hearing to May 10, 2016, but on April 5, 2016, as a preliminary matter, the Board, on its own motion, rescheduled the hearing to an earlier date – from May 10<sup>th</sup> to April 19<sup>th</sup> – and waived the 40-day notice requirement and required a two-week posting of the property, noting the added variance relief. The property was reposted on April 5, 2016 - 14 days prior to the April 19<sup>th</sup> hearing. (See Exhibit 34 – Affidavit of Posting.)

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”) 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. ANC 2B submitted a report dated February 18, 2016, noting that at its regular meeting on February 10, 2016, with a quorum present, it voted 9-0-0 in support of the special exception application. (Exhibit 22.) The ANC did not file a supplemental report after the amended application was noticed and the subsequent hearing was held.

The Office of Planning (“OP”) submitted a report dated March 22, 2016, recommending approval of the application as originally filed, and noting that additional relief may be required under § 776.1 (19.75 ft. width as calculated from height of rear wall, 7 feet existing; 7 feet proposed) and § 2001.3 (increasing the non-conformity of an open court’s width), which OP stated it would not oppose. (Exhibit 29, p. 1.) OP presented no further testimony at the hearing.

The D.C. Department of Transportation submitted a report expressing no objection to the application. (Exhibit 26.)

The project received staff approval at the Historic Preservation Review Board and concept approval at the Commission of Fine Arts. (Exhibit 25C.)

The 1510 H Street Condo Association requested party status in opposition to the application. In addressing the party status request, Louette Ragusa, the association representative testified that the association is not opposed to the project under review, but that the members’ concerns were primarily related to the impact that construction will have on the rear alley access to their property. (Exhibits 27 and 28.) At the hearing of March 29, 2016, by consensus, the Board denied the party status request because the concerns raised by the association were outside the Board’s jurisdiction. The Board afforded Ms. Ragusa the opportunity to testify as a witness at the hearing, but, having made the association’s issues known, she had no further comment at that time.

The Board continued the hearing to allow the Applicant to amend the application and post the property with notice of the revised relief. The Applicant filed a revised self-certification form requesting variance relief (Exhibit 33), and posted the property (Exhibit 34 – affidavit of posting). At the hearing of April 19, 2016, no other witnesses appeared to testify in the application. The Board then closed the record and voted to approve the application as amended.

#### Variance Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the court requirements under § 776. The only parties to this case were the Applicant and ANC 2B which supported the application. No parties appeared at the public hearing in

opposition to this application for variance relief. 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 a variance from §§ 776, 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.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to §§ 3104.1 and 411.11, for special exception relief under §§ 411.18 and 777.1, (penthouse setback requirements); § 774.2, and 774.1, (minimum rear yard requirements). The only parties to this special exception application were the Applicant and the ANC which expressed support. No parties appeared at the public hearing in opposition to this application for special exception relief. 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 the OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 411.11, 411.18, 777.1, 774.2, and § 774.1, that the requested relief can be granted, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 25B - ARCHITECTURAL PLANS.**

**VOTE: 4-0-1** (Marnique Y. Heath; Frederick L. Hill, Anita Butani D'Souza, and Robert E. Miller to APPROVE; Jeffrey L. Hinkle not participating, not voting.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this summary order.

BZA APPLICATION NO. 19229

PAGE NO. 3

**FINAL DATE OF ORDER:** May 4, 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.

BZA APPLICATION NO. 19229

PAGE NO. 4

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19245 of George Simpson**, as amended,<sup>1</sup> pursuant to 11 DCMR § 3104.1, for special exception relief under 11 DCMR § 223, for not meeting the lot occupancy requirements of § 403.2, the side yard requirements of § 405.8, and the nonconforming structure requirements of § 2001.3, to construct an enlargement to a nonconforming single family dwelling in the SSH-1/R-1-B District at 1605 Madison Street, NW (Square 2722W, Lot 1).

**HEARING DATE:** April 12, 2016

**DECISION DATE:** April 26, 2016

**SUMMARY ORDER**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit ["Ex. "] 12 (original) and Ex. 28 (revised.)) 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") 4A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4A, which is automatically a party to this application. ANC 4A filed a report, which indicated that at a properly noticed, regularly scheduled public meeting held on April 5, 2016, with a quorum of Commissioners present, the ANC voted 6-0 to support the application. (Ex. 37.)

The Office of Planning ("OP") submitted a report indicating its support of the amended application (Ex. 34) and testified in support of the application at the public hearing. The District Department of Transportation ("DDOT") submitted a timely report of no objection to the application. (Ex. 35.)

Eleven letters in support from neighbors, including the adjacent property owners, were submitted to the record. (Ex. 31.)

A letter in opposition from the owners of 1612 Montague Street was submitted to the record. (Ex. 33.) Also, a neighbor, Brendan Horton, testified in opposition, citing concerns about the height of the proposed addition.

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<sup>1</sup> The Applicant originally applied for variance relief from side yard (§ 405.8) and nonconforming structure (§ 2001.3) requirements, but amended the application to one for special exception relief under 11 DCMR § 223, for not meeting the lot occupancy requirements of § 403.2, the side yard requirements of § 405.8, and the nonconforming structure requirements of § 2001.3, to construct an enlargement to a nonconforming single family dwelling in the SSH-1/R-1-B District. (See, revised Self-Certification form, Exhibit 28.) The caption has been changed accordingly.

At the conclusion of the hearing, the Board requested the Applicant submit revised plans to reflect the design changes discussed at the hearing, showing the change in façade materials from stucco to brick and rendered in such a way that the true color is represented, and supplemental information, including photographs, to show the context of the building designs in the neighborhood. The Applicant submitted the requested materials, including two façade options, to the record at Exhibits 40-40B. The Applicant requested, and the Board granted, flexibility to choose between both options.

### Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under 11 DCMR §§ 223, 403.2, 405.8, and 2001.3. 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 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, 403.2, 405.8, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map.

The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in the accordance with the Zoning Regulations and Map. Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements 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 EXHIBITS 30 AND 40A. The Applicant shall have the flexibility to construct the project according to either Option 1 or Option 2, as shown in Exhibit 40A.**

**VOTE:**           **5-0-0** (Marnique Y. Heath, Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, Michael G. Turnbull 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:** May 2, 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.

BZA APPLICATION NO. 19245

PAGE NO. 2

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19246 of Stoddard Baptist Global Care at Washington Center for Aging Services**, pursuant to 11 DCMR § 3104.1, for a special exception from the adult development center requirements under § 205, to operate an elderly development center for 55 adults and 11 staff in the R-1-B District at premises 2112 Varnum Street N.E. (Square 4233, Lot 11).

**HEARING DATE:** April 19, 2016

**DECISION DATE:** April 19, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.) 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. ANC 5B did not file a written report to the record; however, the Applicant testified that he presented before the Chair of ANC 5B and the Single Member District Commissioner for 5B01. The Single Member District Commissioner for 5B01 submitted a letter in support. (Exhibit 28.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application with three conditions. (Exhibit 24.) The Applicant testified that he accepted the conditions. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 26.)

Timothy Thomas of Queens Chapel Civic Association filed a letter in support to the record. (Exhibit 29.) At the public hearing, Charles Barber, a representative of Northeastern Presbyterian Church, testified in support of 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 § 205, to operate an elderly development center for 55 adults and 11 staff 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 averse to any party.

Based upon the record before the Board, and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 205, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The hours of operation shall be from 8:00 a.m. to 4:30 p.m.
2. The number of adults enrolled shall not exceed 55.
3. The number of staff shall not exceed 11.

**VOTE: 5-0-0** (Anita Butani D'Souza, Frederick L. Hill, Marnique Y. Heath, Jeffrey L. Hinkle, and Robert E. Miller, 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 29, 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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, 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

**BZA APPLICATION NO. 19246**

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BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 19252 of Susan Hillberg**, as amended<sup>1</sup> pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the court requirements under § 406, and the nonconforming structure requirements under § 2001.3, to construct a rear addition to an existing one-family dwelling in the R-5-B District at premises 605 G Street S.E. (Square 878, Lot 154).

**HEARING DATE:** April 26, 2016  
**DECISION DATE:** April 26, 2016

**SUMMARY ORDER**

**SELF-CERTIFICATION**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 (original) and 30 (revised).) 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") 6B and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 12, 2016, at which a quorum was present, the ANC voted unanimously (9-0-0) to approve the application. (Exhibit 25.) Two letters were filed by abutting neighbors in support of the application. (Exhibits 21 and 24.) The Capitol Hill Restoration Society submitted a letter of support for the application. (Exhibit 26.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 27.) The District Department of Transportation ("DDOT")

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<sup>1</sup> The Applicant initially filed for a special exception relief under § 223, not meeting the lot occupancy requirements under § 403.2, and the court requirements under § 406. (Exhibit 1.) Based on a recommendation by the Office of Planning, the Applicant amended the application by adding relief from the nonconforming structure requirements under § 2001.3 and filed a revised Self-Certification form to reflect that amendment. (Exhibit 30.) The caption has been changed accordingly.

submitted a timely report indicating that it had no objection to the approval of the application. (Exhibit 29.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under §§ 223, 403.2, 406, and 2001.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse 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, 223, 403.2, 406, and 2001.3, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7.**

**VOTE:**           **5-0-0** (Marnique Y. Heath, Frederick L. Hill, Anita Butani D'Souza, Jeffrey L. Hinkle, and Anthony J. Hood 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 29, 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

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OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 08-30B**  
**Z.C. Case No. 08-30B**

**West Half Residential II, LLC and West Half Residential III, LLC**  
**(Capitol Gateway Overlay District Review @ Square 700, Lots 33, 802, 840, 841, 850, 864,**  
**865, 868, 871, 872, 874, and 875)**  
**April 11, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on February 25, 2016, to consider an application filed by West Half Residential II, LLC and West Half Residential III, LLC (collectively, the "Applicant") for review and approval of a modification to previously approved plans for Lots 33, 802, 840, 841, 850, 864, 865, 868, 871, 872, 874, and 875 in Square 700 ("Property"), pursuant to §§ 1604, 1607, and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR" or "Zoning Regulations"), which apply to new construction that (1) abuts M Street, S.E.; (2) is located within Square 700; or (3) is the recipient of density through combined lot development. The modification application also includes a request for special exception approval to provide penthouse enclosing walls of unequal height (§.411.9) and for the following area variances: from the percentage of lot occupancy requirements (§ 634.1), setback requirement for buildings along Half Street, SE (§ 1607.2), compact parking space location requirements (§ 2115.4), and loading (§ 2201.1).

**FINDINGS OF FACT**

1. On December 11, 2015, the Applicant filed an application for review and approval of a modification to previously approved plans pursuant to 11 DCMR §§ 1604, 1607, and 1610, which apply to new construction that (1) abuts M Street, S.E.; (2) is located within Square 700; or (3) is the recipient of density through combined lot development. The modification application also includes a request for special exception and variance approvals pursuant to § 1610.7.
2. The Applicant filed a prehearing submission in support of the application on February 5, 2016 ("Prehearing Submission"). (Exhibit ["Ex."] 21-21D.) The Prehearing Submission included a statement summarizing the application's compliance with the applicable provisions of the Capitol Gateway ("CG") Overlay regulations, and justification for the requested areas of variance relief. The Prehearing Submission also included updated architectural drawings ("Final Architectural Drawings"), a Transportation Impact Study conducted by Gorove/Slade, and resumes of expert witnesses that might testify in support of the application at the public hearing.
3. The Commission held a public hearing on the application on February 25, 2016. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located. Proper notice of the hearing was provided by the Office of Zoning pursuant to 11 DCMR § 3015.
4. Witnesses appearing at the hearing on behalf of the Applicant included Bryan Moll of JBG, Eran Chen of ODA Architects, Sam Lawrence of HM White, and Shane Dettman of

Holland & Knight LLP. Mr. Dettman was qualified by the Commission as an expert in the area of land use planning.

5. At the conclusion of the public hearing, the Commission indicated support for the overall design and materials of the modified project, but requested that the Applicant provide certain additional information, including (i) drawings confirming the penthouse setback from the Via is not visible from the pedestrian level; (ii) additional dimensioned plans and sections for the penthouse level; (iii) drawings and information confirming the mezzanine provided does not exceed 1/3 of the area of the floor immediately below; (iv) drawings confirming that the project design complies with the court dimensional requirements and that relief is not required; (v) drawing identifying the location where flexibility is requested by the Applicant to replace retail use with residential or other non-residential use; (vi) additional study of penthouse setback along court; (vii) additional drawings showing the relationship of ground-floor retail to streetscape; (viii) study whether the building can increase sustainability measures/LEED rating; and (ix) further study of affordable housing provided in terms of affordability level.
6. The record was closed at the conclusion of the hearing, except to receive the requested additional submissions from the Applicant and responses thereto from the parties. The Commission also requested proposed findings of fact and conclusions of law from the Applicant.
7. On March 17, 2016, the Applicant submitted its post-hearing submission, addressing the Commission's recommendations and requests for additional information and submitted proposed findings of fact and conclusions of law, pursuant to 11 DCMR § 3026 on March 24, 2016. (Ex. 34-34B, 35.)
8. On March 31, 2016, the Commission granted a request made by the Office of Planning ("OP") to re-open the record to receive a memorandum prepared by the District Department of Energy and Environment ("DOEE"). (Ex. 37.)
9. On April 7, 2016, the Applicant filed a written response to the DOEE memorandum. (Ex. 38.)
10. At its April 11, 2016, public meeting, the Commission took final action to approve the application. The Commission determined that the project satisfies all applicable requirements of the CG Overlay District and that the Applicant had met its burden of proof regarding the requested special exception and variance relief.

### **Background**

11. An application for Commission review was submitted by predecessor owners of the Property in 2008, pursuant to §§ 1604, 1607, and 1610 of the Zoning Regulations. That application was approved in 2009 by the Z.C. Order No. 08-30, and in 2011, the design of the approved project was modified pursuant to Z.C. Order No. 08-30A.



12. Through Z.C. Order Nos. 08-30 and 08-30A, the Commission approved redevelopment of the Property with a mixed-use building measuring 110 feet in height and containing approximately 288,242 square feet of residential use, approximately 369,292 square feet of office use, and approximately 51,624 square feet of retail use (“Approved Building”).
13. The footprint of the Approved Building occupies the entirety of the eastern half of Square 700 and is bounded on all sides by public streets: M Street to the north, Half Street to the east, N Street to the south, and Van Street to the west. The Approved Building consists of two primary sections: a northern section consisting of office and ground-floor retail uses fronting on M Street and a southern section consisting of residential use as well as office and ground- and second-floor retail uses. A dedicated 30-foot-wide pedestrian right-of way-running in an east-west orientation (“Via”) separates the two sections of the Approved Building, with building connections provided through two footbridges above.

### **Modified Building Proposal**

14. The Applicant has acquired all of the lots comprising the Property with the exception of the northernmost lot, Lot 873 (the Property, excepting Lot 873, herein the “Applicant’s Property”). The Applicant’s Property consists of the land on which the southern portion of the Approved Building and the Via would be located. The Applicant proposes to modify only that portion of the Approved Building located on the Applicant’s Property (the “Southern Portion”).
15. The present modification application does not propose any changes to the design and uses for that portion of the Approved Building located north of the Via other than the location of the building connection (“Northern Portion”). The Applicant understands that a modification application for the Northern Portion of the Approved Building has recently been filed by the owner of that portion of the Property. (Z.C. Case No. 08-30C.)
16. The modification application proposes a 110-foot, 11-story residential tower on the Southern Portion with an occupiable penthouse, as well as a full ground floor and partial second floor of retail.
17. Retail is proposed to occupy all of the Half, N, and Via façades of the ground floor, and a significant percentage of Van Street as well. Two residential lobbies and parking and loading would be accessed from Van Street. Retail would occupy much of the second floor along Half and N Streets, and residential units would face the Via and Van Street on that floor. The second-story retail would be double height and occupy volume in the third floor as well. The Applicant requested flexibility to replace certain retail uses on the second floor with residential and/or office uses.
18. Above the third floor is proposed to be entirely residential, with rental units to the north and for-sale units to the south. A central courtyard would provide light and air to units facing the interior of the tower.

19. As modified, the residential use will increase to approximately 390,000 square feet of gross floor area (including penthouse habitable space) and the retail use will increase to approximately 67,265 square feet of gross floor area, all with a corresponding reduction in overall office use from the Approved Building. Overall density for the Approved Building would decrease from 8.06 to 7.72 FAR. Maximum building height would remain 110 feet from a measuring point taken midpoint along Van Street. While the uses, overall density, and height of the Approved Building would remain largely unchanged by the proposed modification, the configuration and architectural vocabulary of the building have been significantly refined.
20. The Applicant has modified the design of the Southern Portion of the Approved Building to provide a dramatically sculptured presence at this central location within the Capitol Gateway overlay. In footprint, the tower proposed for the Southern Portion takes the form of an inverted C-shape, with a court opening onto Van Street. Along Half Street and N Street, the tower undulates through the use of terracing and setbacks, such that it effectively disappears from view from a northern vantage of the Property from M Street, thereby opening up views to the centerfield entrance to Nationals Park. This terracing effect is carried through to the interior of the tower in the form of cantilevering above the landscaped courtyard. Masonry and precast materials utilized in the earlier approval will be replaced with a palette of glass, metal panels, and extensive plantings.
21. The tower on the Southern Portion is proposed to include a mixture of residential uses and retail uses, with three levels of below-grade parking. The Applicant also proposes to include a small number of units in the penthouse level, some of which will contain mezzanines. These units will generate an inclusionary zoning requirement, which the Applicant will satisfy within the project.
22. The Applicant anticipates that a portion of the residential uses within the project would be for-sale condominium units and a portion would serve as rental units. Each of these components would have a separate entrance along Van Street, where the parking and loading operations also would occur in keeping with the restrictions of the CG Overlay.
23. Retail spaces would be provided throughout the ground and second levels with various entrances to be located directly along each street frontage as well as the Via. Given the proposed replacement of the office use with residential use south of the Via, the sky bridges connecting the portions of the Approved Building are no longer feasible. To replace these bridges, the Applicant and the owner of the Northern Portion of the Property have collaborated on a sculptural element consisting of aluminum spandrels to connect the retail elements of the building, which will serve as a point of interest to draw pedestrians into and through the Via to Van Street.
24. The modified building is planned to have a total of 423 residential units, 10 of which, totaling 24,779 square feet, would be located in penthouse habitable space in the Southern Portion. This amount of habitable space would generate an affordable housing

requirement under the Inclusionary Zoning (“IZ”) provisions of Chapter 26 of the Zoning Regulations in the amount of approximately 1,982 square feet, utilizing the eight percent requirement established in § 2603, all of which will be restricted to low-income households, defined in the Zoning Regulations as households not exceeding 50% of the annual median income for the Metropolitan Washington, DC, statistical area according to the US Department of Housing and Urban Development (HUD) (“Metro AMI”). It is anticipated that this set aside will result in approximately three units of affordable housing, all of which would be provided within the building.

25. In addition to the IZ square footage generated by the penthouse habitable space, the Applicant will provide an additional significant amount of affordable housing, relating directly to the increase in overall residential use provided within the project as part of the modification. The Approved Building contained 288,242 square feet of residential uses, none of which was subject to the IZ set aside as it was approved prior to the implementation of the IZ program. As modified, the project contains approximately 362,855 square feet of residential use, not including the approximately 24,779 square feet of penthouse habitable space, representing an increase of approximately 74,613 square feet of residential. The Applicant has committed to subject this increased amount of residential use to the IZ set aside requirements of 11 DCMR §§ 2603.2 and 2603.4, namely, eight percent of the gross floor area of residential use provided within the building, which would result in approximately 5,970 square feet, or roughly seven to eight units of additional dedicated affordable housing within the building, all of which to be set aside for eligible moderate-income households not exceeding 80% Metro AMI.
26. The Applicant is collaborating with adjacent landowners along both sides of Half Street and the Department of Transportation (“DDOT”) to develop an inviting streetscape experience and also will work with retail tenants to maximize an active street presence, through tenant mix and building signage. To that end, the Applicant has identified locations where it requests flexibility from the Commission to locate signage, including electronic signage as permitted by applicable code.

### **Description of the Surrounding Area and Zoning Classification**

27. The Property is located in the eastern portion of Square 700, with frontage on M Street, N Street, Half Street, and Van Street. Nationals Ballpark is located immediately south of the Property across N Street, S.E.
28. The Property is included in a CR Zone District and is located in the Capitol Gateway (CG) Overlay District. The current use of the Property is as temporary seasonal entertainment on Washington Nationals baseball game days.
29. The Navy Yard metro station west entrance is immediately east of the Property at the corner of M and Half Streets

**Capitol Gateway Overlay District Design Requirements****The Project Meets the Requirements of 11 DCMR § 1604**

30. The project is subject to the requirements of 11 DCMR § 1604 because the building will have frontage along M Street, S.E., within the CG Overlay.
31. The building complies with the requirement that no driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building. (11 DCMR § 1604.2.) The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, S.E.
32. The building complies with the requirement that the streetwall of each new building shall be set back for its entire height and frontage along M Street not less than 15 feet measured from the face of the adjacent curb along M Street, S.E. (11 DCMR § 1604.3.) The Commission previously granted variance relief for the design of the Approved Building relating to this restriction. The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, SE.
33. The building complies with the requirement that each new building shall devote not less than 35% of the ground-floor gross floor area to retail, service, entertainment, and arts uses. Such preferred uses shall occupy 100% of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control. (11 DCMR § 1604.4.) The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, S.E.
34. The building complies with the requirement that not less than 50% of the surface area of the street wall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass and to entrances to commercial uses of the building. (11 DCMR § 1604.6.) The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, S.E.
35. The building complies with the requirement that the minimum floor-to-ceiling clear height for portions of the ground level devoted to preferred uses shall be 14 feet. (11 DCMR § 1604.7.) The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, S.E.
36. The building complies with the requirement that, where preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply. (11 DCMR § 1604.9.) Preferred retail and service uses are required for new construction on the Property.

The Project Meets the Requirements of 11 DCMR § 1607

37. Section 1607 of the Zoning Regulations sets forth a number of specific requirements that apply to all new buildings, structures, and uses with frontage on Half Street, S.E., south of M Street, S.E., within the CG Overlay.
38. The building does not comply with the requirement that any portion of a building or structure that exceeds 65 feet in height shall provide a minimum setback of 20 feet in depth from the building line along Half Street, S.E. The Commission previously granted variance relief for the design of the Approved Building relating to this restriction. While the building design along Half Street has been extensively revised, the Applicant is confronted with the same difficulties given the mixed-use nature of the building and multiple design and use requirements applicable to the Property. As before, the building presents as highly articulated along Half Street, with terracing and a mixture of projections and setbacks along this elevation. The result is that this elevation complies with, and exceeds, the setback requirement in places but is noncompliant in others. Grant of variance relief will not be detrimental to the public good. The project as modified will not diminish views of surrounding landmarks or neighboring buildings, but rather increase and enhance those views as compared to the design of the Approved Building.
39. The building complies with the requirement of § 1607.3 that each new building shall devote not less than 75% of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of the Zoning Regulations. The Commission's approval in Z.C. Order No. 08-30 included grant of variance relief from this requirement, as the Approved Building provided approximately 69% of the ground floor to preferred uses. As proposed to be modified, the ground-floor retail provided in the Southern Portion of the Approved Building is increased by approximately 15,000 square feet. The building as modified complies with this requirement.
40. The building complies with the requirement of § 1607.4 that preferred uses shall occupy 100% of the building's street frontage along Half Street, S.E., except for space devoted to building entrances or required to be devoted to fire control. As modified, the building's design will continue to comply with this restriction.
41. The building complies with the requirement of § 1607.5 that the minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be 14 feet. As modified, the building's design will continue to comply with this restriction.
42. Pursuant to § 1607.6, for good cause shown, the Commission may authorize interim occupancy of the preferred use space required by § 1607.2 by non-preferred uses for up to a five-year period; provided, that the ground-floor space is suitably designed for future occupancy by the preferred uses. The Applicant is not requesting authorization for interim occupancy as part of this application.

43. The building complies with the requirement of § 1607.7 that no private driveway may be constructed or used from Half Street, S.E., to any parking or loading berth areas in or adjacent to a building or structure constructed after February 16, 2007. As modified, the building's design will continue to comply with this restriction.
44. The building complies with the requirement of § 1607.8 that, where preferred use retail space is required under the CG Overlay provisions and is provided, the provisions of § 633 shall not apply.

The Project Meets the Requirements of 11 DCMR § 1610

45. Subsection 1610.2 of the Zoning Regulations provides that all proposed uses, buildings, and structures on a lot abutting South Capitol Street, M Street, or within Square 700 shall be subject to review and approval by the Commission. Subsection 1610.3 further provides that the proposed use, building, or structure must meet the standards set forth in 11 DCMR § 3104, and the applicant must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will comply with the specific requirements set forth in 11 DCMR § 1610.3(a)-(f).
46. The Commission finds that the building as modified meets the requirements of § 1610 and is consistent with all of the applicable purposes of the CG Overlay.
47. The height, bulk, and design of the project as modified are consistent with the requirements of the Zoning Regulations and with the property's designation on the Future Land Use Map. The building's height and density are allowed at this location, and the proposed use is consistent with the Property's designation on the Future Land Use Map. The residential, office, and retail/preferred uses contemplated for the project will help foster an appropriate mix of uses within the square and the surrounding area. (11 DCMR § 1600.2(a).)
48. The project as modified will continue to provide retail/preferred uses in furtherance of the objectives of the CG Overlay. (11 DCMR § 1600.2(b).)
49. The building's design complies with this requirement and includes ground-level retail and service uses along M Street, S.E. (11 DCMR § 1600.2(e).)
50. The project as modified is designed to provide an engaging and pedestrian-oriented Half Street frontage. The Applicant is coordinating with neighboring property owners along Half Street to provide an enhanced streetscape plan. Multiple retail entrances are proposed to be located along this frontage. The building as modified contains extensive terracing back from the street façade to ensure adequate access to light and air as well as provide a suitable scale and public engagement. (11 DCMR § 1600.2(h).)

51. The building will further the objectives set forth in § 1600.2. The modified building will provide approximately 390,000 square feet of residential use (including penthouse habitable space), in a mixture of condominium and rental units, and approximately 314,000 square feet of commercial uses, including approximately 15,000 square feet more retail/service uses than was included in the Approved Building. The pedestrian Via will be retained in the modified design, and the vibrant new design of the Southern Portion will further activate Half Street and provide appropriate scale and setbacks through its extensive and innovative use of terracing. (11 DCMR § 1610.3(a).)
52. The project as modified provides a much desired mixed use building in the neighborhood and will include multi-family residential, in a variety of configurations, sizes, and ownership types, and significant space devoted to preferred retail uses on the ground floor, precisely the types of uses encouraged by § 1600.2(b). (11 DCMR § 1610.3 (b).)
53. The project as modified is contextual to the surrounding neighborhood and street patterns, especially along its Half Street and N Street frontages, where a mixture of stacking and terracing of volumes allows for the building to mark this important corner at the centerfield entrance to the Nationals Ballpark while drawing visual interest from multiple vantage points. The Via remains an important component of the project in facilitating and encouraging pedestrian circulation in an east-west direction, including residents of the building, while vehicular ingress/egress for parking and loading operations remains provided from Van Street. Landscaping and sidewalk treatment along Half Street is proposed to be provided in coordination with adjacent property owners. (11 DCMR § 1610.3 (c).)
54. The loading and parking operations for the building occur on the least trafficked of the street frontages, along Van Street. Pursuant to §§ 1604.2 and 1607.7 of the Zoning Regulations, no driveway may be constructed or used from M Street, S.E., or from Half Street, S.E. Where the loading and parking operations occur along Van Street, the pedestrian will have an uninterrupted sidewalk with similar paving patterns to the typical Van Street sidewalks and public space. (11 DCMR § 1610.3(d).)
55. The building as modified will continue to offer extensive façade articulation for all street elevations as well as the Via elevation. The proposed modifications to the Southern Portion include extensive modulation of building volume along the Half Street and N Street elevations, and to a somewhat lesser extent the Van Street elevation, where the C-shaped orientation of the residential portion is expressed. In addition to shifts of building volume, the building is articulated through use of balconies, extensive landscaping incorporated into the elevations, and innovative materials. (11 DCMR § 1610.3(e).)
56. The building as modified has been designed and will be constructed and operated with a goal toward sustainability and minimizing negative impact upon the environment. To that end, the residential construction on the Southern Portion will qualify for a minimum of LEED NC 2009 Gold certification. (11 DCMR § 1610.3(f)).

57. Subsection 1610.5 of the Zoning Regulations sets forth a number of specific requirements that apply to a building or structure with frontage on Half Street, S.E., south of M Street, S.E., or Front Street, S.E., south of M Street, S.E.
58. The building as modified satisfies the criterion of § 1610.5(a) of the Zoning Regulations as a result of the innovative building articulation and use of materials, extensive landscaping and streetscape, which is being coordinated with other property owners fronting Half Street, and extensive pedestrian-focused retail with appropriate signage, including potential electronic signage as permitted by code.
59. The Commission has previously determined that the Approved Building satisfies § 1610.5(b) of the Zoning Regulations. The building as modified will continue to provide safe and convenient movement to and through the site. Half Street remains the primary pedestrian pathway, linking the Navy Yard Metrorail Station and the Nationals Ballpark. The 30-foot-wide pedestrian Via remains an important design element of the project. Retail entrances will be located primarily along Half Street, with residential entrances and parking and loading operations along Van Street.
60. The Applicant has provided a view analysis and contextual images as part of its submissions to the hearing record as required by § 1610.5(c). As shown therein, the building will have no detrimental impact on views and vistas of the identified monumental properties and focus areas.

#### **Area Variance and Special Exception Relief**

61. Subsection 1610.7 of the Zoning Regulations states that the Commission may hear and decide any additional requests for special exception or variance relief needed for a project and that such requests shall be advertised, heard, and decided together with the application for review and approval for compliance with the CG Overlay provisions.
62. Pursuant to that authority, the modification application also includes requests for the following area variances: from the percentage of lot occupancy requirements (§ 634.1), setback requirement for buildings along Half Street, S.E. (§ 1607.2), compact parking space percentage requirements (§ 2115.4), and loading (§ 2201.1). Subsequent to submitting the modification application, the Applicant determined that, as a result of the inclusion of mezzanine habitable space imbedded with mechanical equipment in the penthouse, special exception approval is needed to allow enclosing walls of the penthouse to be of unequal height pursuant to the recently revised penthouse regulations (§§ 411.11 and 630.4(a).)
63. The Applicant withdrew its earlier requests for area variance from the court dimensional requirements (§ 638.2) and percentage of compact parking spaces (§ 2115.2).
64. The Commission previously determined in Z.C. Order No. 08-30 that the Property and the Approved Building satisfy the test for variances set forth in the Zoning Regulations



and approved variance relief for the Approved Building relating to percentage of lot occupancy, setback from Half Street, loading, percentage of ground-floor retail, and special exception for penthouse.

65. The test for variance relief is three-part: (1) demonstration that a particular property is affected by some exceptional situation or condition; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Commission finds that variance relief is appropriate in this application.
66. With regard to the exceptional condition of the Property, the Commission recognized a number of unique conditions affecting the Property in Z.C. Order No. 08-30. Therein, the Commission found that “the Property is extraordinarily large in size at almost 90,000 square feet and is also very deep (or wide), with an east/west dimension of approximately 150 feet. The project site is located at a very prominent location in the CG Overlay (the intersection of Half and M Streets), which requires a mixture of uses and dictates design features with which the Applicant must comply simply as a result of its presence on both M Street and Half Street (such as a prohibition on curb cuts on two sides of the project, elevated ground floor ceiling heights, and the requirement to provide a "pedestrian scale" building on relatively narrow streets). The Applicant is also proposing to include three different types of land uses on the Property, which is encouraged by the CG Overlay regulations, but raises construction feasibility considerations. Finally, the Property is located directly north of the Ballpark which requires a building design that is cognizant of the building's context and respectful of the District of Columbia's objectives for development in and around the Ballpark.” Z.C. Order No. 08-30, Finding of Fact No. 47. The Commission finds that the same exceptional conditions stated in Z.C. Order No. 08-30 still apply to the Property.

#### Area Variance-Lot Occupancy

67. The Commission previously approved, and the Applicant continues to request, area variance relief from the requirement of § 634 that limits maximum lot occupancy for the Property at 75%. As modified, the building's maximum lot occupancy will total approximately 93%. As the Commission previously recognized and continues to recognize, the strict application of the Zoning Regulations will result in a practical difficulty upon the Applicant in that it would unnecessarily restrict the development envelope for the office portion of the building and detrimentally affect the design of the residential portion, given the portions are connected and considered a single building for zoning purposes.
68. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the zone plan. As the project is considered one building for zoning purposes, the 75% lot occupancy restriction applies to the entire building (starting at the second floor—the horizontal plane where residential uses begin). The

Commission finds that the residential portion of the building provides ample access to natural light through provision of open and closed courts and extensive use of terraces and balconies. Furthermore, given the dramatic terracing of the building, the building's footprint decreases dramatically above the lowest levels.

Area Variance-Stepback Along Half Street, S.E.

69. The Commission earlier approved, and the Applicant continues to request, area variance relief from the requirement of § 1607.2, which requires that any portion of a building or structure that exceeds 65 feet in height shall provide a minimum step-back of 20 feet in depth from the building line along Half Street, S.E.
70. As the Commission previously recognized and continues to recognize, the strict application of the Zoning Regulations in this case will result in a practical difficulty upon the Applicant. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the zone plan. The extensively terraced design provides compliance with the spirit of the regulation and technical compliance along a portion of the Half Street elevation. The design as modified will not compromise the pedestrian experience nor have a negative effect on light and air for neighboring uses. The Applicant's Property is surrounded by a well-connected pedestrian network and most roadways within a quarter mile radius provide sidewalks and acceptable crosswalks and curb ramps, particularly along the primary walking routes. The proposed modification will add or widen sidewalks adjacent to the Property such that they meet or exceed DDOT requirements and provide an improved pedestrian environment, as demonstrated in the conceptual streetscape plans for Half Street.
71. There will be no detrimental impact on views and vistas of the identified monumental properties and focus areas. Rather, the dynamic design of the proposed modification will enhance views from points north and from the Ballpark.

Area Variance-Compact Parking Space

72. The Applicant requests variance relief to allow compact spaces not to be provided in groups of five or more spaces as required pursuant to § 2115.4. As a result of the structural column spacing for the building resulting from the size of the project and multiple design requirements of the CG Overlay, there are areas within the parking levels that are not large enough to accommodate standard-sized parking spaces but can accommodate compact-sized spaces. The grant of this area of relief will have no detrimental impact upon the public good as shown in the Applicant's transportation impact study. (Ex. 21C.)

Area Variance-Loading

73. The Commission previously approved loading relief for the Approved Building, and the Applicant continues to require loading relief for the modification to the Southern Portion.

No change is proposed for the loading operations of the Northern portion of the Approved Building as part of this application.

74. The Applicant cannot satisfy the requirement to provide 55-foot loading berths given the narrow dimension of Van Street, which is the street frontage where loading operations are required to be provided pursuant to the various prohibitions of the CG Overlay. As the Commission previously recognized, relief can be provided without substantial detriment to the public good. The Applicant has consulted with DDOT on this issue, arriving at a multi-point loading management plan, which is addressed as part of its transportation impact study.

#### Special Exception-Penthouse Walls of Unequal height

75. Under § 411.11 of the Regulations, the Board of Zoning Adjustment (“Board”) may approve the location, design, number, or any other aspect of a penthouse even if it does not comply with the requirements of § 630.4, upon a showing of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly or unreasonable. The Board, and by extension the Commission pursuant to § 1610.7, may approve a penthouse under § 411.11, provided that the intent and purpose of the Zoning Regulations are not materially impaired by the structure, and the light and air of adjacent buildings are not affected adversely.
76. The Applicant’s roof level plan is in keeping with the purpose and intent of the Zoning Regulations. The Applicant proposes to provide penthouse walls of unequal height to satisfy the required setback ratio as well as to minimize the scale of the penthouse structure to the overall design. Pursuant to § 411.9, enclosing walls of a penthouse shall be of equal, uniform height as measured from roof level, with certain limited exceptions. One exception provides that enclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space (§ 411.9(a)). The Commission finds that the Applicant’s design complies with that exception but for the small amount of habitable mezzanine space embedded with the mechanical space.
77. The Commission finds that the extensive terracing of the building, a product in part of the Half Street step back requirements of the CG Overlay, make full compliance unduly restrictive as full compliance would result in a penthouse measuring 20 feet in height and not meeting the required setbacks or would compromise the terraced nature of the design. The intent and purpose of the regulations will not be materially impaired nor will light and air of adjacent buildings be affected adversely.
78. The Commission also finds that the Applicant has undertaken additional study, per the Commission’s request, and has removed the trellis feature along the roof line in the courtyard and has undertaken redesign of the court-facing elevation so as to allow a compliant setback of the penthouse from the edge of the building in that location. Further, the Commission recognizes that the Applicant has further modified the

penthouse of the Southern Portion along the Via so as to increase the setback to a full 1:1 ratio.

### Office of Planning Report

79. By report dated February 16, 2016, OP recommended approval of the application. (Ex. 25.) In its report, OP noted that the application meets the CG Overlay goals for providing a preferred use, and meets the requirements for building form and massing. OP also noted that the application successfully addresses most of the evaluation criteria of the CG Overlay and recommended approval of the project and requested that the Applicant provide certain additional information regarding: (i) descriptions, details, and samples of the materials proposed for the exterior of the building; (ii) ways to potentially achieve the equivalent of a higher LEED rating for the building; and (iii) a more detailed rendering of the ground-floor retail environment. OP noted that it strongly supports the project and also supports the relief requested.
80. The Applicant provided the requested materials at the public hearing and as part of its post-hearing submission.

### DDOT Report

81. By report dated February 16, 2016, DDOT stated that it has no objection to the application subject to the Transportation Demand Management (“TDM”) plan being amended to include the following:
- The TDM Leader (for planning, construction and operations will work with goDCgo staff to create free customized marketing materials and a TDM outreach plan for residents and retail employees, including developing a site-specific transportation guide for residents and visitors;
  - The building management agrees to provide updated contact information for the TDM Leader and report on TDM efforts and amenities to goDCgo staff once per year;
  - Provide a SmarTrip card preloaded with \$100 to all new residents (owners and lessees) each year for a total of five years;
  - Provide a free annual Capital Bikeshare membership to all residents (owners and lessees) each year for a total of five years;
  - The Applicant will stock Metrorail, Metrobus, DC Circulator, Capital Bikeshare, Guaranteed Ride Home, DC Commuter Benefits Law, and other brochures; and
  - The public transit information screen shall be located in each of the two residential lobbies.

82. The report also stated that given the complexity and size of the action, the Applicant is expected to continue to work with DDOT outside of the Commission process on the following matters:
- Public Space, including curb gutter, street trees and landscaping, street lights, sidewalks, and other features within the public rights-of-way are expected to be designed and built to DDOT standards. Careful attention should be paid to pedestrian and bicycle connections along the site's perimeter;
  - A unified streetscape design for the entirety of Half Street between M and N Streets as design details are coordinated between DDOT, OP, and all property owners who front on Half Street. A design must be finalized by the time the site is ready for occupancy as a temporary streetscape is not acceptable;
  - Reduction in special paving along N Street, which is currently shown at six feet;
  - Required short-term bicycle parking spaces to be located at main building entrances; and
  - Recommended provision of one 240-volt electric car charging stations on the first level of the parking garage.
83. At the public hearing, the Applicant submitted to the record a revised TDM plan agreeing to the items raised in the DDOT report with the exception of DDOT's requests that the Applicant provide a SmarTrip card preloaded with \$100 to all new residents (owners and lessees) each year for a total of five years and provide a free annual Capital Bikeshare membership to all residents (owners and lessees) each year for a total of five years. The Applicant instead agreed to provide a one-time, annual Capital Bikeshare membership, annual carshare membership, or SmarTrip card preloaded with \$100 for each dwelling unit at initial occupancy. DDOT agreed to the Applicant's revised TDM plan.

### ANC Reports

84. By report dated January 21, 2016, ANC 6D reported that at its duly noticed meeting with a quorum present, a quorum being four Commissioners, ANC 6D voted 7-0-0 to support the requested modification. The ANC's report noted that it was not opposed to the Applicant's request for variances from the lot occupancy, setback, compact parking, and loading requirements. The ANC acknowledged that the Approved Building included a commitment to qualify for LEED-Silver certification for the residential portion; however, noted that the ANC would prefer a higher commitment. The report also asserted the ANC's preference to see more residential units within the building designated as affordable to households with a lower income than only the affordable units required to be provided as part of the penthouse affordable space.

85. As part of its post-hearing submission, the Applicant provided a revised LEED scorecard increasing its commitment from a total of 51 affirmative points to a total of 56 affirmative points and also provided extensive documentation relating to the building design and residential construction as to the difficulty of further increasing its LEED commitment. As detailed below, the Applicant subsequently raised its LEED commitment to LEED-Gold certification. Also, the Applicant provided additional detail regarding dedicated affordable housing to be provided within the building, which will include several IZ units relating to both the penthouse habitable space and the approximately 75,000 more feet of residential being provided as part of the modification to the Southern Portion.

### **DOEE Report**

86. By report dated March 28, 2016, DOEE responded to concerns raised by the Commission regarding the level of commitment to LEED certification and sustainable building strategies for the project. The report stated that if the project included certain energy efficiency and vegetation features, it could achieve LEED-Gold certification.
87. By report dated April 7, 2016, the Applicant responded to DOEE's memorandum. The Applicant stated that the Applicant was committed to using the variable refrigerant flow mechanical system and vegetation features mentioned in DOEE's memo. The Applicant further stated that it was raising its LEED commitment for the project to LEED-Gold (under LEED-NCv2009). (Ex. 38.)

### **CONCLUSIONS OF LAW**

1. The Applicant filed an application for review and approval of a modification to previously approved plans pursuant to 11 DCMR §§ 1604, 1607, and 1610. The Commission concludes that the Applicant has met its burden of proof.
2. The Commission provided proper and timely notice of the public hearing on the application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and owners of property within 200 feet of the Property.
3. Pursuant to 11 DCMR §§ 1604.1, 1607.1, and 1610.1, the Commission required the Applicant to satisfy all applicable requirements set forth in 11 DCMR §§ 1605.2 through 1605.5, 11 DCMR §§ 1607.2 through 1607.8, and 11 DCMR §§ 1610.2 through 1610.7.
4. Pursuant to 11 DCMR § 1610.7, the Commission also required the Applicant to meet the requirements for variance relief set forth in 11 DCMR §§ 3103, 634.1, 1607.2, 2115.4, and 2201.1. The Commission concludes that the Applicant has met its burden.
5. The proposed development is within the applicable height, bulk, and density standards for the CG/CR (Capitol Gateway Overlay/Commercial Residential) Zone District and will

not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.

6. The Commission concludes that the proposed project will further the objectives of the CG Overlay District as set forth in 11 DCMR § 1600.2 and will promote the desired mix of uses set forth therein. The design of the proposed building meets the purposes of the CG Overlay and meets the specific design requirements of 11 DCMR §§ 1604, 1607, and 1610.
7. No person or parties appeared at the public hearing in opposition to the application.
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 issues and concerns raised in the written report of the affected ANC. The affected ANC in this case is ANC 6D. The Commission carefully considered ANC 6D's recommendation for approval and concurs in its recommendation in support of the application, and considered the issues and concerns stated in its report.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the application persuasive.
10. Based upon the record before the Commission, including witness testimony, the reports submitted by OP, DDOT, and ANC 6D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1604, 1607, and 1610 of the Zoning Regulations and for special exception relief pursuant to 11 DCMR §§ 3103 and 3104.

### DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application consistent with this Order. The term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an owner. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lots 33, 802, 840, 841, 850, 864, 865, 868, 871, 872, 874, and 875 in Square 700.

2. The project shall be built in accordance with the Final Architectural Drawings, dated February 5, 2016, as modified by replacement and supplemental drawings and materials dated March 17, 2016, and the guidelines, conditions, and standards below. (Ex. 21B and 34A.)
3. The overall density on the Property shall not exceed 9.0 FAR as permitted pursuant to 11 DCMR § 1602, and pursuant to the Commission's approval of this application.
4. **The Applicant shall implement the following loading management plan for the life of the project:**
  - a. Deliveries will be permitted between 7:00 a.m. and 4:00 p.m. seven days a week, except for when events occur at Nationals Park. Deliveries cannot be scheduled for the period between two hours when an event begins and one hour after an event is completed (including during the event itself);
  - b. A representative of Building Management will supervise all deliveries to the loading dock, for 30-foot trucks (this does not apply to delivery vans). Building management will not schedule deliveries during Nationals Park events as defined above when there could be heavier than typical pedestrian traffic on Van Street;
  - c. All residential and retail deliveries must be scheduled with Building Management to ensure that the dock capacity is not exceeded. Building management will not schedule deliveries during Nationals Park events as defined above when there could be heavier than typical pedestrian traffic on Van Street;
  - d. A flagger will be present when a vehicle is entering the loading dock to ensure pedestrian, bicycle, and vehicle safety with truck back-in maneuvers;
  - e. Building management will post a sign in a highly visible location within the loading area that states that all loading activities must be scheduled through building management; and
  - f. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.
5. **The Applicant shall implement the following TDM measures for the life of the project:**
  - a. The Applicant will comply with Zoning requirements to provide bicycle parking/storage facilities. This includes secure parking located in the garage for residents;



- b. The Applicant will provide a bicycle maintenance facility within the building;
  - c. The Applicant will unbundle the cost of residential parking from the cost of lease or purchase;
  - d. The Applicant will identify a TDM Leader (for planning, construction, and operations). The TDM Leader will work with goDCgo staff to create free customized marketing materials and a TDM outreach plan for residents and retail employees, including developing a site-specific transportation guide for residents and visitors;
  - e. The building management will provide updated contact information for the TDM Leader and report TDM efforts and amenities to goDCgo staff once per year;
  - f. The building management will stock Metrorail, Metrobus, DC Circulator, Capital Bikeshare, Guaranteed Ride Home, DC Commuter Benefits Law, and other brochures;
  - g. The Applicant will unbundle the cost of residential parking from the cost of lease or purchase;
  - h. The Applicant will dedicate two spaces in the residential garage for car sharing services to use with right of first refusal. These spaces will be convenient to the garage entrance, available to members of the car sharing 24 hours a day, seven days a week, without restrictions (the garage may be gated – members of the service would have access to the spaces via a key pad combination to a pass code system or other similar device);
  - i. The Applicant will place electronic message boards in the building lobby that provide real-time information on nearby transit services; and
  - j. The Applicant will provide a one-time, annual Capital Bikeshare membership, annual carshare membership, or SmarTrip card preloaded with \$100 for each dwelling unit at initial occupancy.
6. The residential/Southern Portion shall be certified at the LEED-Gold level (under LEED-NCv2009).
  7. The Applicant shall have flexibility with the design of the project in the following areas:
    - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings;

- b. To vary the final selection of exterior materials within the color ranges provided (maintaining or exceeding the same general level of quality) as proposed, based on availability at the time of construction;
  - c. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
  - d. To substitute residential and/or permitted non-residential uses on the second and third floors in replacement of the approximately 10,550 square feet of retail uses, as shown on Sheet A302 of the Final Architectural Drawings; (Ex. 34A)
  - e. To vary the number of residential units provided so long as the total amount of residential units provided is not diminished or increased by more than 10%;
  - f. To provide signage, including digital signage as authorized by applicable code; and
  - g. To vary the number of parking spaces provided so long as that number equals or exceeds the minimum number of spaces required under the Zoning Regulations.
8. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 et seq. (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identification, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action.

On April 11, 2016, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on May 13, 2016.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 11-03C**  
**Z.C Case No. 11-03C**  
**Wharf District Master Developer, LLC**  
**(Second-Stage PUD @ Southwest Waterfront - Parcel 1)**  
**March 14, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on January 21, 2016, to consider an application for a second-stage planned unit development (“PUD”) filed by Wharf District Master Developer LLC (“Applicant”) on behalf of the District of Columbia, through the Office of the Deputy Mayor for Planning and Economic Development, the current owner of the property. The subject property, consisting of Parcel 1, Market Square, and Market Shed of the Southwest Waterfront redevelopment project is generally bounded by the Washington Channel of the Potomac River and Maine Avenue, between the Maine Avenue Municipal Fish Market on the west and the area to be known as “Blair Alley” on the east. The Commission considered this second-stage PUD application for Parcel 1 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 for Parcel 1.

**FINDINGS OF FACT**

**The Applications, Parties, and Hearings**

1. On August 17, 2015, the Applicant filed an application with the Commission for second-stage review and approval of a PUD for Lots 854 and 856 in Square 473, consisting of approximately 57,856 square feet of land area (the “Property”) (Exhibits [“Ex.”] 1-3.) The Applicant intends to redevelop the Property consistent with the first-stage PUD Order (Z.C. Order No. 11-03, effective on December 16, 2011).
2. By report dated October 9, 2015, the Office of Planning (“OP”) recommended that the application be set down for a public hearing. (Ex. 10.) At its public meeting held on October 19, 2015, the Commission voted to schedule a public hearing on the application.
3. On November 5, 2015, the Applicant submitted its pre-hearing statement, and on December 31, 2015, submitted its supplemental information for the project, along with several architectural drawings to respond to issues raised by the Commission and OP. (Ex. 13-13K, 19-19B18.)
4. A description of the proposed development and the notice of the public hearing for this matter were published in the *D.C. Register* on November 27, 2015. The notice of public hearing was mailed to all property owners within 200 feet of the Property as well as to Advisory Neighborhood Commission (“ANC”) 6D. On January 21, 2016, the Commission held a public hearing to consider the second-stage PUD.
5. The parties to the proceeding were the Applicant and ANC 6D.

6. At the public hearing, the Applicant presented five witnesses in support of its application: Shawn Seaman and Matthew Steenhoek, on behalf of Wharf District Master Developer LLC; Doug Hocking, architect, Kohn Pedersen Fox Associates; Robert Schiesel, Gorove/Slade Associates, transportation consultant; and Shane Dettman, Holland & Knight LLP, land use planner. Based upon their professional experience and qualifications, Mr. Hocking was qualified as an expert in architecture, Mr. Schiesel was qualified as an expert in transportation engineering and planning, and Mr. Dettman was qualified as an expert in land use planning.
7. Matthew Jesick, Development Review Specialist at OP, and Ryan Westrom of the District Department of Transportation (“DDOT”) testified in support of the application with certain comments and conditions.
8. At its December 14, 2015, regularly scheduled meeting, which was duly noticed and at which a quorum was present, ANC 6D voted 7-0-0 to support the application.
9. On January 21, 2016, ANC 6D submitted a report in support of the second-stage PUD. A representative from ANC 6D did not attend the public hearing.
10. At the conclusion of the hearing on this matter the Commission took proposed action to approve the second-stage PUD and requested the Applicant to submit revised architectural drawings that address the Commission’s comments regarding the penthouse setbacks along the west and south facing sides of the building proposed on Parcel 1, additional information regarding the penthouse terrace lighting and acoustic considerations related to the proposed penthouse habitable space, information clarifying the anticipated penthouse terrace furnishings, drawings showing potential locations for retail and building tenant signage, precedent images for the water wall feature proposed along Maine Avenue, and information regarding the Applicant’s efforts in Ward 7 and 8 regarding workforce development. The Applicant submitted the requested information to the Commission on February 4, 2016. (Ex. 27-27C.)
11. To address the Commission’s comments regarding the penthouse setbacks along the west and south, the Applicant submitted two design alternatives. These alternatives were identified as “Alternate 1 Preferred” and “Alternate 2,” in the revised architectural plans included the Applicant’s post-hearing submission (Ex. 27A1-27A6.)
12. The application was referred to the National Capital Planning Commission (“NCPC”) for review for any adverse impacts on the federal interest, as defined in the Federal Elements of the Comprehensive Plan for the National Capital. By delegated action dated February 11, 2016, NCPC’s Executive Director found that the second-stage PUD would not be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital. (Ex. 28.)

13. The Applicant submitted its final list of proffers and draft conditions on February 11, 2016. (Ex. 36.)
14. The Commission reviewed the Applicant's post-hearing submissions at its February 29, 2016 public meeting. The Commission stated that it did not find either of the Applicant's proposed penthouse design alternatives satisfactory because neither provided a full 1:1 setback of rooftop structures along all exterior walls of the Parcel 1 Building. The Commission stated that the potential building signage locations on the upper level of the building were overly large. Finally, the Commission stated that it believed the design flexibility in the Applicant's proposed draft order was overly broad in several ways, namely the flexibility pertaining to the selection of exterior building materials, the ability to make changes to the interior building components, and the ability to make refinements to aspects of the building exterior in response to other required reviews and processes. The Commission requested that the Applicant submit a revised roof design, smaller potential building signage locations on the upper level of the building, and more limited design flexibility provisions.
15. The Applicant submitted the requested information on March 14, 2016. (Ex. 37-37A5.) Attached to the submission were revised drawing sheets showing a revised rooftop design, building signage locations, and design flexibility requests. The Applicant stated in this submission that it was only seeking the Commission's approval of the location and general dimensions of the two proposed upper-level signage areas on the north and west building façades so that the Applicant can, at a minimum present a basic set of signage parameters as being acceptable to the potential building tenants. The Applicant further stated that it will submit the final upper-level signage for review by the Commission as a minor modification on the Commission's consent calendar.
16. The Commission took final action to approve the second-stage PUD at its March 28, 2016 public meeting.

### **The Southwest Waterfront Project**

17. The Southwest Waterfront redevelopment project is a public-private partnership between the District of Columbia and Hoffman-Struever Waterfront, LLC, which entered into a land disposition agreement (the "LDA") for redevelopment of the PUD Site (the "Southwest Waterfront PUD"). The District of Columbia, as owner of the PUD Site, except for Lots 83 and 814 in Square 473, the Vestry of St. Augustine's Church, the owner of Lots 83 and 814 in Square 473, and Hoffman-Struever Waterfront, LLC, the master developer selected by the District of Columbia to implement the redevelopment project, submitted their application for approval of the first-stage PUD to fulfill the revitalization plan envisioned by the District to reactivate the Southwest Waterfront.
18. Pursuant to Z.C. Order No. 11-03, which took effective on December 16, 2011, the Commission approved the first-stage PUD for the Southwest Waterfront redevelopment project, which is generally bounded by the Washington Channel of the Potomac River

and Maine Avenue between 6<sup>th</sup> and 11<sup>th</sup> Streets, S.W., and consists of approximately 991,113 square feet of land area (22.75 acres) and approximately 167,393 square feet of piers and docks in the adjacent riparian area (the “PUD Site”). The Commission approved a second-stage PUD application for Phase 1 of the redevelopment project, consisting of Parcels 2, 3, 4, and 11, the Capital Yacht Club, and the public open spaces known as the Wharf, the Transit Pier, the District Pier, the Yacht Club Piazza, the Mews, Jazz Alley, 7<sup>th</sup> Street Park and Waterfront Park, as well as temporary uses on Parcel 1, pursuant to Z.C. Order Nos. 11-03A(1), 11-03A(2), 11-03A(3), and 11-03A(4) (*effective date* February 15, 2013). In addition, pursuant to Z.C. Order No. 11-03B (*effective date* June 21, 2013), the Commission approved a second-stage PUD for Parcel 5, and, pursuant to Z.C. Order No. 11-03D (*effective date* January 15, 2016), a minor modification to the previously approved Parcel 5 plans.

19. Pursuant to the first-stage PUD approval, the overall redevelopment project will include a maximum landside density of 3.87 floor area ratio (“FAR”), excluding private rights-of-way, and a maximum potential 0.68 FAR of waterside uses. Proposed uses will include up to approximately 1,400 mixed-income and market-rate residential units, with 160,000 square feet of residential gross floor area (“GFA”) set aside for households earning no more than 30% and 60% of the Washington–Arlington–Alexandria, DC–VA–MD–WV Metropolitan Statistical Area Median Income (“AMI”); approximately 925,000 gross square feet of office uses; a luxury hotel with approximately 278 guest rooms, and two additional hotels with approximately 405 rooms; approximately 300,000 gross square feet of retail/service uses; a minimum of 100,000 gross square feet devoted to cultural activities; and more than ten acres of parks and open space. The riparian area will feature four new public-use piers as well as approximately 114,000 square feet of maritime-related commercial, recreational, and service development.
20. The Commission approved the first, second-stage application for the Southwest Waterfront PUD on February 15, 2013 in Z.C. Order Nos. 11-03A(1), 11-03A(2), 11-03A(3) and 11-03A(4), which proposed the development of six buildings on Parcels 2, 3, 4, and 11. This first phase of the project also encompassed the creation of new public parks and open spaces known as the Wharf, The Transit Pier, the District Pier, the Piazza Mews, the Avenue Mews, the Pier Mews, and Jazz Alley (collectively the “Mews”), the Yacht Club Piazza, the 7<sup>th</sup> Street Park, and Waterfront Park. At that time, Parcel 1 was also approved for a temporary parking lot/event space.
21. The subject second-stage PUD, which the Applicant initially contemplated as part of a later phase of the Southwest Waterfront PUD, proposes the development of a trophy-class office building containing ground-floor retail/service uses, as well as habitable penthouses uses on Parcel 1 (the “Parcel 1 Building”). It will contain approximately 261,056 total gross square feet, of which approximately 248,565 gross square feet will be devoted to office uses, and approximately 12,491 gross square feet will be devoted to ground-floor retail/services uses, which could increase by approximately 9,400 gross square feet should the Applicant opt to devote the northern portion of the second floor, identified on the Plans as “Office/Retail,” to retail/service uses rather than office use. The

Parcel 1 Building will also contain approximately 10,079 gross square feet of penthouse habitable space devoted to office and/or retail/service uses with adjacent roof terrace, including the potential for a restaurant, bar, or cocktail lounge use. The second-stage PUD also includes the construction of an active, open-air plaza located to the west of the Parcel 1 Building, known as Market Square, which will include a one-story building containing approximately 1,690 gross square feet of retail/service uses.

### **The Applicant and Development Team**

22. The master developer of the overall Southwest Waterfront PUD is Hoffman-Struever Waterfront, LLC doing business as Hoffman-Madison Waterfront, LLC (“Hoffman-Madison”). The Applicant for the second-stage PUD is Wharf District Master Developer LLC, an affiliate of Hoffman-Madison, which is processing this second-stage PUD application on behalf of the Office of Deputy Mayor for Planning and Economic. The Applicant’s team includes the District-based Certified Local, Small, and Disadvantaged Business Enterprises of E.R. Bacon Development, Paramount Development and Triden Development, as well as District-based and CBE-certified CityPartners.

### **Approved Stage 1 PUD Development Parameters**

23. Under the first-stage PUD, the Commission approved the development parameters for the overall Southwest Waterfront PUD, as shown on the architectural plans submitted to the record. Overall, the Commission approved a maximum landside density of 3.87 FAR, excluding private rights-of-way, and a combined gross floor area of approximately 3,165,000 square feet. Waterside uses were approved for a maximum potential density of 0.68 FAR, or approximately 114,000 gross square feet (*See* Z.C. Order No. 11-03, Condition Nos. A-1 and A-2 at p. 33).
24. The Commission authorized a maximum building height of 130 feet on Parcel 1, which was rezoned to the C-3-C Zone District. (*Id.*, Condition No. A-3 at p. 33.)
25. With respect to parking facilities for the project, the Commission authorized the construction of one or more below-grade parking structures on two to three levels that are required to provide spaces for approximately 2,100-2,650 vehicles. The overall redevelopment project is also required to provide parking or storage for 1,500-2,200 bicycles onsite, and sufficient loading facilities to accommodate the mix of uses on the PUD site. The precise amount of parking and loading is to be determined in each stage two PUD application. (*Id.*, Condition No. A-4 at p. 33.)

### **Overview of the Southwest Waterfront PUD**

26. The primary objective of the Southwest Waterfront PUD is to reunite the city with the water’s edge and activate it with a mix of uses and year-round activity. This objective will be achieved by integrating the city’s unique urban qualities, such as dynamic parks and open spaces that are defined by consistent street walls, with aspects that recall the

character of the thriving commercial warehouse district and maritime activities that once lined the Washington Channel and connected the upland city streets to the maritime edge.

27. As described during the first-stage PUD, the Southwest Waterfront PUD will provide a mix of uses to ensure an active waterfront throughout the year, day and night. Rather than a collection of individual projects, the overall redevelopment has been designed as a series of “places” that integrate architecture and landscape design to create inviting and memorable public environments. There will be a variety of gathering places to cater to every interest, ranging from actively programmed places to simple promenades and parks for passive enjoyment of the water and its environs.
28. The design of the waterside development has been fully integrated with the landside development, and will include four new public-use piers along the Washington Channel. The District Pier, the largest of the piers, is intended to be the primary waterside entrance to the project and the host for the District’s waterside events. Several new tour boats, tall ships, and maritime vessels, such as water taxis, will be added to the existing recreational maritime activities to provide increased activity and several more options for the public to use the waterfront and engage in water sports and activities. The waterside development will extend to the limits of the Washington Channel’s federal navigational channel.

### **Parcel 1, Market Square, and Market Shed Proposed Development**

#### *Parcel 1*

29. Parcel 1 is located at the northwestern end of the PUD Site, consists of approximately 32,744 square feet of land area, and is part of the larger proposed lot of record that will encompass Parcels 1-5. The Applicant proposes to locate multiple buildings on this single lot of record as permitted under 11 DCMR §2517.
30. Consistent with the phased development endorsed by the Commission, the building proposed on Parcel 1, the Parcel 1 Building, will consist of office and retail/service uses. The Parcel 1 Building will have approximately 261,056 gross square feet, of which approximately 248,565 gross square feet will be devoted to office uses, and approximately 12,491 gross square feet will be devoted to retail/services uses. The Parcel 1 Building will also contain approximately 10,079 gross square feet of penthouse habitable space that will be devoted to office and/or retail/service uses, including the potential for a restaurant, bar, or cocktail lounge use.
31. The massing of the Parcel 1 Building will consist of a two-story base with an eight-story office tower above the base, rising to a maximum building height of 130 feet.
32. The office tower is generally arranged in a north-south orientation, angled slightly to form a “V-shape” that opens southward to the Washington Channel. The tower includes a large two-story lobby that runs completely through the building from Maine Avenue to



the Wharf, providing visual connections through to the Washington Channel. Above the second floor along the west façade, the building is set back approximately five feet to break up the massing and scale of the building, and relate to Market Shed and the lower-scaled buildings of the adjacent Fish Market. This setback creates a third-floor terrace that overlooks Market Square and provides views toward the waterfront. The west façade is further articulated by a small court niche that starts at the fifth floor and extends the remaining height of the building.

33. In contrast to the building setback along the west façade of the building, the north façade, along Maine Avenue, S.W., is recessed at the first and second levels creating an upper-level cantilever that breaks up the building massing and emphasizes the main building entrance. A two-story water fall feature is proposed along this façade to animate and add visual interest along the Maine Avenue streetscape. The south façade of the building, facing the Washington Channel, includes an expansive, three-story central atrium that is set back in the center of the tower. At the tenth floor, this portion of the building is further set back an additional 16 feet, creating an outdoor terrace that overlooks the waterfront. Finally, the east façade, along Blair Alley, S.W., has a simple massing and articulation.
34. The retail uses will primarily be located on the ground floor along the west façade, adjacent to Market Square, and on the south façade, facing the Wharf and Washington Channel, and framing the three-story atrium. A dedicated elevator and stair along the west façade will provide general public access to the shared-use parking garage. The Parcel 1 Building's loading facilities and access ramp to the below-grade parking garage are located along the east façade, accessible from Blair Alley, S W. Above the ground floor, the remainder of the Parcel 1 Building will be devoted to office use, with the possible exception of the western portion of the second floor which may contain retail uses.
35. The Parcel 1 Building's penthouse includes both mechanical and habitable space, screened mechanical equipment, and outdoor terrace space. As designed, the penthouse enclosure has variable heights with the habitable space having a maximum height of 16'-0", and the mechanical space and screening having multiple heights of 16'-0" and 18'-6". Based upon the revised architectural plans submitted by the Applicant as part of its post-hearing submission, dated March 14, 2016, the Parcel 1 Building penthouse is setback 1:1 from the edge of the roof along all sides of the building.
36. The Parcel 1 Building penthouse will contain approximately 10,079 gross square feet of penthouse habitable space that will be devoted to office or retail/service uses, as well as an outdoor terrace. Pursuant to § 411.4(c) of the newly adopted penthouse regulations, the Applicant has requested flexibility to devote the penthouse habitable space to a restaurant, bar, and/or cocktail lounge uses.

Market Square

37. As part of the second-stage PUD, the Applicant will construct Market Square, an active, open-air plaza located immediately west of the Parcel 1 Building that will serve as the northern gateway into the renewed Southwest Waterfront neighborhood, the Wharf, and to Market Pier. Market Square is expected to be a primary point of arrival for visitors coming to the waterfront from the National Mall.
38. Market Square will be approximately 26,400 square feet in area.
39. The design of Market Square takes into consideration the heavily trafficked commercial activity of the Fish Market and the waterfront views from Banneker Park. A range of paving materials are proposed within Market Square to distinguish it as a special place in and of itself within the broader Wharf framework, and to help regulate the flow of pedestrians, bicyclists, and vehicles which will all mix together within this active, shared urban space. To ensure safe pedestrian connectivity, dedicated sidewalks are proposed along the edges of Market Square. The sidewalks will have distinct paving and relate to the new signalized crosswalks on Maine Avenue. The east-west shared pedestrian crossing between the Parcel 1 Building and the Fish Market will be distinct from the surrounding shared vehicular surfaces. A different set of paving materials or patterns that is distinguished from the dedicated pedestrian spaces is proposed in the areas where pedestrians, bicycles, and automobiles will intermix. Other traffic calming measures proposed within Market Square include the placement of sturdy planters at crosswalks and the limited use of bollards.

Market Shed

40. As part of the second-stage PUD, the Applicant will construct the Market Shed pavilion, a one-story retail structure consisting of approximately 1,690 gross square feet that will be centrally located within Market Square. Market Shed will measure approximately 18 feet wide by 118 feet in length, and will vary in height from approximately 21 feet at the high points of the roof, to approximately 14 feet at the low point.
41. The Market Shed pavilion has been specifically designed to relate to the other small-scaled pavilions that are set within the landside open spaces, or on new or repurposed waterside piers, throughout the Southwest Waterfront PUD, and to allow views to the waterfront from Banneker Park. Market Shed is designed to accommodate one or two tenants.

The Wharf and Maine Avenue

42. The second-stage PUD will construct approximately 190 linear feet of the Wharf, the pedestrian promenade adjacent to the Washington Channel and running the full length of the PUD Site, that will have the ability to accommodate low-speed, low-volume vehicular access to business fronts, restaurants, elderly and disabled passenger drop off, and valet

parking along the water's edge, and the flexibility to be closed periodically for special events and certain nights and weekends to emphasize and enhance the pedestrian experience while still maintaining emergency access.

43. The portion of the Wharf that will be constructed as part of the second-stage PUD will be consistent in design with other sections of the Wharf that have previously approved by the Commission.
44. As part of the second-stage PUD, approximately 219 linear feet of Maine Avenue, S.W. between Blair Alley, S.W. and Market Square will be reconstructed consistent with the streetscape design that has been previously approved by the Commission.

### **Parking and Loading Facilities**

45. A minimum of 78 parking spaces will be devoted to the office component of the Parcel 1 Building within the shared-use garage located below Parcels 1-5. DDOT expressed no objection to this number of parking spaces based on the Applicant's continued commitment to the Transportation Demand Management ("TDM") program and monitoring plan approved as part of the first-stage PUD, and the TDM measures that are specific to this second-stage PUD. These measures are listed as Condition C.1 of this Order.
46. The required bicycle parking spaces for the Parcel 1 Building will be satisfied within the approximately 120 short-term and 850 long-term bicycle parking spaces that are being provided within the larger shared-use parking garage.
47. Loading facilities are also located off of Blair Alley, near the intersection with Maine Avenue, and will consist of two, 30-foot loading berths and a 250-square-foot loading dock. The Applicant requested flexibility from the loading requirements, as discussed in greater detail elsewhere in this order.
48. The Applicant will implement specific restrictions and guidelines on loading operations at the Parcel 1 Building to ensure coordination of deliveries among the tenants of the Parcel 1 Building, and between Parcel 1 and Parcel 2, as set forth in the transportation technical memorandum submitted into the record. (Ex. 19A.)

### **Project Benefits and Amenities**

49. The Applicant was required by condition C.3 of Z.C. Order No. 11-03 to provide, for each second-stage PUD application, a detailed implementation plan for the public benefits and project amenities enumerated in Exhibit No. 60 and in Conditions Nos. B-3 through B-6 that identifies the benefits and amenities proposed for that particular stage-two application, the benefits and amenities that have already been implemented, the benefits and amenities yet to be implemented, and an overall status update and timetable for implementation. The Applicant provided this plan for this second-stage application.

(Ex. 2E). The Commission finds that this second-stage PUD will provide the benefits and amenities as set forth below.

#### Sustainable (LEED) Development

50. In keeping with the approved first-stage PUD, the overall Southwest Waterfront PUD will be designed to achieve the LEED-ND (v2009) certification at the Gold level or higher, and each new building of the Southwest Waterfront PUD will be designed to achieve LEED-NC (v2009) or LEED-CS (v2009) Silver rating or higher. The Applicant has developed guidelines to ensure that the second-stage PUD has been designed in accordance with LEED-ND (v2009) Gold objectives in order to meet individual certification requirements and to comply with the overall larger framework of LEED-ND (v2009) criteria. The Parcel 1 Building will be designed to achieve a minimum LEED-CS (v2009) Gold rating, which exceeds the first-stage PUD requirement, and will meet the LEED stormwater requirements (*see* Z.C. Order No. 11-03, Condition No. B-7 at p. 36).

#### Project Association

51. In accordance with the LDA, the Applicant will create and manage a project association for the PUD that will be responsible for maintenance and improvements of the private roadways, alleys, bicycle paths, promenade, sidewalks, piers, parks, and signage, within the PUD Site (the "Project Association"). The Applicant will manage and operate the Project Association during the "developer control period," as defined in the Applicant's Declaration of Covenants with the District of Columbia. The developer control period begins upon the effective date of the Declaration of Covenants and ends five years after issuance, or deemed issuance, of the last certificate of completion for all portions of the Southwest Waterfront PUD, and unit certificates of completion for each residential condominium unit. The Project Association will fund maintenance and programming of the common elements of the Southwest Waterfront PUD through a Common Area Maintenance ("CAM") assessment charge to each development component within the Southwest Waterfront. Additionally, the Project Association will be responsible for programming and staging events within the PUD Site.

#### Certified Business Enterprises

52. The Applicant has entered into a Certified Business Enterprise ("CBE") Agreement, with the D.C. Department of Small and Local Business Development ("DSLBD") to achieve, at a minimum, a 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security for the project to be created as a result of the overall Southwest Waterfront PUD.
53. Furthermore, under the LDA, the Applicant has committed that 20% of the retail space throughout the Southwest Waterfront PUD will be set aside for "unique" and/or "local" businesses, which will include CBEs. As defined under the LDA, a "local" business is a retailer that is either a CBE or a retailer headquartered in the District of Columbia. A

"unique" business is a retailer owning or operating fewer than eight retail outlets in the aggregate at the time such retailer enters into a retail lease at the PUD Site (inclusive of such retail outlet at the PUD Site). The Applicant will work collaboratively with business and community organizations throughout the District to identify and, where possible, mentor potential small restaurateurs and retailers to help them lease and successfully operate these retail spaces. The Applicant will also have kiosks along the promenades, and in parks and other public spaces, where even smaller local businesses can try out their retail concepts on a low-risk basis. Those kiosk operators who are successful may have the opportunity to move indoors, into one of the spaces reserved for unique and local business enterprises, thereby growing their business.

#### First Source Employment Opportunity

54. The Applicant has executed a First Source Employment Agreement with the Department of Employment Services to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the overall Southwest Waterfront PUD. (*See* Exhibit 209 in Z.C. Case No. 11-03A.) Prior to issuance of a building permit for construction of the Parcel 1 Building, the Applicant shall complete the Construction Employment Plan of the First Source Employment Agreement outlining the hiring plan for the project. The Applicant shall meet the First Source Employment Agreement requirement that 20% of new jobs will be filled by Ward 8 residents, and that good faith diligent efforts will be made to hire residents of Southwest Washington. In addition, 30% of apprenticeship opportunities shall be filled by residents residing east of the Anacostia River. The Applicant and the contractor, once selected, shall use best efforts to coordinate apprenticeship opportunities with construction trades organizations, the D.C. Students Construction Trades Foundation, and other training and job placement organizations to maximize participation by District residents in phases of construction of the Southwest Waterfront PUD.

#### Workforce Intermediary Program

55. As required as part of the first-stage PUD approved benefits and amenities, the Applicant has contributed \$1 million to the District's Workforce Intermediary Program.

#### Development Incentives

56. *Penthouse Setbacks*: As part of its initial application, the Applicant had requested relief from the 1:1 penthouse setback requirements of the Zoning Regulations along the west and south façades of the Parcel 1 Building, facing Market Square and the Wharf/Washington Channel, respectively. In response to comments made by the Commission at the public hearing, the Applicant submitted revised architectural drawings as part of its post-hearing submission that showed fully compliant penthouse setbacks, thus eliminating the need for this area of relief.

57. Habitable Penthouse Use: Pursuant to the newly adopted penthouse regulations, which went into effect on January 8, 2016, buildings and structures within the C-3-C Zone District, such as the Parcel 1 Building, are permitted to have habitable space devoted to any use permitted within the C-3-C Zone District, with the exception of a nightclub, bar, cocktail lounge, or restaurant, which are permitted by special exception. Thus, in addition to any other use that is permitted as a matter of right in the C-3-C, such as office and retail/service uses, the Applicant requests relief to allow a restaurant, bar, and/or cocktail lounge use within the Parcel 1 Building penthouse. While the Applicant had initially requested relief to also allow a nightclub as a potential use in the Parcel 1 Building habitable penthouse, this particular use was eliminated from the flexibility request in response to Commission comments.
58. Mechanical Penthouse Height: Under the newly adopted penthouse regulations, penthouse mechanical space, penthouse habitable space, and equipment screening are permitted to each have a different height, but individually must be designed to a uniform height. (Z.C. Order No. 14-13, effective January 8, 2016.) The Applicant requested flexibility to allow the Parcel 1 Building's penthouse mechanical space to have two separate heights. The majority of the penthouse mechanical space will have a height of 18'-6", with the remainder having a lower height of 16'-0". The two different heights are a result of the size and function of the mechanical equipment within these areas.
59. Loading Facilities: Pursuant to § 2201.1 of the Zoning Regulations, the Parcel 1 Building generates a loading requirement of three, 30-foot-deep loading berths; one, 20-foot service/delivery space; and three platforms each measuring 100 square feet, 300 square feet total. Relief is requested from the prescribed loading requirement to provide two, 30-foot loading berths and a 250-square-foot loading platform.
60. Parking: The office and retail/service uses within the Parcel 1 Building generate a vehicle parking requirement of approximately 153-166 parking spaces, inclusive of the penthouse habitable space. The Applicant will provide a minimum of 78 vehicle parking spaces in the shared-use garage located below Parcels 1-5, which will be devoted to the office component of the Parcel 1 Building. Employees and retailers of the Parcel 1 Building's retail/service use component will have access to the general use spaces within the shared-use garage. Approximately 11 additional surface parking spaces will be provided in Market Square.

### **Design Flexibility**

61. The Applicant requested flexibility with the design of the second-stage PUD in the following areas:
- a. The Parcel 1 Building shall provide two 30'-0" loading berths and a 250-square-foot loading platform;

- b. To vary the location and configuration of the parking spaces devoted to the office component of the Parcel 1 Building within the shared-use garage located below Parcels 1-5;
- c. To adjust the total amount of office and retail gross floor area by five percent;
- d. To allow multiple penthouse heights for penthouse mechanical space;
- e. To allow office, retail, restaurant, bar, and/or cocktail lounge uses within the Parcel 1 Building penthouse and on the penthouse terrace consistent with the Plans;
- f. 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;
- g. To make refinements to exterior building details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit;
- h. To vary the retail entrances, façades, and signage in accordance with the needs of the retail tenants and within the potential retail signage zones shown in the supplemental plans filed as part of the Applicant's post-hearing submission;
- i. To permit the selection of either the terra cotta panel, metal panel, or combination terra cotta/metal panel exterior façade system, to vary the depth of the façade panels, and to vary the final color of the panels based on availability at the time of construction without reducing material quality;
- j. To permit the selection of travertine or other similar stone product used on the exterior building façade at the two-story retail level, based on availability at the time of construction without reducing the quality of materials, and provided the final selection is similar in color and texture to what is shown in the approved plans; and
- k. To vary the final selection of the open space paving materials within the color ranges and material types as proposed, based on constructability and availability at the time of construction.

### **Office of Planning Report**

62. By report dated January 11, 2016, OP recommended approval of the second-stage PUD, noting that the project is not inconsistent with the first-stage PUD or the Zoning

Regulation. In addition, OP stated that the project is not inconsistent with the Comprehensive Plan, including the Generalized Policy Map and Future Land Use Map, and is also consistent with the Development Plan and Anacostia Waterfront Initiative Vision for the Southwest Waterfront. (Ex. 21.)

63. OP did not object to the Applicant's request for flexibility from certain areas of the Zoning Regulations, and for certain aspects of the design of the second-stage PUD.
64. Based on the analysis provided in the OP report, the Commission finds the second-stage PUD to be not inconsistent with the Comprehensive Plan, including the Generalized Policy Map and Future Land Use Map.

### **DDOT Report**

65. DDOT submitted a memorandum, dated January 11, 2016, in support of the second-stage PUD, with conditions. (Ex. 20.) DDOT concluded, after an extensive review of the case materials submitted by the Applicant, that any adverse impacts of the second-stage PUD can be mitigated based on: (i) the TDM mitigation measures proffered in the second-stage PUD for Phase 1 of the Southwest Waterfront PUD (Z.C. Order No. 11-03A(1), (2), (3), and (4)); and (ii) implementation of the additional TDM measures specific to this second-stage PUD that are listed in the Applicant's transportation technical memorandum. (Ex. 19A.)
66. DDOT also recommended that the Applicant supplement its TDM measures to include placement of electronic message boards in both the Parcel 1 Building and Market Shed, which provide real-time information on nearby transit services. The Applicant agreed to this recommendation.
67. Based on the TDM measures included in Z.C. Case No. 11-03A that will govern the entirety of the Southwest Waterfront PUD, the additional TDM commitments made by the Applicant that are specific to this second-stage PUD, and the additional TDM commitment recommended by DDOT, to which the Applicant has agreed, the Commission finds that any potential adverse transportation impacts that may arise can be detected, monitored, and addressed quickly and efficiently.

### **ANC Report**

68. On December 14, 2015, ANC 6D voted 7-0-0 to support the second-stage PUD. The report of the ANC was submitted to the case record on January 21, 2016. (Ex. 24.)
69. With respect to the second-stage PUD design, the ANC was very supportive of the overall design of the Parcel 1 Building, especially with respect to its relationship to the Washington Channel.



70. While in support of the second-stage PUD, ANC 6D provided several comments for the Commission's consideration regarding certain aspects of the project that pertain to: (i) acoustic impacts caused by the use of the proposed penthouse habitable space for a nightclub, restaurant, bar, and/or cocktail lounge uses; (ii) signage and lighting; (iii) the impact of the Parcel 1 Building on migratory birds; (iv) the types of paving within Market Square; (v) the Applicant's request for flexibility to change building materials, (vi) the programming of Market Shed; and (vii) site circulation and pedestrian safety.
71. Noting that it shared some of the same comments as the ANC, particularly those relating to potential noise impacts caused by certain uses within the penthouse, and in particular a nightclub; signage and lighting; and the requested flexibility to change building materials, the Commission requested the Applicant to supplement the case record with additional information on these items, which was provided by the Applicant as part of its post-hearing submission.
72. The Commission accords great weight to the views of the ANC and finds that the Applicant has responded appropriately to the ANC's comments.

#### **Metropolitan Police Department**

73. On January 20, 2016, the Metropolitan Police Department, First District ("MPD"), submitted comments on the second-stage PUD. (Ex. 22.) MPD's letter contained recommendations regarding general safety and security of the PUD Site, including, among other things, providing adequate lighting along streets, alleys, and bicycle paths, utilizing FOB keys to control access to buildings, and provision of onsite security. MPD stated that it was in support of a restaurant use, but was not in support of a nightclub or bar.
74. At the public hearing, the Applicant confirmed it would be implementing security systems and procedures, as necessary, to ensure a safe environment throughout the Southwest Waterfront PUD. In addition, as previously noted, the Applicant has withdrawn its initial request for flexibility to allow a nightclub use in the Parcel 1 Building penthouse. Therefore, based on the information contained in the record and the testimony provided at the public hearing, the Commission finds that the Applicant has adequately addressed MPD's comments. With respect to MPD's comment on restaurant and bar uses, the Commission finds both uses to be acceptable and appropriate considering the mixed-use, entertainment type environment sought for the Southwest Waterfront, and that the potential impacts of both uses are likely to be similar, since restaurants oftentimes include a bar and bars often serve food, and able to be addressed in much the same manner.

#### **Commission of Fine Arts**

75. At its June 18, 2015, meeting, the U.S. Commission of Fine Arts ("CFA") reviewed and granted concept approval to the Parcel 1 Building. (Ex. 2F.)

### CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a 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 that would otherwise require approval by the District of Columbia Board of Zoning Adjustment.
3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments, which will offer a project with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. Both the Overall PUD Site and the Property meet the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The second-stage PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the PUD guidelines, the parameters of the first-stage PUD, and the authority vested in the Commission to grant deviations therefrom. The office and retail/service uses proposed as part of the second-stage PUD are appropriate for the Property, as well as the Overall PUD Site. The impacts of the second-stage PUD on the surrounding area are not unacceptable. Accordingly, the second-stage PUD should be approved.
6. This stage-two PUD is substantially in accordance with the elements, guidelines, and conditions of the first-stage PUD, and thus, should be granted second-stage PUD approval. Pursuant to § 2408.6, if the Commission finds the second-stage PUD application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage PUD approval, the Commission shall approve the second-stage PUD, including any guidelines, conditions, and standards that are necessary to carry out the Commission's decision. As set forth above, the Commission so finds.
7. The second-stage PUD can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

8. The Applicant's requests for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan, and the requests for flexibility for certain design aspects of the second-stage PUD are appropriate. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility.
9. Approval of the second-stage PUD is appropriate because the proposed development is not inconsistent with the Comprehensive Plan for the National Capital. In addition, the proposed development will promote the orderly development of the Property, and Overall PUD Site, in conformity with the entirety of the Zone Plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
10. 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. The Commission carefully considered the OP reports and its oral testimony at the hearing. As explained in this decision, the Commission finds OP's recommendation to grant the application persuasive.
11. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The Commission has carefully considered the ANC 6D's recommendation for approval, and finds that the Applicant has successfully addressed all of the comments in ANC 6D's report.
12. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for approval of the second-stage PUD for Parcel 1 of the Southwest Waterfront redevelopment project, subject to the guidelines, conditions, and standards set forth below.

#### **A. Project Development**

1. The second-stage PUD shall be developed with a mixed-use building containing office and retail/service uses, in accordance with the architectural plans submitted by the Applicant dated January 1, 2016, and marked as Exhibits 19B1-19B18 in the case record, as updated/revised by the Applicant as part of its post-hearing submission, dated March 14, 2016, marked as Exhibits 37A1-37A5 (collectively, the "Plans"), and as modified by the guidelines, conditions, and standards herein.
2. The maximum height of the Parcel 1 Building shall be 130 feet, with approximately 261,056 square feet of gross floor area.

3. Consistent with the Plans, the Applicant shall provide a minimum of 78 parking spaces in the shared-use garage located below Parcels 1-5 that are devoted to the office component of the Parcel 1 Building.
4. This second-stage PUD shall also provide the improvements to Maine Avenue and the Wharf adjacent to Parcel 1 and Market Square as shown on Sheets 2.1, 2.2, and 2.6 of the Plans. (Ex. 19B13-19B14.) To the extent any of these improvements are located within public space, the Applicant shall obtain approval by DDOT, and/or other District agencies as necessary, prior to construction of the improvements.
5. The Applicant shall have flexibility with the design of the second-stage PUD in the following areas:
  - a. The Parcel 1 Building shall provide two 30'-0" loading berths and a 250-square-foot loading platform;
  - b. To vary the location and configuration of the parking spaces devoted to the office component of the Parcel 1 Building within the shared-use garage located below Parcels 1-5;
  - c. To adjust the total amount of office and retail gross floor area by five percent;
  - d. To allow multiple penthouse heights for penthouse mechanical space;
  - e. To allow office, retail, restaurant, bar, and/or cocktail lounge uses within the Parcel 1 Building penthouse and on the penthouse terrace consistent with the Plans;
  - f. 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;
  - g. To make refinements to exterior building details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit;
  - h. To vary the retail entrances, façades, and signage in accordance with the needs of the retail tenants and within the potential retail signage zones shown in the supplemental plans filed as part of the Applicant's post-hearing submission;

- i. To permit the selection of either the terra cotta panel, metal panel, or combination terra cotta/metal panel exterior façade system, to vary the depth of the façade panels, and to vary the final color of the panels based on availability at the time of construction without reducing material quality;
  - j. To permit the selection of travertine or other similar stone product used on the exterior building façade at the two-story retail level, based on availability at the time of construction without reducing the quality of materials, and provided the final selection is similar in color and texture to what is shown in the approved plans; and
  - k. To vary the final selection of the open space paving materials within the color ranges and material types as proposed, based on constructability and availability at the time of construction.
6. The Applicant shall submit the final upper-level signage design for review by the Commission as a minor modification on the Commission's consent calendar.

**B. Public Benefits**

1. **Prior to the issuance of a certificate of occupancy**, the Applicant shall demonstrate that the Parcel 1 Building has been designed to achieve a LEED-CS (core and shell) Gold rating, generally consistent with the score sheet submitted as Sheet 1.4O of the portion of the Plans dated January 1, 2016. (Ex. 19B12.)
2. **Prior to issuance of a certificate of occupancy**, the Applicant shall establish the Project Association for the Southwest Waterfront PUD that will be responsible for maintenance and improvements of the private roadways, alleys, bicycle paths, promenade, sidewalks, piers, parks, and signage within the PUD Site. Additionally, the Project Association will be responsible for programming and staging events within the PUD Site. The Project Association will fund maintenance and programming elements of the common elements of the Southwest Waterfront PUD through a Common Area Maintenance ("CAM") assessment charge to each development component within the Southwest Waterfront PUD. The Applicant shall create, manage and operate the Project Association during the "developer control period," which begins on the effective date of the Declaration of Covenants between the District of Columbia and the Applicant and ends five years after issuance, or deemed issuance, of the last certificate of completion for all portions of the Southwest Waterfront PUD, and unit certificates of completion for each residential condominium unit.
3. **During construction of the PUD**, the Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of

Employment Services to achieve the goal of utilizing District residents for at least 51% of the new jobs created by the Southwest Waterfront PUD. Prior to issuance of a building permit for the construction of the Parcel 1 Building, the Applicant shall complete the Construction Employment Plan of the First Source Employment Agreement outlining the hiring plan for the project. The Applicant and the contractor, once selected, shall use best efforts to coordinate apprenticeship opportunities with construction trades organizations, the D.C. Students Construction Trades Foundation, and other training and job placement organizations to maximize participation by District residents in the training and apprenticeship opportunities in the Southwest Waterfront PUD.

4. **During the life of the project**, in accordance with the LDA, the Applicant shall abide by the executed CBE Agreement with the Department of Small and Local Business Development to achieve, at a minimum, 35% participation by certified business enterprises in the contracted development costs for the design, development, construction, maintenance, and security for the project to be created as a result of the Southwest Waterfront PUD. (Z.C. Case No. 11-03, Ex. No. 4-J.) The Applicant shall comply with the LDA requirement to lease 20% of the retail space throughout the Wharf to “unique” and/or “local” businesses, which will include CBEs.

### C. **Transportation Mitigation**

1. **For the life of the Project**, the Applicant shall abide by the Transportation Demand Management (TDM) program and monitoring plan approved as part of the first-stage PUD, and the following TDM measures that are specific to this second-stage PUD:
  - a. A member of the Wharf property management group will be a point of contact and will be responsible for coordinating, implementing, and monitoring the TDM strategies. This would include the development and distribution of information regarding transit facilities and services, bicycle facilities and linkages, and car-sharing.
  - b. The Applicant will post all TDM commitments to allow the public to see what commitments have been promised.
  - c. To encourage public transit utilization by both Metrorail and Metrobus, the Applicant will make information available within the office lobby related to local transportation alternatives. The marketing program should also utilize existing resources such as [www.goDCgo.com](http://www.goDCgo.com), which provides transportation information and options for getting around the District.

- d. The Applicant will install an electronic message board in both the Parcel 1 Building and Market Shed, which provide real-time information on nearby transit services.
2. ***For the life of the Project***, consistent with the Plans, the Applicant shall provide two, 30-foot loading berths and a 250-square-foot loading platform, and, to accommodate the expected loading demand of the Parcel 1 Building and mitigate any potential impacts that may result from the loading flexibility granted by the Commission, the Applicant shall implement the following specific restrictions and guidance regarding loading operations at the Parcel 1 Building loading dock:
    - a. A representative of the Operations Manager will supervise deliveries to the loading dock to minimize conflicts, especially when large trucks are maneuvering down the alley in two-way traffic;
    - b. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including, but not limited to, 20 DCMR - Chapter 9, Section 900 ("Engine Idling"), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document;
    - c. Maneuvering of delivery trucks will be limited, as necessary, during peak periods when traffic volumes are highest or at times that would coincide with trash collection to avoid and/or minimize potential conflicts; and
    - d. High-turnover retail and restaurant delivery trucks will be allowed limited use of the loading dock during times of high retail and restaurant traffic in The Wharf.

**D. Miscellaneous**

1. 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, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The second-stage PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 11-03C. Within such time, an application must be filed for a building permit for the construction of the project as specified in 11 DCMR § 2409.1. Construction of the project must commence within three years of the effective date of Z.C. Order No. 11-03C.

3. 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 and expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On January 21, 2016, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On March 28, 2016, upon the motion of Commissioner Turnbull, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order by the Zoning Commission at its public meeting on March 28, 2016, by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on May 13, 2016.



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 15-03**  
**Z.C. Case No. 15-03**  
**Aria Development Group**  
**(Consolidated Approval for a PUD and Related Zoning Map**  
**Amendment @ Square 2866, Lots 831 & 838)**  
**April 11, 2016**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on December 10, 2015, to consider an application from Aria Development Group (“Applicant”) for consolidated review and approval of a planned unit development (“PUD”) and related Zoning Map amendment. 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. 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. The project site consists of Lots 831 and 838 in Square 2866 (“Property”). The Property is zoned R-5-B. The Property includes approximately 29,700 square feet of land area and is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 1B. (Exhibit [“Ex.”] 1.)
2. On February 6, 2015, the Applicant submitted an application seeking review and approval of a consolidated PUD and related Zoning Map amendment to the R-5-C Zone District for a new multifamily apartment building. (Ex. 1-1H.)
3. Notice of the public hearing was published in the *D.C. Register* on October 30, 2015, was mailed to ANC 1B and to owners of all property within 200 feet of the Property in accordance with 11 DCMR § 3015.3, and was posted on signs at the Property at least 40 days before the hearing. (Ex. 15, 16.)
4. The public hearing on the application was conducted on December 10, 2015. Notice of the hearing was provided in accordance with the provisions of 11 DCMR §§ 3014 and 3015, and the hearing was conducted in accordance with the provisions of 11 DCMR § 3022.
5. By memorandum dated March 20, 2015, and through testimony at the public meeting held on March 30, 2015, the Office of Planning (“OP”) recommended that the Commission set down the application for public hearing as a consolidated PUD and related Zoning Map amendment to the R-5-C Zone District. (Ex. 9; 3/30/2015 Transcript (“Tr.”) at pp. 57-58.)
6. At its March 30, 2015 public meeting, the Commission set down the cases for a public hearing as a contested case. The Commission adopted OP’s recommendation that the

- application be set down as a consolidated PUD and related Zoning Map amendment to the R-5-C Zone District. (3/30/2015 Tr. at pp. 61-62.)
7. On October 6, 2015, the Applicant filed a pre-hearing submission, and a public hearing was timely scheduled for December 10, 2015. On November 19, 2015, prior to the public hearing, the Applicant supplemented its application with additional information, including updated public benefits and amenities; revised plans; and a transportation impact study. (Ex. 11-11C, 23-23D.)
  8. In addition to the Applicant, ANC 1B was automatically a party in this proceeding. ANC 1B submitted a report concerning the application. The ANC also provided testimony at the public hearing. Following the public hearing, the ANC submitted another report in support of the application. (Ex. 51, 60; 12/10/2015 Tr. at pp. 85-105.)
  9. At the public hearing, the Commission heard testimony and received a report from OP in support of the application. (Ex. 44; 12/10/2015 Tr. at p. 80.)
  10. At the public hearing, the Commission heard testimony and received a report from the District Department of Transportation (“DDOT”) stating that it has no objection to the application. (Ex. 46; 12/10/2015 Tr. at pp. 80-83.)
  11. At the December 10, 2015 public hearing, the Applicant presented evidence and testimony from Josh Benaim, a member of the development team; Ralph Cunningham, qualified as an expert in architecture; Heather Daley Rao, project architect; and Jim Watson, qualified as an expert in traffic engineering. (12/10/2015 Tr. at pp. 9-46.)
  12. On February 8, 2016, the Applicant submitted additional information in response to issues and questions raised at the December 10 public hearing. (Ex. 59-59G.)
  13. At a public meeting held on February 29, 2016, the Commission took proposed action to approve the application. the Commission requested that the Applicant state whether it believed the penthouse required setback relief from the closed court at the east side of the building.
  14. On March 7, 2016, the Applicant provided the list of proffers and proposed conditions as required by 11 DCMR § 2403.16. (Ex. 64.)
  15. On March 11, 2016, the Applicant responded to the question posed by the Commission when it took proposed action. The Applicant stated it believed a setback was not required, pursuant to 11 DCMR § 411.18(c)(5).
  16. On March 21, 2016, the Applicant provided its final list of proffers and draft conditions that responded to the comments provided by the Office of the Attorney General. (Ex. 66.) Attached to the list was the chart showing details of the Applicant’s affordable housing proffer. (Ex. 67.)

17. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to the District of Columbia Home Rule Act. (Ex. 63.) NCPC did not provide a report for this case.
18. At a public meeting on April 11, 2016, the Commission took final action to approve the application, subject to conditions.

### **The Property and Surrounding Area**

19. The Property is located in the Northwest quadrant of the District of Columbia and contains approximately 29,700 square feet of land area. It is bounded by a public alley that ranges from approximately 22–37 feet wide to the north, Clifton Street, N.W. to the south, a multifamily condominium building to the east, and another condominium building to the west. The Property is less than one-half mile from both the U Street–Cardozo and the Columbia Heights Metrorail stations. (Ex. 1, 50A-50B; 12/10/2015 Tr. at pp. 17-18.)
20. The Property is currently improved with two older apartment buildings. The apartment building on the east side of the Property, 1309 Clifton Street, is a three-story building constructed circa 1954 that contains approximately 18 units and provides four parking spaces. This building is in poor condition and has been a security problem for the families residing in the building. The apartment building on the west side of the Property, 1315 Clifton Street, is an attractive four-story apartment building constructed circa 1909 in an Italianate Revival style. This building has not been renovated in many years and lacks many modern conveniences and necessities. The existing landscaping in front of the buildings is largely unremarkable and unkempt. A berm elevates the majority of the Property above the sidewalk on Clifton Street. (Ex. 1, 50A-50B; 12/10/2015 Tr. at pp. 21-22, 56-57.)
21. The immediately surrounding blocks are developed with a mixture of multifamily buildings of different heights and densities – ranging from two stories to more than six stories. In the same block, and along the same side of Clifton Street as the Property, are multiple three- or four-story apartment buildings. Directly across the street from the Property are three large six-story apartment buildings containing more than 100 units that span almost the entire length of the block. These three buildings were developed contemporaneously, but one is a condominium, known as Wardman Court, and two are rental buildings. At the western end of the block is a paint store with a surface parking lot to service it. Access to the alley behind the Property is via an entrance off Clifton Street adjacent to the paint store property. At the eastern end of the block, across 13<sup>th</sup> Street, is the Cardozo Educational Campus. (Ex. 1, 50A-50B; 12/10/2015 Tr. at pp.11-13.)
22. The immediate neighborhood is primarily zoned R-5-B, with the properties along 14<sup>th</sup> Street to the west zoned C-2-B. To the north and east of the Property, properties are zoned R-4. (Ex. 1C, 50A-50B)

23. The Property is located in the Medium-Density Residential category on the District of Columbia Future Land Use Map (“FLUM”). The Applicant requested a PUD-related rezoning of the Property to the R-5-C Zone District. (Ex. 1, 1D.)

### **Description of the PUD Project**

24. The project will be a new six-story apartment building with underground bicycle and automobile parking (“Project”). The Project will have a maximum floor area of approximately 118,800 gross square feet (“GSF”), for an effective density of 4.0 floor area ratio (“FAR”). All of the gross square feet will be dedicated to residential use. The lot occupancy will be 71%, and the maximum height of the building will be 60 feet. The underground parking garage will provide 45 parking spaces, and the building will provide a 30-foot loading berth accessed from the alley. (Ex. 11A, 23B; 12/10/2015 Tr. at pp. 18-19.)
25. The majority of the building will be a new structure on the east and north sides of the Project, but a large front segment of the existing west building will be preserved and integrated into the design, resulting in one harmonious building that has two distinct but complimentary elements. (Ex. 11A, 23B, 50A-50B; 12/10/2014 Tr. at pp. 21-22.)
26. In total, the Project will include 152-156 new residential units. The Project will provide 10% of the gross floor area (“GFA”) (on floors one to five) as affordable units for the life of the Project pursuant to the Inclusionary Zoning regulations. Eight percent of the GFA will be reserved for households making 50% of the Area Median Income, and two percent of the GFA will be reserved for households making 80% of the AMI. The residential units will consist of a mix of studio, one-bedroom, two-bedroom, and three-bedroom units. (Ex. 11A, 23A, 23B, 50A-50B; 12/10/2015 Tr. at p. 19.)
27. The Project will provide 45 automobile parking spaces in a single underground level. This parking garage will be accessed from the public alley at the rear of the Property. Loading facilities will also be accessed from the rear public alley and located on the north side of the building. Further, the Project will include at least 80 bike parking spaces in an underground level that will have a separate entrance at the rear of the building. (Ex. 11A, 23B, 50A-50B; 12/10/2015 Tr. at pp. 19-20.)
28. The new construction will rise to six stories (60 feet) plus a penthouse that will contain habitable space. The existing building portion that will be retained will not receive any additional height, thereby recessing the height and density behind and to the side of the retained structure. The new structure will be set back at least 10 feet from the front property line, while the retained portion of the existing building will maintain its setback of 27 feet from the front property line, thereby creating a significant amount of open green space at the front. To the east, the Project will abut the property line, but a large 35’x45’ closed court on the east side of the building will provide open and green space. To the west, the building will be set back a minimum of 10 feet from the property line with additional setback at the upper floor, and a large 39’x38’ open court will provide significant open green space. To the rear, the Project will be set back between one and six

feet from rear property line, and, above the fourth floor, parts of the building will be further set back. (Ex. 1, 11A, 23B, 50A-50B; 12/10/2015 Tr. at pp. 19-20.)

### **Flexibility Requested**

29. The Applicant requested flexibility from the rear yard requirement in § 404.1. The Project will provide a rear yard ranging from one foot to six feet adjacent to the alley. The required rear yard would be 17 feet-10 inches. Because the front of the Project is set back to match the other buildings on Clifton Street, and because of the large courts in the Project, some of the Project's mass is shifted to the rear portion of the Project. In addition, areas of the upper floor of the rear of the Project are further set back from the alley. Since the alley is between 20 and 35 feet wide behind the building, the Project will allow sufficient light and air and will avoid encroaching on the neighboring properties to the rear. (Ex. 1, 50A-50B, 59A.)
30. The Applicant requested flexibility from the side yard width requirement in § 405.6. While the Project is not required to provide side yards, the Project will provide a western side yard of 10 feet. The side yard does not meet the minimum 15-foot requirement because of the large open courts in the Project, which shifts the density to the west. As mentioned, however, the overall Project site plan will provide significant open space to allow sufficient light and air and to avoid the encroachment of the new building on neighboring properties. (Ex. 1, 50A-50B.)
31. The Applicant requested flexibility from the parking requirement in § 2101.1. The required parking is 50-53 parking spaces, but the Project will provide 45 below-grade parking spaces. The required number of spaces would require creating an additional level of underground parking, which the Applicant demonstrated was inefficient to provide only the small number of additional spaces required. Additionally, given the Project's proximity to public transit, it is anticipated that many residents will not own cars. (Ex. 1, 23C; 12/10/2015 Tr. at p. 35.)
32. The Applicant requested flexibility from the loading requirement in § 2200.1. Subsection 2200.1 requires one 55-foot berth, one 200-square-foot platform, and one 20-foot delivery space, but the Project will provide one 30-foot berth and one 200-square-foot platform. The required maneuvering space for bringing larger 55-foot trucks to the Project would be disruptive to the circulation space on the ground floor, and it is not anticipated that the Project would have demand for 55-foot trucks. Further, the alley will not accommodate 55-foot trucks. (Ex. 1, 23C.)

### **Public Benefits and Project Amenities**

33. Based on the Applicant's written submissions and testimony before the Commission, the following public benefits and project amenities will be created as a result of the Project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403. The PUD will provide superior public benefits and project amenities in the following proffered categories from 11 DCMR § 2403.9.

- a. *Housing and Affordable Housing* – The Project will provide 152-156 new residential units in the Columbia Heights neighborhood, where housing is in high demand. This will be a net increase in housing units on the site, where 48 currently exist. Also, the Project will provide 10% of the residential GFA (11,880 square feet “SF”) for units as affordable, with eight percent of the gross floor area (9,472 SF) reserved for households making 50% or less of the Area Median Income (“AMI”), and two percent (2,368 SF) reserved for households making 80% or less of AMI. All units will be subject to the Inclusionary Zoning Regulations set forth in Chapter 26 of Title 11 DCMR as those provisions may hereinafter be amended. The Applicant will provide the affordable housing shown in the chart below. This will provide additional housing where it is in high demand, and affordable housing in excess of the amount required for the proposed development, to ensure that current and new residents of limited incomes are able to live in the area. This represents a significant increase in amount and depth of affordable housing over both a matter-of-right steel or concrete frame project in the underlying R-5-B Zone District and a matter-of-right project in the R-5-C Zone District sought through this PUD (9,472 square feet of affordable housing, with 4,736 square feet at 50% AMI and 4,736 square feet at 80% AMI); (Ex. 1, 23, 23A, 59, 59B, 67.)

**TABLE 1: Affordable Housing Chart**

Residential Unit Type	GFA/ Percentage of Total	Units*	Income Type**	Affordable Control Period	Affordable Unit Type***	Notes
Total	118,400 SF/100%	152-156				
Market Rate	106,560 SF/90%	136-140				
IZ (50% AMI)	9,472 SF/8%	Approx. 14	50% AMI	Life of the Project	Rental	
IZ (80% AMI)	2,368 SF/2%	Approx. 2	80% AMI	Life of the Project	Rental	

\* The Applicant requested flexibility to modify the final number of units, which may impact the final number and location of affordable units.

- b. *Urban Design, Architecture, and Landscaping* – The Project will exhibit many characteristics of exemplary urban design, including infill redevelopment, thoughtful integration into the neighborhood, innovative architecture, the use of high-quality materials, sustainable landscape and hardscape improvements, visually appealing landscaping features, large open space, and other “green”

features. Indeed, the building has been designed to minimize impacts on neighboring properties while incorporating elements from the neighborhood's past. Further, the Project will preserve a portion of the western building on the Property to give the Project authenticity and character while tying the Project to a contemporary and inventive design for a new residential building; (Ex. 1, 11, 23, 59.)

- c. *Site Planning, and Efficient and Economical Land Uses* – The Project will capitalize on the Property's transit-rich and retail-dense location to create much needed market-rate and affordable housing on an underutilized site. The Project balances innovative new changes to the block with enhancing and retaining the character of the neighborhood. The Project will efficiently use the land to accommodate more apartments than currently exist, but the exemplary design will retain a sense of history and open space. The front yard setbacks and large landscaped courts will provide the open space necessary for site planning that integrates well into the neighborhood. At the same time, the construction of more housing in a walkable and transit-oriented location is a highly efficient and economical use of the Property; (Ex. 1, 11, 23, 59.)
- d. *Effective and Safe Vehicular and Pedestrian Access* – The circulation plan for the Project will diminish vehicular and pedestrian conflicts. All parking and loading access will occur from the public alley accessible off of Clifton Street, which runs to a large public alley behind the Property. The Project will not create any additional curb cuts at the Property. The parking facility, which contains 45 below-grade parking spaces, will be accessed off of the public alley. There will also be a 30-foot loading space accessed off of the public alley. The project will also contain a bicycle storage facility with space for at least 80 bicycles. The Applicant's traffic impact study ("TIS") concluded that the Project will not create detrimental impacts to the transportation network. The proposed site plan contains many transit-oriented and multi-modal elements and will enhance the pedestrian environment around the site. Roadway impacts generated by new vehicular trips will be minimal and non-detrimental, in part due to a strong transportation demand and loading management plan focused on encouraging alternative modes of travel. (Ex. 23C.)

The Applicant's additional alley study also concluded that the traffic from the Project is not likely to lead to significant traffic conflicts in the alley. The study found that two-way conflicts were rare and that traffic generally flowed in one direction in the alley. Further, with the Project's alley and loading demand management plan, including the restriction on loading to daytime hours, the TIS and alley study conclude that the Project will not have a detrimental impact on the alley or street vehicular traffic in the Property vicinity. (Ex. 23C, 59E.)

As the TIS indicates, and DDOT confirmed, the transportation demand will be managed by the site's location near transit, car-sharing spaces, bicycle parking, pedestrian facilities, and the provision of a transportation demand and loading

management program. (Ex. 23, 23C, 46, 59B; 12/10/2015 Tr. at pp. 80-83.) In order to mitigate any possible adverse impacts from traffic generated by the project, the Applicant proposed the transportation demand management (“TDM”) plan, including a loading management plan, that incorporates DDOT recommendations. The plan includes carshare and Capital Bikeshare memberships included with tenancies; (Ex. 23, 23C, 46, 59, 59B; 12/10/2015 Tr. at pp. 36-37.)

- e. *Environmental Benefits* – The new building will be designed to attain a LEED-Silver rating. The Applicant’s preliminary LEED scorecard illustrates the Applicant’s goal of between 50 and 60 points. The Project will incorporate additional environmental benefits, including energy efficient lighting and appliances; low-flow plumbing fixtures; a green roof; significant landscaping; access to daylight and views; bike storage beyond what is required; recycled or local/regional materials; permeable pavers; and a high-reflectance roofing system, where applicable; and (Ex. 1, 11, 11B, 23, 23A, 59B; 12/10/2015 at p. Tr. 32.)
- f. *Uses of Special Value* – Prior to and after the filing of the PUD and Zoning Map Amendment applications, representatives of the Applicant’s team engaged in significant outreach to the neighboring community. The Applicant and its design team have held many meetings with and made presentations to, ANC 1B, neighborhood residents, and other members of the community. The Applicant sought input from ANC 1B, the ANC’s Zoning, Planning, and Design Committee, and neighborhood residents about the public amenities and benefits package. The Project’s community amenities and public benefits were the result of the Applicant’s extensive discussions with these groups. The Applicant’s community benefits package, estimated at approximately \$200,000, includes the following:
  - i. The Applicant will renovate the Mazique Child Development Center at Wardman Court with upgraded flooring, paint, furniture, child care equipment, and educational materials;
  - ii. The Applicant will redesign and renovate the community room and commercial kitchen at the Christopher Price House Belmont Apartments to ADA standards with special focus on the needs of wheelchair-bound individuals;
  - iii. The Applicant will renovate the computer lab and provide new state of the art computers and accessory technology for The Rita Bright Family & Youth Center;
  - iv. The Applicant will furnish and install new exterior exercise equipment at the Columbia Heights Community Center to provide fitness facilities for teenagers and adults to focus on health and wellness;
  - v. The Applicant will work with the N Street Village to co-sponsor the creation of the Miriam House Wellness and Rehabilitation Center and



advance Miriam House programming. The wellness center will be a resource for physical therapy and general wellness constructed to meet the needs of those living with HIV/AIDS;

- vi. The Applicant will fund the completion of capital improvements for bathroom and kitchen renovations to one of the Samaritan Inns' residential facilities on Fairmont Street; and
- vii. The Applicant will commit to pursue alley improvement and beautification projects that the community identifies, including planting trees and foliage. The Applicant will work with DDOT and city officials to plant and/or improve tree boxes in the sidewalks of the 1300 block of Clifton Street. (Ex. 1, 23, 23A, 50B; 59B; 12/10/2015 Tr. at pp. 41-43.)

### **Comprehensive Plan**

34. The Commission finds that the PUD advances the goals and policies in the Land Use, Transportation, Housing, Urban Design and Mid-City Area Elements of the District of Columbia Comprehensive Plan ("Plan").
35. The Land Use Element of the Comprehensive Plan includes the following policies advanced by the Project:
  - **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-1.3.4: 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-2.1.10: Multi-Family Neighborhoods** – Maintain the multi-family residential character of the District’s Medium-and High-Density residential areas. Limit the encroachment of large scale, incompatible commercial uses into these areas, and make these areas more attractive, pedestrian-friendly, and transit accessible; and
- **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.

The Commission finds that the Project will advance the policies of the land use element. The Project will rehabilitate an overlooked and underutilized parcel of residential land in the center of a thriving multi-family residential and retail neighborhood. At the same time, the Project will conserve parts of an existing building to help retain the neighborhood character. The new building design will beautify the existing parcel and will add an attractive new building to the fabric of the neighborhood. The Project will leverage its proximity to myriad public transit options (two Metrorail stations, Metrobus routes, Capital Bikeshare stations) and a plethora of amenities and services by promoting density on the site oriented to pedestrians and cyclists. The Project will be the quintessential infill development that will allow an underutilized site to be brought to its highest and best use with new housing close to public transportation and amenities. Given its location near both Columbia Heights and the U Street/14<sup>th</sup> Street Corridor, the Project will deftly promote transit oriented development without compromising the existing nearby multifamily residential areas. (Ex. 1, 11, 11A, 23, 23B, 50; 12/10/2015 Tr. at pp. 10, 20.)

36. The Transportation Element of the Comprehensive Plan includes the following policy advanced by the Project:
- **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; and

- **Policy T-2.3.3: Bicycle Safety** – Increase bicycle safety through traffic calming measures, provision of public bicycle parking, enforcement of regulations requiring private bicycle parking, and improving bicycle access where barriers to bicycle travel now exist.

The Commission finds that the Project will advance these policies of the transportation element. The Project will make a significant contribution of new housing at a site served by mass transit and surrounded by services and amenities. The Project will be strategically located near the Yellow and Green Line's Columbia Heights and U Street-Cardozo Metrorail stations, as well as along a major transportation and Metrobus corridor (14<sup>th</sup> Street). The Property's proximity to public transportation makes it a prime location for additional density and residences. The Project design also will encourage bicycling with its substantial bike storage and repair facilities with a separate protected entrance. Altogether, the Project will encourage alternate modes of transportation by providing the infrastructure for walking, biking, and various modes of public transportation. (Ex. 1, 11, 23C, 59B; 12/10/2015 Tr. at pp. 34-37.)

37. The Urban Design Element of the Comprehensive Plan includes the following policies advanced by the Project:

- **Policy UD-2.2.1: Neighborhood Character and Identity** – Strengthen the defining visual qualities of Washington's neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations, and additions to existing neighborhood context;
- **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-2.2.7: Infill Development** – Regardless of neighborhood identity, avoid overpowering contrasts of scale, height and density as infill development occurs; and
- **Policy UD-2.2.9: Protection of Neighborhood Open Space** – Ensure that infill development respects and improves the integrity of neighborhood open spaces and public areas. Buildings should be designed to avoid the loss of sunlight and reduced usability of neighborhood parks and plazas.

The Commission finds that the Project will advance these policies of the urban design element. The Project design acknowledges and embraces the importance of the site location in a vibrant retail and residential neighborhood. By incorporating new construction and contemporary design with preservation of part of an existing building, the building design will relate to its location in an established neighborhood while facilitating the vibrancy and growth of the neighborhood. The PUD design will create a sense of place, while relating to the existing residential buildings nearby. As such, the

design effectively incorporates elements of materials and articulation that are reminiscent of the nearby buildings while offering a contemporary design that does not try to emulate other buildings. Further, the design maintains the front setbacks and open spaces that are characteristic of the neighborhood. At the same time, the Project will have a scale, height, and density appropriate for a site in the center of a growing and thriving residential and retail neighborhood. (Ex. 1, 11, 11A, 23, 23B, 50; 12/10/2015 Tr. at p. 21.)

38. The Housing Element of the Comprehensive Plan includes the following policies advanced by the Project:

- **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-1.2.1: Affordable Housing Production as a Civic Priority** – Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout 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; and
- **Policy H-2.1.1: Protecting Affordable Rental Housing** – Recognize the importance of preserving rental housing affordability to the well-being of the District of Columbia and the diversity of its neighborhoods. Undertake programs to protect the supply of subsidized rental units and low-cost market rate units.

The Commission finds that the Project will advance these policies for the housing element. The Project will expand the District’s housing supply in an established and

growing residential neighborhood. By providing 152-156 new residential units in a neighborhood with a significant housing demand, the Project will promote multi-unit residential development objectives. The Project will produce replacement and new housing on an underutilized site in thriving residential community for all income levels. The residential building will be a high quality design and will incorporate high quality materials. Tenants in the existing buildings will be permitted to return to the Project at their existing rents. Importantly, the Project will provide 10% of its gross floor area for affordable housing pursuant to Inclusionary Zoning. The existing buildings provide no guarantee of affordability, but the Project will provide, in perpetuity, more affordable housing – at deeper levels of affordability – than the Inclusionary Zoning regulations require. (Ex. 1, 11, 23, 23A; 12/10/2015 Tr. at pp. 40-41.)

39. The Environmental Protection Element of the Comprehensive Plan includes the following policies advanced by the Project:

- **Policy E-3.1.1: Maximizing Permeable Surfaces** – Encourage the use of permeable materials for parking lots, driveways, walkways, and other paved surfaces as a way to absorb stormwater and reduce urban runoff;
- **Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff** – Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse, and the application of tree and landscaping standards for parking lots and other large paved surfaces;
- **Policy E-3.1.3: Green Engineering** – Promote green engineering practices for water and wastewater systems. These practices include design techniques, operational methods, and technology to reduce environmental damage and the toxicity of waste generated; and
- **Policy E-3.2.1: Support for Green Building** – Encourage the use of green building methods in new construction and rehabilitation projects, and develop green building methods for operation and maintenance activities.

The Commission finds that the Project will advance these policies of the environmental protection element. The Project incorporates many environmentally sensitive features that will allow it to satisfy the LEED-Silver standard. Such green features include green roofs, water efficient landscaping, more trees, water retention and reuse, and enhanced energy efficiency for HVAC systems and lighting. (Ex. 1, 11, 11B, 23, 50; 12/10/2015 Tr. at p. 32.)

40. The PUD site is located in the Mid-City Area Element of the Comprehensive Plan. The Project will be consistent with the following policies and action of the Area Element:

- **Policy MC-1.1.1: Neighborhood Conservation** – Retain and reinforce the historic character of Mid-City neighborhoods, particularly its row houses, older apartment

houses, historic districts, and walkable neighborhood shopping districts. The area's rich architectural heritage and cultural history should be protected and enhanced;

- **Policy MC-1.1.3: Infill and Rehabilitation** – Encourage redevelopment of vacant lots and the rehabilitation of abandoned structures within the community, particularly along Georgia Avenue, Florida Avenue, 11th Street, and North Capitol Street, and in the Shaw, Bloomingdale, and Eckington communities. Infill development should be compatible in scale and character with adjacent uses; and
- **Policy UNE-1.1.7: Protection of Affordable Housing** – Strive to retain the character of Mid-City as a mixed income community by protecting the area's existing stock of affordable housing units and promoting the construction of new affordable units.

The Commission finds that the Project will advance these policies in the area element. The condition of the existing buildings on the Property is outdated, and the existing units have no guarantee of affordability. The Project will replace these substandard buildings on an underutilized parcel in a central location with a new high-quality building. The Project will conserve the character of the neighborhood by retaining a significant portion of the existing western building, which has a character that is prevalent in the neighborhood. Further, the Project will devote 10% of the gross floor area to affordable units in perpetuity, most of which will be at deep levels of affordability. All of this will contribute to the well-being of the Mid-City community. (Ex. 1, 11, 23; 12/10/2015 Tr. at pp. 22-23, 40-41.)

### Government Agency Reports

41. By report dated November 30, 2015, OP recommended, subject to conditions, that the proposed PUD and related Zoning Map amendment should be approved. In its testimony at the public hearing, OP reiterated its recommendation for approval (Ex. 44; 12/10/2015 Tr. at p. 80.)
42. OP determined that the Project and related Zoning Map amendment would not be inconsistent with the Comprehensive Plan or the Future Land Use Map. In its report, OP stated, "The proposed map amendment to the R-5-C District and the proposed density are not inconsistent with [the Medium Residential land use category] designation." (Ex. 44; 12/10/2015 at Tr. p. 80.)
43. By its report dated November 30, 2015, DDOT supported approval of the PUD and related Zoning Map amendment, with conditions and recommendations. At the public hearing, DDOT reiterated its support. DDOT stated that it found that the Project will only "minimally increase vehicle travel delay and queues in the area." (Ex. 46, 12/10/2015 Tr. at pp. 80-83.)
44. On February 16, 2016, DDOT submitted a supplemental report concerning the alley traffic conditions and the Applicant's revised "1315 Clifton NW Alley Operation Study", dated February 5, 2016. (Ex. 59E.) The report stated that DDOT agrees with the Applicant's findings that two-way encounters and alley blockages are infrequent given

the low volume of traffic in the alley and that prevailing operations of the alley align with residential commuting patterns. The study identifies that movements against the prevailing operations, while currently minimal, have the biggest negative impact on alley operations. As a result of the Project, traffic in the alley is expected to increase somewhat. To address this increase and in response to the additional alley operations analysis, the Applicant proposed additional mitigation measures, namely, a revised Loading Management Plan that restricts loading berth hours to 9:00 a.m. to 5:00 p.m., a prohibition of daytime parking for nearby businesses within the 1315 Clifton Street building, coordination with the District to increase enforcement of vehicles parking in public space and along the alley, and coordination with DDOT and the community to designate a loading zone along Clifton Street. The report stated that DDOT found the revised Loading Management Plan and daytime parking prohibition will serve to minimize vehicle movements against the prevailing operations in the alley, and that additional enforcement will serve to facilitate vehicle movements and operations in the alley. DDOT further stated that the curbside loading zone requires an application to DDOT and no application has been submitted at the time of its report. DDOT would evaluate any potential application to determine the appropriateness of establishing a curbside loading zone in the vicinity. The report stated that curbside loading zones are for commercial loading activity only and not intended for residential-related loading activity, and the request is unlikely to be supported by DDOT for the suggested non-commercial uses. (Ex. 62)

45. The Commission finds that in light of DDOT's statement that it is unlikely to support the proposed curbside loading zone, it will not require the Applicant to pursue it. The Commission finds that the Applicant's other proposed mitigation measures are adequate to mitigate the identified potential adverse effects, and has incorporated them into the conditions of this Order.

#### **ANC 1B Reports**

46. On December 10, 2015, ANC 1B submitted a report noting that at a duly scheduled public meeting on December 3, 2015, the ANC voted to refer the Project back to the Zoning, Preservation, and Design Committee for further review, and requested deferral to issue its full report until after that time. (Ex. 51.) At the public hearing, the ANC's representatives noted that a few issues, primarily concerning the Project's impact on the public alley, were still being resolved between the ANC and the Applicant, and that additional review by the ANC's Zoning, Preservation, and Design could help resolve such issues. (Ex. 51; 12/10/2015 Tr. at pp. 145-46)
47. On February 9, 2016, ANC 1B submitted a new report in support of the application. The letter stated that, on February 4, 2016, at a duly-noticed meeting with a quorum present, the ANC voted 10-1-0 to support the PUD and related Zoning Map amendment application. The recommendation stated that the ANC encourages the Applicant to pursue use of private property adjacent to the alley entrance for public use and to develop a mechanism to administer its alley beautification fund. (Ex. 60.)

**Persons in Support**

48. Five persons testified in support of the application. Testimony was from existing residents who were happy to be returning to the new Project and from a neighbor sharing the alley who expressed pleasure with the Applicant's changes and accommodations. Additional support testimony concerned how the existing tenants were pleased with the agreement with the Applicant, how the Applicant was responsive to the adjacent building, and how approval of the Project would benefit community organizations, such as the Mazique Parent Child Center. (12/10/2015 Tr. at pp. 109-122.)
49. The Commission received 24 letters of support for the Project. The letters expressed support of the Project based on the Project's opportunity for residents, the proffered public amenities, the Applicant's history of commitment to the neighborhood, the appealing context-appropriate design of the Project, the elimination of run-down apartment buildings, the enhancement of open space, overall enhancement and benefit to the character of the neighborhood, the potential to draw greater amenities and create a safer environment, and the appropriateness of the new buildings' heights. (Ex. 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 47, 49, 52, 53.)

**Persons in Opposition**

50. At the public hearing, two persons testified in opposition to the Project. Reasons cited for opposition to the project included: the Project obstructs the view from the lower-level apartments on adjacent properties; the rear yard relief requested; infrastructure concerns; and that the development might create negative environmental consequences. (12/10/2015 Tr. at pp. 114-119.)
51. The Commission received one letter in opposition to the Project. The letter expressed concern over the Project's height, massing, and traffic impact. (Ex. 10.)

**Satisfaction of the PUD and Zoning Map Amendment Approval Standards**

52. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." (11 DCMR § 2403.8.) The Applicant engaged in extensive communication with ANC 1B and the ANC's Zoning, Preservation, and Design Committee to develop a specific and appropriate package of public benefits and project amenities. Given the amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the Project and the related rezoning are appropriate and that the application satisfies the requirements for a PUD under Chapter 24 of the Zoning Regulations. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this Project.



53. Based on evidence and testimony submitted by the Applicant, 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 housing and affordable housing, land use, urban design, site planning, transportation, environment, and uses of special value to the neighborhood and District as a whole.
54. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan or the Future Land Use Map. The Project and related rezoning are consistent with medium density residential development and advance numerous policies of the Comprehensive Plan.
55. The Commission credits the written submissions and testimony of the Applicant and persons in support that the PUD, related map amendment, and community amenities package resulted from significant and inclusive community outreach and input over many months. The Commission finds that the Applicant engaged in extensive outreach with the community, particularly the Property residents, and participated in numerous meetings, phone calls, and email exchanges with many community and ANC members to solicit feedback. The Commission acknowledges that Applicant was responsive to concerns, demonstrated by the number of changes to the Project – including adjustment of the rear-yard setback, architectural refinements, and adjustments for increased privacy and view – that were direct responses to community concerns. The Commission finds that the Applicant engaged in extensive public outreach during the planning for the Project. (12/10/2015 Tr. at pp. 15-16.)
56. The Commission credits the written submissions and testimony of the Applicant and persons in support that height, size, and placement of the new building is appropriate and will not detrimentally restrict light, air, and openness on the site. The Commission is compelled by building's design and the significant amounts of open space on the site, particularly in the side courts and the front setback, to conclude that the massing of new building will be appropriate for the site and for the neighborhood. The Commission finds that the distance from Clifton Street to the building frontage is appropriate to retain the character of the neighborhood. Furthermore, the Commission is convinced that the design refinements, including upper floor setbacks, made in response to community comments will preserve the design integrity and resident privacy of the neighborhood. Based on the many enhancements and benefits that this Project will bring to the neighborhood, the Commission concludes that the Project will not have a deleterious effect.
57. The Commission credits the testimony and written submissions of the Applicant that the Project design will provide significant amounts of open space that will preserve light, air, and quality of life for the neighborhood. The Project's landscape and site design will incorporate many new features, such as alley trees, more plantings, and vertical plantings on the building that will enhance the exiting open spaces and will provide more landscaped and welcoming spaces than currently exist. The Commission concludes that the high quality of the Project and improvements in the neighborhood and community

organizations that will accompany the addition of the building on the Property will significantly outweigh the additional density and height that accompany the Project.

58. The Commission credits the testimony and written submissions of the Applicant that the Project height and massing will be consistent with the character of the neighborhood. As the Applicant demonstrated, the surrounding blocks in the neighborhood, including across the street, includes multiple apartment buildings that are similar or larger in scale to the Project. (Ex. 50.)
59. The Commission credits the testimony and written submissions of the Applicant that the benefits and amenities, including the substantial affordable housing provided by the Project, are appropriate in relationship to the proposed Project. The Commission credits the testimony and written submissions of OP and persons in support of the Project that assisted the Applicant in shaping the benefits and amenities package for the Project.
60. The Commission credits the testimony and written submissions of the Applicant and DDOT that the site will provide a safe traffic flow pattern for both cars and pedestrians. The Commission finds that the Project's parking garage located off of the public alley provides appropriate facilities for the demand created by the Project. Also, the Commission finds that the Project will not significantly contribute to alley congestion and that the potential for two-way conflicts in the alley is small and that the Project will not exacerbate any conflicts. Furthermore, the Project's loading management plan will limit any potential for problems or conflicts with large trucks in the alley or at the site. Additionally, due to the Property's proximity to Metrorail and Metrobus routes, the Commission finds that this Project will be a transit-oriented development that does not generate unduly high automotive travel and that the provided number of parking spaces will be sufficient to satisfy demand in the building. Finally, the robust TDM plan constructed by the Applicant will ensure the Project does not negatively impact the traffic conditions at the Property.
61. The Commission finds that through its testimony at the December 10, 2015 hearing and in its February 8 submission, the Applicant sufficiently complied with or agreed to OP's conditions of support. Accordingly, the Commission can accord OP's full support for the Project and related Zoning Map amendment.
62. The Commission finds that, through the Applicant's testimony at the December 10, 2015 hearing and through its February 8, 2016 submission, the Applicant sufficiently responded to DDOT's conditions and recommendations in its report. The Commission concludes that DDOT's full support for the Project and related Map amendment can be accorded. The Applicant agreed to the recommended TDM measures, which will reduce demand for parking and automobiles and will address traffic concerns in the area. Based on this agreement and the Applicant's own testimony and written submissions, the Commission finds that the Project will not have an adverse impact on the transportation or parking network in the vicinity of the Project. (Ex. 59, 59E; 12/10/2015 Tr. at pp. 80-83.)

63. From evidence presented at the hearing the Commission finds that the PUD and related Zoning Map amendment will not have material adverse impacts on neighboring properties. The Commission credits the Applicant's post-hearing submission addressing alley traffic concerns and illustrating that the Project will not have an adverse impact on the area. Further, the Commission credits the Project's neighborhood context and landscaping features to demonstrate that the building heights will not cause adverse impacts on neighboring properties. Finally, the Commission credits the site planning and landscape features to demonstrate that the Project will retain the characteristics of the neighborhood. (Ex. 50, 59, 59B; 12/10/2015 Tr. at p. 58.)
64. The Commission finds that the Applicant's submission on February 8, 2016 adequately addressed questions and issues raised during the December 10 hearing, particularly with respect to the alley conditions the Project's impacts on the alley. The Commission credits the Applicant's alley study and its review of other alley conditions, as well as the changes to the building's rear to address these concerns. (Ex. 59, 59B.)

### 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, FAR, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (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, use, and design of the proposed PUD are appropriate, and the proposed construction of an attractive residential 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 R-5-C Zone District, an increase in the maximum permitted FAR pursuant to 11 DCMR § 2405.3, and flexibility from the rear yard, side yard, parking, and loading requirements. 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 PUD is 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 in a central urban location.
8. The Project provides 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 housing and affordable housing, urban design, site planning, architecture, efficient and safe vehicular and pedestrian access, environmentally-beneficial features, employment opportunities, and uses of special value are all significant public benefits. The impact of the Project is acceptable given the quality of the public benefits of the Project.
9. 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, including on the alley. The application will be approved with conditions to ensure that any potential adverse effects on the surrounding area and the alley from the Project will be mitigated.
10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Project will advance numerous goals and policies of the Comprehensive Plan in the Land Use Element, Housing Element, Urban Design, and other citywide elements and policies as well as policies in the Mid-City Area Element, as delineated in the OP report.
11. The proposed PUD-related Zoning Map amendment to the R-5-C Zone District is not inconsistent with the Property's designation on the Future Land Use Map. The Commission agrees with the determination of OP and finds that the R-5-C Zone District in this case is congruent with the Medium-Density Residential land use category in the Comprehensive Plan. The R-5-C Zone District is included in the definition of Medium-Density Residential in the Framework Element of the Comprehensive Plan. Thus, the proposed R-5-C Zone District is appropriate for the Property and its Future Land Use Map designation.
12. The Project's height, massing, and use are not inconsistent with the Future Land Use Map, Generalized Policy Map, or the Comprehensive Plan. The Project will preserve residential use on the Property, as identified on the Generalized Policy Map. Further, the Project's density and height are at and below those permitted by a R-5-C PUD. Since the R-5-C Zone District is squarely consistent with Medium-Density Residential use, the

proposed height and density are not inconsistent with the Future Land Use Map. Accordingly, the Commission concludes that the Project's height and density are not inconsistent with the Comprehensive Plan.

13. 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.
14. The Commission is required under 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.
15. In accordance with 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 1B the "great weight" to which they are entitled, and in so doing fully credited the unique vantage point that ANC 1B holds with respect to the impact of the proposed application on the ANC's constituents. ANC 1B recommended approval, and the Commission credits this recommendation.
16. 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 for the District of Columbia **ORDERS APPROVAL** of this application for consolidated review of a planned unit development and related Zoning Map amendment to the R-5-C Zone District for the Property. The approval of this PUD is subject to the following conditions:

#### **A. Project Development**

1. The Project shall be developed in accordance with the plans marked as Exhibits 11A, 23B, and 59A of the record, as modified by guidelines, conditions, and standards herein (collectively, the "Plans").
2. The Property shall be rezoned from R-5-B to R-5-C. 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 rear of the Project shall include a green wall, consistent with pages A-25 and A-37 in the plans marked as Exhibit 59A in the record.
4. 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 or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems; and
- f. To vary the number of residential units between 152-156 and accordingly adjust the number and location of affordable units to reflect the final unit mix of the Project.

**B. Public Benefits**

1. **For so long as the Project exists**, the Applicant the project shall include 118,400 square feet of residential gross floor area, and the Applicant shall set aside the following amounts of residential gross floor area for Inclusionary Units governed by the Inclusionary Zoning Regulations as set forth in Chapter 26 of the Zoning Regulations, as may be amended:
  - a. The Applicant shall set aside a minimum of eight percent of the residential gross floor area of the Project (*i.e.* 9,472 square feet of gross floor area) for households earning at or below 50% of the area median income; and
  - b. The Applicant shall set aside a minimum of two percent of the residential gross floor area of the Project (*i.e.* 2,368 square feet of gross floor area) for households earning at or below 80% of the area median income.

2. The Project shall be designed to achieve a LEED-Silver certification, but the Applicant shall not be required to obtain LEED-Silver 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 achieve the minimum number of points necessary to attain LEED-Silver 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 will renovate the Mazique Child Development Center at Wardman Court with upgraded flooring, paint, furniture, child care equipment, and educational materials;
  - b. The Applicant will redesign and renovate the community room and commercial kitchen at the Christopher Price House – Belmont Apartments to ADA standards with special focus on the needs of wheelchair bound individuals;
  - c. The Applicant will renovate the computer lab and provide new state of the art computers and accessory technology for the Rita Bright Family & Youth Center;
  - d. The Applicant will furnish and install new exterior exercise equipment at the Columbia Heights Community Center to provide fitness facilities for teenagers and adults to focus on health and wellness;
  - e. The Applicant will create a new computer lab at the Miriam House Wellness and Rehabilitation Center of N Street Village, which will include the purchase and installation of up to 10 new computers and two new printers;
  - f. The Applicant shall fund the completion of the following improvements at one of Samaritan Inns' residential facilities on Fairmont Street: refinishing interior floors; minor roof repairs; upgrading rear porch, convert first floor monitor bedroom to monitor station; provide monitoring equipment; provide new kitchen appliances; install new kitchen cabinets and floor; and install new second floor bathroom. The Applicant shall not be required to spend more than \$40,000 on these improvements. **The Applicant shall submit evidence to the Zoning Administrator that the items funded have been provided prior to the issuance of a certificate of occupancy for the Project**; and
  - g. Subject to DDOT approval, the Applicant shall install trees and other plantings in the alley behind the Project. Subject to DDOT approval, the Applicant shall plant and/or improve tree boxes in the sidewalks of the

1300 block of Clifton Street. The Applicant shall spend at least \$10,000 on these projects.

C. **Mitigation**

1. The Applicant shall provide the following transportation demand management (“TDM”) measures **for the life of the Project unless otherwise specified:**
  - a. *Transportation Management Coordinator (“TMC”).* A member of the property management group would be a point of contact and would be responsible for coordinating, implementing, and monitoring the TDM strategies. This shall include the development and distribution of information and promotional brochures to residents and visitors regarding transit facilities and services, pedestrian and bicycle facilities and linkages, ridesharing (carpool and vanpool), and car sharing. In addition, the TMC shall be responsible for ensuring that loading and trash activities are properly coordinated and do not impede the pedestrian, bicycle, or vehicular lanes adjacent to the development, including the existing alley located behind the proposed building. The contact information for the TMC shall be provided to DDOT/Zoning Enforcement with annual contact updates;
  - b. A TransitScreen shall be installed in the residential lobby to keep residents and visitors informed on all available transportation choices and provide real-time transportation updates;
  - c. The TMC shall establish a TDM marketing program that provides detailed transportation information and promotes walking, cycling, and transit. An effective marketing strategy should consist of a multi-modal access guide that provides comprehensive transportation information. This information can be compiled in a brochure for distribution. The marketing program should also utilize and provide website links to CommuterConnections.com and goDCgo.com, which provide transportation information and options for getting around the District;
  - d. *Transportation Incentives.* To help encourage non-auto transportation uses, the Applicant shall offer the first occupant of each residential unit with an annual carsharing membership and an annual Capitol Bikeshare membership for a period not to exceed three years to help alleviate the reliance on personal vehicles. These incentives shall be included in a move-in transportation package that includes brochures for transit facilities as well as bicycle and car sharing services for the first occupant of each residential unit;
  - e. The Applicant shall unbundle the cost of renting a parking space from the cost of renting a residential unit in the Project;



- f. The Applicant shall encourage all alternative transportation modes including bicycling. Bicycling shall be promoted with the provision of on-site outdoor temporary and secure indoor long-term bicycle parking spaces. The secure indoor long-term bicycle parking spaces shall be provided in a bicycle storage room that shall also include a bicycle repair station. The marketing program shall include brochures on bicycling in the District and for Capital Bikeshare;
  - g. The Applicant shall prohibit daytime parking for nearby businesses in the 1315 Clifton Building; and
  - h. Coordinate with the District to increase enforcement of vehicles parking in public space and along the alley that will serve the Project.
2. **For the life of the Project**, the Applicant shall abide by the following loading management plan:
- a. Tenants shall be required to coordinate and schedule deliveries, and a loading coordinator shall be on duty during delivery hours;
  - b. Trucks accessing the on-site loading space shall be limited to a maximum of 24 feet in length. Any truck larger than 24 feet in length shall be required to obtain temporary parking restrictions along Clifton Street and load from the curb;
  - c. All tenants shall be required to schedule any loading operation conducted using a truck greater than 24 feet in length;
  - d. Deliveries shall be scheduled such that the loading space's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the loading space is full, that driver shall be directed to return at a later time when the loading space shall be available so as to not impede the alley that passes adjacent to the loading space;
  - e. Inbound and outbound truck maneuvers shall be monitored to ensure that trucks accessing the loading space do not block vehicular traffic along the alley except during those times when a truck is actively entering or exiting the loading space and alley;
  - f. Trucks using the loading space 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), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and

- g. The loading dock operation shall be limited to daytime hours of operation, with signage indicating these hours posted prominently at the loading space with notification also given to tenants. The loading space shall be open seven days a week from 9:00 a.m. to 5:00 p.m. so as not to conflict with commuter traffic entering and exiting the alley. The Applicant shall prohibit trucks from accessing the loading docks outside of these times.
3. If parking spaces are unused and available in the building, then the Applicant shall offer to lease up to 10 unused spaces to residents of Square 2866. Unused spaces cannot be leased to anyone outside the building other than residents of Square 2866.

**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 shall start within three years from the effective date of this Order.
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 29, 2016, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, 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 April 11, 2016, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie, I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on May 13, 2016.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF FILING**  
**Z.C. Case No. 80-07A**  
**(Jemal's Darth Vader, LLC – PUD Modification and**  
**Related Map Amendment @ Square 563)**  
**May 2, 2016**

**THIS CASE IS OF INTEREST TO ANC 6E and 6C**

On April 27, 2016, the Office of Zoning received an application from Jemal's Darth Vader, LLC (the "Applicant") for approval of a modification to a previously-approved planned unit development ("PUD") and related map amendment for the above referenced property.

The property that is the subject of this application consists of Lot 16 in Square 563 in northwest Washington, D.C. (Ward 6), on property located at 111 Massachusetts Avenue, N.W. The property is currently zoned C-3-C. The Applicant is proposing a PUD-related map amendment to rezone the property, for the purposes of this project, to the C-4 Zone District.

The Applicant proposes to construct an addition to the existing office building and to undertake significant renovations to the building to update and improve the building's architectural and street context. The proposed total density is 9.2 floor are ratio ("FAR") and the building would have a maximum height of 130 feet. The building will continue to provide 230 parking spaces and it will be constructed to satisfy LEED-Gold requirements.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

Government of the District of Columbia  
Public Employee Relations Board

In the matter of:

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 American Federation of State, County, and )  
 Municipal Employees, District Council 20, )  
 Local 2401, AFL-CIO )  
 )  
 Petitioner, )  
 )  
 and )  
 )  
 Public Service Commission )  
 of the District of Columbia )  
 )  
 Respondent. )  
 )  
 )  
 )  
 \_\_\_\_\_)

PERB Case No. 16-CU-02

Opinion No. 1569

**DECISION AND ORDER ON COMPENSATION UNIT DETERMINATION**

On December 21, 2015, the American Federation of State, County, and Municipal Employees, District Council 20, Local 2401 (“AFSCME”) and the Public Service Commission (“PSC”) (collectively “Petitioners”) filed a Joint Petition with the Board for Compensation Unit Determination (“Petition”) to designate Compensation Unit 1 as the appropriate compensation unit for a bargaining unit in PSC that is represented by AFSCME.<sup>1</sup> Pursuant to Board Rule 503.4, PSC posted the required notice for fourteen (14) consecutive days. No comments to the notice were received by the Board.

<sup>1</sup> Labor organizations are initially certified by the Board under the Comprehensive Merit Personnel Act (“CMPA”) to represent units of employees that have been determined to be appropriate for the purpose of non-compensation terms-and-conditions bargaining. Once this determination is made, upon request, the Board then determines the compensation unit in which these employees should be placed. The determination of a terms-and-conditions unit is governed by criteria set forth under D.C. Code § 1-617.09. Unit placement for purposes of authorizing collective bargaining over compensation is governed by D.C. Code § 1-617.16(b).

Decision and Order  
PERB Case No. 16-CU-02  
Page 2 of 3

AFSCME is the certified exclusive bargaining representative for:

All professional and non-professional employees employed by the District of Columbia Public Service Commission, excluding all management officials, supervisors, confidential employees, employees who are covered by another union's certification, employees engaged in personnel work other than in a purely clerical capacity and employees engaged in administering the provisions of Title I, Chapter 6, subchapter XVII of the D.C. Official Code.<sup>2</sup>

The Board authorizes compensation units pursuant to D.C. Official Code § 1-617.16(b), which provides:

In determining an appropriate bargaining unit for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employers or employee groups as may be appropriate.

The Board recognizes a two-part test from this provision to determine an appropriate compensation unit: (1) the employees of the proposed unit comprise broad occupational groups; and (2) the proposed unit minimizes the number of different pay systems or schemes.<sup>3</sup>

According to Petitioners, the proposed group of employees consists of a broad range of occupational groups, including Regulatory Affairs Specialist; Paralegal Specialist; Compliance Enforcement Officer; Pipeline Safety Engineer; Economist; Financial Analyst; Senior Accountant; IT Specialist; Program Analyst; and Consumer Specialist. Petitioners assert that the position classifications fall within the broad occupational groups found in Compensation Unit 1.<sup>4</sup> The Board finds that the Petitioners have satisfied the first statutory requirement that the proposed group of employees consists of a broad range of occupational groups.

Petitioners further assert that all of the employees are Career Service employees and on the District Service pay, retirement, and compensation system<sup>5</sup> and that the placement of the employees in Compensation Unit 1 does not increase the number of different pay systems or schemes.<sup>6</sup> The Board finds that the placement of the employees in Compensation Unit 1 would minimize the number of different pay systems or schemes in the District, and that the Petitioners have satisfied the second statutory requirement.

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<sup>2</sup> Petition at 1. PERB Case No. 14-RC-01, Certification No. 157 (June 4, 2014)

<sup>3</sup> *AFSCME, D.C. Council 20, Local 2401 v. D.C. Pub. Schs.*, 59 D.C. Reg. 4954, Slip Op. No. 962 at p. 3, PERB Case No. 08-CU-01 (2009).

<sup>4</sup> Petition at 2.

<sup>5</sup> Petition at 3.

<sup>6</sup> Petition at 3.

Decision and Order  
PERB Case No. 16-CU-02  
Page 3 of 3

For the foregoing reasons, the Board grants the Joint Petition for Compensation Unit Determination and places the above-referenced bargaining unit in Compensation Unit 1.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Petitioners' "Joint Petition for Compensation Unit Determination" is granted.
2. The following employees are placed in Compensation Unit 1:  
All professional and non-professional employees employed by the District of Columbia Public Service Commission, excluding all management officials, supervisors, confidential employees, employees who are covered by another union's certification, employees engaged in personnel work other than in a purely clerical capacity and employees engaged in administering the provisions of Title I, Chapter 6, subchapter XVII of the D.C. Official Code.
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.

March 17, 2016

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 16-CU-02, Opinion No. 1569, was served by File & ServXpress on the following parties on this the 17<sup>th</sup> day of March, 2016.

Brenda C. Zwack, Esq.  
Murphy Anderson, PLLC  
1300 L Street, N.W., Suite 1210  
Washington, DC 20005

Lloyd Jordan, Esq.  
Motley Waller LLP  
1155 F Street, NW, Suite 1050  
Washington, DC 20004

/s/ Sheryl Harrington \_\_\_\_\_

PERB



Government of the District of Columbia  
Public Employee Relations Board

_____	)	
In the Matter of:	)	
	)	
District of Columbia Public Schools,	)	
	)	PERB Case No. 15-A-07
Petitioner,	)	
	)	Opinion No. 1571
and	)	
	)	Motion for Reconsideration
Council of School Officers, Local 4,	)	
American Federation of School Administrators,	)	
	)	
Respondent.	)	
_____	)	

**MOTION FOR RECONSIDERATION**

**DECISION AND ORDER**

**I. Statement of the Case**

On January 4, 2016, the Board issued Opinion No. 1559 (“Opinion”) in the above-captioned matter, affirming an arbitration award (“Award”), which was before the Board at the request of the District of Columbia Public Schools (“DCPS”).<sup>1</sup>

On January 19, 2016, DCPS filed a Motion for Reconsideration (“Motion”) of Opinion No. 1559. DCPS requests that the Board reverse its Opinion, on the grounds that the Board erred by (1) finding that the Arbitrator did not exceed his jurisdiction when he denied DCPS’s request to introduce a witness after the close of the record, and (2) determining that the Award was not contrary to law and public policy. The Council of School Officers, Local 4 (“CSO”) did not file an Opposition.

<sup>1</sup> *DCPS v. CSO, Local 4*, 63 D.C. Reg. 2116, Slip Op. No. 1559, PERB Case No. 15-A-07 (2016).

Decision and Order  
PERB Case No. 15-A-07  
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## II. Background

A relevant background summary from the Board's Opinion is as follows:

The grievance before the Arbitrator was filed on behalf of an employee ("Grievant") by CSO, concerning Grievant's termination. DCPS removed Grievant from his position of Dean of Students at a DCPS high school for adults for an alleged improper relationship with a student ("Student"). The parties presented their cases at a December 14, 2014<sup>2</sup> hearing before the Arbitrator. After DCPS rested its case-in-chief without any testimony from the Student, CSO moved for a "Directed Verdict" ("Motion") on the grounds that DCPS had failed to meet its burden of proof that DCPS had just cause to terminate Grievant. DCPS objected to CSO's motion, arguing that the case involved "a credibility issue that the arbitrator is appropriate to weigh" and that further briefing should take place. The Arbitrator continued the hearing, and CSO presented its witness. At the close of the hearing, the parties agreed off the record that DCPS could file a position regarding CSO's Motion. The Arbitrator then closed the evidentiary record at the end of the hearing, but instructed that any evidence that needed to be added to the record would require a conference call before admission.

In an email to the Arbitrator, DCPS opposed CSO's motion and requested a conference call to discuss reopening the record for testimony from the Student who had not testified during the hearing, along with other unnamed witnesses. The Arbitrator granted DCPS's request for a conference call, but placed DCPS on notice that the bar for reopening the record would be high for a witness that he believed should have been called during the hearing. On January 28, 2015, the Arbitrator held a conference call with the parties. The Award noted that, during the conference call, DCPS provided for the first time some of the efforts it made to locate the Student in order to have her testify at the December 17, 2014 arbitration hearing. According to the Arbitrator, "No specifics were provided by the DCPS as to dates of telephone calls, e-mails, letters, etc., which assertedly had been made by the DCPS to" the Student. The Arbitrator denied DCPS's request to present the Student as a witness. In denying DCPS's request, the Arbitrator noted that DCPS made no arguments about its attempts to obtain the Student's cooperation and attendance before or during the hearing, nor did DCPS request to have the record be held open in order for DCPS to reach the Student as a witness. The Arbitrator found that DCPS's request at that point in the proceedings

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<sup>2</sup> The hearing was held on December 17, 2014. ARR at 10.

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was “inappropriate and harmful to the Arbitration process, given that the request was not made until after the DCPS had rested its direct case, after the Union had presented the testimony of the Grievant, and after the evidentiary record at the instant Arbitration hearing was declared closed by the Arbitrator following the full, complete and unreserved agreement of the DCPS and the Union.”

The Arbitrator sustained CSO’s motion, finding that DCPS failed to meet its burden of proof that the Grievant engaged in the alleged misconduct. In finding that DCPS failed to prove just cause for the Grievant’s termination, the Arbitrator determined that DCPS improperly based the Grievant’s termination upon a Report of Investigation that was compiled by an investigator. The Arbitrator found that the Report of Investigation yielded no “probative evidence to support the bare allegation” that the Grievant and the Student had an improper relationship. The Arbitrator also found that DCPS failed “to present on its direct case sufficient credible, probative evidence to support” the charge that the Grievant and the Student engaged in an improper relationship. The Arbitrator ordered the Grievant reinstated and made whole for his losses.<sup>3</sup>

DCPS filed an arbitration review request, asserting that (1) the Arbitrator exceeded his jurisdiction under the parties’ collective bargaining agreement (“CBA”) when he denied DCPS’s request to reopen the arbitration record to allow the Student to testify, (2) the Award was contrary to law under the Revised Uniform Arbitration Act, and (3) the Award was contrary to law under the D.C. Court of Appeals’ standard for a directed verdict.<sup>4</sup> The Board rejected DCPS’s arguments, and upheld the Award.

### III. Discussion

The Comprehensive Merit Personnel Act (“CMPA”) authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the 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>5</sup> The Board has only “limited authority to overturn an arbitral award.”<sup>6</sup> There is a “well defined and dominant” policy favoring arbitration of a dispute where the parties have chosen that course.<sup>7</sup> Just as “Congress [has] declared a national policy favoring arbitration,” so has the District of Columbia.<sup>8</sup> This preference for honoring the parties’ agreement to arbitrate disputes underlies the

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<sup>3</sup> Slip Op. No. 1559 at 1-3.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> D.C. Official Code § 1-605.02(6).

<sup>6</sup> *Fraternal Order of Police v. District of Columbia Pub. Employee Relations Bd.*, 973 A.2d 174, 177 (D.C. 2009).

<sup>7</sup> *District of Columbia Metro. Police Dep’t v. Public Employee Relations Bd.*, 901 A. 2d 784, 789 (D.C. 2006).

<sup>8</sup> *District of Columbia v. Greene*, 806 A. 2d 216, 221 (D.C. 2002) (quoting *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984)). See, e.g., *Masurovsky v. Green*, 687 A.2d 198, 201 (D.C. 1997) (“Variously called a presumption, preference or policy, the rule favoring arbitration is identical under the D.C. Uniform Arbitration Act and the Federal Arbitration Act.”) (citation omitted).

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practical “hands-off” approach to review arbitrators’ decisions, except in certain “restricted” circumstances.<sup>9</sup> The Board will not substitute its own interpretation of the collective bargaining agreement for that of the parties or of the duly designated arbitrator.<sup>10</sup>

In reviewing a motion for reconsideration, the Board has held that mere disagreement with the Board’s decision is not grounds for reversal.<sup>11</sup> A successful motion for reconsideration must demonstrate that the Board’s decision was based on an error of law or reasoning, which requires reconsideration of its decision.<sup>12</sup>

DCPS asserts that the Board should reverse and vacate its Opinion, because (1) the Arbitrator exceeded his jurisdiction, and (2) the Award was contrary to law. The Board notes that DCPS’s arguments are a repetition of its arguments that the Board considered in its Opinion. DCPS has failed to state in its Motion how the Board erred in rejecting its arguments. For the following reasons, the Board denies DCPS’s Motion.

**A. The Arbitrator did not exceed his jurisdiction.**

DCPS asserts that the Arbitrator added terms to the parties’ collective bargaining agreement (“CBA”) by requiring DCPS to meet a “new standard for witness inavailability [sic].”<sup>13</sup> DCPS challenges the Arbitrator’s refusal to allow DCPS to reopen the arbitration record to allow the Student to testify. The Arbitrator found that DCPS had failed to raise the possibility of calling the Student as a witness at any point during the arbitration proceedings until after the close of the arbitration record. DCPS does not assert in its Motion or Request what standard the Arbitrator should have applied.

DCPS asks that the Board adopt its assertion that the Arbitrator erred by denying its witness. DCPS crafts its evidentiary argument as an Arbitrator’s jurisdiction argument, arguing that the Arbitrator’s denial of evidence modified the parties’ CBA outside the Arbitrator’s jurisdiction.<sup>14</sup> DCPS concludes that the Arbitrator exceeded his jurisdiction and that the Award did not draw its essence from the CBA.<sup>15</sup> DCPS without any analysis or reasoning repeats the same argument that was considered and rejected by the Board in its Opinion.

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<sup>9</sup> *D.C. Metro. Police Dep’t*, 901 A.2d at 787. See *Fraternal Order of Police*, 973 A.2d at 177, n.2.

<sup>10</sup> *D.C. Dep’t of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 D.C. Reg. 3616, Slip Op. No. 157, PERB Case No. 87-A-02 (1987).

<sup>11</sup> *Dep’t of Human Serv. and FOP/Dep’t of Human Serv. Labor Committee*, 52 D.C. Reg. 1623, Slip Op. No. 71, PERB Case Nos. 02-A-04 & 02-A-05 (2005).

<sup>12</sup> *FOP/MPD Labor Committee and MPD*, 59 D.C. Reg. 9817, Slip Op. No. 1283 at 2, PERB Case No. 07-U-10 (2008). See, e.g., *Dep’t of Human Servs.*, 52 D.C. Reg. 1623, Slip Op. No. 717, PERB Case No. 02-A-04 (2005) (denying on the basis that the Board’s decision was well-reasoned and not contrary to law); and *MPD and FOP/MPD Labor Committee*, 49 D.C. Reg. 8960, Slip Op. No. 680, PERB Case No. 01-A-02 (2002)(denying on basis that Petitioner failed to cite any legal authority contrary to the Board’s decision).

<sup>13</sup> Motion at 2.

<sup>14</sup> The parties’ CBA states, “arbitrator shall have no power to delete or modify in any way any of the provisions of this Agreement.” Article VIII, Section C(2)(c)(3).

<sup>15</sup> Motion at 2.

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Rejecting DCPS's arguments, the Board stated:

DCPS's argument that the Arbitrator exceeded his jurisdiction by refusing to reopen the record amounts to an objection to the Arbitrator's evaluation of certain evidence....Even if the denial of a witness was a serious error, this did not divest the Arbitrator of jurisdiction to resolve the issues presented to him. Furthermore, the Board has held on numerous occasions that such evidentiary objections do not rise to the asserted statutory basis for review.<sup>16</sup>

Further, an arbitrator has the power to procedurally control an arbitration hearing, as the Board has stated that "the CMPA does not give us [PERB] general supervisory power over grievance arbitrators...."<sup>17</sup> As a result, the Board has held that an arbitrator has jurisdiction to determine admissibility of evidence.<sup>18</sup> The Arbitrator's decision that DCPS in essence waived adding more witnesses at the close of the record was within the general power of the Arbitrator and did not require being included expressly in the CBA.

The Board has held, with respect to an arbitrator's findings and conclusion, that the resolution of disputes over credibility determinations and assessing what weight and significance such evidence should be afforded is within the jurisdictional authority of an arbitrator.<sup>19</sup> The Board concludes that the Arbitrator acted within his jurisdictional authority to deny DCPS's witness after the close of the record and that the Arbitrator did not modify or add to the parties' CBA. The Board denies DCPS's Motion for Reconsideration on the grounds that the Arbitrator did not exceed his jurisdiction.

**B. The Award is not contrary to law.**

DCPS asserts that the Award is contrary to law, because the Arbitrator did not apply the standard used by the D.C. Court of Appeals for granting a Motion for a Directed Verdict.<sup>20</sup> As was true with respect to the argument that the Arbitrator exceeded his jurisdiction, DCPS provides no argument or analysis of how the Board erred in determining that the Award was not contrary to law.

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<sup>16</sup> Slip Op. No.1559 at 6 (citing *see, e.g., University of the District of Columbia Faculty Association/NEA and University of the District of Columbia*, 39 D.C. Reg. 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992)).

<sup>17</sup> *University of the District of Columbia and University of the District of Columbia Faculty Association/NEA*, 38 D.C. Reg. 1580, Slip Op. No. 262 at 4, PERB Case No. 90-A-08 (1991)..

<sup>18</sup> *NAGE, Local R3-05, SEIU and MPD*, Slip Op. No. 732, PERB Case No. 02-A-01. *See, e.g., DOC and FOP/DOC Labor Committee*, 48 D.C. Reg. 10951, Slip Op. No. 412 at fn.3, PERB Case No. 95-A-01 (2000)(noting that the Arbitrator was proper in denying evidence after the Agency rested its case-in-chief).

<sup>19</sup> *D.C. Water & Sewer Authority and AFGE, local 872*, 54 D.C. Reg. 2582, Slip Op. No. 798, PERB Case No. 04-A-10 (2007).

<sup>20</sup> Motion at 3.

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In its Motion, DCPS asks that the Board require the Arbitrator be held to the D.C. Court of Appeals standard for granting a motion for a directed verdict.<sup>21</sup> DCPS argues that a directed verdict should not be granted “as long as there is some evidence from which jurors could find that the [non-moving] party has met its burden.”<sup>22</sup> In its Opinion, the Board rejected DCPS’s argument that the Award was contrary to law, and found that the Arbitrator was not required to apply the standard applied by the Court of Appeals. DCPS overlooks the fact that the Union’s counsel called CSO’s motion a Motion for a Directed Verdict, as he noted, “for lack of a better ter.”<sup>23</sup> In fact, the Arbitrator rendered a decision on the merits of the case based on the evidence presented at the hearing and the arguments of the parties. The Board denies DCPS’s Motion for Reconsideration, as DCPS fails to demonstrate that the Board erred in its conclusion that the Award was not contrary to law and public policy.

#### IV. Conclusion

The Board finds that DCPS has not asserted a legal basis for overturning the Board’s decision in Opinion No. 1559. As a result, the Board denies DCPS’s Motion for Reconsideration.

### ORDER

#### IT IS HEREBY ORDERED THAT:

1. DCPS’s Motion for Reconsideration is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Tr. at. 166-167.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-07 (MFR) was served to the following parties via File & ServeXpress on this the 25th day of March 2016:

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**Government of the District of Columbia  
Public Employee Relations Board**

_____	)	
In the Matter of:	)	
	)	
Renee Jackson,	)	
	)	PERB Case No. 14-S-02
Complainant,	)	
	)	Opinion No. 1572
v.	)	
	)	
Teamsters Local Union No. 639, a/w	)	
International Brotherhood of Teamsters,	)	
	)	
Respondent.	)	
_____	)	

**DECISION AND ORDER**

**I. Statement of the Case**

On March 7, 2014, Renee Jackson (“Complainant”) filed a Standards of Conduct Complaint (“Complaint”), alleging Teamsters Local Union No. 639 (“Teamsters”) violated D.C. Official Code § 1-617.03(a) by failing to ensure Complainant was provided monetary payments from a settlement agreement between Teamsters and the District of Columbia Public Schools. Teamsters filed an answer, denying the allegations and asserting that Complainant had failed to state a claim for a standards of conduct violation or a duty of fair representation violation. The matter was sent to a hearing. The Hearing Examiner’s Report and Recommendation (“Report and Recommendation”) is before the Board for disposition. No Exceptions were filed in the case.

**II. Hearing Examiner’s Report and Recommendation**

A. Factual findings

The Hearing Examiner found:

In 2008 the Complainant was a cafeteria worker for District of Columbia Public Schools (DCPS); she was a 10-month employee. She was in a bargaining unit that was represented by the Respondent (Local 639). At the beginning of the 2008-09 school year, DCPS contracted with Chartwell’s, a private company, to provide food services in the schools.



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The Complainant, along with several hundred other food service workers, were transferred to Chartwell's. (The Complainant was still working for Chartwell's at the time of the hearing.) The Complainant's final pay period with DCPS ended on May 24, 2008. Her pay stub for this final period showed that she had accrued 356.35 sick leave hours.

There was some dispute between Local 639 and DCPS about what would happen to employees' accrued sick leave at the time of their transfer to Chartwell's....Eventually (the date is not in the record), DCPS said it would not honor unused sick leave. Local 639 then filed a grievance and an unfair labor practice charge.

In late 2013, prior to the grievance being heard by an arbitrator, or the unfair labor practice charge heard by a PERB hearing examiner, DCPS offered to settle the matter. According to [Teamsters' Business Agent] Scott Clark, DCPS agreed to pay employees, at the rate of approximately 25 cents on the dollar, for the accrued sick leave they had at the time of their transfer to Chartwell's. Employees who had transferred to Chartwell's but were no longer working for the company at the time of the settlement (whether by death, retirement, or resignation) would be excluded from the settlement. Also excluded would be employees who had zero or negative sick leave balances at the time of the transfer.<sup>1</sup>

At some point after the settlement, Complainant notified Teamsters that she had not received payment for her sick leave hours under the settlement agreement. In order to determine who would receive payment under the settlement, Clark requested employees' sick leave records from Chartwell, as DCPS no longer kept the transferred employees' records. Chartwell's records for Complainant showed that she had a balance of zero sick leave hours at the time of the transfer. Clark investigated to see if there were any other records to verify Complainant's sick leave, but was unable to find any other verification of her sick leave.<sup>2</sup>

Complainant then filed the Complaint that is before the Board.

#### B. Recommendations

The Hearing Examiner considered whether Teamsters violated D.C. Official Code § 1-617.03(a) by failing to provide "fair and equal treatment" to Complainant.<sup>3</sup> The Hearing Examiner found that Teamsters "took reasonable steps to ascertain the facts of the Complainant's sick leave status," that DCPS did not have Complainant's employee records, and that Chartwell's records showed that Complainant had a zero sick leave balance.<sup>4</sup> The Hearing Examiner considered whether Teamsters' actions were in good faith and its actions motivated by honesty

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<sup>1</sup> Report and Recommendation at 2.

<sup>2</sup> *Id.* at 2-3.

<sup>3</sup> *Id.* at 4-5.

<sup>4</sup> Report and Recommendation at 5.

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of purpose, and not its competence.<sup>5</sup> The Hearing Examiner found that Teamsters acted reasonably and in good faith while investigating Complainant's sick leave.<sup>6</sup> The Hearing Examiner concluded that Teamsters' determination that Complainant was not entitled to a payment under the settlement agree was not arbitrary, discriminatory, or reached in bad faith, nor was the determination based on irrelevant, unfair, or invidious considerations.<sup>7</sup> The Hearing Examiner recommended that the Complaint be dismissed, because Teamsters did not violate the standards of conduct set forth in D.C. Official Code § 1-617.03(a)(1).

### III. Analysis

No Exceptions were filed. "Whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendation if it finds, upon full review of the record, that the hearing examiner's 'analysis, reasoning and conclusions' are 'rational and persuasive.'"<sup>8</sup>

Considering standard of conduct and duty of fair representation violations, the Board has held that "a breach by an exclusive representative of the duty to fairly represent its employees ... does not concomitantly constitute a breach of the standards of conduct, and vice versa."<sup>9</sup> The CMPA's standards of conduct for labor organizations address standards that apply to the internal operation of the union and union members' participation in such affairs, which arises from a union's duty to comply with certain minimum standards prescribed by D.C. Official Code § 1-617.03(a).

The right to be fairly represented arises from a union's role as the employee's collective bargaining representative.<sup>10</sup> An unfair labor practice alleging a breach of a union's duty of fair representation concerns infringements by the union of employees' statutory collective bargaining rights under the CMPA.<sup>11</sup> D.C. Official Code § 1-617.04(b)(1) prohibits employees, labor organizations, their agents or representatives from "[i]nterfering with, restraining or coercing any employees or the District in the exercise of rights guaranteed by this subchapter ...." "Employee rights under this subchapter" are prescribed under and consist of the following: "(1) [t]o organize a labor organization free from interference, restraint or coercion; (2) [t]o form, join or assist any labor organization; (3) [t]o bargain collectively through a representative of their own choosing ...; (4) [t]o present a grievance at any time to his or her employer without the intervention of a labor organization [.]"<sup>12</sup> The Board has ruled that D.C. Official Code §1-

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public Schools*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Ass'n v. D.C. Dep't of Human Servs.*, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).

<sup>9</sup> *Charles Bagenstose v. Washington Teachers Union, Local 6*, 43 D.C. Reg. 1397, Slip Op. No. 355, PERB Case Nos. 90-S-01 and 90-U-02 (1993).

<sup>10</sup> *William H. Dupree v. FOP/DOC Labor Committee*, 46 D.C. Reg. 4034, Slip Op. No. 568, PERB Case Nos. 98-S-08 & 98-U-23 (1999).

<sup>11</sup> *Id.*

<sup>12</sup> *See Sylvia Cephas v. FOP/DOC Labor Committee*, 49 D.C. Reg. 4379, Slip Op. No. 676, PERB Case No. 01-U-17 (2002).

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617.04 (b)(1) (2001) also “encompasses the right of employees to be fairly represented by the labor organization that has been certified as the exclusive representative for the collective-bargaining unit of which the employee is a part. Specifically, the right to bargain collectively through a designated representative includes the duty of labor organizations to ‘represent the interests of all employees in the unit without discrimination and without regard to membership in the labor organization ....’”<sup>13</sup>

A. Standards of Conduct allegations

D.C. Official Code § 1-617.03(a) sets certain minimum standards that labor organizations must maintain with respect to its operation, practice and procedures for recognition by the Board as a labor organization under the CMPA.<sup>14</sup> The CMPA’s standards of conduct for labor organizations address standards that apply to the internal operation of the union and union members’ participation in such affairs.<sup>15</sup> Under § 1-617.03(a)(1), a member of the bargaining unit is entitled to “fair and equal treatment under the governing rules of the [labor] organization.” The Board considers whether the union’s conduct was arbitrary, discriminatory, or in bad faith, or based on considerations that are irrelevant, invidious, or unfair.<sup>16</sup>

In the present case, Complainant does not state any allegations related to any internal union proceedings or breach of any of Teamsters’ by-laws or constitution. Complainant has not asserted a requisite element of a standards of conduct claim. While a Complainant need not prove his or her case on the pleadings, the Complainant must plead or assert allegations that, if proven, would establish the alleged statutory violations.<sup>17</sup> Even if, *arguendo*, a proper standards of conduct claim was before the Board, the Board has held that, to find a violation, a union’s conduct “must be arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair.”<sup>18</sup> The Hearing Examiner found that the Teamsters acted reasonably while investigating Complainant’s sick leave hours and making the determination that she was not entitled to payment under Teamsters’ and DCPS’s settlement agreement.<sup>19</sup> The Board finds that the Hearing Examiner’s findings and conclusions are reasonable, supported by the record, and consistent with the Board’s precedent. Therefore, the Board adopts the Hearing Examiner’s Report and Recommendation and dismisses the standards of conduct allegations.

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<sup>13</sup> *Glendale Hoggard v. American Federation of State, County and Municipal Employees, District Council 20, Local 1959*, 43 D.C. Reg. 2655, Slip Op. No. 356 at 2-3, PERB Case No. 93-U-10 (1996)(citing *Charles Bagenstose v. WTU, Local 6*, 40 D.C. Reg. 1397, Slip Op. No. 355, PERB Case Nos. 90-S-01 & 09-U-02 (1996)).

<sup>14</sup> *Charles Bagenstose*, Slip Op. No. 355 (noting that the Board’s authority to “take appropriate action on charges of failure to adopt, subscribe or comply with the internal or national labor organization standards of conduct for labor organizations” is prescribed by D.C. Official Code § 1-605.2(9)).

<sup>15</sup> *William Dupree v. FOP/DOC Labor Committee*, 46 D.C. Reg. 4031, Slip Op. No. 568, PERB Case Nos. 98-S-08 & 98-U-28 (1999).

<sup>16</sup> *Id.*

<sup>17</sup> *See, Virginia Dade v. National Ass’n of Gov’t Employees, Service Employees Int’l Union, Local R3- 06*, 46 D.C. Rwg. 6876, Slip Op. No. 491 at 4, PERB Case No. 96-S-22 (1996).

<sup>18</sup> *Stanley O. Roberts v. American Federation of Government Employees, Local 2725*, 36 D.C. Reg. 1590, Slip Op. No. 203 at 3, PERB Case No. 88-S-01(1989).

<sup>19</sup> Report and Recommendation at 5.

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B. Duty of fair representation

Although Complainant captioned her Complaint as a standards of conduct complaint and not an unfair labor practice complaint, the Board has not required strict compliance with Board Rules for *pro se* complainants.<sup>20</sup> When considering an allegation that a union has breached its duty of fair representation, the Board has repeatedly held that the test is not the competence of a union, but rather whether a union's representation was in good faith and its actions motivated by honesty of purpose.<sup>21</sup> The Board applies this test by determining whether a union engaged in any conduct that was arbitrary, discriminatory, or in bad faith, or was based on considerations that are irrelevant, invidious or unfair.<sup>22</sup> The Hearing Examiner analyzed Complainant's allegations as if she had claimed a breach of the duty of fair representation. The Hearing Examiner found that Teamsters acted reasonably, and that Complainant did not assert any arbitrary, discriminatory, or bad-faith actions by the Teamsters.<sup>23</sup>

The Board finds that the Hearing Examiner's findings and conclusions are reasonable, supported by the record, and consistent with Board precedent. The Board adopts the Hearing Examiner's Report and Recommendation with respect to Complainant's allegations.

**IV. Conclusion**

The Board adopts the Hearing Examiner's findings and conclusions, and dismisses the Complaint for a failure to state a claim for a standards of conduct violation

**ORDER**

1. The Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**

By unanimous vote of Board Chairperson Charles Murphy, Member Yvonne Dixon, Member Ann Hoffman, and Member Keith Washington.

Washington, D.C.

March 17, 2016

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<sup>20</sup> See *Sylvia Cephas*, Slip Op. No. 676.

<sup>21</sup> *Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 20*, Slip Op. No. 303, at 2, PERB Case No. 91-U-17 (1992). See also, *Stanley O. Roberts v. American Federation of Government Employees, Local 2725*, 36 D.C. Reg. 1590, Slip Op. No. 203 at 3, PERB Case No. 88-S-01(1989). The *Roberts* case, cited by the Hearing Examiner, was a Standards of Conduct case analyzed by PERB as a duty of fair representation case.

<sup>22</sup> *Id.*

<sup>23</sup> Report and Recommendation at 5.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-S-02 was served to the following parties on this the 25th day of March 2016:

**U.S. Mail**

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**Government of the District of Columbia  
Public Employee Relations Board**

_____		)	
In the Matter of:		)	
		)	
Paula Bonaparte,		)	
		)	
Complainant,		)	PERB Case No. 15-U-06
		)	
		)	Opinion No. 1573
v.		)	
		)	
District Council #20, Andrew Washington		)	
Executive Director,		)	
		)	
Respondent.		)	
_____		)	

**DECISION AND ORDER**

The instant complaint asserts an unfair labor practice claim and a standards of conduct claim for breach of the duty of fair representation and requests a variety of remedies. The complaint and a motion to dismiss are before the Board for disposition. As the complaint alleges neither the elements of a claim for breach of the duty of fair representation nor the elements of a standards of conduct violation, the motion to dismiss is granted.

**I. Statement of the Case**

**A. Parties**

On December 2, 2014, Complainant Paula Bonaparte (“Complainant” or “Bonaparte”), an employee of the Office of the Chief Financial Officer, acting *pro se*, filed a complaint styled “Unfair Labor Practice & Standards of Conduct” (“Complaint”). The Complaint contains four different versions of the name of the respondent. The caption names as the respondent “District Council #20, Andrew Washington, Executive Director.” At the bottom of the cover page, the respondent’s name appears as “Andrew Washington, Executive Director, Council #20.” The certificate of service certifies service by U.S. Mail upon “Council #20, of AFSCME” and service by e-mail upon “Stephen Gerald White, agent.” The body of the complaint refers simply to “the union” and to “Council #20.”

PERB’s Executive Director sent to Andrew Washington, Executive Director, Council #20, a letter advising him that the Complaint was filed and that he may file an answer no later

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than December 17, 2014. No answer was filed. On December 17, 2014, the American Federation of State, County and Municipal Employees, District Council 20, Local 2776 (“Union”) filed a motion to dismiss. The Union argues in its motion that the Complaint states neither an unfair labor practice claim nor a standards of conduct claim. As will be discussed below, the Union is correct that the Complaint does not state a claim against anyone. Consequently, it is unnecessary to determine whether the respondent is the Union or the Union’s executive director.

## **B. Undisputed Facts**

The Board deems the factual allegations of the Complaint to be true for two reasons. First, Board Rules 520.6 and 544.6 require an answer to be filed within fifteen days of service of the Complaint. Rules 520.7 and 544.7 provide, “A respondent who fails to file a timely answer shall be deemed to have admitted the material facts alleged in the complaint and to have waived a hearing.” Second, when considering a motion to dismiss, the Board will view all factual allegations in a complaint as true in order to determine whether the complaint may give rise to a violation of the Comprehensive Merit Personnel Act (“CMPA”).<sup>1</sup> It should be added that the Board does not deem to be true legal allegations or allegations that are legally conclusory or speculative.<sup>2</sup>

Paragraph 8 of the Complaint states, “See Exhibits for proof of my claims.” We regard paragraph 8 as incorporating by reference the exhibits to the Complaint, which are e-mails between Bonaparte and Stephen White, staff representative of AFSCME District Council 20, and the collective bargaining agreement between AFSCME District Council 20, AFL-CIO and the Government of the District of Columbia (“CBA”).

The following are the Complaint’s allegations of material fact, which are deemed to be true:

In August 2014, Bonaparte was suspended without pay for 3 days. She filed a grievance challenging her suspension with Mr. Jeffrey DeWitt, the Chief Financial Officer. The Complaint further states that “no grievances are ever filed by the union. . . . [T]he sole reason is economics; the money is in the budget.”<sup>3</sup> DeWitt never responded.<sup>4</sup>

The staff representative of AFSCME District Council 20, Stephen White, told Bonaparte on November 4, 2014, that he was going to sign documents to send her grievance(s) to arbitration.<sup>5</sup> On November 18, 2014, Bonaparte asked for proof that the arbitration had been filed. White sent Bonaparte an e-mail on November 24, 2014, stating, “After having our attorney

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<sup>1</sup> *D.C. Fire & Emergency Med. Servs. Dep’t v. AFGE, Local 3721*, Slip Op. No. 1556 at 4, PERB Case No. 15-U-22 (Nov. 19, 2015).

<sup>2</sup> *Id.* at 4 n.18.

<sup>3</sup> Complaint ¶ 3.

<sup>4</sup> Complaint ¶ 2.

<sup>5</sup> Complaint ¶ 3.

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review your case, the Executive Director has declined to pursue arbitration at this time. We will be scheduling to meet with your Director after the Holiday.”<sup>6</sup>

### C. Complainant’s “Motion to Stay”

A response to the Union’s motion to dismiss was due on December 24, 2014, but was not filed. On December 30, 2014, Bonaparte filed a pleading styled “Motion to Stay.” The pleading does not request a stay of anything. Instead, it re-states Bonaparte’s dissatisfaction with the Union’s conduct and responds generally to the motion to dismiss.

## II. Discussion

The Complaint alleges that the Union committed unfair labor practices and violated the standards-of-conduct provisions of the CMPA in violation of D.C. Official Code sections 1-617.04(b)(1) and (3) and 1-617.03(a)(1).<sup>7</sup>

### B. Bonaparte failed to allege facts establishing an unfair labor practice.

Section 1-617.04(b)(3) prohibits labor organizations designated as the exclusive representative from refusing to bargain collectively with the District. An employee, such as Bonaparte, does not have standing to allege an unfair labor practice in violation of this provision.<sup>8</sup> Only an employer can demand that a union bargain in good faith with the District.<sup>9</sup> Bonaparte does not allege that she is an employer.

Section 1-617.04(b)(1) states, “Employees, labor organizations, their agents, or representatives are prohibited from: (1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter. . . .” This provision “encompasses the right to be fairly represented by the labor organization that has been certified as the exclusive representative for the collective bargaining unit of which the employee is a part.”<sup>10</sup>

Bonaparte filed her grievance herself.<sup>11</sup> She alleges that “no grievances are ever filed by the Union . . . and the sole reason is economics; the money is in the budget.”<sup>12</sup> A complaint alleging that a union’s *refusal* to file a grievance was arbitrary, discriminatory, or in bad faith could present a *prima facie* case of breach of the duty of fair representation,<sup>13</sup> but Bonaparte does

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<sup>6</sup> Complaint ¶ 3, Ex. 2.

<sup>7</sup> Complaint ¶ 1, 3.

<sup>8</sup> *Thomas v. AFGE, Local 1975*, 45 D.C. Reg. 6712, Slip Op. No. 554 at 6, PERB Case No. 98-S-04 (1998).

<sup>9</sup> *Dade v. NAGE, SEIU, Local R3-006*, 46 D.C. Reg. 6876, Slip Op No. 491 at 3 n.1, PERB Case No. 96-U-22 (1996).

<sup>10</sup> *Hoggard v. AFSCME, Dist. Council 20, Local 1959*, 43 D.C. Reg. 2655, Slip Op. No. 356 at 2-3, PERB Case No. 93-U-10 (1993).

<sup>11</sup> Complaint ¶ 2.

<sup>12</sup> Complaint ¶ 3.

<sup>13</sup> *Cf. Sparks v. AFSCME, Dist. Council 20, Local 1959*, 59 D.C. Reg. 3906, Slip Op. No. 915 at 2, 5, PERB Case No. 05-U-26 (2007); *Oskere v. AFSCME*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case No. 99-U-15 (2000).



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not allege that she requested the Union to file the grievance, that the Union refused to file the grievance, or that such refusal was arbitrary, discriminatory, or in bad faith. Absent those allegations, the filing of the grievance by Bonaparte rather than by the Union does not constitute a breach of the duty of fair representation.<sup>14</sup>

Bonaparte does allege that the Union refused to send her grievance to arbitration. In arguing that this refusal was “unfair representation,” Bonaparte’s motion to stay calls attention to the benefits of arbitration: it saves money; it is tailored to address workplace problems; arbitrators can apply the law to the facts as well as interpret the contract; and both the union and the arbitrator bring their expertise to the table.<sup>15</sup> In her praise of arbitration, Bonaparte overlooks the role of unions as gatekeepers in the process. The Supreme Court discussed the importance of that role in *Vaca v. Sipes*:

In providing for a grievance and arbitration procedure which gives the union discretion to supervise the grievance machinery and to invoke arbitration, the employer and the union contemplate that each will endeavor in good faith to settle grievances short of arbitration. Through this settlement process, frivolous grievances are ended prior to the most costly and time-consuming step in the grievance procedures. Moreover, both sides are assured that similar complaints will be treated consistently, and major problem areas in the interpretation of the collective bargaining contract can be isolated and perhaps resolved. . . .

If the individual employee could compel arbitration of his grievance regardless of its merit, the settlement machinery provided by the contract would be substantially undermined, thus destroying the employer’s confidence in the union’s authority and returning the individual grievant to the vagaries of independent and unsystematic negotiation. Moreover, under such a rule, a significantly greater number of grievances would proceed to arbitration. This would greatly increase the cost of the grievance machinery and could so overburden the arbitration process as to prevent it from functioning successfully.<sup>16</sup>

Board precedent and the CBA are consistent with *Vaca v. Sipes* in giving the Union discretion to handle a grievance in the way it sees fit and to pursue the grievance to the level it

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<sup>14</sup> See *Gibson v. D.C. Pub. Employee Relations Bd.*, 785 A.2d 1238, 1240, 1243 (D.C. 2001) (affirming dismissal where employee did not allege that union’s refusal to file grievance was arbitrary, discriminatory, or in bad faith); *Holloway v. Shambaugh & Son, Inc.*, 988 F. Supp. 2d 801, 908-909 (N.D. Ind. 2013) (dismissing complaint where employee did not allege he requested the union to file a grievance); *Kozina v. B & O Chicago Terminal R.R. Co.*, 609 F. Supp. 53, 55 (N.D. Ill. 1984) (dismissing complaint where employee did not allege he requested the union to file a grievance).

<sup>15</sup> Motion to Stay 4, 6.

<sup>16</sup> 386 U.S. 171, 191-92 (1967).

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deems necessary.<sup>17</sup> Article 22, section 2 of the CBA provides that if a grievance is unresolved after Step 4, “the Union *may* by written notice request arbitration within twenty (20) days after the reply at Step 4 is due or received, whichever is sooner.”<sup>18</sup> The duty of fair representation does not require a union to pursue every grievance to arbitration. A complainant alleging that a union breached the duty of fair representation by deciding against pursuing a grievance to arbitration must demonstrate that the decision was arbitrary, discriminatory, or the product of bad faith.<sup>19</sup>

The Union argues in its motion to dismiss that “[n]owhere in her complaint does Bonaparte allege that the Union acted arbitrarily, discriminatorily, or in bad faith.”<sup>20</sup> A review of the undisputed allegations of fact in the Complaint reveals that the Union is correct.

Apparently referring to agents of the Union, Bonaparte states in her Complaint that “they treated me unequally and unfairly.”<sup>21</sup> This conclusory statement is insufficient to establish that the Union’s conduct was discriminatory. A complainant who alleges that a union breached its duty by not advancing a grievance to arbitration must go beyond mere conclusions or beliefs and allege the existence of some evidence that would tie actions of the union to the alleged violation.<sup>22</sup> The Complaint does not allege facts indicating that the Union discriminates in deciding when to request arbitration.

Bonaparte’s motion to stay acknowledges that the Complaint does not allege discrimination.<sup>23</sup> In several places the motion to stay makes vague references to discrimination against women, minorities, and the disabled but does not indicate who has discriminated against them. Even if the motion to stay were to be construed as amending the Complaint, Bonaparte would still not have alleged facts that would establish that the Union’s decision against arbitration of her grievance was discriminatory. Bonaparte asserts that she is disabled and expresses her “belief that unfair representation is made against women, minorities, and the disabled”<sup>24</sup> but does not suggest that the Union decided against arbitration of her grievance on the basis of her asserted disability or on any other invidious basis.

In the Complaint, Bonaparte claims that the Union misled her, lied to her, and was deceitful.<sup>25</sup> Like her claim that she was treated unequally, these are merely conclusions without any factual support. The facts alleged by Bonaparte support the opposite conclusion: that the Union reversed the position that Stephen White initially took not because the Union was dishonest but because a higher-ranking official of the Union, with the advice of counsel, re-evaluated the grievance after White had given his opinion. White e-mailed Bonaparte, “After

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<sup>17</sup> *Owens v. AFSCME, Local 2095*, 52 D.C. Reg. 1645, Slip Op. No. 750 at 7, PERB Case No. 02-U-27 (2004).

<sup>18</sup> Complaint Ex. 4 at 35 (emphasis added).

<sup>19</sup> *Johnson v. D.C. Pub. Sch.*, 61 D.C. Reg. 7380, Slip Op. No. 1472 at 5, PERB Case No. 07-U-07 (2014) .

<sup>20</sup> Motion to Dismiss 3.

<sup>21</sup> Complaint ¶ 3.

<sup>22</sup> *Johnson v. Washington Teachers’ Union, Local 6*, 60 D.C. Reg. 13747, Slip Op. No. 1420 at 10, 12, PERB Case No. 13-U-34 (2013).

<sup>23</sup> Motion to Stay 2.

<sup>24</sup> Motion to Stay 2, 4.

<sup>25</sup> Complaint ¶¶ 3, 6.

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having our attorney review your case, the Executive Director has declined to pursue arbitration at this time.”<sup>26</sup> Unions are allowed to reconsider such matters. A decision against arbitration is neither arbitrary nor in bad faith merely because it rescinds an earlier decision to invoke arbitration.<sup>27</sup> Considering a less costly alternative, such as meeting with the director, is not arbitrary either. In the absence of evidence of bad motive, the handling and processing of an employee’s grievance are within the discretion of the Union as the bargaining unit’s exclusive representative.<sup>28</sup>

**C. Bonaparte failed to allege facts establishing a violation of standards of conduct.**

The Complaint also claims that the Union’s failure to bring Bonaparte’s grievance to arbitration violated section 1-617.03(a)(1).

D.C. Official Code § 1-617.03(a) sets certain minimum standards that a labor organization must maintain with respect to its operation, practice and procedures for recognition by the Board as a labor organization under the CMPA.<sup>29</sup> The CMPA’s standards of conduct for labor organizations address standards that apply to the internal operation of the union and union members’ participation in such affairs.<sup>30</sup> One of the standards, to which the motion to stay refers, is “[t]he maintenance of . . . provisions defining and securing the right of individual members . . . to fair and equal treatment under the governing rules of the organization. . . .” In order to show that a union’s conduct violates this standard, a complainant must demonstrate that the union’s conduct was arbitrary, discriminatory, or in bad faith, or based on considerations that are irrelevant, invidious, or unfair.<sup>31</sup>

In the present case, Bonaparte does not state any allegations related to any internal union proceedings or breach of the Union’s by-laws or constitution. She therefore has not asserted a requisite element of a standards of conduct claim. While a complainant need not prove his or her case on the pleadings, the complainant must plead or assert allegations that, if proven, would establish the alleged statutory violations.<sup>32</sup> Even if, *arguendo*, a proper standards of conduct

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<sup>26</sup> Complaint Ex. 2.

<sup>27</sup> *Osborne v. AFSCME, Local 2095*, Slip Op. No. 713 at 6-7, PERB Case Nos. 02-U-30 and 02-S-09 (May 21, 2003); *Johnson v. D.C. Dep’t of Pub. Works*, 35 D.C. Reg. 4064, Slip Op. No. 175, PERB Case No. 87-U-02 (1988).

<sup>28</sup> *See Brown v. Washington Teachers’ Union, AFT Local No. 6*, Slip Op. No. 1291 at 3, PERB Case No. 12-U-21 (May 30, 2012).

<sup>29</sup> *Bagenstose v. WTU, Local 6*, 40 D.C. Reg. 1397, Slip Op. No. 355, PERB Case Nos. 90-S-01 & 09-U-02 (1996) (noting that the Board’s authority to “take appropriate action on charges of failure to adopt, subscribe or comply with the internal or national labor organization standards of conduct for labor organizations” is prescribed by D.C. Official Code § 1-605.2(9)).

<sup>30</sup> *Dupree v. F.O.P./Dep’t of Corrs. Labor Comm.*, 46 D.C. Reg. 4031, Slip Op. No. 568, PERB Case Nos. 98-S-08 & 98-U-28 (1999).

<sup>31</sup> *Green v. Int’l Bhd. of Teamsters, Local 730*, 61 D.C. Reg. 12845 Slip Op. No. 1496 at 8, PERB Case No. 14-U-17 (2014); *Christian v. Univ. of D.C. Faculty Ass’n/Nat’l Educ. Ass’n*, 50 D.C. Reg. 6786, Slip Op. No. 700 at 4, PERB Case No. 02-S-05 (2003); *Roberts and AFGE, Local 2725*, 36 D.C. Reg. 3631, Slip Op. No. 203 at 2-3, PERB Case No. 88-S-01 (1989).

<sup>32</sup> *See, Dade v. Nat’l Ass’n of Gov’t Employees, Serv. Employees Int’l Union. Local R3- 06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-S-22 (1996).

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claim were before the Board, the Complaint, does not allege facts establishing that the union's conduct was arbitrary, discriminatory, or the product of bad faith.<sup>33</sup>

### III. Conclusion

As the Board said of the complainant in *Owens v. AFSCME, Local 2095*,<sup>34</sup> there is no question that Bonaparte was dissatisfied with the Union's decision, but her dissatisfaction, in and of itself, does not constitute breach of the duty of fair representation when no evidence of arbitrariness, discrimination, or bad faith is alleged. Accordingly, the motion to dismiss is granted.

### ORDER

#### IT IS HEREBY ORDERED THAT:

1. The Union's motion to dismiss is granted. The Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

#### BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

March 17, 2016  
Washington, D.C.

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<sup>33</sup> See *supra* text accompanying notes 21-28.

<sup>34</sup> 52 D.C. Reg. 1645, Slip Op. No. 750 at 7, PERB Case No. 02-U-27 (2004).

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case Number 15-U-03 is being transmitted to the following parties on this the 29th day of March 2016.

Paula Bonaparte  
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/s/ Sheryl V. Harrington  
Sheryl V. Harrington  
Secretary

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