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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council passes Resolution 21-570, Advisory Referendum on the State of New Columbia Admission Act Resolution of 2016
- D.C. Council passes Resolution 21-578, Fiscal Year 2016 Revised Budget Request Adjustment Extension Emergency Declaration Resolution of 2016
- Department of Behavioral Health solicits applications from business entities or individuals seeking licensure for a Mental Health Community Residence Facility
- Department of Energy and Environment establishes standards for the District's Paint Stewardship Program
- Department of Small and Local Business Development announces funding availability for the revised DC Clean Team Program
- D.C. Water and Sewer Authority approves increase in rates for Water and Sewer Services

Office of the Secretary publishes notice of notarial fee increase

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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ENROLLED ORIGINAL

A RESOLUTION

21-522

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 28, 2016

To confirm the reappointment of Mr. Paul Ashton to the Police Complaints Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Police Complaints Board Paul Ashton Confirmation Resolution of 2016".

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

Mr. Paul Ashton
1510 Columbia Road, N.W.
Washington, D.C. 20009
(Ward 1)

as a member of the Police Complaints Board, established by section 5 of the Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1104), for a 3-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-523

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 28, 2016

To confirm the appointment of Ms. Susan Reinertson to the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,Tthat this resolution may be cited as the "District of Columbia Homeland Security Commission Susan Reinertson Confirmation Resolution of 2016".

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

Ms. Susan Reinertson
400 Madison Street, #1107
Alexandria, VA 22314

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), in accordance with section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)), for a 3-year term to end February 22, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-526

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 28, 2016

To confirm the appointment of Ms. Norma Hutcheson to the District of Columbia Board of Ethics and Government Accountability.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Board of Ethics and Government Accountability Norma Hutcheson Confirmation Resolution of 2016".

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

Ms. Norma Hutcheson
3829 13th Street, N.W.
Washington, D.C. 20011
(Ward 4)

as a member of the District of Columbia Board of Ethics and Government Accountability, established by section 202 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.02), for a 6-year term to end July 1, 2022.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-527

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 28, 2016

To confirm the appointment of Mr. Shomari Wade to the District of Columbia Board of Ethics and Government Accountability.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Board of Ethics and Government Accountability Shomari Wade Confirmation Resolution of 2016".

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

Mr. Shomari Wade
1794 Lanier Place, N.W., Unit 212
Washington, D.C. 20009
(Ward 1)

as a member of the District of Columbia Board of Ethics and Government Accountability, established by section 202 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.02), for a 6-year term to end July 1, 2022.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-530

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 28, 2016

To confirm the reappointment of Mr. Darrell Darnell to the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Homeland Security Commission Darrell Darnell Confirmation Resolution of 2016".

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

Mr. Darrell Darnell
2840 Chancellors Way, N.E.
Washington, D.C. 20017
(Ward 5)

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), in accordance with section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)), for a 3-year term to end February 22, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-531

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 28, 2016

To confirm the reappointment of Dr. Daniel Kaniewski to the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Homeland Security Commission Daniel Kaniewski Confirmation Resolution of 2016".

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

Dr. Daniel Kaniewsky
926 N. Columbus Street
Alexandria, VA 22314

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), in accordance with section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)), for a 3-year term to end February 22, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-532

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 28, 2016

To confirm the reappointment of Dr. Rebecca Katz to the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Homeland Security Commission Rebecca Katz Confirmation Resolution of 2016".

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

Dr. Rebecca Katz
9407 Elsmere Court
Bethesda, MD 20814

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), in accordance with section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)), for a 3-year term to end February 22, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-559

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the reappointment of Mr. Stanley Jackson to the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Housing Finance Agency Board of Directors Stanley Jackson Confirmation Resolution of 2016".

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

Mr. Stanley Jackson
52 Brandywine Street, S.W.
Washington, D.C. 20032
(Ward 8)

as a member, representing community interests, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), in accordance with section 2(e)(10) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code§ 1- 523.0l(e)(10)), for a term to end June 28, 2017.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-560

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Mr. Michael Spencer to the Rental Housing Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Rental Housing Commission Michael Spencer Confirmation Resolution of 2016".

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

Mr. Michael Spencer
3642 Camden Street, S.E.
Washington, D.C. 20020
(Ward 7)

as a member of the Rental Housing Commission, established by section 201 of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.01), in accordance with section 2(e)(19) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1- 523.0l(e)(19)), replacing Ronald A. Young, for a term to end July 18, 2018.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-561

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Ms. Diana Epps to the Rental Housing Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Rental Housing Commission Diana Epps Confirmation Resolution of 2016".

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

Ms. Diana Epps
2930 14th Street, N.E.
Washington, D.C. 20017
(Ward 5)

as a member of the Rental Housing Commission, established by section 201 of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.01), in accordance with section 2(e)(19) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code§ 1- 523.0l(e)(19)), replacing Claudia McKoin, for a term to end July 18, 2019.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-562

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Ms. Sheila Miller to the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Housing Finance Agency Board of Directors Sheila Miller Confirmation Resolution of 2016".

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

Ms. Sheila Miller
117 R Street, N.E.
Washington, D.C. 20002
(Ward 5)

as a member, with experience in home building, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), in accordance with section 2(e)(10) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code§ 1- 523.0l(e)(10)), replacing Leila Batties, for a term to end June 28, 2017.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-563

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Ms. Alexandra Ashbrook as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Food Policy Council Alexandra Ashbrook Confirmation Resolution of 2016".

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

Ms. Alexandra Ashbrook
2925 39th Street, N.W.
Washington, D.C. 20016
(Ward 3)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), for a one-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-564

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Mr. Christopher Bradshaw as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Food Policy Council Christopher Bradshaw Confirmation Resolution of 2016".

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

Mr. Christopher Bradshaw
1436 W Street, N.W., Apartment 103
Washington, D.C. 20009
(Ward 1)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), for a one-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-565

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Mr. Caesar Layton as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Food Policy Council Caesar Layton Confirmation Resolution of 2016".

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

Mr. Caesar Layton
1425 Euclid Street, N.W., Apartment 12
Washington, D.C. 20009
(Ward 1)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), for a one-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-566

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Mr. Alexander Moore as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Food Policy Council Alexander Moore Confirmation Resolution of 2016".

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

Mr. Alexander Moore
425 Second Street, N.W.
Washington, D.C. 20001
(Ward 6)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), for a 2-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-567

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Ms. Paula Reichel as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Food Policy Council Paula Reichel Confirmation Resolution of 2016".

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

Ms. Paula Reichel
818 5th Street, N.E., Apartment 2
Washington, D.C. 20002
(Ward 6)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), for a 2-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-568

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Ms. Joelle Robinson as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Food Policy Council Joelle Robinson Confirmation Resolution of 2016".

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

Ms. Joelle Robinson
3353 Alden Place, N.E.
Washington, D.C. 20019
(Ward 7)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), for a 2-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-569

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To confirm the appointment of Ms. Tambra Raye Stevenson as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Food Policy Council Tambra Raye Stevenson Confirmation Resolution of 2016".

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

Ms. Tambra Raye Stevenson
2609 Douglass Road, S.E., Apartment 302
Washington, D.C. 20020
(Ward 8)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), for a 2-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-570

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To approve the submission of a proposed advisory referendum to the District of Columbia Board of Elections, for inclusion on the ballot for the general election to be held on November 8, 2016, that asks the electorate whether the Council should petition Congress to enact a statehood admission act to provide for the State of New Columbia to be declared to admitted to the Union and whether the Council should approve a state constitution.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Advisory Referendum on the State of New Columbia Admission Act Resolution of 2016".

Sec. 2. (a) Pursuant to section 412(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(b)), the Council hereby approves an advisory referendum, which shall ask the voters whether the Council should petition Congress to enact a statehood admission act to provide for the State of New Columbia to be declared admitted to the Union and whether the Council should approve a state constitution.

(b) The advisory referendum shall read as follows:

"ADVISORY REFERENDUM"

Short Title

"Advisory Referendum on the State of New Columbia Admission Act Resolution of 2016".

Summary Statement

To ask the voters on November 8, 2016, through an advisory referendum, whether the Council should petition Congress to enact a statehood admission act to admit the State of New Columbia to the Union. Advising the Council to approve this proposal would establish that the citizens of the District of Columbia ("District") (1) agree that the District should be admitted to the Union as the State of New Columbia; (2) approve of a Constitution of the State of New Columbia to be adopted by the Council; (3) approve the State of New Columbia's boundaries, as adopted by the New Columbia Statehood Commission on June 28, 2016; and (4) agree that the State of New Columbia shall guarantee an elected representative form of government.

Shall the voters of the District of Columbia advise the Council to approve or reject this proposal?

YES, to approve ____

NO, to reject____

ENROLLED ORIGINAL

Sec. 3. The District of Columbia Public Library shall make drafts of the state constitution and the State of New Columbia's proposed boundaries available for public inspection at every branch.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

ENROLLED ORIGINAL

A RESOLUTION

21-571

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To approve proposed Contract No. GAGA-2016-C-0036A-1 between the District of Columbia Public Schools and SodexoMagic, LLC for one base year in the amount of $35,401,842.20 to manage the overall District of Columbia Public Schools Food Service Program for an estimated 101 schools.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. GAGA-2016-C-0036A-1 with SodexoMagic, LLC Approval Resolution of 2016".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Contract No. GAGA-2016-C-0036A-1, which the Mayor transmitted to the Council on June 23, 2016, between the District of Columbia Public Schools ("DCPS") and SodexoMagic, LLC for one base year in the amount of $35,401,842.20 to manage the overall DCPS Food Service Program for an estimated 101 schools.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-572

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To approve proposed Contract No. GAGA-2016-C-0036A-2 between the District of Columbia Public Schools and DC Central Kitchen for one base year in the amount of $5,154,018.94 to manage the overall District of Columbia Public Schools Food Service Program for an estimated 12 schools.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. GAGA-2016-C-0036A-2 with DC Central Kitchen Approval Resolution of 2016".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Contract No. GAGA-2016-C-0036A-2, which the Mayor transmitted to the Council on June 23, 2016, between the District of Columbia Public Schools ("DCPS") and DC Central Kitchen for one base year in the amount of $5,154,018.94 to manage the overall DCPS Food Service Program for an estimated 12 schools.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-574

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To declare the existence of an emergency with respect to the need to approve HFA21-0020, the District of Columbia Housing Finance Agency Amended Eligibility Resolution as to the Eligibility of the Beacon Center for Tax -Exempt and/or Taxable Multifamily Housing Mortgage Revenue Bond Financing, to increase the not-to-exceed amount of tax-exempt or taxable multifamily housing mortgage revenue for the Emory Beacon of Light project to $26 million.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Emory Beacon Center Mortgage Revenue Bond Financing Approval Emergency Declaration Resolution of 2016".

Sec. 2. (a) Emory Beacon of Light, Inc., is developing the Emory Beacon Center, at 6100 Georgia Avenue, N.W., in Ward 4, to expand the affordable housing opportunities in the District for low-income and moderate-income residents.

(b) The District of Columbia Housing Finance Agency ("HFA") has submitted an amended eligibility resolution for the bonds (HFA21-20) that will assist the development team in acquiring and constructing the Emory Beacon Center.

(c) The Council passively approved a previous financing resolution submitted by the HFA for this project (HFA20-15) in an amount not to exceed $20,760,000.

(d) The amended eligibility resolution is necessary to reflect the HFA's increase in bond financing available to Emory Beacon of Light, Inc., from $20,760,000 to $26,000,000.

(e) The Emory Beacon Center is a mixed-use project that will include 100% of the residential rental units set aside for low-income and moderate-income households. The project also includes retail space to support the community economic development under the Georgia Avenue Great Streets Redevelopment Plan.

(f) The current submission will be passively approved by the Council in October, 2016, a month after Emory Beacon of Light, Inc., is planning on closing on the property. That delay has the potential of lengthening the development timeline for the project. The increased costs associated with these issues could represent a significant economic hardship for the church.

(g) To prevent an unintended delay in the development of this project, the Council must approve the submission on an emergency basis.

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 Emory Beacon Center Mortgage Revenue Bond Financing Emergency Approval Resolution of 2016 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-575

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To approve, on an emergency basis, HFA21-0020, the District of Columbia Housing Finance Agency Amended Eligibility Resolution as to the Eligibility of the Beacon Center for Tax -Exempt and/or Taxable Multifamily Housing Mortgage Revenue Bond Financing, which would increase the not-to-exceed amount of tax-exempt or taxable multifamily housing mortgage revenue bond financing for the Emory Beacon Center project to $26 million.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Emory Beacon Center Mortgage Revenue Bond Financing Emergency Approval Resolution of 2016".

Sec. 2. Pursuant to section 207(b) of the District of Columbia Housing Finance Agency Act, effective October 5, 1985 (D.C. Law 6-44; D.C. Official Code § 42-2702.07(b)), the District of Columbia Housing Finance Agency submitted to the Council on June 15, 2016, HFA 21-0020, the District of Columbia Housing Finance Agency Amended Resolution as to the Eligibility of the Beacon Center For Tax-Exempt and/or Taxable Multifamily Housing Mortgage Revenue Bond Financing, which provided notice of the Board of Directors of the District of Columbia Housing Finance Agency's proposal to issue revenue bond financing in a not-to-exceed amount of $26 million for the Emory Beacon Center Project. The Council approves the proposed revenue bond financing.

Sec. 3. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor and the District of Columbia Housing Finance Agency.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-578

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To declare the existence of an emergency with respect to the need to extend certain adjustments made to the Fiscal Year 2016 Budget and Financial Plan through the remainder of Fiscal Year 2016.

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

Sec. 2. (a) On October 6, 2015, the Council passed the Fiscal Year 2015 and Fiscal Year 2016 Revised Budget Request Adjustment Temporary Act of 2015, effective January 21, 2016 (D.C. Law 21-48; 62 DCR 13979) (the "Act"), which will expire on August 21, 2016.

(b) The Act consists of substantial adjustments to budget authority for both Fiscal Year 2015 and Fiscal Year 2016.

(c) The adjustments made by the Act to the Fiscal Year 2016 budget must be extended through the end of Fiscal Year 2016 in order to continue the legal authority for the revised budget and ensure a balanced budget and a clean Comprehensive Annual Financial Report for Fiscal Year 2016.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

21-581

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 12, 2016

To declare the existence of an emergency with respect to the need to order the closing of a portion of 14th Street, N.E., adjacent to Squares 3954 and 4024 and Parcel 143/45, and to accept the dedication of portions of land in Squares 3953, 3954, 4024, and 4025 and Parcel 143/45 for public street and alley purposes, in Ward 5.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Closing of Public Streets and Dedication of Land for Street and Alley Purposes in and abutting Squares 3953, 3954, 4024, 4025, and Parcel 143/45, S.O. 14-20357, Emergency Declaration Resolution of 2016".

Sec. 2. (a) The portions of 14th Street, N.E., shown on the Surveyor's plat filed under S.O. 14-20357, are unnecessary for street purposes.

(b) On June 15, 2016 the Council's Committee of the Whole held a public hearing on the closing of these portions of 14th Street, N.E.

(c) The Council is moving a separate measure to close these portions of 14th Street, N.E., as permanent legislation; however, because of the Council's impending recess, no work would be able to begin until after a second reading in late September and congressional review thereafter.

(d) This emergency legislation is necessary to permit the project to proceed without unnecessary and undue delay.

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 Closing of Public Streets and Dedication of Land for Street and Alley Purposes in and abutting Squares 3953, 3954, 4024, 4025, and Parcel 143/45, S.O. 14-20357, Emergency Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

BILLS

B21-847 Law Enforcement Career Opportunity Amendment Act of 2016

Intro. 7-14-16 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Posting Date:	July 15, 2016
Petition Date:	August 29, 2016
Hearing Date:	September 12, 2016
License No.:	ABRA-101092
Licensee:	Fasol LLC
Trade Name:	Brown Street Market
License Class:	Retailer B
Address:	3320 Brown Street, N.W.
Contact Information:	Michael Fasanmi: 202-754-0029

WARD 1 ANC 1D SMD 1D01

Notice is hereby given that this licensee has applied for a Substantial Change to their 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, 2000 14th Street, N.W., 400 South, Washington, DC 20009. A petition 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 OPERATION:
Class Change from a Retailer B to a Retailer A.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES
Sunday through Saturday, 8 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 22, 2016
Petition Date: September 6, 2016
Hearing Date: September 19, 2016

License No.: ABRA-092773
Licensee: Daci Enterprises, LLC
Trade Name: Dacha Beer Garden
License Class: Retailer's Class "C" Tavern
Address: 1600-1602 7th Street, N.W.
Contact: Erin Sharkey: (202) 686-7600

WARD 6 ANC 6E SMD 6E01

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

NATURE OF SUBSTANTIAL CHANGE
Applicant requests a Change of Hours of operation and alcoholic beverage sales and consumption.

CURRENT HOURS OF OPERATION
Sunday through Thursday 7:00 am- 10:30 pm, Friday and Saturday 7:00 am –11:59 pm

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday 8:00 am- 10:30 pm, Friday and Saturday 8:00 am –11:59 pm

CURRENT HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday 6:00 pm- 10:30 pm, Friday and Saturday 6:00 pm –11:59 pm

PROPOSED HOURS OF OPERATION
Sunday through Thursday 7:00 am- 2:00 am, Friday and Saturday 7:00 am –3:00 am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday 8:00 am- 2:00 am, Friday and Saturday 8:00 am –3:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	July 22, 2016
Petition Date:	September 6, 2016
Hearing Date:	September 19, 2016
Protest Hearing Date:	November 16, 2016

License No.:	ABRA-103505
Licensee:	Decades, LLC
Trade Name:	Decades
License Class:	Retailer's Class "C" Nightclub
Address:	1219 Connecticut Avenue, N.W.
Contact:	Danielle Balmelle: (202) 714-2976

WARD 2 ANC 2B SMD 2B05

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for November 16, 2016 at 1:30 pm.

NATURE OF OPERATION

Late night lounge with entertainment, dancing, and cover charge. Total occupant load: 800. Total number of seats: 400. Total number of summer garden seats: 150.

HOURS OF OPERATION ON PREMISE AND FOR SUMMER GARDEN

Sunday through Saturday 8 am – 4 am

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

Sunday through Thursday 8 am- 2 am and Friday through Saturday 8 am- 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
7/22/2016

Notice is hereby given that:
License Number: ABRA-101732 **License Class/Type: C Restaurant**
Applicant: RUSA Management LLC
Trade Name: Duke's Counter
ANC: 3C03

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

3000 CONNECTICUT AVE NW

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

9/6/2016

A HEARING WILL BE HELD ON:

9/19/2016

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

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

ENDORSEMENT(S): Cover Charge Entertainment Sidewalk Cafe

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
7/22/2016

Notice is hereby given that:
License Number: ABRA-060872 **License Class/Type: C Restaurant**
Applicant: Expo Restaurant & Lounge, Inc.
Trade Name: Expo Restaurant & Lounge
ANC: 1B02

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

1928 9TH ST NW

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

9/6/2016

A HEARING WILL BE HELD ON:

9/19/2016

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

Days	Hours of Operation	Hours of Sales/Service
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): Cover Charge Dancing Entertainment

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
7/22/2016

Notice is hereby given that:
License Number: ABRA-101682 **License Class/Type: C Multipurpose**
Applicant: TSBL, LLC
Trade Name: Karma
ANC: 5C02

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

2221 ADAMS PL NE

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

9/6/2016

A HEARING WILL BE HELD ON:

9/19/2016

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	10 am - 3 am	10 am - 2 am
Monday:	6 pm - 3 am	6 pm - 2 am
Tuesday:	6 pm - 3 am	6 pm - 2 am
Wednesday:	6 pm - 3 am	6 pm - 2 am
Thursday:	6 pm - 3 am	6 pm - 2 am
Friday:	6 pm - 4 am	6 pm - 3 am
Saturday:	9 am - 4 am	10 am - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	July 22, 2016
Petition Date:	September 6, 2016
Hearing Date:	September 19, 2016
Protest Hearing Date:	November 16, 2016
License No.:	ABRA-103577
Licensee:	16th Street Dining Inc.
Trade Name:	Plateau
License Class:	Retailer's Class "C" Restaurant
Address:	900 16th Street, N.W.
Contact:	Stephen O'Brien: (202) 625-7700

WARD 2 ANC 2B SMD 2B05

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for November 16, 2016 at 1:30 pm.

NATURE OF OPERATION

Full-service restaurant serving breakfast, lunch, and dinner featuring French cuisine with live entertainment indoors on the weekend. Total occupant load: 180. Total number of seats: 147. Total number of sidewalk café seats: 66.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON PREMISE

Sunday through Saturday 8 am – 2 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON SIDEWALK CAFE

Sunday through Saturday 9 am – 12 am

HOURS OF LIVE ENTERTAINMENT

Sunday through Saturday 6 pm – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
7/22/2016

Notice is hereby given that:
License Number: ABRA-023943 **License Class/Type: C Restaurant**
Applicant: DMM, LLC.
Trade Name: Raku-Ya
ANC: 2B03

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

1900 Q ST NW

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

9/6/2016

A HEARING WILL BE HELD ON:

9/19/2016

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

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

ENDORSEMENT(S): Sidewalk Cafe

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
7/22/2016

****READVERTISEMENT**

Notice is hereby given that:
License Number: ABRA-099323 **License Class/Type: C Restaurant**
Applicant: 201 Upshur Hospitality, LLC
Trade Name: Slash Run
ANC: 4C10

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

201 UPSHUR ST NW

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

9/6/2016

A HEARING WILL BE HELD ON:

9/19/2016

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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 3 am	9 am -2 am
Monday:	9 am - 3 am	9 am - 2 am
Tuesday:	9 am - 3 am	9 am - 2 am
Wednesday:	9 am - 3 am	9 am - 2 am
Thursday:	9 am - 3 am	9 am - 2 am
Friday:	9 am - 3 am	9 am - 3 am
Saturday:	9 am - 3 am	9 am - 3 am

ENDORSEMENTS: Entertainment

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
4/15/2016

****RESCIND**

Notice is hereby given that:
License Number: ABRA-099323 **License Class/Type: C Restaurant**
Applicant: 201 Upshur Hospitality, LLC
Trade Name: Slash Run
ANC: 4C10

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

201 UPSHUR 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

Days	Hours of Operation	Hours of Sales/Service
Sunday:	9 am - 3 am	9 am -2 am
Monday:	9 am - 3 am	9 am - 2 am
Tuesday:	9 am - 3 am	9 am - 2 am
Wednesday:	9 am - 3 am	9 am - 2 am
Thursday:	9 am - 3 am	9 am - 2 am
Friday:	9 am - 3 am	9 am - 3 am
Saturday:	9 am - 3 am	9 am - 3 am

ENDORSEMENTS:

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	July 22, 2016
Petition Date:	September 6, 2016
Hearing Date:	September 19, 2016
Protest Date:	November 16, 2016

License No.:	ABRA-103525
Licensee:	Saul Urban Host, LLC
Trade Name:	TBD
License Class:	Retailer's Class "C" Tavern
Address:	15 Dupont Circle, N.W.
Contact:	Erin Sharkey: (202) 686-7600

WARD 2 ANC 2B SMD 2B07

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 November 16, 2016 at 4:30pm.

NATURE OF OPERATION
New C Tavern with a Total Occupancy Load of 48 seats.

HOURS OF OPERATION
Sunday through Saturday 6:00 am – 9:00 pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 4:00 pm – 9:00 pm

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, SEPTEMBER 20, 2016
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD SIX

19331 ANC-6B **Application of Keith Moore**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1, to add a two-story rear addition to an existing one-family dwelling in the RF-1 Zone at premises 1625 A Street S.E. (Square 1086, Lot 60).

WARD ONE

19333 ANC-1B **Application of The Dirty Goose, LP**, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the 50% linear frontage limitation on eating and drinking establishment requirements of Subtitle K § 811.9(a), to permit a restaurant in the ARTS-2 Zone at premises 913 U Street N.W. (Square 360, Lot 39).

WARD FIVE

19334 ANC-5C **Appeal of Shaid Q. Qureshi**, pursuant to 11 DCMR §§ 3100 and 3101, from an April 19, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to revoke Certificate of Occupancy No. CO0901692, granted to permit a parking lot in the R-1-B District at premises 2200 Channing Street N.E. (Square 4255, Lot 28).

WARD SIX

THIS CASE WAS MOVED ADMINISTRATIVELY FROM THE PUBLIC HEARINGS OF JUNE 14, 2016 AND JUNE 28, 2016:

19275 ANC-6B **Appeal of ANC 6B**, pursuant to 11 DCMR §§ 3100 and 3101, from a February 5, 2016 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Certificate of Occupancy No. CO1601252, to permit general office space for counseling in the C-2-A District at premises 201 15th Street S.E. (Square 1060, Lot 47).

WARD SIX

THIS CASE WAS POSTPONED BY THE APPLICANT FROM THE PUBLIC HEARINGS OF JUNE 21, 2016 AND JULY 6, 2016:

19280 ANC-6E **Application of Martin Hardy**, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the lot occupancy requirements of Subtitle G § 304.1, the open court requirements of Subtitle G § 202.1, and the nonconforming structure requirements of Subtitle C § 202, to allow the conversion of an existing two-story, one-family dwelling into a three-story, four-unit apartment house in the MU-4 District at premises 1316 8th Street N.W. (Square 399, Lot 830).

WARD ONE

THIS APPLICATION WAS POSTPONED BY THE APPLICANT FROM THE PUBLIC HEARING OF JULY 12, 2016:

19298 ANC-1B **Application of Evergreen Properties II LLC**, pursuant to 11 DCMR Subtitle X, Chapters 9 and 10, for a special exception from the off-street parking requirements of Subtitle C § 703, and variances from the lot occupancy requirements of Subtitle E § 304.1, and the rear yard requirements of Subtitle E § 306.1, to construct a new three-story building and a new third-story rear addition to an existing building for residential uses in the RF-1 Zone at premises 1901, 1903, and 1905 9 1/2 Street N.W. (Square 361, Lots 124-126).

WARD FIVE

THIS APPLICATION WAS POSTPONED BY THE APPLICANT FROM THE PUBLIC HEARING OF JULY 12, 2016:

19302 ANC-5E **Application of Johann Lee**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions from the RF-use requirements of Subtitle U § 320.2, and the penthouse requirements of Subtitle C § 1504.1, to convert a two-story, one-family dwelling into a three-story, three-unit apartment house in the RF-1 Zone at premises 232 S Street N.E. (Square 3569, Lot 56).

WARD ONE

THIS APPLICATION WAS POSTPONED BY THE APPLICANT FROM THE PUBLIC HEARING OF SEPTEMBER 13, 2016:

18511C ANC-1A **Application of Alleyoop LLC**, pursuant to 11 DCMR Subtitle Y § 704, for a modification of significance of BZA Order No. 18511, now requesting special exception relief under the penthouse requirements of Subtitle C § 1500.4, and the alley lot height requirements of Subtitle E § 5102, and variance relief under the RF use requirements of Subtitle U § 600.1(b), to convert an existing auto repair shop into an office and two artist studios in the RF-1 Zone at premises 1018 Irving Street N.W. (Square 2851, Lots 219-221).

WARD SIX

THIS CASE WAS POSTPONED FROM JANUARY 12, 2016 TO FEBRUARY 23, 2016, CONTINUED TO APRIL 5, 2016, THEN POSTPONED FROM MAY 10, 2016, JUNE 21, 2016, AND JULY 12, 2016 AT THE APPLICANT'S REQUEST, AND IS VESTED UNDER THE 1958 ZONING REGULATIONS:

19153
ANC-6B

Application of Independence Avenue Investments LLC, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1, to commit parking spaces to a car-sharing service in the R-4 District at premises (rear) 1524 Independence Avenue, S.E. (Square 1072, Lots 2025-2032).

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 Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form**.* This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

**Note that party status is not permitted in Foreign Missions cases.*

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

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

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, SEPTEMBER 27, 2016
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD SIX

19320 ANC-6A **Application of St Albans Investments**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the NC-Use Group B requirements of Subtitle H § 1107.1(d), to establish an eating and drinking establishment in the NC-16 Zone at premises 814 H Street N.E. (Square 911, Lot 75).

WARD ONE

19325 ANC-1C **Application of PN Hoffman, Inc.**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the rear yard requirements of Subtitle G §§ 405.2 and 1201.1, the court requirements of Subtitle G § 202.1, or alternatively, the side yard requirements of Subtitle G § 406.1, to construct a new apartment building with ground-floor retail uses and underground parking in the MU-5 Zone at premises 1800 Columbia Road N.W. (Square 2551, Lot 78).

WARD TWO

19328 ANC-2B **Application of Jason Liebel**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse requirements of Subtitle C §§ 1500.9 and 1500.10, to convert a flat into a three-unit apartment house in the RA-8 Zone at premises 1739 17th Street N.W. (Square 178, Lot 82).

WARD SIX

19332 ANC-6E **Application of Brant Shalikashvili and Marleen Welsh**, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the lot occupancy requirements of Subtitle E § 304.1, to construct a single-car detached garage at the rear of the property in the RF-1 Zone at premises 446 N Street N.W. (Square 513, Lot 77).

WARD ONE

THIS APPLICATION HAS BEEN ACCEPTED AND SCHEDULED FOR HEARING UNDER THE 1958 ZONING REGULATIONS:

19343
ANC-1B

Application of GS U St LLC, pursuant to 11 DCMR § 3103.2, for variances from the public open space requirements under § 633, the rear yard requirements under § 636, the open court requirements under § 638, and the off-street parking requirements under § 2101.1, to permit the construction of an eight-story mixed-use building in the ARTS/CR District at premises 1355-1357 U Street N.W. (Square 236, Lots 64-65).

WARD SIX

THIS APPLICATION HAS BEEN POSTPONED FROM THE PUBLIC HEARING OF SEPTEMBER 13, 2016:

19323
ANC-6D

Application of Christopher D. French, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle F § 5201, from the lot occupancy requirements of Subtitle F § 304.1, and the rear yard requirements of Subtitle F § 305.1, and under Subtitle C § 703, from the vehicle parking requirements of Subtitle C § 704.1, to add a third-floor addition to an existing two-story, one-family dwelling in the RA-2 Zone at premises 929 5th Street S.E. (Square 824 Lot 31).

WARD SEVEN

THIS APPLICATION HAS BEEN CONTINUED FROM THE PUBLIC HEARING OF JULY 6, 2016, AND IS VESTED UNDER THE 1958 ZONING REGULATIONS:

19241
ANC-7C

Application of Ira L. Hartwell, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, and the rear yard setback requirements under § 404.1, to construct a sunroom and expand the porch of an existing one-family dwelling in the R-2 District at premises 852 50th Place N.E. (Square 5177W, Lot 19).

WARD SEVEN

THIS APPLICATION HAS BEEN POSTPONED FROM THE PUBLIC HEARING OF JULY 19, 2016:

19254 **Application of 1612 Seventh Street NW LP**, pursuant to 11 DCMR Subtitle
ANC-6E X, Chapters 9 and 10, for a special exception from the historic structure parking requirements of Subtitle C § 704.2, and variances from the lot occupancy requirements of Subtitle G § 304.1, and the rear yard requirements of Subtitle G § 305, to allow the rehabilitation of, and addition to, a contributing historic structure for conversion to a mixed-use building with first and second floor retail uses, and eight residential units in the MU-4 Zone at premises 1612-1616 7th Street N.W. (Square 420, Lot 38).

WARD FIVE

THIS APPLICATION HAS BEEN POSTPONED FROM THE PUBLIC HEARING OF JULY 19, 2016:

19277 **Application of Orpel Tucker (Sanders)**, pursuant to 11 DCMR Subtitle X,
ANC-5B Chapter 9, for special exceptions from the off-street parking requirements of Subtitle C § 703, and the daytime care requirements of Subtitle U § 203.1(g), to operate a child development center for 30 children and 14 staff in the R-1-B Zone at premises 3302 18th Street N.E. (Square 4143, Lot 800).

WARD ONE

THIS APPLICATION HAS BEEN POSTPONED FROM THE PUBLIC HEARING OF JULY 19, 2016:

19278 **Application of Orpel Tucker (Sanders)**, pursuant to 11 DCMR Subtitle X,
ANC-1A Chapter 9, for special exceptions from the off-street parking requirements of Subtitle C § 703, and the daytime care requirements of Subtitle U § 203.1(g), to operate a child development center for 28 children and 14 staff in the RF-1 Zone at premises 424 Irving Street N.W. (Square 3050, Lot 138).

WARD ONE

THIS APPLICATION HAS BEEN POSTPONED FROM THE PUBLIC HEARING OF JULY 19, 2016:

19292 **Application of Orpel Tucker (Sanders)**, pursuant to 11 DCMR Subtitle X,
ANC-1A Chapter 9, for special exceptions from the off-street parking requirements of Subtitle C § 703, and the daytime care requirements of Subtitle U § 203.1(g), to operate a child development center for 28 children and 14 staff in the RF-1 Zone at premises 629 Columbia Road N.W. (Square 3052, Lot 150).

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 Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form**.* This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Radon Contractor Proficiency Requirements

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in Section 2(b) of the Radon Contractor Proficiency Act of 1992, effective March 13, 1993 (D.C. Law 9-183; D.C. Official Code § 28-4202 (2013 Repl. & 2016 Supp.)); the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2013 Repl. & 2016 Supp.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby amends Chapter 32 (Mold Licensure and Certification)) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

The final rulemaking implements the provisions of the Act by setting radon proficiency requirements for all professionals who perform radon screening, testing or remediation in the District of Columbia. The purpose of the Act and these regulations is to ensure a fundamental level of competence in the performance of radon-related activities. The rulemaking describes the criteria by which the Department may recognize the certification of an independent body as the basis to perform radon services granted by the District. The Department will recognize certification from the American Association of Radon Scientists and Technologists – National Radon Proficiency Program (AARST-NRPP) or the National Radon Safety Board, or their successor organizations based on these criteria.

The Department published a notice of Proposed Rulemaking in the *D.C. Register* on February 26, 2016 at 63 DCR 002251. The Department did not receive any comments on the proposed rulemaking and made no changes to the Proposed Rulemaking. This rulemaking was submitted to the Council of the District of Columbia (Council) for a review period of forty-five (45) days. The Proposed Resolution of Approval for the Notice of Final Rulemaking was introduced in the Council on April 21, 2016, and was deemed passively approved on July 13, 2016.

The rules were adopted as final on April 1, 2016 and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 32, MOLD LICENSURE AND CERTIFICATION, of Title 20 DCMR, ENVIRONMENT, is amended as follows:

The title of Chapter 32 is amended to read as follows:

CHAPTER 32 MOLD AND RADON LICENSURE AND CERTIFICATION

A new Section 3250 is added to read as follows:

3250 PROFICIENCY REQUIREMENTS FOR RADON PROFESSIONALS

3250.1 No person or company shall conduct or offer to conduct radon screening, testing or mitigation in the District for a fee unless that person is currently certified as proficient by the American Association of Radon Scientists and Technologists, Inc. - National Radon Proficiency Program (AARST-NRPP) or the National Radon Safety Board (NRSB), or their successor organizations, or in the case of a company, employs at least one person who is certified by the AARTS-NRPP, NRSB, or their successor organizations.

3250.2 No person or company shall use the name or title of "professional," "certified," or any other term that communicates a level of expertise in radon screening, testing or remediation, unless that person is certified as proficient under § 3250.1, or in the case of a company, employs at least one person who is certified as proficient under § 3250.1.

3250.3 All persons using such names or titles as referenced in § 3250.2 or conducting such activities as listed in § 3350.1 shall provide to the Department their name and AARST-NRPP or NRSB issued certification or identification number upon request.

3250.4 All companies using such names or titles as referenced in § 3250.2 or conducting such activities as listed in § 3250.1 shall provide to the Department the name and AARST-NRPP or NRSB issued certification or identification number of each of its employees that perform the activities listed under § 3250.2 upon request.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Paint Stewardship Program

The Director of the Department of Energy and Environment (DOEE or Department), in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2013 Repl.)); the Paint Stewardship Act of 2014, effective March 11, 2015 (D.C. Law 20-205; D.C. Official Code §§ 8-233.01 *et seq*. (2016 Supp.)); and Mayor's Order 2015-229, dated October 7, 2015, hereby gives notice of amendments to Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) by adopting a new Chapter 40 (Paint Stewardship) to establish the standards for the District's Paint Stewardship Program.

The primary purpose of the proposed regulations is to implement the Paint Stewardship Act of 2014, which creates a producer responsibility program for postconsumer paint management, by establishing requirements for submission of a paint stewardship plan, annual reporting, collection of postconsumer paint, and paint stewardship program fees.

The Department published a Notice of Proposed Rulemaking on January 29, 2016, at 63 DCR 1083. The comment period closed on February 29, 2016, and the Department considered all the comments received. A summary of comments and responses is available online at http://doee.dc.gov. In response to comments, the Department has made non-substantive revisions that clarify the original intent of the rules and reduce the administrative burden of the rules by removing the requirements to: 1) submit a five-year projected budget with the first paint stewardship plan, 2) submit an amended plan based on specific Department findings, and 3) include total capital costs in the annual report.

These rules were adopted as final on March 28, 2016, and will become effective upon publication of this notice in the *D.C. Register*.

Title 20 DCMR, ENVIRONMENT, is amended by adding a new Chapter 40 as follows:

CHAPTER 40 PAINT STEWARDSHIP

4000 PURPOSE

4000.1 The purpose of this chapter is to implement the Paint Stewardship Act of 2014 (D.C. Law 20-205; D.C. Official Code §§ 8-233.01 *et seq*.) to create a producer responsibility program for paint in the District.

4001 PRODUCER PAINT STEWARDSHIP PLAN

4001.1 By April 1, 2016, a producer of paint sold at retail in the District, or a representative organization in which the producer is a member, shall submit a paint stewardship plan for the establishment of a paint stewardship program to the Department for approval that, in addition to the requirements outlined in the Act, includes:

(a) A program budget; and

(b) A policy regarding financial reserves.

4001.2 A producer of paint sold at retail in the District, or a representative organization in which the producer is a member, shall submit a modified paint stewardship plan if, at any time:

(a) The producer or representative organization makes a change to the paint stewardship assessment that was approved by the Department as part of the paint stewardship plan;

(b) The producer or representative organization makes a change to the types of postconsumer paint that will be collected by the stewardship organization under the paint stewardship plan; or

(c) The producer or representative organization makes a change to the goals that were approved by the Department as part of the paint stewardship plan.

4002 ANNUAL REPORTING REQUIREMENTS

4002.1 On or before October 1, 2017, and annually thereafter, a producer or representative organization shall submit to the Department a paint stewardship program report for the previous calendar year that, in addition to the requirements outlined in the Act, includes:

(a) A description of how each consumer of paint in the District had an opportunity to recycle and properly manage their postconsumer paint, including the number, location, and type of collection points located in the District;

(b) A description of best management practices followed by collection points that shall include any training that the manufacturer or stewardship

organization provided or required of collection points to ensure proper collection and management of postconsumer paint;

(c) A description of the disposition of postconsumer paint collected, by type and by estimated volume, including:

(1) The name and corporate address of each processor that manages the postconsumer paint under the program; and

(2) The name and corporate address of each transporter of postconsumer paint that is collected under the program;

(d) A description of the total cost of implementing the program that includes the following:

(1) The assessment amount per container;

(2) The total volume of paint sold in the District during the preceding reporting period;

(3) The total cost of the program;

(4) The cost per gallon of the program during the prior year;

(5) The total cost of educational information provided to consumers and as a percentage of the total program cost;

(6) The total cost of transportation and processing and as a percentage of the total program cost;

(7) The total cost of program administration and as a percentage of the total program cost; and

(8) The total amount of surplus funding, if any;

(e) A description of the methodology used to calculate the volume of paint sold and collected in §§ 4002.1(d)(2) and (d)(4), indicating any changes from prior years in the methodology;

(f) An operating budget for the program for the next calendar year;

(g) A description of the coordination of the paint stewardship program with existing local household hazardous waste collection programs; and

(h) A description of qualitative goals and activities based on the paint stewardship plan achievement during the reporting period, any

adjustments to goals stated in the approved paint stewardship plan that may be made for the upcoming reporting period and accompanying rationale for those changes.

4003 COLLECTION OF POSTCONSUMER PAINT

4003.1 Postconsumer paint may be accepted at any collection location if all of the following conditions are met:

(a) The collection location operates pursuant to a contract with a producer or representative organization that has submitted a paint stewardship plan approved by the Department, pursuant to the Act;

(b) The collection location manages the postconsumer paint in accordance with District and federal laws and regulations;

(c) Oil-based paint received at the collection location is non-RCRA hazardous waste, or otherwise exempt, or is not otherwise regulated under District and federal laws and regulations and received from either:

(1) A household; or

(2) A conditionally exempt small quantity generator; and

(d) Oil-based paint received at the collection location is in liquid form and in its original packaging, or is in a closed container that is properly labeled.

4004 ENFORCEMENT

4004.1 Violation of any of the requirements of this chapter or the Paint Stewardship Act of 2014 (D.C. Law 20-205; D.C. Official Code §§ 8-233.01 *et seq*.), shall subject a person to the penalties set forth in this section.

4004.2 The Department may enforce a violation of this chapter by issuing one or more of the following:

(a) Notice of violation; or

(b) Notice of infraction.

4004.3 The Department may issue a notice of infraction without first issuing a notice of violation or threatened violation.

4004.4 Sanctions, including civil fines and penalties, may be imposed pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq*.).

4004.5 The Department may also initiate a civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, preliminary injunction, or other relief necessary for enforcement of this chapter.

4004.6 Each instance or day of a violation of each provision of this chapter shall be a separate violation.

4005 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

4005.1 A person adversely affected by an enforcement action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 *et seq.*), or OAH's successor.

4005.2 The appeal to OAH shall be filed in writing within fifteen (15) calendar days of service, or twenty (20) calendar days if service is made by United States mail.

4005.3 The Department may toll a period for filing an administrative appeal with OAH if it does so explicitly in writing before the period expires.

4005.4 OAH shall:

(a) Resolve a notice of infraction by:

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

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

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

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

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

4005.5 The filing of an administrative appeal shall not in itself stay enforcement of an action, except that a person may request a stay according to the rules of OAH.

4005.6 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:

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

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

4005.7 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

4005.8 Nothing in this chapter shall be interpreted to:

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

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

4006 FEES

4006.1 On or before December 31, 2016, a producer or representative organization shall pay an initial fee of fifty thousand dollars ($50,000) for submission of a proposed paint stewardship plan.

4006.2 On or before December 31, 2017 and annually thereafter, a producer or representative organization implementing a paint stewardship plan shall pay a fee of twenty six thousand dollars ($26,000).

4006.3 Beginning in 2019, fees charged by the Department may be adjusted annually based on the change in the Consumer Price Index value published by the U.S. Department of Labor for all-urban consumers.

4099 DEFINITIONS

4099.1 When used in this chapter, the following terms shall have the meanings ascribed (some of the definitions were codified in the Act, indicated as [Statutory], and are reprinted below for regulatory efficiency):

Act - the Paint Stewardship Act of 2014, effective March 11, 2015 (D.C. Law 20-205; D.C. Official Code §§ 8-233.01 *et seq*.).

Conditionally Exempt Small Quantity Generator – a generator defined by the RCRA regulations in 40 C.F.R. Part 261, promulgated by the United States Environmental Protection Agency.

Distributor - a company that has a contractual relationship with one or more producers to market and sell paint to retailers in the District. [Statutory]

Environmentally sound management practices - procedures for the collection, storage, transportation, reuse, recycling, and disposal of paint, to be implemented by the producer, representative organization, or their contracted partners to ensure compliance with applicable federal and District laws and regulations and to protect human health and the environment. These procedures shall address adequate record keeping, tracking, and documenting the fate of materials, and adequate environmental liability coverage for professional services and for the contractors working on behalf of the producer or representative organization. [Statutory]

Household – a residential dwelling, including single and multiple residences.

Paint - interior and exterior architectural coatings sold in containers of five (5) gallons or less and does not mean industrial, original equipment, or specialty coatings. [Statutory]

Paint stewardship assessment - the amount added to the purchase price of paint sold in the District necessary to cover the paint stewardship program's cost of collecting, transporting, and processing the postconsumer paint District-wide. [Statutory]

Person – an individual, firm, partnership, company, corporation, nonprofit corporation, trust, association, organization, or any other private or governmental entity.

Postconsumer paint - paint not used and no longer wanted by a purchaser. [Statutory]

Producer - a manufacturer of paint who sells, offers for sale, or distributes that paint in the District under the producer's own name or brand. The term "producer" does not include a retailer that adds tint, colorant, or other additives to paint at the retail location. [Statutory]

RCRA - Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq*.

Recycling - a process by which discarded products, components, and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity but does not include energy recovery or energy generation by means of incineration or combustion of discarded products, components, and by-products with or without other waste products. [Statutory]

Representative organization - a nonprofit organization created by producers to implement a paint stewardship plan required by D.C. Official Code § 8-233.02. [Statutory]

Retailer - a person or entity that offers paint for sale at retail in the District. [Statutory]

Reuse - the return of a product into the economic stream for use in the same kind of application as originally intended, without a change in the product's identity. [Statutory]

Sell or sale - any transfer of title for consideration including remote sales conducted through sales outlets, catalogs, or electronic means. [Statutory]

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Stormwater Fee Discount Program

The Director of the Department of Energy and Environment (DOEE or Department) pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006, as amended (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2013 Repl.)); the Comprehensive Stormwater Management Enhancement Amendment Act of 2008, effective March 25, 2009, as amended (D.C. Law 17-371; D.C. Official Code §§ 8-152.01 *et seq.* (2013 Repl.)); the Water Pollution Control Act of 1984, effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.* (2013 Repl.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby adopts the following amendments to Chapter 5 (Water Quality and Pollution) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

The final rulemaking aligns the Department's administrative enrollment process with DC Water's existing billing practices by commencing a discount when DC Water posts it to the customer's account; provides a greater discount for green infrastructure that receives runoff from compacted cover; and allows greater flexibility in calculating discounts for rainwater harvesting practices.

The Department published a Notice of Proposed Rulemaking in the *D.C. Register* on January 29, 2016 at 63 DCR 001092. The Department did not receive any comments on the proposed rulemaking.

The rules were adopted as final on March 1, 2016 and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 5, WATER QUALITY AND POLLUTION, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:

Section 558, STORMWATER FEE DISCOUNT PROGRAM: ELIGIBILITY, is amended as follows:

Subsection 558.4 is amended to read as follows:

558.4 The Department shall calculate the discount to be applied to the customer's DC Water bill:

(a) As a recurring subtraction from the stormwater fee billed pursuant to § 556;

(b) Beginning no later than the billing period that follows DC Water's processing of the discount; and

(c) For the stormwater fee discount period that this chapter sets.

Section 559, STORMWATER FEE DISCOUNT PROGRAM: DISCOUNT CALCULATION, is amended as follows:

Subsection 559.2 is amended to read as follows:

559.2 The stormwater fee discount shall be calculated as follows:

(a) Determine, in gallons, the maximum volume of stormwater runoff retained by the eligible Best Management Practice (BMP) during a one and two-tenths-inch (1.2 in.) rainfall event;

(b) Divide the step "(a)" result by seven hundred ten and seventy-five hundredths gallons (710.75 gal.) per Equivalent Residential Unit (ERU) (the number of gallons of stormwater runoff per ERU that would be generated by a one and two-tenths-inch (1.2 in.) rainfall event);

(c) Multiply the step "(b)" result by the maximum allowable discount percentage; and

(d) Multiply the step "(c)" result by the stormwater fee per ERU specified in § 556;

(e) Except that, for a rain barrel, the Department may allow the calculation method in § 559.6(e) to be used.

Subsection 559.6 is amended to read as follows:

559.6 The Department shall calculate the discount eligible for use of the Simplified Application as follows:

(a) Determine the total area that the BMP(s) manages, in square feet, after taking into consideration the runoff coefficients of this chapter for each land cover type;

(b) Divide the step "(a)" result by the original total area of impervious surface, and express the quotient as a percentage;

(c) Multiply the step "(b)" result by the maximum allowable discount;

(d) Multiply the percentage result from step "(c)" by the stormwater fee per ERU specified in § 556; and

(e) For rainwater harvesting, including a rain barrel and a cistern, add:

(1) The product of multiplying the stormwater fee by 0.13 ERU per rain barrel installed; or

(2) The discount calculated using the methodology of § 559.2.

DISTRICT OF COLUMBIA
HEALTH BENEFIT EXCHANGE AUTHORITY

NOTICE OF FINAL RULEMAKING

The Executive Board of the District of Columbia Health Benefit Exchange Authority ("Authority"), pursuant to the authority set forth in Section 18 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code §§ 31-3171.01 *et seq*. (2013 Repl. & 2016 Supp.)) ("Act"), hereby gives notice of the adoption of the following rule, which will establish a new Subtitle D (Health Benefit Exchange) of Title 26 (Insurance, Securities, and Banking) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking is related to the assessment pursuant to the Health Benefit Exchange Authority Financial Sustainability Amendment Act of 2015, effective June 23, 2015 (D.C. Law 21-0013; 62 DCR 5946 (May 15, 2015)). This rulemaking clarifies entities subject to the health carrier assessment and establishes a process by which an assessed entity may contest an assessment.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on December 18, 2015 at 62 DCR 016124. No comments were received and no substantive changes were made to the proposed rulemaking. Pursuant to Section 18 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code §§ 31-3171.01 *et seq*. (2013 Repl. & 2016 Supp.)), this rulemaking was submitted to the Council of the District of Columbia (Council) for a review period of thirty (30) days. The Proposed Resolution of Approval for the Notice of Proposed Rulemaking was introduced on May 6, 2016, and was deemed passively approved on June 30, 2016.

These rules were adopted as final on July 12, 2016 and will become effective upon publication of this notice in the *D.C. Register.*

A new Title 26-D DCMR, HEALTH BENEFIT EXCHANGE, is added as follows:

A new Chapter 1, HEALTH CARRIER ASSESSMENT, is added to read as follows:

CHAPTER 1 HEALTH CARRIER ASSESSMENT

110 HEALTH CARRIER ASSESSMENT GENERAL PROVISIONS

110.1 Pursuant to Section 4(f) of the Act (D.C. Official Code § 31-3171.03(f)), the Health Benefit Exchange Authority (HBX) shall annually assess each health carrier defined in Section 2(6) of the Act (D.C. Official Code § 31-3171.01(6)).

110.2 For purposes of this chapter and under D.C. Official Code § 31-3171.01(6), an accident and sickness insurance company includes companies offering certain insurance products, including but not limited to:

(a) Major medical; and

(b) Excepted benefits as set forth in 45 C.F.R. § 146.145 and 45 C.F.R. § 148.220 unless otherwise specified in Subsection 110.3.

110.3 For purposes of this chapter and under D.C. Official Code § 31-3171.01(3A), health insurance carrier risks do not include each of the following:

(a) Coverage for on-site medical clinics;

(b) Coverage issued as a supplement to liability insurance;

(c) Credit-only insurance (including mortgage insurance);

(d) Federal Employees Dental and Vision Insurance Program, as set forth at 5 C.F.R. §§ 894.101 *et seq.*;

(e) Federal Employees Health Benefits Program, as set forth at 5 C.F.R §§ 890.101 *et seq.*;

(f) Fraternal benefit societies, as set forth in Section 1202 of the Fraternal Benefit Societies Act of 1998, effective April 29, 1998 (D.C. Law 12-86; D.C. Official Code § 31-5301);

(g) Liability insurance, including general liability and auto liability insurance;

(h) Medicare Part D, as set forth at 42 U.S.C. §§ 1395w-101 *et seq.*;

(i) Stop-loss insurance; and

(j) Workers' compensation or similar insurance.

120 HEALTH CARRIER ASSESSMENT ADMINISTRATIVE APPEAL

120.1 An entity assessed pursuant to D.C. Official Code § 31-3171.03(f) may file a request for reconsideration under this section to contest the assessment in the Notice of Assessment. An entity may request reconsideration of its classification under section 2(6) of the Act (D.C. Official Code § 31-3171.01(6)), a processing error, the incorrect application of relevant methodology, mathematical error with respect to the assessment, or the amount of the assessment.

120.2 An entity must file a request for reconsideration within forty-five (45) calendar days after the date of the Notice of Assessment. Submission of a request for reconsideration does not toll the due date for submitting payment of the assessment.

120.3 A contesting entity must specify the basis for the reconsideration in the request, as specified in Subsection 120.1. Such entity may provide, only at the time the reconsideration is requested or to rebut additional information provided to the entity by the Executive Director of the Authority or his or her designee consistent with Subsection 120.4, additional documentation supporting the request for reconsideration by the Authority. An entity may not submit documentation or data that was previously submitted to the Department of Insurance, Securities and Banking, but may provide evidence of timely submission.

120.4 The Executive Director of the Authority or his or her designee will review evidence and findings upon which the assessment was based and any additional documentation provided by the contesting entity. The Executive Director or designee may review any additional information believed to be relevant to the request for reconsideration. The Executive Director or designee will provide any additional information used in the review to the contesting entity and provide such entity with a reasonable time to review and rebut the additional information. The contesting entity must prove its case by a preponderance of the evidence with respect to the issues of fact.

120.5 The Executive Director or designee will inform the contesting entity of their decision in writing within forty-five (45) calendar days of receipt of the request for reconsideration. The Executive Director's or designee's decision on the request for reconsideration is final and binding. Nothing in this section limits a contesting entity's right to judicial review.

A new Chapter 99, DEFINITIONS, is added to read as follows:

9900 DEFINITIONS

9900.1 When used in this chapter, the following terms shall have the meanings ascribed:

"Authority" means the District of Columbia Health Benefit Exchange Authority established pursuant to Section 3 of the Act (D.C. Official Code § 31-3171.02).

"Health carrier" has the same meaning as provided in Section 2(6) of the Act (D.C. Official Code § 31-3171.01(6)).

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 2016 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 amendments to Section 1928, entitled "Physical Therapy 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 for physical therapy 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. Physical therapy services treat physical dysfunctions or reduce the degree of pain associated with movement to prevent disability, promote mobility, maintain health and maximize independence.

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 Fiscal Year 2015 Budget Support Act of 2015, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2014 Repl. & 2016 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

The rules for Physical Therapy Services (29 DCMR § 1928), have undergone three sets of emergency and proposed rulemakings since August 2015. The Notice of Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on August 14, 2015, at 62 DCR 011308, amended the rules by (1) including in the description of physical therapy services that they prevent regression of a person's functional abilities; (2) describing the requirements for measureable and functional outcomes; (3) requiring and describing the role of the provider at the person's ISP and other support team meetings; (4) clarifying that documentation for adaptive equipment must be completed within the timeframes required by the person's insurance for this to be a reimbursable activity; (5) describing requirements for progress notes; (6) clarifying requirements for routine assessment of adaptive equipment; (7) requiring that the provider must be selected by the person, and/ or his or substitute decision maker; (8) modifying rates to reflect increased costs of providing service; and (9) adding physical therapy assistants who work under the direct supervision of a licensed physical therapist to the list of providers for physical therapy services.

DHCF received one comment in response to the first emergency and proposed rules and promulgated the Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on January 1, 2016, at 63 DCR 000106, and further amended the rules to include physician's assistants and nurse practitioners as authorized medical providers to make referrals to physical therapists and to renumber the last six provisions to correct a numbering error.

DHCF did not receive comments to the second emergency and proposed rulemaking but promulgated the Notice of Third Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on April 15, 2016, at 63 DCR 005801, to continue the changes reflected in the first two notices of emergency and proposed rulemaking described above and to increase the reimbursement rate in Subsection 1928.17 to correspond with Waiver Year 4 rates. The third emergency rulemaking was adopted on April 5, 2016, became effective immediately, and shall remain in effect until August 3, 2016, or until superseded by publication of this Notice of Final Rulemaking in the *D.C. Register*. DHCF received no comments to the third emergency and proposed rulemaking and no changes have been made.

The Director of DHCF adopted these rules as final on July 7, 2016, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 1928, PHYSICAL THERAPY SERVICES, is deleted in its entirety and amended to read as follows:

1928 PHYSICAL THERAPY SERVICES

1928.1 This section establishes the conditions for Medicaid providers enumerated in § 1928.10 ("Medicaid Providers") and physical therapy services professionals enumerated in § 1928.8 ("professionals") to provide physical therapy services to persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).

1928.2 Physical therapy services are services that are designed to treat physical dysfunctions or reduce the degree of pain associated with movement, prevent disability and regression of functional abilities, promote mobility, maintain health and maximize independence. These services are delivered in the person's home or day service setting.

1928.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) before providing, or allowing any professional to provide physical therapy services. In its

request for prior authorization, the Medicaid provider shall document the following:

(a) The ID/DD Waiver participant's need for physical therapy services as demonstrated by a physician's, physician's assistant's, or nurse practitioner's order; and

(b) The name of the professional who will provide the physical therapy services.

1928.4 In order to be eligible for Medicaid reimbursement, each physical therapy professional shall conduct an assessment of physical therapy needs within the first four (4) hours of service delivery, and develop a therapy plan to provide services.

1928.5 In order to be eligible for Medicaid reimbursement, the therapy plan shall include therapeutic techniques, training goals for the person's caregiver, and a schedule for ongoing services. The therapy plan shall include the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP and a schedule of approved physical therapy services to be provided, and shall be submitted by the Medicaid provider to DDS before services are delivered.

1928.6 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person's Individual Support Plan (ISP) and Plan of Care:

(a) The date, amount, and duration of physical therapy services provided;

(b) The scope of the physical therapy services provided; and

(c) The name of the professional who provided the physical therapy services.

1928.7 Medicaid reimbursable physical therapy services shall consist of the following activities:

(a) Consulting with the person, his or her family, caregivers, and support team to develop the therapy plan;

(b) Implementing therapies described under the therapy plan;

(c) Recording progress notes on each visit and submitting quarterly reports. Progress notes shall contain the following:

(1) Progress in meeting each goal in the ISP;

(2) Any unusual health or behavioral events or change in status;

(3) The start and end time of any services received by the person; and

(4) Any matter requiring follow-up on the part of the service provider or DDS.

(d) Routinely assess (at least annually and more frequently as needed) the appropriateness and quality of adaptive equipment to ensure it addresses the person's needs;

(e) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines and Medicare and Medicaid guidelines, including required timelines for submission; and

(f) Conducting periodic examinations and modified treatments for the person, as needed.

1928.8 Medicaid reimbursable physical therapy services shall be provided by a licensed physical therapist or a Physical Therapy Assistant working under the direct supervision of a licensed physical therapist.

1928.9 Physical therapy service providers, without regard to their employer of record, shall be selected by and be acceptable to the person receiving services, his or her guardian, or legal representative.

1928.10 In order to be eligible for Medicaid reimbursement, a physical therapist shall be employed by the following providers:

(a) An ID/DD Waiver Provider enrolled by DDS; and

(b) A Home Health Agency as defined in Section 1999 of Title 29 DCMR.

1928.11 Each Medicaid provider shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1928.12 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:

(a) The physician's, physician's assistant's, or nurse practitioner's order;

(b) A copy of the physical therapy assessment and therapy plan in accordance with the requirements of Subsections 1928.4 and 1928.5; and

(c) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 DCMR.

1928.13 Each Medicaid provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.

1928.14 In order to be eligible for Medicaid reimbursement, each individual providing physical therapy services shall participate in ISP and Support Team meetings to provide consultative services and recommendations specific to the expert content with a focus on how the person is doing in achieving the functional goals that are important to him or her.

1928.15 If the person enrolled in the ID/DD Waiver is between the ages of eighteen (18) and twenty-one (21) years, the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefits under the Medicaid State Plan are fully utilized and the ID/DD Waiver service is neither replacing nor duplicating EPSDT services.

1928.16 Medicaid reimbursable physical therapy services shall be limited to four (4) hours per day and one hundred (100) hours per year. Requests for additional hours may be approved when accompanied by a physician's order documenting the need for additional physical therapy services and approved by a DDS staff member designated to provide clinical oversight.

1928.17 The Medicaid reimbursement rate for physical therapy services shall be one hundred dollars and thirty-two cents ($100.32) per hour. The billable unit of service shall be fifteen (15) minutes.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 2016 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 amendments to Section 1931, entitled "Skilled Nursing 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 change the reimbursement rate for skilled nursing services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver). Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities.

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. An amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2014 Repl. & 2016 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 15, 2016, at 63 DCR 005806, which amended the rule by recognizing that reimbursement rates for skilled nursing and extended skilled nursing services are based on whether the services are being delivered by a registered nurse or a licensed practical nurse under the supervision of a registered nurse, by increasing the reimbursement rates so that they will be consistent with rate increases proposed for the Medicaid State Plan, and by ensuring consistency through tying subsequent increases in the reimbursement rates in the Medicaid State Plan for skilled nursing services to skilled nursing and extended skilled nursing services delivered under the ID/DD Waiver. The emergency rulemaking was adopted on April 5, 2016, became effective immediately, and shall remain in effect until August 3, 2016, or unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. DHCF received no comments to the emergency and proposed rulemaking and no changes have been made.

The Director adopted these rules as final on July 7, 2016, and they shall be 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:

Subsections 1931.21, 1931.22, 1931.23 and 1931.24 of Section 1931, SKILLED NURSING SERVICES, are amended, and a new Subsection 1931.26 is added, to read as follows:

1931.21 Upon exhaustion of the hours available for skilled nursing services under the Medicaid State Plan, Medicaid reimbursement may be available for one-to-one extended skilled nursing services for twenty-four (24) hours a day, for up to three hundred and sixty-five (365) days, with prior approval from DDS, for persons on a ventilator or requiring frequent tracheal suctioning.

1931.22 Prior approval for one-to-one extended skilled nursing services shall be obtained from the Medicaid Waiver Supervisor or designated DDS staff person after submission of documentation demonstrating the need for the extended services.

1931.23 Medicaid reimbursement governing the provision of skilled nursing and extended skilled nursing services shall be based on whether the Waiver services are being delivered by an RN or an LPN under the supervision of an RN.

1931.24 The Medicaid reimbursement rate for skilled nursing services and extended skilled nursing services shall be fifteen dollars ($15.00) for each fifteen (15) minute unit of service for services provided by an RN, and twelve dollars and fifty cents ($12.50) for each fifteen (15) minute unit of service provided by an LPN. The Medicaid reimbursement rate for an initial assessment is a flat rate of one hundred and twenty dollars ($120.00). The initial assessment for skilled nursing services shall be used for new admissions and any significant health condition changes that may warrant changes in a person's supports and services. The Medicaid reimbursement rate for quarterly reassessments and supervisory visits shall be the RN rate for each fifteen (15) minute unit of service not to exceed a total of eight (8) units of service per reassessment or supervisory visit.

…

1931.26 Any future increases in the Medicaid reimbursement rate for skilled nursing services under the Medicaid State Plan, listed in Title 29 (Public Welfare) of the DCMR, shall be applied equally to skilled nursing services and extended skilled nursing services through the Waiver.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2014 Repl. & 2016 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 amendments to Section 1933, entitled "Supported Employment Services - Individual And Small Group Services," of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing the reimbursement of supported employment services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and to establish conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia (Council) and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2012. The corresponding amendment to the ID/DD Waiver was approved by the Council through the Medicaid Assistance Program Emergency Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Official Code § 1-307.02(a)(8)(E) (2014 Repl. & 2016 Supp.)). CMS approved the amendment to the ID/DD Waiver effective September 24, 2015.

A Notice of Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on January 8, 2016, at 63 DCR 000441, amended the rules by: (1) modifying rates based on the approved methodology; (2) barring the payment of stipends to attendees of Supported Employment services by the provider; (3) barring the Supported Employment provider from concurrently being the person's employer and provider of Supported Employment services; (4) requiring that the purpose of small group supported employment is for the person to attain integrated employment; (5) clarifying which Medicaid reimbursable services occur in individual supported employment and which occur in small group supported employment; (6) requiring the use of Person-Centered Thinking and Discovery tools; (7) adding community mapping for the purposes of networking and job development, placement and mentoring to the list of Medicaid reimbursable intake and assessment activities; (8) including employment counseling on a person's employment rights as an employees with a disability to the list of Medicaid reimbursable intake and assessment activities; (9) clarifying the time that the assessment is due; (10) requiring that the assessment include information on natural supports; (11) adding to the list of Medicaid reimbursable job placement and development activities, including the addition of benefits counseling; (12) using people first respectful language; (13) adding to the list of Medicaid reimbursable job training and support activities including training on the use of

assistive technology; (14) clarifying when benefits counseling should occur; (15) requiring the provider to participate in a person's support team at the person's preference; (16) requiring that providers of Medicaid reimbursable supported employment services must also be enrolled as a provider for the Rehabilitation Services Administration by September 23, 2016, for current providers, or within one year of becoming a supported employment provider; and (17) adding sanctions for delays in providing required documents. DHCF did not receive comments to the first emergency and proposed rulemaking.

DHCF promulgated a Notice of Second Emergency and Proposed Rulemaking, which was published in the *D.C. Register* on April 22, 2016, at 63 DCR 006271, to (1) continue the changes reflected in the first notice of emergency and proposed rulemaking described above; (2) clarify that intake and assessment activities are limited to individual supported employment services; (3) fix a mathematical error in the computation of the hourly rate for paraprofessional services in Subsections 1933.42 to 1933.44; (4) modify the reimbursement rates in Subsections 1933.42 to 1933.45 to correspond with ID/DD Waiver Year 4 rates; and (5) clarify through the reimbursement rates in Subsections 1933.42 to 1933.45 that small group supported employment services are provided with a staffing ratio of one paraprofessional to not more than four (4) persons. The second emergency rulemaking was adopted on April 6, 2016, became effective immediately, and shall remain in effect until August 4, 2016, or until superseded by publication of this Notice of Final Rulemaking in the *D.C. Register*. DHCF did not receive comments to the second emergency and proposed rulemaking and no changes have been made.

The Director of DHCF adopted these rules as final on July 7, 2016, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 1933, SUPPORTED EMPLOYMENT SERVICES - INDIVIDUAL AND SMALL GROUP SERVICES, is deleted in its entirety and amended to read as follows:

1933 SUPPORTED EMPLOYMENT SERVICES - INDIVIDUAL AND SMALL GROUP SERVICES

1933.1 This section shall establish standards governing Medicaid eligibility for supported employment services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and shall establish conditions of participation for providers of supported employment services.

1933.2 Medicaid reimbursable supported employment services are designed to provide opportunities for persons with disabilities to obtain competitive work in integrated work settings, at minimum wage or higher and at a rate comparable to workers without disabilities performing the same tasks.

1933.3 Medicaid reimbursable supported employment services may be delivered individually or in a small group.

1933.4 Medicaid reimbursable small group supported employment services are services and training activities that are provided in regular business, industry, or community setting for groups of two (2) to eight (8) workers.

1933.5 Small group supported employment services is intended to enable the person to become part of a competitive, integrated work setting.

1933.6 In order to receive Medicaid reimbursement for supported employment services, the person receiving services shall:

(a) Be interested in obtaining full-time or part-time employment in an integrated work setting; and

(b) Demonstrate that a previous application for the District of Columbia Rehabilitation Services Administration (RSA) funded supported employment services was made, by the submission of a letter documenting either ineligibility for RSA services or the completion of RSA services with the recommendation for long-term employment support.

1933.7 Medicaid reimbursable supported employment services shall:

(a) Provide opportunities for persons with disabilities to achieve successful integrated employment consistent with the person's goals;

(b) Be recommended by the person's Support Team; and

(c) Be identified in the person's Individual Support Plan (ISP), Plan of Care, and Summary of Supports.

1933.8 The three (3) models of supported employment services eligible for Medicaid reimbursement are as follows:

(a) An Individual Job Support Model, which evaluates the needs of the person and places the person into an integrated competitive or customized work environment through a job discovery process;

(b) A Small Group Supported Employment Model, which utilizes training activities for groups of two (2) to eight (8) workers with disabilities to place persons in an integrated community based work setting; and

(c) An Entrepreneurial Model, which utilizes training techniques to develop on-going support for a small business that is owned and operated by the person.

1933.9 Medicaid reimbursable supported employment services for the entrepreneurial model shall include the following activities:

(a) Assisting the person to identify potential business opportunities;

(b) Assisting the person in the development of a business and launching a business;

(c) Identification of the supports that are necessary in order for the person to operate the business; and

(d) Ongoing assistance, counseling and guidance once the business has been launched.

1933.10 Medicaid reimbursable supported employment individual services shall consist of the following activities:

(a) Intake and assessment;

(b) Job placement and development;

(c) Job training and support; and

(d) Long-term follow-along services.

1933.11 Medicaid reimbursable supported employment small group services shall consist of the following activities:

(a) Job placement and development;

(b) Job training and support; and

(c) Long-term follow-along services.

1933.12 Intake and assessment services determine the interests, strengths, preferences, and skills of the person in order to ultimately obtain competitive employment and to further identify the necessary conditions for the person's successful participation in employment. The purpose of the intake and assessment is to facilitate and ensure a person's success in integrated competitive employment.

1933.13 Medicaid reimbursable intake and assessment activities include, but are not limited to, the following:

(a) Conducting a person-centered vocational and situational assessment based upon what is important to and for the person as reflected in his or her Person-Centered Thinking and Discovery tools and related ISP goals;

(b) Developing a person-centered employment plan that includes the person's job preferences and desires, through a discovery process and the development of a Positive Personal Profile and Job Search and Community Participation Plan;

(c) Assessing person-centered employment information, including the person's interest in doing different jobs, transportation to and from work, family support, and financial issues;

(d) Engaging in community mapping to identify available community supports and assisting the person to establish a network for job development, placement and mentoring;

(e) Counseling an interested person on the tasks necessary to start a business, including referral to resources and nonprofit associations that provide information specific to owning and operating a business; and

(f) Providing employment counseling, which includes, but is not limited to, the person's rights as an employee with a disability.

1933.14 After intake and completion of the assessments, each provider of Medicaid reimbursable supported employment services shall complete and deliver a comprehensive vocational assessment report prior to the end of the intake and assessment service authorization period, to the Department on Disability Services (DDS) Service Coordinator that includes the following information:

(a) Employment-related strengths and weaknesses of the person;

(b) Availability of family and community supports for the person;

(c) The assessor's concerns about the health, safety, and wellbeing of the person;

(d) Accommodations and supports that may be required for the person on the job; and

(e) If a specific job or entrepreneurial effort has been targeted:

(1) Individualized training needed by the person to acquire and maintain skills that are commensurate with the skills of other employees;

(2) Anticipated level of interventions that will be required for the person by the job coach;

(3) Type of integrated work environment in which the person can potentially succeed; and

(4) Activities and supports that are needed to improve the person's potential for employment, including whether the person has natural supports that may help him or her to be successful in the specific job or entrepreneurial effort.

1933.15 Medicaid reimbursable job placement and development includes activities to facilitate the person's ability to work in a setting that is consistent with their strengths, abilities, priorities, and interests, as well as the identification of potential employment options, as determined through the supported employment intake and assessment process.

1933.16 Job placement and development activities eligible for Medicaid reimbursement include, but are not limited to, the following:

(a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;

(b) Conducting workshops or other activities to instruct the person on appropriate work attire, work ethic, attitude, and expectations;

(c) Assisting the person with the completion of job applications;

(d) Assisting the person with job exploration and placement, including assessing opportunities for the person's advancement and growth, with a consideration for customized employment, as needed;

(e) Visiting employment sites, participating in informational interviews, attending employment networking events, and job shadowing;

(f) Making telephone calls and conducting face-to-face informational interviews with prospective employers, individuals in the person's network, utilizing the internet, social media, magazines, newspapers, and other publications as prospective employment leads;

(g) Collecting descriptive data regarding various types of employment opportunities, for purposes of job matching and customized employment;

(h) Negotiating employment terms with or on behalf of the person;

(i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start-up capital, and other tasks necessary to starting a small business;

(j) Benefits counseling; and

(k) Working with the person and employer to develop group placements.

1933.17 Job training and support activities are those activities designed to assist and support the person after he or she has obtained employment. The expectation is that the person's reliance upon job training and support activities will decline as a result of job skills training and support from supervisors and co-workers in the existing work setting to maintain employment.

1933.18 Medicaid reimbursable job training and support activities include, but are not limited to, the following:

(a) On-the-job training in work and work-related skills required to perform the job;

(b) Work site support that is intervention-oriented and designed to enhance work performance and support the development of appropriate workplace etiquette

(c) Supervision and monitoring of the person in the workplace;

(d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, attendance and punctuality, mobility training, re-training as job responsibilities change, and attaining new jobs; including, where appropriate, the use of assistive technology, *i.e.* calendar alerts, timers, alarm clocks and other devices that assist a person with meeting employment requirements;

(e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of job placement, integration into the work environment, and need for functional adaptation modifications at the job site;

(f) Ongoing benefits counseling, including but not limited to prior to the person reaching the end of his or her Trial Work period and/or attaining Substantive Gainful Activity (SGA);

(g) Consulting with other professionals and the person's family, as necessary;

(h) Providing support and training to the person's employer, co-workers, or supervisors so that they can provide workplace support, as necessary; and

(i) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and confidence so that the person is less reliant upon job training and support activities.

1933.19 Medicaid reimbursable long-term follow-along activities are stabilization services needed to support and maintain a person in an integrated competitive employment site or in their own business.

1933.20 Medicaid reimbursable long-term follow-along activities include, but are not limited to, the following:

(a) Periodic monitoring of job stability with a minimum of two (2) visits per month;

(b) Intervening to address issues that threaten job stability;

(c) Providing re-training, cross-training, and additional supports as needed, when job duties change;

(d) Facilitating integration and natural supports at the job site;

(e) Benefits counseling prior to and after the person reaching the end of his or her Trial Work period and/or attaining SGA, and to ensure a person maintains eligibility for benefits and that earnings are being properly reported;

(f) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and confidence so that the person is less reliant upon job training and support activities; and

(g) Facilitating job advancement, professional growth, and job mobility.

1933.21 Each provider of Medicaid reimbursable supported employment services shall be responsible for delivering ongoing supports to the person to promote job stability after they become employed. Once the person exhibits confidence to perform the job without a job coach present, the provider shall make a minimum of two (2) visits to the job site per month for the purpose of monitoring job stability.

1933.22 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with DDS and the employer to provide functional

adaptive modifications for each person to accomplish basic work related tasks at the work site.

1933.23 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with the employer to ensure that each person has an emergency back-up plan for job training and support.

1933.24 Each provider of Medicaid reimbursable supported employment services shall be a Waiver provider agency and shall comply with the following requirements:

(a) Participate in the person's support team meetings, at the person's preference;

(b) Be certified by the U.S. Department of Labor, if applicable;

(c) Comply with the requirements described under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR; and

(d) Enroll as a supported employment provider for the District of Columbia Rehabilitation Services Administration by September 23, 2016, for current providers, or, for new Medicaid waiver supported employment provider agencies, within one year after enrollment as a waiver provider.

1933.25 Each professional or paraprofessional providing Medicaid reimbursable supported employment services for a Waiver provider shall meet the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 DCMR.

1933.26 Professionals authorized to provide Medicaid reimbursable supported employment activities without supervision shall include the following:

(a) A Vocational Rehabilitation Counselor;

(b) An individual with a Master's degree and a minimum of one (1) year of experience working with persons with intellectual and developmental disabilities in supported employment;

(c) An individual with a bachelor's degree and two years of experience working with persons with intellectual and developmental disabilities in supported employment; or

(d) A Rehabilitation Specialist.

1933.27 Paraprofessionals shall be authorized to perform Medicaid reimbursable supported employment activities under the supervision of a professional.

Supervision is not intended to mean that the paraprofessional performs supported employment activities in the presence of the professional, but rather that the paraprofessional has a supervisor who meets the qualifications of a professional as set forth in § 1933.26.

1933.28 Paraprofessionals authorized to perform Medicaid reimbursable supported employment activities are as follows:

(a) A Job Coach; or

(b) An Employment Specialist.

1933.29 Services shall be authorized for Medicaid reimbursement in accordance with the following Waiver provider requirements:

(a) DDS provides a written service authorization before the commencement of services;

(b) The provider conducts a comprehensive vocational assessment, at minimum consisting of a Positive Personal Profile and Job Search and Community Participation Plan, if the person does not already have a comprehensive assessment. If the person does have a comprehensive vocational assessment, this must be reviewed to ensure that it is current and reflects what is important to and for the person, and updated as needed.

(c) The provider develops an individualized employment plan with training goals and techniques within the first two (2) hours of service delivery;

(d) The service name and provider delivering services are identified in the ISP and Plan of Care;

(e) The ISP, Plan of Care, and Summary of Supports and Services document the amount and frequency of services to be received; and

(f) Services shall not conflict with the service limitations described under Subsections 1933.31-1933.42; and

1933.30 If extended services are required, the provider shall submit a supported employment extension request. The request is a written justification that must be submitted to the Service Coordinator at least fifteen (15) calendar days before the exhaustion of Supported Employment hours. Failure to submit all required documents may result in a delay of the approval of services. Any failure on the part of the provider to submit required documents to approve service authorizations will result in sanctions by DDS up to and including a ban on authorizations for new service recipients. Service interruptions to the waiver participant due to the service provider's failure to submit required documentation will initiate referrals to a choice of a new service provider to ensure a continuation of services for the waiver participant.

1933.31 Supported employment services shall not qualify for Medicaid reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973, Section 110, enacted September 26, 1973 (Pub. L. 93-112; 29 U.S.C. §§ 720 *et seq.*), or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1401 (16) and (71), enacted October 30, 1990 (Pub. L. 91-230; 20 U.S.C. §§ 1400 *et seq.*), hereinafter referred to as the "Acts".

1933.32 Court-ordered vocational assessments authorizing intake and assessment services qualify for Medicaid reimbursement under the Waiver if services provided through programs funded under the Acts referenced in Subsection 1933.31 cannot be provided in the timeframe set forth in the Court's Order.

1933.33 Medicaid reimbursement is available for supported employment services that are provided either exclusively as a vocational service or in combination with individualized day supports, employment readiness, or day habilitation services if provided during different periods of time, including during the same day.

1933.34 Medicaid reimbursement is not available if supported employment services are provided in specialized facilities that are not part of the general workforce. Medicaid reimbursement is not available for volunteer work.

1933.35 Medicaid reimbursable supported employment services shall not include payment for supervision, training, support, adaptations, or equipment typically available to other workers without disabilities in similar positions.

1933.36 Medicaid reimbursable supported employment services shall be provided for a maximum of eight (8) hours per day, five (5) days per week.

1933.37 Medicaid reimbursement is not available for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(a) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment services program;

(b) Payments that are processed and paid to users of supported employment service programs; and

(c) Payment for vocational training that is not directly related to the person's success in the supported employment services program.

1933.38 Supported employment providers may not pay a stipend to a person for attendance or participation in activities at the day habilitation program.

1933.39 A supported employment provider may not concurrently employ a person and be his or her provider of Medicaid supported employment services.

1933.40 Medicaid reimbursement is not available for time spent in transportation to and from the employment program and shall not be included in the total amount of services provided per day. Time spent in transportation to and from the program for the purpose of training the person on the use of transportation services is Medicaid reimbursable and may be included in the number of hours of services provided per day for a period of time specified in the person's ISP and Plan of Care.

1933.41 Medicaid reimbursement shall only be available for adaptations, supervision and training for supported employment services provided at the work site in which persons without disabilities are employed. Medicaid reimbursement shall not be available for supervisory activities, which are rendered as a normal part of the business setting.

1933.42 Medicaid reimbursable intake and assessment activities shall be billed at the unit rate. This service shall not exceed three-hundred and twenty (320) units or eighty (80) hours annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for individual supported employment intake and assessment activities (a) shall be eleven dollars and ninety cents ($11.90) per unit or forty-seven dollars and sixty cents ($47.60) per hour if performed by a professional listed in Subsection 1933.26; and (b) shall be seven dollars and sixteen cents ($7.16) per unit or twenty-eight dollars and sixty-four cents ($28.64) per hour if performed by a paraprofessional listed in Section 1933.28 under the supervision of a professional.

1933.43 Medicaid reimbursable job preparation, developmental and placement activities shall be billed at the unit rate. This service shall not exceed nine hundred and sixty (960) units or two-hundred and forty (240) hours annually for both individual and group services, combined. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill for one (1) unit of service. The Medicaid reimbursement rate for individual supported employment job preparation, developmental and placement activities (a) shall be eleven dollars and ninety cents ($11.90) per unit, or forty-seven dollars and sixty cents ($47.60) per hour if performed by a professional listed in Section 1933.26; and (b) shall be seven dollars and sixteen cents ($7.16) per unit or twenty-eight dollars and sixty-four cents ($28.64) per hour if performed by a paraprofessional listed in Subsection 1933.28 under the supervision of a professional. For small group supported employment job preparation, developmental and placement activities, the Medicaid reimbursement rate shall be two dollars and eighty-six cents ($2.86) per unit or eleven dollars and forty-four cents ($11.44) per hour for each person in a group of two (2) to four (4) people enrolled in the Waiver.

1933.44 Medicaid reimbursable on the job training and support activities shall not exceed three hundred and sixty hours (360) or one thousand, four hundred and forty

(1,440) units per ISP year, unless additional hours are prior authorized by DDS. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for individual supported employment job training and support activities (a) shall be eleven dollars and ninety cents ($11.90) per unit, or forty-seven dollars and sixty cents ($47.60) per hour if performed by a professional listed in Subsection 1933.26; and (b) shall be seven dollars and sixteen cents per unit or twenty-eight dollars and sixty-four cents ($28.64) per hour if performed by a paraprofessional listed in Subsection 1933.28 under the supervision of a professional. For small group supported employment on the job training and support activities, the Medicaid reimbursement rate shall be two dollars and eighty-six cents ($2.86) per unit or eleven dollars and forty-four cents ($11.44) per hour for each person in a group of two (2) to four (4) people enrolled in the Waiver.

1933.45 Medicaid reimbursable long-term follow-along activities shall not exceed one thousand four hundred eight (1,408) units per ISP year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for both professionals and paraprofessionals for individual supported employment long-term follow-along activities shall be five dollars and seventy-eight cents ($5.78) per unit and twenty-three dollars and twelve cents ($23.12) per hour. For small group supported employment long-term follow-along activities, the Medicaid reimbursement rate shall be two dollars and eighty-six cents ($2.86) per unit or eleven dollars and forty-four cents ($11.44) per hour for each person in a group of two (2) to four (4) people enrolled in the Waiver.

Section 1999, DEFINITIONS, is amended by adding the following definitions:

Benefits Counseling – Analysis and advice provided to a person to help him/her understand the potential impact of employment on his/her public benefits, including but not limited to Supplemental Security Income, Medicaid, Social Security Disability Insurance, Medicare, and Food Stamps.

Competitive Integrated Employment - Full or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities.

Employment Specialist - An individual with a four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent; an individual with a four-year college degree and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or a high school graduate with three (3) years of experience in a supported employment program or equivalent.

Group Supported Employment - An integrated setting in competitive employment in which a group of two to four individuals or four to eight individuals are working at a particular work setting. The individuals may be disbursed throughout the company or among workers without disabilities.

Individual Supported Employment - A supported employment strategy in which a job coach places a person into competitive or customized employment through a job discovery process, provides training and support, and then gradually reduces time and assistance at the work site.

Integrated Work Setting - A work setting that provides a person enrolled in the Waiver with daily interactions with other employees without disabilities and/or the general public.

Job Coach – An individual with a four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent; an individual with a college degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or an individual with a high school degree and three (3) years of experience in a supported employment program, or equivalent.

Long-term follow along activities - Ongoing support services considered necessary to assure job retention.

Person centered – An approach that focuses on what is important to the individual based on his or her needs, goals, and abilities rather than using a general standard applicable to all people.

Rehabilitation Specialist - An individual with a Master's degree in Rehabilitation Counseling or a similar degree from an accredited university; an individual with a Master’s degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program or equivalent; or an individual with a Master’s degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Situational Assessment - A type of assessment that provides the person an opportunity to explore job tasks in work environments in the community to identify the type of employment that may be beneficial to the person and the support required by each person to succeed in his/her work environment. This assessment shall include observation of the person at the work site, identification of work site characteristics, training procedures, identification of supports needed for the person, and

recommendations and plans for future services, including the appropriateness of continuing supported employment.

Stipend – Nominal fee paid to a person for attendance and/ or participation in activities designed to achieve his or her employment goal, as identified in the person's ISP.

Substantial Gainful Activity (SGA) - Activities that the person is engaged in that result in a sum earnings greater than a fixed monthly amount, set by federal standards and determined by the nature of one's disability and the national wage index.

Vocational Assessment - An assessment designed to assist a person, their family and service providers with specific employment related data that will generate positive employment outcomes. The assessment should address the person's life, relationships, challenges, and perceptions as they relate to potential sources of community support and mentorship.

Vocational Rehabilitation Counselor - An individual with a Master's degree in Vocational Counseling, Vocational Rehabilitation Counseling or a similar degree from an accredited university; an individual with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program or equivalent; or an individual with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl.)), hereby gives notice of the adoption of the following amendments to Chapter 53 (Recertifications, Housing Quality Standard Inspections, and Family Moves) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments is to allow for biennial housing quality standard inspections.

The proposed rulemaking was published in the *D.C. Register* on May 20, 2016, at 63 DCR 7690. This rulemaking was adopted as final at the Board of Commissioners regular meeting on July 13, 2016, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 53, RECERTIFICATIONS, HOUSING QUALITY STANDARD INSPECTIONS, AND FAMILY MOVES, of Title 14 DCMR, HOUSING, is amended as follows:

Section 5300, INCOME CONSIDERATIONS AND DETERMINATION OF TOTAL TENANT PAYMENT, is amended to read as follows:

5300 INCOME CONSIDERATIONS AND DETERMINATION OF TOTAL TENANT PAYMENT

5300.1 Once a participant is receiving assistance, the following regularly scheduled events shall occur:

(a) Biennial recertification, in which income is calculated and total tenant payment is determined;

(b) Interim recertification when necessary; and

(c) Housing Quality Standard inspections.

Section 5325, GENERAL POLICIES FOR ANNUAL INSPECTIONS, is amended to read as follows:

5325 GENERAL POLICIES FOR ANNUAL INSPECTIONS

5325.1 Units that do not meet the criteria for biennial Housing Quality Standard inspections as set forth in § 5325.5 shall be subject to annual HQS inspections.

5325.2 If the tenant or Owner complains that the unit does not meet Housing Quality Standards, DCHA shall conduct a complaint inspection. DCHA shall only inspect

violations subject to the complaint from the Owner or Family, but if other violations are noticed during the inspection, DCHA shall also note those violations and require the Owner or Family to repair the violations.

5325.3 The Owner or Family shall be given time to correct the failed violations pursuant to the following guidelines:

(a) If the violation is listed in the emergency repair items list as set forth in § 5326, the Owner or Family shall be given twenty-four (24) hours to correct the violation after being notified; or

(b) For all other cited violations, the Owner or Family shall be given thirty (30) days to correct the violation.

5325.4 Minor violations that are listed as "Passed with Comments" on the inspection report shall not be re-inspected on site. Instead the tenant and Owner will be given a self-certification form, whereby they can certify that the violations have been repaired.

(a) If the Family does not repair the minor violations attributable to the Family, the Family will not be approved for a transfer voucher except in emergency circumstances as set forth in § 8500.1; or

(b) If the Owner does not repair the minor violations attributable to the Owner, the Owner will not be approved for an annual rent increase.

5325.5 Criteria for Biennial HQS Inspections:

(a) Units that receive DCHA Moderate Rehabilitation Program assistance, Single Room Occupancy Program assistance, Federal Project-based assistance, or Local Project-based assistance shall automatically qualify for biennial HQS inspections.

(b) DCHA may approve units that receive Federal Tenant-based assistance or Local Tenant-based assistance for biennial HQS inspections when the units have not had a final failed inspection due to a Family or Owner violation in the past two (2) years from the date of DCHA approval.

(c) DCHA will conduct a higher percentage of annual Quality Assurance HQS inspections on any unit qualified for biennial HQS inspections.

(d) DCHA has the right to reinstitute annual HQS inspections for units that were previously approved for biennial HQS inspections if there is a pattern of HQS non-compliance for either the Family or Owner.

(e) Approval of a unit for biennial HQS inspection does not waive the right of DCHA to inspect the unit at any time, or the rights of the Owner or Family to have DCHA conduct a complaint or compliance inspection.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Directors (Board) of the District of Columbia Water and Sewer Authority (DC Water), pursuant to the authority set forth in Sections 203(3) and (11) and 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code §§ 34-2202.03(3) and (11) and § 34-2202.16 (2012 Repl.)); Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a) (2012 Repl.)); and in accordance with Chapter 40 (Retail Ratemaking) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR), hereby gives notice that at its regularly scheduled meeting on July 7, 2016, took final action through adoption of Board Resolution #16-61 to amend Section 112 (Fees) of Chapter 1 (Water Supply); and Sections 4100 (Rates for Water Service) and 4101 (Rates for Sewer Service) of Chapter 41 (Retail Water and Sewer Rates) of Title 21 (Water and Sanitation) of the DCMR.

The purpose of the amendments is to amend the rates for Water and Sewer Services, Right-of-Way (ROW) Fee, Payment-in-Lieu of Taxes (PILOT) Fee, and Clean Rivers Impervious Surface Area Charge (CRIAC) effective for Fiscal Year 2017 and 2018.

Pursuant to Board Resolution #15-108, dated December 3, 2015, DC Water's proposed rulemaking was published in the *D.C. Register* on January 1, 2016 at 63 DCR 103. Further, a notice of public hearing was published in the *D.C. Register* on April 29, 2016 at 63 DCR 6544, and a public hearing was held on May 11, 2016. The record of the public hearing remained open until June 13, 2016, to receive written comments on the proposed rulemaking. DC Water also conducted eight (8) town hall meetings from April 1, 2016 through April 30, 2016 to receive comments on the proposed rulemaking. On June 9 and 28, 2016, the Retail Water and Sewer Rates Committee met to consider the comments offered at the May 11, 2016 public hearing and during the public comment period and recommendations from the DC Water General Manager.

On July 7, 2016, the Board, through Resolution #16-61, after consideration of all comments received and the report of the Retail Water and Sewer Rates Committee, voted to amend the DCMR to: implement a combined retail water and sewer rate increase of $0.42 per one hundred cubic feet (Ccf) for the first 4 Ccf of a Residential customer's water use (Lifeline) for FY 2017 and an increase of $0.45 per Ccf for the first 4 Ccf of a Residential customer's water use for FY 2018; implement a combined retail water and sewer rate increase of $0.46 per Ccf of a Residential customer's water usage greater than 4 Ccf for FY 2017 and an increase of $0.49 per Ccf of a Residential customer's water usage greater than 4 Ccf for FY 2018; implement a combined retail water and sewer rate increase of $0.44 per Ccf of water use by Multi-family customers for FY 2017 and an increase of $0.47 per Ccf of water use by Multi-family customers for FY 2018; implement a combined retail water and sewer rate increase of $0.47 per Ccf of water use by Non-Residential customers for FY 2017 and an increase of $0.50 per Ccf of water use by Non-Residential customers for FY 2018; implement a monthly increase of $1.94 per Equivalent Residential Unit in the monthly CRIAC for FY 2017 and a monthly increase of $2.94 per Equivalent Residential Unit in the monthly CRIAC for FY 2018; maintain the ROW Pass

Through Charge at $0.17 per Ccf for FY 2017 and implement an increase of $0.01 per Ccf for the ROW Pass Through Charge for FY 2018; and implement an increase of $0.01 per Ccf for the PILOT Fee for FY 2017 and an increase of $0.01 per Ccf for the PILOT Fee for FY 2018.

No changes were made to the substance of the proposed regulations. The text in 21 DCMR § 4101.3 was revised to read "The annual and monthly Clean Rivers Impervious Surface Area Charge (CRIAC) …" to clarify that in addition to the annual CRIAC the table includes the monthly CRIAC fee per ERU.

These rules were adopted as final on July 7, 2016 by resolution and will become effective October 1, 2016.

Chapter 1, WATER SUPPLY, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:

Section 112, FEES, Subsection 112.8, is amended to read as follows:

112.8 The District of Columbia Right-of-Way Occupancy Fee Pass Through Charge and the Payment-in-Lieu of Taxes (PILOT) Fee shall be as follows:

(a) District of Columbia Right-of-Way Fee, assessed to recover the cost of fees charged by the District of Columbia to D.C. Water and Sewer Authority for use of District of Columbia public space and rights of way, for each one hundred cubic feet (1 Ccf) of water use shall be:

	Effective October 1, 2016		Effective October 1, 2017	
Customer	Per Ccf of water use	Per 1,000 Gals. of water use	Per Ccf of water use	Per 1,000 Gals. of water use
Residential	$0.17	$0.23	$0.18	$0.24
Multi-Family	$0.17	$0.23	$0.18	$0.24
Non-Residential	$0.17	$0.23	$0.18	$0.24

(b) Payment-in-Lieu of Taxes (PILOT) Fee to the Office of the Chief Financial Officer (OCFO) of the District of Columbia, assessed to cover the amount which D.C. Water and Sewer Authority pays each fiscal year to the District of Columbia, consistent with D.C. Water and Sewer Authority's enabling statute for public goods and services received from the District of Columbia, for each one hundred cubic feet (1 Ccf) of water use shall be:

Customer	Effective October 1, 2016		Effective October 1, 2017	
	Per Ccf of water use	Per 1,000 Gals. of water use	Per Ccf of water use	Per 1,000 Gals. of water use
Residential	$0.48	$0.64	$0.49	$0.65
Multi-Family	$0.48	$0.64	$0.49	$0.65
Non-Residential	$0.48	$0.64	$0.49	$0.65

Chapter 41, RETAIL WATER AND SEWER RATES, is amended as follows:

Section 4100, RATES FOR WATER SERVICE, Subsection 4100.3, is amended to read as follows:

4100.3 The retail rates for metered water service for each one hundred cubic feet (1 Ccf) of water use shall be:

Customer	Effective October 1, 2016		Effective October 1, 2017	
	Per Ccf of water use	Per 1,000 Gals. of water use	Per Ccf of water use	Per 1,000 Gals. of water use
Residential - 0 to 4 Ccf	$3.23	$4.32	$3.39	$4.53
Residential - Greater than 4 Ccf	$4.06	$5.43	$4.26	$5.70
Multi-Family	$3.62	$4.84	$3.80	$5.08
Non-Residential	$4.19	$5.60	$4.40	$5.88

Section 4101, RATES FOR SEWER SERVICE, Subsection 4101.1, is amended to read as follows:

4101.1

(a) The retail rates for sanitary sewer service for each one hundred cubic feet (1 Ccf) of water use shall be:

	Effective October 1, 2016		Effective October 1, 2017	
Customer	Per Ccf of water use	Per 1,000 Gals. of water use	Per Ccf of water use	Per 1,000 Gals. of water use
Residential	$5.71	$7.63	$6.00	$8.02
Multi-Family	$5.71	$7.63	$6.00	$8.02
Non-Residential	$5.71	$7.63	$6.00	$8.02

Subsection 4101.3 is amended to read as follows:

4101.3 The annual and monthly Clean Rivers Impervious Surface Area Charge (CRIAC) per Equivalent Residential Unit (ERU) shall be:

	Effective October 1, 2016		Effective October 1, 2017	
Customer	Annual CRIAC per ERU	Monthly CRIAC per ERU	Annual CRIAC per ERU	Monthly CRIAC per ERU
Residential	$266.88	$22.24	$302.16	$25.18
Multi-Family	$266.88	$22.24	$302.16	$25.18
Non-Residential	$266.88	$22.24	$302.16	$25.18

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health ("Department"), pursuant to § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Health Occupations Revision Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2012 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to take final rulemaking action to adopt the following amendments to Chapter 48 (Chiropractic) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the rulemaking is to set forth rule amendments regarding educational requirements, licensure requirements, examination, continuing education requirements, standards of conduct, and scope of practice, to bring the D.C. Board of Chiropractic up to date with current standards and best practices in the regulation of the chiropractic profession. Consistent with the aim of the Health Occupations Revision Act, this rulemaking will enhance professionalism within the community and operate in support of the health and welfare of the public.

Chapter 48, CHIROPRACTIC, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 4805, DISTRICT EXAMINATION, is amended as follows:

Subsection 4805.4 is amended to read as follows:

4805.4 The District examination may include questions on the following:

(a) The District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*. (2007 Repl.));

(b) Title 17, Chapter 48 of the District of Columbia Municipal Regulations;

(c) Title 17, Chapters 40 and 41 of the District of Columbia Municipal Regulations;

(d) Scope of practice; and

(e) Ethics and boundaries.

Subsection 4805.6 is amended to read as follows:

4805.6 A passing score on the District Examination shall be seventy-five percent (75%). After failing to obtain a score of at least seventy-five percent (75%) on two (2)

successive District examinations, the applicant shall appear before the Board before being permitted to retake the examination a third time. In the event of a third failure, the applicant shall not be permitted to sit for a fourth attempt for a period of one (1) year. An applicant practicing under the supervision of a licensed chiropractor while waiting to sit for the District Examination, who twice fails the examination, shall have the pending application status suspended for a period of ninety (90) days.

Subsection 4805.7 is amended to read as follows:

4805.7 Pursuant to the Act, an applicant approved for an initial license to sit for the next scheduled examination may request the Board's permission to practice under the direct supervision of a District licensed chiropractor for a period not to exceed six (6) months.

Section 4806, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:

Subsection 4806.4 is amended to read as follows:

4806.4 An applicant for renewal of a license expiring on December 31, 2018 and all subsequent licensure terms shall submit proof upon request of the Board pursuant to § 4806.7 of having completed thirty (30) hours of approved continuing education credit during the two (2) year period preceding the date the license expires that include three (3) hours in communicable disease (including HIV-AIDS), two (2) hours in cultural competence and appropriate clinical treatment specifically for individuals who are lesbian, gay, bisexual, transgender, gender nonconforming, queer, or questioning their sexual orientation or gender identity and expression, and five (5) hours in any combination of ethics, risk management, documentation and record keeping, or cultural competency.

Subsection 4806.5 is amended to read as follows:

4806.5 A person in inactive status, within the meaning of § 511 of the Act, may qualify for a license by submitting an application to reactivate a license and submitting proof, pursuant to § 4806.7, of having completed fifteen (15) hours of approved continuing education credit for each license year after December 31, 1990, that the applicant was in inactive status.

Subsection 4806.6 is amended to read as follows:

4806.6 To qualify for a license, an applicant for reinstatement of a license shall submit proof, pursuant to § 4806.7, of having completed fifteen (15) hours of approved continuing education credit for each year that the license was expired.

Section 4807, APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES, is amended as follows:

Subsection 4807.1 is amended to read as follows:

4807.1 The Board shall accept for credit continuing education programs provided or sponsored by the following:

(a) A chiropractic college accredited by the Council on Chiropractic Education;

(b) The America Chiropractic Association;

(c) The International Chiropractors Association;

(d) The Federation of Chiropractic Licensing Boards Providers of Approved Continuing Education (PACE) Program; or

(e) Approved by the District of Columbia Board of Chiropractic.

Section 4809, STANDARDS OF CONDUCT, is amended by adding a Subsection 4809.16 to read as follows:

4809.16 A licensee shall not make any false, misleading, or deceptive communication in any form of advertising nor shall the licensee utilize any form of advertising that has the capacity or tendency to deceive, mislead, or confuse the recipient in any manner including the following:

(a) Advertising that contains a misrepresentation of any fact including advertising that has the capacity or tendency to mislead, deceive, or confuse any potential recipient, either through false or misleading claims, or by failing to disclose relevant or material facts;

(b) Advertising that conveys the impression of professional superiority or other superior attributes that cannot be substantiated. A licensee shall not advertise that he or she has a certification or has attained diplomate status without having been conferred the title of diplomate or having received a certification;

(c) Advertising that has the capacity or tendency to create false or unjustified expectations of beneficial treatment or successful cures;

(d) Advertising that contains any guarantee of the results of any service;

(e) Advertising a service that the licensee is not licensed to perform in the District of Columbia;

(f) Advertising under a heading that may foster confusion about the professional status of the chiropractor or under a professional heading in which the chiropractor is not licensed; or

(g) Advertising a transaction that is in itself illegal.

Section 4811, SCOPE OF PRACTICE, is amended as follows:

Subsection 4811.1 is amended to read as follows:

4811.1 A chiropractor who is licensed to practice in the District of Columbia under the provisions of this chapter may provide the following chiropractic services:

(a) Locating, diagnosing, and analyzing subluxated vertebrae as follows:

(1) By x-ray of the spinal column;

(2) By physical examination; and

(3) By employing other non-invasive procedures such as MRI and CAT scan;

(b) Correcting vertebral subluxation displacement by applying specific localized force to the spine;

(c) Advising and instructing a patient about exercise, stress management, and nutrition;

(d) Referring a patient for specialized diagnostic testing, which may be necessary for chiropractic treatment or patient safety;

(e) Referring a patient to other healthcare practitioners as the chiropractor deems necessary; and

(f) Diagnosing and treating bodily articulations by means of manipulation or adjustments.

Subsection 4811.2 is amended to read as follows:

4811.2 A chiropractor who is certified by the Board to perform ancillary procedures pursuant to § 4803.3 may perform any physiotherapy for which the chiropractor has received specialized training at a program or institution listed in § 4807.1 provided the physiotherapy is preparatory or complementary to chiropractic care.

Section 4811 is amended to have these subsections added as follows:

4811.3 A chiropractor not licensed to practice in the District of Columbia but who is licensed and in good standing in any other state, territory, or jurisdiction of the United States or any other nation or foreign jurisdiction may engage in the practice of chiropractic if he or she is employed or designated in his or her professional capacity by a sports or performing arts entity visiting the District of Columbia for a specific sports or performing arts event subject to the following restrictions and rules:

(a) The practice of chiropractic subject to this rule shall be limited to members, coaches, or official staff of the team or event for which that chiropractor is designated. If services are requested by a specific athlete or performer, the practice of chiropractic shall be limited to services performed for that individual only;

(b) The practice of chiropractic as authorized by this rule shall be limited to the designated venue of the event or designated treatment area for the event. The Board, in its discretion, may audit, review, or inspect the venue and chiropractic services rendered;

(c) A chiropractor practicing under the authority of this section may use only those practices and procedures that are within the scope of chiropractic practice in the District of Columbia as authorized by statute and the rules governing chiropractic practice in the District of Columbia; and

(d) Unless otherwise determined by the Board, the visiting chiropractor shall request and receive written permission from the Board at least sixty (60) days before the start of practice in the District, and the visiting chiropractor may practice chiropractic in the District no more than fourteen (14) days during any calendar year.

4811.4 A student enrolled at an approved chiropractic college may perform chiropractic procedures provided the student has successfully completed at least one (1) academic year of schooling and the chiropractic procedures are performed under the supervision and direction of an authorized instructor duly licensed to practice chiropractic in the District of Columbia.

4811.5 A student enrolled at an approved chiropractic college may perform chiropractic procedures at a location other than the premises of the chiropractic college at which the student is enrolled, provided the student has successfully completed a minimum of three (3) academic years of chiropractic college and has met all of the chiropractic college's requirements concerning its student/preceptor program. The chiropractic procedures performed by the student shall be performed under the supervision and direction of a Chiropractic Preceptor. A duly authorized instructor or Chiropractic Preceptor shall be within the immediate patient treatment area, the clinic proper, and available to the student at all times.

4811.6 A student performing chiropractic procedures at a location other than the premises of the chiropractic college at which the student is enrolled and under the supervision and direction of a Chiropractic Preceptor shall be known as a "Chiropractic Intern" and shall not represent him or her self to the public as a licensed Chiropractor or use terms such as "Chiropractor", "Doctor of Chiropractic" or "D.C."

4811.7 The Chiropractic Preceptor shall be approved by the Board before supervising a chiropractic student. To qualify as a Chiropractic Preceptor, the chiropractor shall:

(a) Be licensed to practice chiropractic in the District of Columbia for not less than five (5) years;

(b) Not have had any public or private sanction against his or her license to practice chiropractic in the District of Columbia or any other state;

(c) Disclose if he or she has been convicted or found guilty of a violation of any law other than a minor traffic violation within seven years prior to his or her application to serve as a preceptor; and

(d) Have the written approval of the chiropractic student's chiropractic college to serve as an adjunct faculty member for the purpose of a student/preceptor program.

4811.8 Any chiropractic procedure performed by a chiropractic student shall be in compliance with all laws, rules, and regulations regarding the practice of chiropractic in the District of Columbia.

4811.9 The primary responsibility for the programming and treatment of the patient by the chiropractic student shall rest with the Chiropractic Preceptor or other authorized instructor.

4811.10 Documentation of all programming and treatment of the patient and all changes to the programming and treatment plans shall be reviewed and approved by the authorized instructor or Chiropractic Preceptor.

4811.11 The chiropractic college shall notify the Board of the specific dates that a Chiropractic Intern shall be serving as a Chiropractic Intern under the supervision and direction of a Chiropractic Preceptor.

4811.12 The Board's approval for any chiropractor serving as a Chiropractic Preceptor shall expire December 31st of each even-numbered year. The chiropractic college shall submit to the Board for reapproval the required documentation concerning each Chiropractic Preceptor during the last quarter of the even-numbered year.

Section 4899, DEFINITIONS, is amended to read as follows:

4899.1 For purposes of this chapter, the following terms shall have the meanings ascribed:

Act—The District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2007 Repl.)).

Ancillary—any physiotherapy procedure used on a patient prior to, and complimentary to, receiving a chiropractic treatment.

Applicant—A person applying for a license to practice chiropractic or certification to practice ancillary procedures under this chapter.

Board—The D.C. Board of Chiropractic, established by § 216 of the Health Occupations Revision Act, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202.16 (2007 Repl.)).

CAT scan—A diagnostic, medical, radiological scan in which cross-sectional images of a part of the body are formed through computerized axial tomography and shown on a computer screen.

Chiropractic Preceptor—Any person licensed as a doctor of chiropractic in the District of Columbia who is approved by the Board to supervise chiropractic students in the performance of chiropractic at a location other than the premises of the chiropractic college in which the student is enrolled.

Chiropractor—A person licensed to practice chiropractic under the Health Occupations Revision Act, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1205.01 *et seq.* (2007 Repl.)).

MRI—An imaging technique that uses electromagnetic radiation to obtain images of the body's soft tissues by subjecting the body to a powerful magnetic field, allowing tiny signals from atomic nuclei to be detected and then processed and converted into images by a computer.

NBCE—The National Board of Chiropractic Examiners.

Physiotherapy—Any external modality that the chiropractor uses on a patient before receiving a chiropractic adjustment or manipulation, that creates a physiological change in the human tissue condition, and that contributes to the overall improvement of the condition for which the patient is being treated.

Spinal adjustment or manipulation—A specific thrust applied to a subluxated vertebra utilizing parts of the vertebra and contiguous structures as levers to directionally correct that particular articular malposition, and thus influencing neural integrity in that area.

Subluxation—A complex of functional or structural changes that occur in the spinal column that compromises neural integrity and thus may influence organ system function and general health.

Supervision—Having a licensed District of Columbia chiropractor in the same office on a continuous basis while the assistant is on duty. The supervising chiropractor should be immediately available for delegated acts that the chiropractic assistant performs. Telecommunication is insufficient for supervision purposes or as a means for directing delegated acts.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Administrative Assistant, at Angli.Black@dc.gov, (202) 442-5977.

DEPARTMENT OF HEALTH

NOTICE OF SECOND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Sections 4902(a)(8) and 4908 of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code §§ 7-731(a)(8) and 7-737 (2012 Repl. & 2016 Supp.)), and Mayor's Order 2006-34, dated March 12, 2006, hereby gives notice of the intent to take rulemaking action to adopt the following amendments to Chapters 102 (Licensing of Medical Device Distributors and Manufacturers), 105 (Establishment, Registration, and Device Listing for Manufacturers and Initial Importers of Devices), and 106 (Premarket Approval of Medical Devices) of Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 4902(a) (8) of the Department of Health Functions Clarification Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(a) (8) (2012 Repl. & 2016 Supp.)) authorizes the Department of Health to regulate medical devices in the District of Columbia. The Notice of Final Rulemaking published on July 12, 2013 in the *D.C. Register* at 60 DCR 10252, only required manufacturers and distributors to be licensed and regulated by the Department of Health. However, there are four business entities that are involved in the supply of medical devices in the District of Columbia – manufacturers, distributors, initial importers, and vendors. The Department of Health proposes to regulate all of these entities to ensure that the medical devices placed in the stream of commerce in the District of Columbia are safe and effective.

The purpose of these amendments is to require initial importers and vendors of medical devices to be licensed and regulated as are manufacturers and distributors. In addition, this rulemaking will define the terms "initial importer" and "vendor."

These amendments were published as Notice of Proposed Rulemaking in the *D.C. Register* on July 24, 2015 at 62 DCR 010043. The Department received two (2) comments from the Advanced Medical Technology Association. They were as follows:

Comment 1: The Association recommended that the definition of "vendor" and "importer" be modified to specifically exclude agents or representatives of licensed manufacturers and distributors. The Association argued that as currently written, the proposed rule could be construed as requiring manufacturer and distributor sales representatives and agents to obtain vendor or importer licenses. The Association also averred that as written, the rulemaking could cause confusion as to which licensees interface with the Department of Health.

Comment 2: The Association recommended that the definition of "importer" should be modified to clarify that common carriers and delivery agents who do not take title or assume other ownership rights to medical devices are not required to be licensed. The Association reasoned that the change would prevent common carriers and delivery agents from needing a license while engaged in the transportation of medical devices.

After review of the comments, the Department determined that the requests are reasonable and has amended the definitions of "importer" and "vendor" to comport with the request. In addition, the term "initial importer" is being substituted for "importer" as "initial importer" appears in Chapter 105 (text). The amended definitions were forwarded to the commenter. The commenter is in agreement with the amended language.

Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended as follows:

Chapter 102, LICENSING OF MEDICAL DEVICE DISTRIBUTORS AND MANUFACTURERS, is amended as follows:

The Chapter 102 heading is amended to read as follows:

CHAPTER 102 LICENSING OF MEDICAL DEVICES – DISTRIBUTORS, MANUFACTURERS, INITIAL IMPORTERS, AND VENDORS

Section 10200, GENERAL PROVISIONS, is amended as follows:

Subsection 10200.1 is amended to read as follows:

10200.1 These section provide for the minimum licensing standards necessary to ensure the safety and efficacy of medical devices placed in the stream of commerce by distributors, manufacturers, initial importers, and vendors.

Section 10203, LICENSURE REQUIREMENTS, is amended as follows:

The section heading for 10203 is amended to read as follows:

10203 LICENSURE REQUIREMENTS FOR DISTRIBUTORS, MANUFACTURERS, INITIAL IMPORTERS, AND VENDORS

Subsections 10203.1 to 10203.6 are amended to read as follows:

10203.1 Except as provided by § 10202, a person may not engage in distributing, manufacturing, importing, or vending medical devices in the District of Columbia unless the person has a valid license from the Department of Health.

10203.2 The license shall be displayed in an open public area at each place of business.

10203.3 Each person engaged in distributing, manufacturing, importing, or vending of medical devices in the District of Columbia on the effective date of these sections shall apply for a medical device distributor, manufacturer, importer, or vendor license no later than sixty (60) days following the effective date of these regulations.

10203.4 Each person acquiring or establishing a place of business for the purpose of medical device distribution, manufacturing, importation, or vending after the effective date of these subsections shall apply to the Department for a license prior to beginning operation.

10203.5 If the medical device distributor, manufacturer, initial importer, or vendor operates more than one place of business, the medical device distributor, manufacturer, initial importer, or vendor shall obtain a license for each place of business.

10203.6 The Department may license a distributor, manufacturer, initial importer, or vendor of medical devices who meets the requirements of these sections and pays all fees.

Subsection 10203.14 is amended to read as follows:

10203.14 If the United States Food and Drug Administration (FDA) determines with respect to a product that is a combination of a drug and a medical device, that the primary mode of action of the product is as a device, a distributor, manufacturer, initial importer, or vendor of the product is subject to licensure as described in this section.

Section 10204, LICENSING PROCEDURES, is amended as follows:

The section heading for 10204 is amended to read as follows:

10204 LICENSING PROCEDURES FOR DISTRIBUTORS, MANUFACTURERS, INITIAL IMPORTERS AND VENDORS

Subsections 10204.1 and 10204.2 are amended to read as follows:

10204.1 License application forms may be obtained from the Department at 899 North Capitol Street, N.E., Washington, D.C., or online at www.hpla.doh.dc.gov.

10204.2 The application for licensure as a medical device distributor, manufacturer, initial importer, or vendor shall be signed and verified, and submitted on a license application form furnished by the Department.

Subsection 10204.4 is amended to read as follows:

10204.4 A completed application shall entitle a medical device distributor, manufacturer, importer, or vendor to a license, except as provided in § 10207.

A new Subsection 10204.5 is added to read as follows:

10204.5 The renewal application for licensure as a medical device distributor, manufacturer, importer, or vendor shall be made on a license application form furnished by the Department.

Subsection 10204.6 is repealed.

Section 10207, REFUSAL, CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSE, is amended as follows:

Subsections 10207.3 and 10207.4 are amended to read as follows:

10207.3 The Department may, after providing opportunity for a hearing, refuse to license a distributor, manufacturer, initial importer, or vendor of medical devices, or may suspend or revoke a license, for any violation of the federal-law requirements incorporated into these regulations pursuant to § 10201.

10207.4 A license issued under this chapter shall be returned to the Department if the medical device distributor, manufacturer, initial importer, or vendor's place of business:

(a) Ceases business or otherwise ceases operation on a permanent basis;

(b) Relocates; or

(c) Is deemed, as a corporation, to have undergone an ownership change as determined by a transfer of five percent (5%) or more of the share of stock from one person to another.

Section 10208, MINIMUM STANDARDS FOR LICENSURE, is amended as follows:

Subsection 10208.1 is amended to read as follows:

10208.1 All medical device distributors, manufacturers, initial importers, or vendors engaged in the design, manufacture, packaging, labeling, storage, installation, servicing, and vending of medical devices shall comply with the minimum standards of this section.

Subsections 10208.3 and 10208.4 are repealed.

Subsection 10208.6 is amended to read as follows:

10208.6 No manufacturing, assembling, packaging, packing, holding, testing, or labeling operations of medical devices by distributors, manufacturers, initial importers, or vendors shall be conducted in any personal residence.

Subsection 10208.8 is amended to read as follows:

10208.8 All medical devices stored by distributors, manufacturers, initial importers, or vendors shall be held at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the label of such medical devices.

Subsection 10208.9 is amended to read as follows:

10208.9 Medical devices distributed by device distributors, manufacturers, initial importers, or vendors shall meet the labeling requirements of Chapter 103 of this subtitle.

Subsection 10208.12 is amended to read as follows:

10208.12 Medical device distributors, manufacturers, initial importers, or vendors shall meet the applicable medical device reporting requirements of Chapter 104 of this subtitle.

Subsection 10208.14 is repealed and reserved.

Subsection 10208.15 is amended to read as follows:

10208.15 Each medical device distributor, manufacturer, initial importer, or vendor who distributes prescription medical devices shall maintain a record for every prescription medical device, showing the identity and quantity received or manufactured and the disposition of each device.

Subsection 10208.16 is amended to read as follows:

10208.16 Each medical device distributor, manufacturer, initial importer, or vendor who delivers a prescription medical device to the ultimate user shall maintain a record of any prescription or other order lawfully issued by a practitioner in connection with the device.

A new Section 10299 is added to read as follows:

10299 DEFINITIONS

10299.1 As used in this chapter, the following term shall have the meanings ascribed:

Initial importer – any person who furthers the marketing of a medical device from a foreign manufacturer to the person who makes the final delivery or sale of the medical device to the ultimate consumer or user, but does not repackage or otherwise change the container, wrapper, or labeling of the medical device or medical device package. The term "initial importer"

does not include a common carrier, a delivery agent, or an agent or sales representative of a licensed manufacturer or distributor.

Vendor – any person, with the exception of any agent or sale representative of a licensed manufacturer or distributor, engaged in selling medical devices for the immediate delivery upon purchase.

Chapter 105, ESTABLISHMENT, REGISTRATION, AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES, Section 10500, WHO MUST REGISTER AND SUBMIT A DEVICE LIST, is amended as follows:

A new Subsection 10500.6 is added to read as follows:

10500.6 For purposes of these chapters, the term "device(s)", wherever it appears, shall mean "medical device(s)."

Section 10599, DEFINITIONS, Subsection 10599.1, is amended as follows:

The following definition is amended:

Initial importer – any person who furthers the marketing of a medical device from a foreign manufacturer to the person who makes the final delivery or sale of the medical device to the ultimate consumer or user, but does not repackage or otherwise change the container, wrapper, or labeling of the medical device or medical device package. The term "initial importer" does not include a common carrier, a delivery agent, or an agent or sales representative of a licensed manufacturer or distributor.

The following definitions are added:

Medical device – an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory:

(a) Which is:

(1) Recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them;

(2) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals; or

(3) Intended to affect the structure or any function of the body of man or other animals; and

(b) Which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

Vendor – any person, with the exception of an agent or sales representative of a licensed manufacturer or distributor, engaged in selling medical devices for the immediate delivery upon purchase.

Chapter 106, PREMARKET APPROVAL OF MEDICAL DEVICES, Section 10699, DEFINITIONS, is amended as follows:

Subsection 10699.1 is amended to include the following definition:

Initial importer – any person who furthers the marketing of a medical device from a foreign manufacturer to the person who makes the final delivery or sale of the medical device to the ultimate consumer or user, but does not repackage or otherwise change the container, wrapper, or labeling of the medical device or medical device package. The term "initial importer" does not include a common carrier, a delivery agent, or an agent or sales representative of a licensed manufacturer or distributor.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be sent in writing to: Van Brathwaite, Department of Health, 899 North Capitol Street, N.E., 2nd Floor, Washington, D.C. 20002 or van.brathwaite@dc.gov. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9:00 a.m. to 5 p.m., Monday through Friday, excluding holidays. Requests may be communicated by calling (202) 442-5977 or addressing emails to angli.black@dc.gov.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF EMERGENCY RULEMAKING
Z.C. Case No. 14-11C
(Text Amendment – Office of Planning's Request for Technical Correction to § 336.13)

The Zoning Commission for the District of Columbia (Commission), pursuant to the authority set forth in §1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Repl.)) and the authority set forth in Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment making a technical correction to § 336.13 of the Zoning Regulations of the District of Columbia, Title 11 of the District of Columbia Municipal Regulations (DCMR).

The amendment corrects the last word of § 336.13 so that it reads "section" instead of "subsection."

The explanation for this emergency action is as follows:

On June 26, 2015, a Notice of Final Rulemaking was published in the *D.C. Register* at 62 DCR 8883 that, among other things, adopted a new § 336.13, which read:

> 336.13 An apartment house in an R-4 Zone District, converted from a residential building prior to June 26, 2015, or converted pursuant to §§ 3202.8 or 3202.9, shall be considered a conforming use and structure, but shall not be permitted to expand unless approved by the Board of Zoning Adjustment pursuant to §§ 3104.1 and 3104.3 and this **section.**

Emphasis added.

Among other things, § 336.5 requires that there must be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit. Thus, an applicant wanting to expand an apartment house described in § 336.13 would have to apply for a variance if there would be less than the nine hundred square feet (900 sq. ft.) per unit. The variance test includes a requirement that the Board of Zoning Adjustment (BZA) find that the relief can be granted "without substantial detriment to the public good." D.C. Official Code § 6-641.07(g)(3).

On July 31, 2015, a Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* at 62 DCR 10432 that proposed a technical correction to § 336.13. The proposed correction did not include a change to the word "section." Although the Commission voted to adopt the text as proposed, the Notice of Final Rulemaking that gave notice of the adoption of the technical correction, as published in the *D.C. Register* on September 25, 2015 at 62 DCR 10737, replaced the word "section" with "subsection."

The Office of Documents and Administrative Issuances (ODAI) prepared an Errata Notice to administratively correct § 336.13, which was published in the July 15, 2016 edition of the *D.C.*

Register at 63 DCR 9531. However, on July 19, 2016, BZA was scheduled to hear an application to expand an existing apartment house that presently does not, and as expanded will not, meet the nine hundred square feet (900 sq. ft.) per unit requirement. In order to ensure that the BZA applies the intended standard on July 19th, the Commission took the emergency corrective action on July 11th, concluding that doing so was necessary for the "immediate preservation of public ... welfare." D.C. Official Code § 2-505(c).

This emergency rule was adopted on July 11, 2016 and became effective on that date. The emergency rule will expire on September 6, 2016, which is the date that § 336.13 will be repealed[1] and replaced by Subtitle U § 320.2(c), or the date the Errata Notice is published in the *D.C. Register*, whichever occurs first.

Title 11 DCMR was amended on an emergency basis as follows (deleted language is shown in bold strikethrough text):

Chapter 3, R-2, R-3, R-4, AND R-5 RESIDENCE DISTRICT USE REGULATIONS, of Title 11 DCMR, ZONING, §336, CONVERSION OF A RESIDENTIAL BUILDING EXISTING PRIOR TO MAY 12, 1958, TO APARTMENT HOUSES (R-4), § 336.13, is amended to read as follows:

336.13 An apartment house in an R-4 Zone District, converted from a residential building prior to June 26, 2015, or converted pursuant to §§ 3202.8, 3202.9, or 3202.10, shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to §§ 3104.1 and 3104.3 and this ~~sub~~section.

[1] *See* Notice of Final Rulemaking published in Part II of the March 4, 2016 edition of the *District of Columbia Register*.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl. & 2016 Supp.)), hereby gives notice of the adoption, on an emergency basis, of the following amendment to Chapter 61 (Public Housing: Admission and Recertification) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendment is to expand the availability of vouchers to applicants residing in units declared unfit for habitation.

Per D.C. Official Code § 2-505(c), emergency rulemakings are promulgated when the action is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals. There is an urgent need to adopt these emergency regulations to decrease the rate of homelessness in the District of Columbia.

These emergency regulations were adopted by the Board on July 13, 2016 and became effective immediately. They will remain in effect for up to one hundred twenty (120) days from the date of adoption, until November 10, 2016, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. The Board of Commissioners of DCHA also gives notice of intent to take rulemaking action to adopt these proposed regulations as final in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 61, PUBLIC HOUSING: ADMISSION AND RECERTIFICATION, of Title 14 DCMR, HOUSING, is amended as follows:

Section 6125, PREFERENCES FOR PLACEMENT ELIGIBILITY HOUSING CHOICE VOUCHER APPLICANTS, Subsection 6125.4, is amended to read as follows:

6125.4 DCHA shall give placement priority to referrals to DCHA from the Executive Office of the Mayor or designated District of Columbia agency of households who currently reside in substandard housing and units declared unfit for habitation. The aggregate number of outstanding vouchers authorized for use is set by the Board of Commissioners from time to time.

Interested persons are encouraged to submit comments regarding this Proposed Rulemaking to DCHA's Office of General Counsel. Copies of this Proposed Rulemaking can be obtained at www.dcregs.gov, or by contacting Chelsea Johnson at the Office of the General Counsel, 1133 North Capitol Street, N.E., Suite 210, Washington, D.C. 20002-7599 or via telephone at (202) 535-2835. All communications on this subject matter must refer to the above referenced title and must include the phrase "Comment to Proposed Rulemaking" in the subject line. There are two methods of submitting Public Comments:

1. Submission of comments by mail: Comments may be submitted by mail to the Office of the General Counsel, 1133 North Capitol Street, N.E., Suite 210, Washington, D.C. 20002-7549.

2. Electronic Submission of comments: Comments may be submitted electronically by submitting comments to Chelsea Johnson at: PublicationComments@dchousing.org.

3. No facsimile will be accepted.

Comments Due Date: August 22, 2016.

ACHIEVEMENT PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Janitorial Services

Achievement Prep PCS is seeking competitive bids for janitorial services at it's redeveloped Wahler Place Elementary Campus. Proposed services should include day porter services, overnight housekeeping and the provision of all supplies and cleaning equipment necessary to support a 48,000 sq. ft. remodeled facility with approximately 550 students and 75 adults.

Please find the full RFP specifications at www.achievementprep.org under News. Proposals must be received by 5:00PM on Monday, July 25, 2016. Please send proposals to bids@achievmentprep.org and include "RFP – Janitorial Services" in the heading.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JULY 27, 2016
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: Nick Alberti, Mike Silverstein,
Ruthanne Miller, James Short

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00030; Moroc & Moroc, LLC, t/a Yard & Toast, 1541-1543 7th Street NW, License #101636, Retailer CT, ANC 6E
Application for a New License

Protest Hearing (Status) **9:30 AM**
Case # 16-PRO-00071; Black 14th Street NW, LLC, t/a Pearl Dive Oyster Palace/Black Jack, 1612 14th Street NW, License #85382, Retailer CR, ANC 2F
Application to Renew the License

Show Cause Hearing (Status) **9:30 AM**
Case # 16-CMP-00103; S & L, LLC, t/a Midnight Delicatessen, 4701 Georgia Ave NW, License #95044, Retailer B, ANC 4D
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 16-CMP-00093; 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 # 16-CMP-00361; New Da Hsin Trading, Inc., t/a New Da Hsin Trading, Inc., 811 7th Street NW, License #23501, Retailer A, ANC 2C
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 16-CMP-00344; 4686 MLK, LLC, t/a Fort Drum Market, 4686 Martin Luther King, Jr., Ave, SW, License #96107, Retailer B, ANC 8D
No ABC Manager on Duty

Board's Calendar
July 27, 2016

Show Cause Hearing (Status) **9:30 AM**
Case # 16-CMP-00300; Brown YI, Inc., t/a Brown Street Market, 3320 Brown Street NW, License #9087, Retailer B, ANC 1D
Sold Go-Cups

Show Cause Hearing (Status) **9:30 AM**
Case # 16-251-00087; Terfneh Kahsay, t/a Salina Restaurant, 1936 9th Street NW, License #82969, Retailer CT, ANC 1B
Allowed Establishment to be Used for Unlawful or Disorderly Purposes, Failed to Preserve a Crime Scene, Change of Trade Name Without Board Approval (Two Counts), Transfer of Ownership Without Board's Approval, Failed to Surrender the License for Safekeeping, Failed to Comply with a Board Order

Fact Finding Hearing* **9:30 AM**
Brant L. Rooker
Manager's Application

Fact Finding Hearing* **9:30 AM**
Mohammad J. Hosseini
Manager's Application

Show Cause Hearing* **10:00 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* **11:00 AM**
A Modo Mio, Inc., t/a Et Voila, 5120 MacArthur Blvd NW, License #78332 Retailer CR, ANC 3D
Request for a Wine Pub Permit

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA AT 1:00 PM

Protest Hearing* **1:30 PM**
Case # 16-PRO-00023; Mendelsohn Hospitality Group, t/a Bearnaise, 313-315 Pennsylvania Ave SE, License #89622, Retailer CR, ANC 6B
Application to Renew the License

Board's Calendar
July 27, 2016

Protest Hearing* **4:30 PM**
Case # 16-PRO-00024; Kookoovaya, Inc., t/a We, The Pizza, 305 Pennsylvania Ave SE, License #82062, Retailer CR, ANC 6B
Application to Renew the License

***The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Offical Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, JULY 27, 2016
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On July 27, 2016 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#16-CC-00035 Sherry's Wine and Spirits, 2627 Connecticut Ave. N.W., Retailer A License # ABRA-086022

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2. Case#16-CC-00036 FoBoGro 2140 F Street N.W., Retailer B, License # ABRA-082431

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3. Case#16-CC-00064 El Centro D.F., 1218 Wisconsin Ave. N.W., Retailer CR, License # ABRA-072469

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4. Case#16-CC-00079, Dirty Martini Inn Bar/Dirty Bar, 1223 Connecticut Ave N.W. Retailer CN, License # ABRA-083919

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JULY 27, 2016 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Manager's License. ***Jessica L. Weinstein-***ABRA 103567.

***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.**

DEPARTMENT OF BEHAVIORIAL HEALTH

NOTICE

The Director of the Department of Behavioral Health (DBH), pursuant to the authority set forth in sections 5113, 5115, 5117, 5118 and 5119 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; D.C. Official Code §§ 7-1141.02, 7-1141.04, 7-1141.06, 7-1141.07 and 7-1141.08)(2013 Supp.), hereby gives notice that effective July 15, 2016, DBH will accept applications from business entities or individuals seeking licensure for a mental health community residence facility pursuant to Title 22-B of the D.C. Municipal Regulations, Chapters 31 and 38. The Department is seeking applicants for up to forty-two (42) Supported Residence beds and twelve (12) Supported Rehabilitation Residence beds. Applicants shall apply in accordance with Title 22-B, D.C. Municipal Regulation, Chapter 38. The Department will accept applications until September 30, 2016.

Successful applicants must meet all contract requirements as determined by the Department's Office of Contracting and Procurement prior to receiving a Contract and per diem payments in accordance with Title 22-A, D.C. Municipal Regulation, Chapter 57. Award of a Contract is subject to availability of funds.

In evaluating applicants, the Department shall consider the following: (a) the ability of the applicant to meet the requirements of Title 22-B, D.C. Municipal Regulation, Chapter 38; (b) the quality of an applicant's facility; (c) the quality of an applicant's programming; (d) an applicant's record of compliance with Chapter 38 in regards to other licensed facilities; and (e) the facility's proximity to metro transit and community-based activities that are conducive to a healthy and independent lifestyle.

If you have any questions or would like to request an application, you may contact Sheila Kelly, Supervisory Health Systems Specialist, District of Columbia Department of Behavioral Health, 64 New York Ave., NE, 3rd Floor, Washington, D.C. 20002-4347, (202) 673-3516, Sheila.kelly@dc.gov.

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

HVAC Services

E.L. Haynes Public Charter School ("ELH") is seeking proposals from qualified vendors to provide parts and service to replace leaking king valves on our Mitsubishi AC unit at our elementary school property, located at 4501 Kansas Avenue, NW. The contract will be assigned to a successful bidder who can provide the parts and service to complete these tasks.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Friday, July 29, 2016. We will notify the final vendor of selection immediately and all work must be completed by August 5, 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

FRIENDSHIP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Friendship Public Charter School is seeking bids from prospective vendors to provide;

- Text book Management System
- Curricula for Pre-Kindergarten

The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. Proposals are due no later than 4:00 P.M., EST, August 15th, 2016. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org.

NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACTS

MackinVIA

Friendship Public Charter School intends to enter into sole source contracts with MackinVIA for eResource Management System. The estimated yearly cost is approximately $300,000. The decision to sole source is due to the fact MackinVIA is the sole provider of a complete eResource Management System providing streamlined access to a school or library's eBooks, educational databases, digital audiobooks, videos and digital links with just one login and password. MackinVIA is the only eResource Management System that allows libraries, schools and districts to include *all* your digital materials in one easy-to-access location. The contract term shall be automatically renewed for the same period unless either party, 60 days before expiration, gives notice to the other of its desire to end the agreement.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Optometry ("Board") hereby gives notice of its regular meeting schedule 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.) ("Act").

The Board's regular meetings shall now be conducted on the third Thursday of every other month starting on July 21, 2016. The meetings will held from 9:30 AM to 11:30 AM and will be open to the public from 9:30 AM until 10:30 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. Official Code § 2-574(b), the meetings will be closed from 10:30 AM until 11:30 AM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations. The schedule of the Board's meetings during the next twelve-month period will be as follows:

July 21, 2016
October 20, 2016
January 19, 2017
April 20, 2017
July 20, 2017

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health Events link at http://doh.dc.gov/events for additional information.

DEPARTMENT OF HEALTH

NOTICE OF PUBLIC MEETING

The Director of the Department of Health hereby gives the following notice pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 (Act), effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.01, *et seq*. (2012 Repl.)), and Mayor's Order 2013-201, dated October 28, 2013.

The District of Columbia Medical Marijuana Intergovernmental Subcommittee of the Medical Marijuana Advisory Committee ("Subcommittee") will hold a public meeting on:

Tuesday, August 2, 2016, from 1:00 p.m. to 2:00 p.m.
At 899 North Capitol St, NE, 2nd Floor, Room 216
Washington, D.C. 20002

The purpose of this meeting will be for the subcommittee to vote on whether to recommend that the Director of the Department of Health increase the amount of medical marijuana a patient may receive within a thirty (30) day period from two (2) ounces to four (4) ounces, and whether the increase should apply to all forms of medical marijuana or only certain forms.

HOWARD UNIVERSITY MIDDLE SCHOOL OF MATHEMATICS AND SCIENCE

INVITATION FOR BID

Food Service Management Services

Howard University Middle School of Mathematics and Science is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2016-2017 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **July 22, 2016** from Dayton Watkins on (202) 806-7845 or Dayton.Watkins@hu-ms2.org

Proposals will be accepted at **Howard University Middle School | 405 Howard Place, NW | Washington, DC 20059** on **August 8, 2016** not later than **1:30 p.m.**

All bids not addressing all areas as outlined in the IFB will not be considered.

KIPP DC PUBLIC CHARTER SCHOOLS

NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACTS

Tutoring

KIPP DC intends to enter into a sole source contract with Literacy Lab for Tutoring. The decision to sole source is due to the fact that Literacy Lab is the exclusive provider of the training, curriculum, assessment approach, and tutors to be provided to seven early childhood and elementary schools. The cost of the contract will be approximately $40,000.

LEE MONTESSORI PUBLIC CHARTER SCHOOL

INVITATION FOR BID

Food Service Management Services

Lee Montessori PCS is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2016-2017 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **July 22, 2016** from Erin Rowsey at 202-779-9740 or erin@leemontessori.org

Proposals will be accepted at 3025 4th Street, NE, Washington, DC 20017 on **August 16, 2016**, not later than **3 p.m.**

All bids not addressing all areas as outlined in the IFB will not be considered.

NATIONAL COLLEGIATE PREPARATORY PUBLIC CHARTER HIGH SCHOOL

REQUEST FOR PROPOSALS

National Collegiate Preparatory Public Charter High School is requesting bids for various services for the 2016-17 school year. Services required include the following:

- Student Meal Services
- Special Education supportive services
- Event Catering/Rental Supplies
- IT Support Services
- Computers & Technological supplies
- Student Transportation Services
- Instructional Materials & Supplies
- Public Relations Services
- Part-time Sign Language Teacher
- Travel Agent
- Legal Services
- Cafeteria Manager
- Cafeteria Assistant
- Social Worker

If you are a vendor/entrepreneur and are interested in offering any of these services to our school, please e-mail Eric Stultz, Business Manager, at estultz@nationalprepdc.org, as well as Ms. Ana Navarro, anavarro@nationalprepdc.org, for further information on what will be required to fulfill the contract. Please also note that all bids must include evidence of experience in the field, the qualifications of principles, and estimated fees, and ***three (3) copies*** of all proposals must be mailed or delivered (note: scanned copies will be accepted as well as long as certified receipt occurs prior to the deadline) to the following address **by 4 pm on Monday, August 15th, 2016**:

Business Manager
4600 Livingston Rd SE
Washington, DC 20032

Please include on the envelope the type of service you and/or your company is offering

PAUL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Paul Public Charter School seeks competitive bids for:
Chromebooks (Branded HP, Dell, Acer etc.)
For a copy of the full RFP, interested firms should contact:
Iftikhar Khan at: ikhan@paulcharter.org

Bids must be received by 4:00 P.M. Monday, August 1st. Please submit bids electronically to
ikhan@paulcharter.org
Paul PCS reserves the right to cancel this RFP at any time.

Paul Public Charter School
ATTN: Iftikhar Khan
5800 8th St. N.W.
Washington, DC 20011

PAUL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Paul Public Charter School seeks bids for:
Painting walls of hallways and stairwells.
For a copy of the full RFP and associated scope of work interested firms should contact:
Rolando R. Campos at rcampos@paulcharter.org or 202-378-2269.

Bids must be received by **12:00 PM, Monday, August 1st**, 2016to the following location:
Paul Public Charter School
ATTN: Rolando R. Campos
5800 8th St NW
Washington, DC 20011

OFFICE OF THE SECRETARY
OFFICE OF NOTARY COMMISSIONS AND AUTHENTICATIONS

NOTICE OF NOTARIAL FEE INCREASE

As of July 1, 2016, under the Notary Public Fee Enhancement Amendment Act of 2016, effective July 1, 2016 (D.C. Law 21-0137; 63 DCR 7148 (May 13, 2016))[1], the fee a notary public in the District of Columbia may charge for each individual notarial act has been increased from $2.00 to $5.00 per notarial act.

Notary publics are not authorized to charge more than $5.00 per notarial act.

For more information, contact the Office of Notary Commissions and Authentications:

441 4th Street, N.W.
Suite 810 South
Washington, D.C. 20001
Phone: (202) 727-3117
Fax: (202) 727-8457
notary@dc.gov
http://os.dc.gov/page/office-notary-commissions-and-authentications

[1] The law is available in the D.C. Council Legislative Information Management System (LIMS) at: http://lims.dccouncil.us/, and was published in the *D.C. Register* on May 13, 2016 at 63 DCR 7148.

D.C. SENTENCING AND CRIMINAL CODE REVISION COMMISSION

MEETING UPDATE

The D.C. Sentencing and Criminal Code Revision Commission hereby gives notice that the Commission meeting scheduled on Tuesday, July 19, 2016 is cancelled. Inquiries concerning the meeting may be addressed to Mia Hebb, Staff Assistant, at (202) 727-8822 or Mia.Hebb@dc.gov.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

***REVISED* NOTICE OF FUNDING AVAILABILITY (NOFA)**

DC CLEAN TEAM PROGRAM

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to manage a **DC Clean Team Program** ("the Program") in thirteen service areas (listed below). This revised NOFA extends the submission deadline from July 8th to July 25th. **The submission deadline is Monday, July 25, 2016 at 2:00 p.m.**

Through this grant, DSLBD will fund clean teams, which will achieve the following objectives.

- Improve commercial district appearance to help increase foot traffic, and consequently, opportunity for customer sales.
- Provide jobs for DC residents.
- Reduce litter, graffiti, and posters which contribute to the perception of an unsafe commercial area.
- Maintain a healthy tree canopy, including landscaping, along the corridor.
- Support Sustainable DC goals by recycling, mulching street trees, using eco-friendly supplies, and reducing stormwater pollution generated by DC's commercial districts.

Eligible applicants are DC-based nonprofit organizations which are incorporated in the District of Columbia and which are current on all taxes. Applicants should have a demonstrated capacity with the following areas of expertise.

- Providing clean team services or related services to commercial districts or public spaces.
- Providing job-training services to its employees.
- Providing social support services to its Clean Team employees.

DSLBD will **award** one grant for **each** of the following **service areas** (i.e., a total of thirteen grants). The size of grant is noted for each district.

- 12th Street, NE - $100,618
- Bellevue - $100,000
- Benning Road - $107,000
- Connecticut Avenue, NW - $101,982
- Pleasant Plains/Petworth - $100,000
- Brightwood/Petworth, NW - $101,982
- Upper Georgia Avenue - $100,000
- Kennedy Street, NW - $100,618
- Minnesota Avenue, NE - $101,982
- New York Avenue, NE - $113,521
- Pennsylvania Avenue SE - $107,000
- Ward 1 - $100,618
- Wisconsin Avenue - $113,521

The **grant performance period** to deliver clean team services is October 1, 2016 through September 30, 2017.

The **Request for Application** (RFA) includes a detailed description of clean team services, service area boundaries, and selection criteria. DSLBD will post the RFA on or before **Friday, July 8, 2016** at www.dslbd.dc.gov. Click on the *Our Programs* tab, then *Neighborhood Revitalization*, and then *Solicitations and Opportunities* on the left navigation column.

Application Process: Interested applicants must complete an online application on or before **Friday, July 25, 2016 at 2:00 p.m**. DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.**

The online application will be live **Friday, July 8, 2016**. To access the online application, an organization must complete and submit an online **Expression of Interest** (Registration) form at https://octo.quickbase.com/db/bks6qx66x . DSLBD will activate their online access within two business days and notify them via email.

Selection Criteria for applications will include the following criteria.

- Applicant Organization's demonstrated capacity to provide clean team or related services, and managing grant funds.
- Proposed service delivery plan for basic clean team services.
- Proposed service delivery plan for additional clean team services.

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess the Applicant's eligibility, experience, capacity, service delivery plan, and, budget. Applicants may apply for one or more service areas by submitting a separate application for each service area. DSLBD will determine grant award selection and notify all applicants of their status via email on or before August 17, 2016.

Funding for this award is contingent on continued funding from the DC Council. The RFA does not commit the Agency to make an award.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

All applicants must attest to executing DSLBD grant agreement as issued (sample document will be provided with the online application) and to starting services on October 1, 2016.

For more information, contact Lauren Adkins at the Department of Small and Local Business Development at (202) 727-3900 or lauren.adkins@dc.gov.

UNIVERSITY OF THE DISTRICT OF COLUMBIA
REGULAR MEETING OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The regular meeting of the Board of Trustees of the University of the District of Columbia will be held on Tuesday, July 26, 2016 at 5:00 p.m. in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

I. Call to Order and Roll Call
II. Approval of the Minutes – May 5, 2016
III. Action Items
IV. Report of Chairperson
V. Report of the President
VI. Committee Reports
- a. Executive – Dr. Crider
- b. Committee of the Whole – Dr. Crider
- c. Academic and Student Affairs – Mr. Wyner
  - i. Alumni Task Force – Mr. Shelton
  - ii. Communications Task Force – Mr. Mills
- d. Audit, Budget and Finance – Mr. Felton
- e. Community College – Dr. Tardd
- f. Operations – Mr. Bell

VII. Unfinished Business
VIII. New Business
IX. Closing Remarks

Adjournment
Expected Meeting Closure
In accordance with Section 2-575 (b) (10) of the D. C. Code, the Board of Trustees hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance, evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

WILLIAM E. DOAR, JR. PUBLIC CHARTER SCHOOL FOR THE PERFORMING ARTS

REQUEST FOR PROPOSALS

The William E. Doar Jr. Public Charter School for the Performing Arts, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest from Vendors or Consultants for the following tasks and services:

- Professional Development Support for Teachers
- Middle States Accreditation
- Student Data Support
- Teacher Coaching Support

Please send an email to bids@wedjschool.us to receive a full RFP offering more detail on scope of work and bidder requirements.

Proposals shall be received no later than 5:00 pm, Wednesday, August 29, 2016.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator
bids@wedjschool.us

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. Student Data Support). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14096-A[1] **of Wilson NPB LLC**, pursuant to 11 DCMR § 3104.1, for a special exception from the unused bonus density requirements under § 768, to permit the interior renovation of an existing building in the DD/C-5 District at premises 529 14th Street, N.W. (Square 254, Lot 53).

HEARING DATE: July 6, 2016
DECISION DATE: July 6, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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") 2C and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2C, which is automatically a party to this application. The ANC submitted a report, dated May 9, 2016, indicating that at a duly noticed and scheduled public meeting on May 9, 2016, at which a quorum was in attendance, the ANC voted 3-0-0 in support of the application. (Exhibit 16.)

The Office of Planning ("OP") submitted a timely report on June 29, 2016, recommending approval of the application, contingent upon the Applicant filing additional information as noted in the OP report. (Exhibit 37.) OP testified that the Applicant's supplemental submission satisfied those requests. OP filed a Revised Supplemental Report based on the information provided by the Applicant. OP remained in support of the application[2] (Exhibit 38) and testified

[1] This application seeks to modify the plans previously approved by the BZA for a special exception pursuant to 11 DCMR §§ 762 and 768 (Bonus Incentive System) in Application No. 14096 (issued May 22, 1984) (modifying previously approved plans in BZA Order No. 13507). For a full explanation of the background in this application, see Pre-Hearing Statement of the Applicant. (Exhibit 35 in Application No. 14096A.)

[2] In its reports, OP also stated that "the application also appears to require relief from § 2001.3, for an existing building non-conforming to height, court width, and rear yard requirements." OP indicated that it would have no objection to that relief being granted. (See Exhibit 37, p. 1.) The application was not amended.

in support at the hearing.

The District Department of Transportation submitted a timely report on June 29, 2016, indicating that it had no objection to the application. (Exhibit 39.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 768. The only parties to the application were the Applicant and the ANC which expressed support for the application. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 768, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. 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 36A-36B - ARCHITECTURAL PLANS (PART 1 AND PART 2).**

VOTE: 4-0-1 (Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE; Marnique Y. Heath not present, not 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: July 8, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 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

Appeal No. 18980 of Concerned Citizens of Argonne Place, pursuant to 11 DCMR §§ 3100 and 3101, from December 18, 2014 and January 8, 2015 decisions by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permits Nos. B1502210 and B1404813 to convert a one-family dwelling to a four-unit apartment house in the R-5-B District at premises 1636 Argonne Place, N.W. (Square 2589, Lot 460).

HEARING DATE: July 7, 2015
DECISION DATES: July 7, 2015 and September 15, 2015

ORDER DISMISSING APPEAL AS UNTIMELY IN PART, AFFIRMING THE DETERMINATION OF THE ZONING ADMINISTRATOR IN PART, AND REVERSING THE DETERMINATION OF THE ZONING ADMINISTRATOR IN PART

This appeal was submitted on February 13, 2015 by Concerned Citizens of Argonne Place (the "Appellant"), a group of residents who own and reside in properties near 1636 Argonne Place N.W. (the "subject property"), to challenge decisions of the Zoning Administrator, at the Department of Consumer and Regulatory Affairs ("DCRA"), to issue building permits that allowed the conversion of a former one-family dwelling and two-family flat to a four-unit apartment house in the R-5-B zone. Following a public hearing, the Board voted to dismiss the appeal in part as untimely and to affirm in part and reverse in part the determination of the Zoning Administrator.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated February 26, 2015, the Office of Zoning provided notice of the appeal to the Zoning Administrator at DCRA; the Office of Planning; the Councilmember for Ward 1; Advisory Neighborhood Commission ("ANC") 1C, the ANC in which the subject property is located; and Single Member District/ANC 1C05. Pursuant to 11 DCMR § 3112.14, on February 25, 2015, the Office of Zoning mailed letters providing notice of the hearing to the Appellant; the Zoning Administrator; District Design and Development Argonne LLC, the owner of the property that is the subject of the appeal; and ANC 1C. Notice was published in the *D.C. Register* on March 6, 201. (62 DCR 10.)

Party Status. Parties in this proceeding are the Appellant, DCRA, ANC 1C, and District Design and Development Argonne LLC ("Property Owner"). There were no other requests for party status.

Appellant's Case. The Appellant challenged decisions of the Zoning Administrator to issue certain building permits for the subject property, which the Appellant alleged were based on erroneous determinations especially with respect to gross floor area ("GFA") that resulted in errors in calculations of floor area ratio ("FAR") and lot occupancy. The Appellant also alleged error in an email from the Zoning Administrator, sent December 19, 2014, that described a determination that the subject property was in compliance with respect to FAR. That determination was made after the Property Owner submitted an application for a permit revision to change the finished grade adjacent to the front and rear of the building to establish the lower level as a cellar. The Appellant contended that the "cumulative effect of these two permits and the Zoning Administrator's ruling … is to permit construction of an apartment building with a greater FAR and lot occupancy than is permitted in an R-5-B zone, in violation of Section 402.4." (Exhibit 7.)

In its prehearing statement submitted on May 5, 2015, the Appellant also alleged "violation of multiple parking regulations" when building permits were issued that allowed the Property Owner to eliminate the former garage space under the project without providing the two parking spaces required for a four-unit apartment house. According to the Appellant, "allowing installation of a retaining wall across the back of the building not only constitutes an improper and unsuccessful effort to change the grade measure but also further shortens the distance to the alley, thus increasing the non-conformity of potential parking spaces, leaving no space for parking." (Exhibit 22.) After issuance of a revised permit, the Appellant argued that the slope of two newly created parking spaces at the subject property would, at 12% grade, "far exceed the allowable 5% parking surface allowed by the Barrier Act of 1980, thus creating a scenario where zero spaces are provided to the development." (Exhibit 31.) Pursuant to 11 DCMR § 2115.1, "[p]arking shall also be in compliance with the requirements of the District of Columbia Architectural Barriers Act of 1980, effective July 1, 1980 (D.C. Law 3-76; 12 DCMR art. 15)."

DCRA. The Department of Consumer and Regulatory Affairs described the appeal as a challenge of the Zoning Administrator's approval of a building permit issued on September 9, 2014, and revised on December 18, 2014, to change the adjacent finished grade at the subject property so as to bring the floor area ratio into conformity with zoning requirements, noting that a second revised permit was issued on June 23, 2015 after the Zoning Administrator determined that the first revision had caused a collateral zoning violation. DCRA agreed with the Property Owner that the Appellant failed to file a timely appeal to the initial permit, and asserted that the appeal should therefore be limited to the first and second revised permits, which were both "limited to addressing the determination of the lower level as a basement." (Exhibit 35.) DCRA also contended that the Zoning Administrator correctly approved the second revised permit as compliant with the Zoning Regulations.

Property Owner. The owner of the subject property filed a motion to dismiss the appeal as untimely, stating that "[o]ther than the lower-level Gross Floor Area issue (the 'Retaining Wall Issue'), every aspect of the March 19th zoning approval has not changed since the original approval on March 19th and per the issuance of the Building Permit on September 9th," more than eight months before the appeal was submitted. The Property Owner contended that "full zoning

approval" had been received on March 19, 2014, although that approval was revoked eight months later, in December 2014, and one "week later Argonne LLC received a zoning approval for the resolution of the single issue on which the approval was revoked in December – the Retaining Wall Issue." The appeal was filed "nearly eleven (11) months after the original zoning approval, five (5) months after issuance and posting of the subject Building Permit, and a little over two (2) months after the approval of the Retaining Wall Issue." (Exhibit 25.)

The Property Owner claimed good-faith reliance on the original zoning approval on March 19, 2014, on the building permit issued on September 9, 2014, and on the Zoning Administrator's revised approval on December 10, 2014. The Property Owner asserted the affirmative defenses of laches and estoppel, and moved to dismiss the appeal, for lack of timeliness, on all claims of error other than the claim relating to the retaining wall, since every other decision was made on March 19, 2014 and made official in the permit issued on September 9, 2014, which were 11 months and five months, respectively, before the appeal was filed.

ANC Report. By a vote of 6-0 at a public meeting on April 1, 2015, with a quorum present, ANC 1C adopted a resolution in support of the appeal. The resolution stated that "failure to enforce zoning and building code regulations on the subject property will set a flawed precedent for similar and identical properties in Adams Morgan and other neighborhoods in the District of Columbia." (Exhibit 17.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 1636 Argonne Place, N.W. (Square 2589, Lot 460).

2. The lot is improved with a row building formerly used as a one-family dwelling and later as a two-family flat. The Property Owner recently began construction of an addition to the building as part of its planned conversion to a four-unit apartment house.

3. A parking area with spaces for two vehicles will be provided at the rear of the property, accessible from a public alley. The parking area will occupy the rear yard, which is 16 feet deep, and will rise from the alley toward the building at a grade of 12%.

4. The subject property is zoned R-5-B, which permits a maximum FAR of 1.8 and maximum lot occupancy of 60%. (11 DCMR §§ 402.4, 403.2.)

5. The Property Owner applied for a permit for the apartment house project at the subject property on March 5, 2014. That application, for Building Permit No. 1404813, was approved by the Zoning Division of DCRA on March 19, 2014, and the permit was issued on September 9, 2014 (the "September permit"). The permit type was "addition alteration repair" and the description of work included "Renovation of existing single

family masonry veneer structure, 1 story wood framed addition with mezzanine" and "change of use from single family dwelling to 4 unit condo building." (Exhibit 22D.)

6. Beginning in October 2014, residents living near the subject property, including some who later became members of the Appellant group, contacted and met with DCRA staff "to raise concerns about potential violation of FAR and lot occupancy limitations." (Exhibit 31.)

7. On December 3, 2014, a stop work order was issued, on the ground that the project would exceed the maximum floor area ratio permitted in the R-5-B zone because of a recalculation of the gross floor area on the lower level of the building. (Exhibits 22G, 25.) The Property Owner filed an application for a new building permit to revise the September permit so as to allow the installation of a retaining wall extending from the rear building wall that would alter the rear adjacent finished grade.

8. At a meeting with the Property Owner on December 10, 2014, the Zoning Administrator approved the proposed revision based on his determinations that the planned retaining wall would be consistent with the zoning definition of "retaining wall," and would create an adjacent finished grade for the lower level consistent with the zoning definition of a cellar because the ceiling of the lower level would be less than four feet above the adjacent finished grade created by the retaining wall.[1] (Exhibits 25, 24A at 2.) The Zoning Administrator determined that the lower level, as a cellar, would not be included in the calculation of gross floor area[2] and so would also be excluded from the calculation of FAR.[3] Accordingly, the Zoning Administrator concluded that the proposed revision brought the project into compliance with FAR requirements, and the stop work order was lifted around December 20, 2014.

9. A new permit, Building Permit No. 1502210, was issued March 24, 2015 as a revision of B1404813 with "plans to reflect new grade" ("Revised permit"). (Exhibit 22Q.) The Revised permit authorized a retaining wall at the rear of the property that would establish the adjacent finished grade.

[1] A "cellar" is defined in § 199.1 of the Zoning Regulations as "that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade," while a "basement" is defined as "that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade."

[2] In accordance with § 199.1, the "term 'gross floor area' shall include basements…[but] shall not include cellars….".

[3] As defined in § 199.1, "floor area ratio" is "a figure that expresses the total gross floor area as a multiple of the area of the lot. This figure is determined by dividing the gross floor area of all buildings on a lot by the area of that lot."

10. The Zoning Administrator subsequently made a site visit to the subject property and discovered that the Revised permit had caused a collateral violation of the Zoning Regulations by increasing a nonconforming aspect of the planned parking spaces. After a second stop work order was placed on the property on May 20, 2015, the Property Owner submitted a new building permit application to revise the Revised permit. (Exhibit 29 at 3.)

11. Building Permit No. 1509180 was issued June 23, 2015 as a revision of B1404813 "to remove approximately 73 square feet of cellar and install retaining wall." ("Second Revised permit".) (Exhibit 30.) The second revision changed the location of the planned retaining wall to a niche to be formed at the rear of the building, so that the retaining wall would be aligned with the face of the building and would not diminish the depth of the rear yard or the length of the parking area.

12. The height of the retaining wall would be one foot, 10 inches, measured from the top of the parking surface to the top of the berm that would create the finished grade adjacent to the rear wall of the building. The distance between the top of the berm and the ceiling of the lower level would be three feet, 11 inches. (Exhibit 29 at 3.) The Second Revised permit did not alter the Zoning Administrator's prior determination that the lower level of the building was a cellar but allowed an increase in the width of the retaining wall as well as its relocation into the building niche.

13. This appeal was submitted on February 13, 2015.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized by § 8 of the Zoning Act to "hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal" made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2008 Repl.). *See also* 11 DCMR § 3100.2.) Appeals to the Board of Zoning Adjustment "may be taken by any person aggrieved, or organization authorized to represent that person, affected by any decision of an administrative officer…granting or withholding a certificate of occupancy … based in whole or part upon any zoning regulations or map" adopted pursuant to the Zoning Act. (D.C. Official Code § 6-641.07(f) (2008 Repl.). *See also* 11 DCMR § 3200.2.)

The Zoning Regulations specify that an appeal must be filed within 60 days "from the date the person appealing … had notice or knowledge of the decision complained of, or reasonably should have had notice …, whichever is earlier." (11 DCMR § 3112.2(a).) The Property Owner and DCRA filed motions to dismiss the appeal as untimely, except with respect to the determination made in the Revised permit, as replaced by the Second Revised permit – namely the calculation of the rear adjacent finished grade. The Property Owner contended that all the other decisions subject to challenge in the appeal were made on March 19, 2014 when the

Zoning Administrator approved the application for the September permit, although the appeal was not filed until at least 100 days after the Appellant "fully knew of the decisions being challenged." (Exhibit 25.) DCRA argued that the Appellant failed to file a timely appeal of the initial permit (Building Permit No. 1404813, issued September 9, 2014), and asserted that the appeal should be limited to the Revised permit and the Second Revised permit; that is, "the determination of 'adjacent finished grade' and the impact of that on the FAR calculation." (Exhibit 35.) The Property Owner contended that the 60-day period began by late October 2014 at the latest, when the Appellant had obtained copies of the relevant building permits and architectural plans. (Transcript ("Tr.") of July 7, 2015 at 54-55.) According to the Property Owner, the beginning of the 60-day period could be fixed earlier, with the issuance of the building permit on September 9, because the permit was posted promptly and work began at the subject property immediately thereafter, or even earlier than the date of permit issuance, because the neighbors were aware of the project.

Despite the neighbors' earlier knowledge that construction had begun at the subject property, the Appellant argued that the 60-day period for an appeal to the Board of Zoning Adjustment began December 18, 2014 with the Zoning Administrator's approval of the Revised permit. The Appellant stated that, despite an inability to obtain copies of relevant drawings, the Appellant's neighbors nonetheless had "immediately started conversations with DCRA and raised questions during the 60-day period after September 9 when the first permit was issued working with the zoning regulatory process." (Tr. of July 7, 2015 at 52.) The Appellant decided not to file an appeal while engaged in "an active conversation … with the regulatory body [about] … a problem that they would like to perhaps address," especially in light of the issuance of a stop work order on December 3, 2014, which confirmed the Appellant's reliance on the regulatory process. (Tr. of July 7, 2015 at 53.) The Appellant also contended that the appeal was timely because the aspect under appeal "in the first permit also applies to all of the other permits later issued," specifically with respect to errors in the calculation of gross floor area and height. (Tr. of July 7, 2015 at 53.)

The building permit is ordinarily the document that reflects a zoning decision about whether a proposed structure and its intended use, as described in the permit application, conform to the zoning regulations, and may provide "the first notice from which an aggrieved person knew or 'reasonably should have … know[n]' … of the resolution or decision …." *Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356, 364, 367 (D.C. 2008); *Schonberger v. District of Columbia Bd. of Zoning Adjustment*, 940 A.2d 159 (2008). A zoning decision made prior to the issuance of a building permit may be appealable if the appellant had knowledge of the decision.[4] *See Appeal No. 19049 of Caesar Junker et al.* (2015).

[4] The Appellant became aware at some time that "DCRA issued multiple building permits for the subject property" between March and September 2014, "with determinations that existing and proposed FAR, lot occupancy, building height and parking conditions were in compliance with zoning regulations," and that "[c]oncerns were brought to the attention of DCRA by neighbors over the time period October-December 2014." (Exhibit 31.) While some members of the Appellant group may have been aware that the zoning review of the September permit was completed by March 19, 2014, that information may not have been known to the Appellant until later, and the

In this case the Board finds no reason to conclude that the Appellant lacked knowledge of the issuance of Building Permit No. 1404813 on September 9, 2014. The Board credits the Property Owner's assertion that the permit was posted and work began at the subject property immediately thereafter. By its own account, the Appellant knew of the issuance of the September permit at least by October 2014, when some neighbors met with DCRA to discuss their concerns about potential zoning violations at the subject property related to lot occupancy and floor area ratio. However, the appeal was not filed until February 13, 2015 – that is, well after the 60-day deadline even based on the October date when the Appellant indisputably had knowledge of the zoning decision. The Appellant's "active conversation" with DCRA or other measures to pursue the regulatory process did not toll the time allowed for submission of an appeal. *See Woodley Park Community Ass'n v. District of Columbia Bd. of Zoning* Adjustment, 490 A.2d 628, 638 (D.C. 1985) (delay in filing appeal was not reasonable where appellant opted to continue negotiations with property owner rather than pursue the alternate route of an administrative challenge to owner's development plans; property owner's behavior, including being "less than fully candid" so that appellant believed its concerns would be accommodated, did not eliminate responsibility for choices where appellant "was fully aware of the sharp differences that existed between the parties."); *Waste Management of Maryland, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 775 A.2d 1117, 1123 (D.C. 2001) (fact that appellant continued discussions with DCRA, choosing "to concentrate on avenues that reasonably may have appeared more promising than an appeal," did not excuse its delay in noting an appeal).

The Board finds no merit in the Appellant's contention that the appeal was timely because the aspect of the first permit under appeal applies as well to all the permits at issue. To the extent that the subsequent permits merely reiterated the zoning decisions embodied in the issuance of the September permit and did not reflect new zoning decisions, the initial permit was the only appealable decision. A subsequent building permit or communication from the Zoning Administrator cannot be appealed unless it contains a new decision. *See* Appeal No. 17915 (*Bolduc*), 56 DCR 9698 (2009), citing Appeal No. 16982 (*Herron and ANC 3F*), 52 DCR 3904 (2005), Appeal No. 17411 (*Basken and Meyer*), 53 DCR 2495, *affirmed, Basken,* 946 A.2d at 362 (D.C. 2008); Appeal No. 17830 (*Cooper*), 56 DCR 3737 (2009).

The Board was not persuaded by the Appellant's contention that the 60-day deadline should be extended due to exceptional circumstances outside the Appellant's control that could not have been reasonably anticipated but that substantially impaired the Appellant's ability to file the appeal. (*See* 11 DCMR § 3112.2(d).) In this instance the September permit was not ambiguous or one of a series that hampered comprehension of the entire scope of the project, nor was the Appellant faced with building permit applications of a "cumulative, piecemeal nature" that obfuscated the full extent of the construction project. *Compare Sisson v. District of Columbia*

Board declines to base its decision on timeliness on the earlier March 2014 date without a showing that the Appellant had actual knowledge then. (Cf. Appeal No. 18300 (*Ausubel*; April 11, 2012) (pre-permit email from ZA to Appellant constituted notice of zoning determination); Appeal No. 18469 (*Lynch*; March 19, 2013) (ZA posting on permit tracking system constituted notice of zoning determination where appellant knew of the zoning approval).

Bd. of Zoning Adjustment, 805 A.2d 964, 969-970 (D.C. 2008) (Appellant was not chargeable with notice of entire scope of work performed at neighboring property until all permits were issued, where permit applications omitted relevant information, most permits were issued under wrong zoning classification, individual permits failed to reflect the entire scope of proposed renovations, and work was performed outside the scope of issued permits). The Appellant claimed difficulty in obtaining copies of plans from DCRA but acknowledged receiving copies of construction plans from neighbors living close to the subject property. An extension of the filing deadline would prejudice the other parties to the appeal, as evidenced by DCRA's assertion of prejudice both to DCRA and to the permit holder (Exhibit 35), and the Property Owner's claims of estoppel and laches (Exhibit 25).[5]

Accordingly, the Board finds a lack of timeliness in the appeal of matters that were not changed after issuance of Building Permit No. 1404813 on September 9, 2014, or after October 2014, when the Appellants certainly had notice of some matters they now challenge in the appeal. The Board concludes that the appeal was timely only with respect to the matters newly authorized by the Revised permit issued in December 2014, as amended by the Second Revised permit issued in June 2015; that is, the calculation of the rear adjacent finished grade and collateral issues relating to the proposed rear retaining wall and the grade in the parking area. (Tr. at 68, 92.) The Revised permit authorized a change to the original permit in such a way that altered the determination of the rear adjacent finished grade by means of a retaining wall installed adjacent to the rear building wall. The Second Revised permit again altered the determination of the rear adjacent finished grade, replacing the proposal of the Revised permit with a plan to "carve out" a portion of the rear of the building for a berm that would establish the adjacent finished grade and be held in place by the retaining wall. This proposal created a 12% grade for the rear parking area accessible from the public alley.

In light of the Board's decision that a portion of the appeal must be dismissed as untimely, the merits of the appeal are limited to the remaining issues raised by the Appellant, which concern the retaining wall approved in the Second Revised permit and its use in determining adjacent finished grade, and the location of the parking area on a 12% grade. The Appellant contended that the retaining wall was illegal and could not create the adjacent finished grade or serve as a reference point for the determination of the lower level as a cellar, in part because the wall was not yet built and thus could not designate "existing" conditions, including finished grade.

The Zoning Regulations define "retaining wall" as "a vertical, self-supporting structure constructed of concrete, durable wood, masonry or other material, designed to resist the lateral displacement of soil or other materials …." (11 DCMR § 199.1.) The term "retaining wall" includes "concrete walls, crib and bin walls, reinforced or mechanically stabilized earth systems,

[5] The Property Owner asserted that "permanent and expensive improvements [were made] in justifiable reliance on the affirmative act of DCRA in approving the subject Building Permit. DCRA then took no action for almost three (3) months, when the Stop Work Order was issued." (Exhibit 25.) At the public hearing, the Property Owner acknowledged that the claims of estoppel and laches were no longer applicable after the Board determined that a portion of the appeal, concerning decisions reflected in the September permit and not altered by subsequently issued revised permits, was not timely. (See Tr. of July 7, 2015 at 84.)

anchored walls, soil nail walls, multi-tiered systems, boulder walls, or other retaining structures." The Board concurs with DCRA and the Property Owner that the retaining wall approved by the Second Revised permit would comply with zoning requirements in that the wall would serve a legitimate purpose in laterally displacing soil. The Appellant did not contradict testimony that the retaining wall at the subject property was necessary to prevent soil erosion. *Compare* Appeal No. 17285 (*Carome*; 2006) (an elevated platform structure constructed to shore up an artificially created surface for leisure activities was not a retaining wall built to resist lateral pressure and prevent an earth slide); *affirmed, Economides v. District of Columbia Bd. of Zoning Adjustment*, 954 A.2d 427 (D.C. 2008).

The Board finds no merit in the Appellant's contention that the approved retaining wall cannot create the adjacent finished grade or serve as a reference point for the determination of the lower level as a cellar. As the Property Owner noted, the Zoning Regulations do not prohibit the adjusting of the finished grade for purposes of FAR calculations, and the Appellant did not demonstrate that the Zoning Administrator's decision in this regard was inconsistent with customary practice or otherwise in error. Noting that "adjacent finished grade" is not defined in the Zoning Regulations, DCRA asserted that the term has been consistently interpreted by its plain meaning as the grade adjacent to the building that is established at the conclusion of the construction process as shown on the plans approved with a building permit. The Board concurs with DCRA's assessment that the plans approved with the Second Revised permit showed the adjacent finished grade to be the grade between the rear of the building and the top of the retaining wall. Since that grade would be less than four feet below the ceiling of the lower level, the lower level would be a cellar under the definition in § 199.1, and, as a cellar, the lower level would not be included in the calculation of gross floor area or floor area ratio, in keeping with the definitions of those terms in § 199.1. The Board also concurs with DCRA that the § 199.1 definitions at issue in this proceeding do not refer to "existing" conditions but rather require an evaluation of proposed conditions for zoning compliance, since "'finished' means the grade proposed by the [permit] applicant to be established under a permit." (Exhibit 35.)

With respect to the parking area at the rear of the subject property, § 2115.1 provides:

> 2115.1 Except as otherwise provided in this section, a required automobile parking space shall be a minimum of nine feet (9 ft.) in width and nineteen feet (19 ft.) in length, exclusive of access drives, aisles, ramps, columns, office or work areas and shall be striped according to the requirements of § 2117.3. Parking shall also be in compliance with the requirements of the District of Columbia Architectural Barriers Act of 1980, effective July 1, 1980 (D.C. Law 3-76; 12 DCMR art. 15).

The Appellant asserted that the parking spaces would be illegal because their 12% grade would purportedly violate the Barrier Act.[6] The Appellant acknowledged that the 12% slope might have been approved pursuant to § 2117.8(a),[7] but argued that "a parking space of 16' in length is not a driveway as defined in § 2117.8(a) ('provides access to required parking spaces')" but "a stationary spot" that is "the terminal arrival point served by a driveway." (Exhibit 31.) The Property Owner and DCRA asserted that the two parking spaces would be legal because their substandard size was grandfathered as existing parking spaces. DCRA also noted that the Zoning Administrator has interpreted § 2117.8(a) as permitting a maximum 12% grade for a parking space as well as for a driveway, especially under circumstances such as at the subject property where the parking area would serve as both, because the Zoning Regulations do not separately define parking spaces and driveways.

The Board agrees with DCRA and the Property Owner that the parking area at the subject property may be provided at a maximum grade of 12% in accordance with § 2117.8 since the Zoning Regulations do not distinguish a parking space and an access ramp, aisle, or driveway, except in § 2115.1. That provision is intended to ensure that a parking space will generally be striped in compliance with a certain minimum size, exclusive of related features such as driveways that might otherwise impinge on a parking area. The Board does not find that the minimum size requirement precludes the approval of a 12% grade, specifically permitted for a driveway, to a parking area as well.

However, the Board concurs with the Appellant that the two parking spaces at the subject property would not comply with § 2115.1, because that provision sets the minimum size of "a required automobile parking space" at nine feet in width and 19 feet in length "exclusive of access drives, aisles, ramps, columns, office or work areas ….". The Property Owner conceded that the length of the spaces at the subject property would be only 16 feet.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. Section 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) (2001)). In this case, ANC 1C adopted a resolution in support of the appeal, stating that the "failure to enforce zoning and building code regulations on the subject property will set a flawed precedent for similar and identical properties…. (Exhibit 17.) For the reasons discussed above, the Board determined that a portion of the appeal was not filed in compliance with the deadline established by the Zoning Regulations and therefore must be dismissed. With respect to the remaining zoning issues on appeal, the Board determined that the Zoning Administrator's determinations should be upheld in part and reversed in part. The ANC's resolution recognized the need for compliance with zoning requirements but did not specifically address the issues decided by the Board in this

[6] The current Construction Codes at Title 12 DCMR does not appear to contain any portion of this act. The act as adopted appears at 27 DCR 2409 (1980).

[7] Pursuant to § 2117.8(a), a "driveway that provides access to required parking spaces" may "have a maximum grade of not more than twelve percent (12%) with a vertical transition at the property line."

proceeding, and therefore the Board cannot give "great weight" to any specific issues or concerns raised by the ANC.

Based on the findings of fact and conclusion of law, the Board concludes that the Appellant has not satisfied the burden of proof in its claims of error in the decisions of the Zoning Administrator with respect to the finally approved retaining wall, the adjacent finished grade, and the determination that the lower level of the building is a cellar, or in allowing the 12% grade in the parking area; however, the Board does find error in the Zoning Administrator's determination to approve a parking area where the spaces would not satisfy the minimum size requirements stated in § 2115.1[8] Accordingly, it is therefore **ORDERED** that a portion of the **APPEAL** is **DISMISSED** as untimely and the Zoning Administrator's determination is **SUSTAINED in part and REVERSED in part.**

VOTE: 4-0-1 (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen voting to DISMISS a portion of the appeal as untimely; Frederick L. Hill not participating).

VOTE: 3-0-2 (Lloyd J. Jordan, Jeffrey L. Hinkle, and Marcie I. Cohen voting to AFFIRM the Zoning Administrator's determination in part and to REVERSE the determination in part; Marnique Y. Heath not present, not voting; Frederick L. Hill 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: July 13, 2016

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

[8] On January 12, 2016, the Board granted Application No. 19154 by the Property Owner for variance relief from this requirement. An order formally approving the application is being separately issued.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 19154 of District Design and Development Argonne, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the minimum parking space dimension requirements of § 2115.1, to convert an existing flat into a four-unit apartment house in the R-5-B District at premises 1636 Argonne Place, N.W. (Square 2589, Lot 460).

HEARING DATE: January 12, 2016
DECISION DATE: January 12, 2016

DECISION AND ORDER

District Design and Development Argonne, LLC (the "Applicant"), the owner of the subject property, submitted this self-certified application on October 1, 2015, seeking a variance from the minimum parking space dimension requirements under § 2115.1, to convert an existing flat into a four-unit apartment house in the R-5-B District at premises 1636 Argonne Place N.W. (Square 2589, Lot 460).

The Board of Zoning Adjustment (the "Board") held a hearing on the application on January 12, 2016, at which it voted 3-0-2 to grant the requested relief.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated October 14, 2015, the Office of Zoning sent notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 1; Advisory Neighborhood Commission ("ANC") 1C, the ANC for the area within which the subject property is located; and the single-member district ANC 1C-05. Pursuant to 11 DCMR § 3112.14, on October 19, 2015, the Office of Zoning mailed notice of the hearing to the Applicant, ANC 1C, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on October 23, 2015 (62 DCR 44).

Request for Party Status. The Applicant and ANC 1C were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from the Concerned Citizens of Argonne Place, represented by Alan Gambrell and Ana Bruno.

Applicant's Case. The Applicant provided evidence and testimony from Greg Keats, Principal of District Design and Development Argonne, LLC, the owner of the subject property. The evidence and testimony described the Applicant's plans to provide two compact spaces and the burden associated with providing two 9' x 19' spaces, as well as the Applicant's reliance on DCRA's assurances that the parking pad was sufficient.

OP Report. By report dated January 5, 2016, and through testimony at the public hearing, OP noted that it was supportive of the project and recommended approval of the requested variance relief.

DDOT Report. By memorandum dated January 5, 2016, DDOT indicated no objection to the application, noting that the proposal will have no adverse impacts on the District's transportation network.

ANC Report. The ANC did not submit a report.

Persons in Support. On January 6, 2016, Ron Baker, the owner of 1620 Argonne Place N.W., submitted a letter in support of the application.

Party in Opposition. The Board heard testimony from two members of the group of residents that were granted party status (the "Opposition Party"), Alan Gambrell and Ana Bruno.

FINDINGS OF FACT

1. The subject property is located at 1636 Argonne Place, N.W. (Square 2589, Lot 460).

2. The subject property is a rectangular property measuring 1,700 square feet in land area and 20 feet in width.

3. The subject property is located in the R-5-B Zone District.

4. The subject property is currently improved with an existing row structure, including a recently constructed addition. The Applicant constructed the addition and made certain other improvements to the property in conjunction with the enlargement and conversion of the dwelling into a four-unit apartment house (the "Project"). As part of the planned conversion, the Applicant proposed to provide two parking spaces in an area at the rear of the dwelling that would be 16 feet deep and 20 feet wide.

5. The two proposed parking spaces at the rear of the subject property will be accessed from a public alley 15 feet wide. The parking pad will occupy an area that slopes up toward the apartment house at a grade of 12%. The Applicant will install a fence or other barrier to enhance safety where the grade of the subject property changes near the abutting properties.

6. Many properties in the immediate vicinity of the subject property provide parking accessible from the alley, on parking pads or in garages constructed in the lower levels of the buildings. Prior to the conversion project, the building at the subject property also had a lower level garage accessible from the alley.

7. The Applicant submitted an application for a building permit for the Project. A portion of the application, prepared by the Applicant or its architect, depicted the parking area and reflected that the two proposed parking spaces would be smaller than the size generally required by the Zoning Regulations (that is, nine feet wide and 19 feet deep). Nonetheless, the building permit application received approval from the Zoning Division of DCRA on March 19, 2014. The March 19, 2014 approval included specific comments noting that the 16' x 20' parking area proposed by the Applicant complied with the Zoning Regulations.

8. The dimensions of the parking area in the proposed and approved permit plans has not changed since originally proposed in March 19, 2014.

9. On September 9, 2014, DCRA issued Building Permit No. B1404813 (the "Building Permit"), which authorized construction of the Project, including the addition and the conversion from two units to four units, with parking area dimensions of 20 feet wide and 16 feet long.

10. Upon issuance of the Building Permit, the Applicant immediately commenced the permitted construction.

11. The Applicant relied both on the initial approval from the DCRA zoning technician in March 2014, as well as on Building Permit No. B1404813 issued in September 2014, in diligently pursuing and substantially completing the approved construction and conversion.

12. In December 2014, more than three months after the issuance of the Building Permit, DCRA issued a stop work order for an alleged violation relating to the calculation of the floor area ratio ("FAR") of the Project. The Applicant corrected the FAR issues and work recommenced shortly thereafter. The stop work order did not implicate any issue related to the dimensions of the parking spaces.

13. The Building Permit and supplemental permits associated with the Project were challenged in two appeals: Appeal No. 18980, filed by the Concerned Citizens of Argonne Place (the "Appeal"); and Appeal No. 19115, submitted by ANC 1C.[1]

14. The Appeal was filed on February 13, 2015, challenging the issuance of Building Permit No. B1404813 and B1509180 (issued to amend B1404813). The Appeal did not initially challenge the parking area. The first mention made by any party of an issue with the approval of the parking spaces was made in the prehearing statement filed by the

[1] The Board voted on December 1, 2015 to dismiss the latter appeal (No. 19115) because it challenged the same building permit on the same grounds that the Board had decided in Appeal No. 18980, to which ANC 1C had also been a party.

appellant on May 4, 2015 in Appeal No. 18980, eight months after the date of permit issuance and commencement of the work in September 2014.

15. On July 7, 2015, the Board voted to dismiss most of the claims made in the Appeal as untimely. The issues remaining in the Appeal were related to decisions made by the Zoning Administrator in December 2014 and in May 2015, after DCRA issued stop work orders and the property owner obtain responding permit revisions. The Board voted on September 15, 2015 to uphold the Zoning Administrator's determinations on those issues.

16. At the public meeting on September 15, 2015, the Board also voted to reverse the Zoning Administrator's determination that the parking area complied with the Zoning Regulations, since the two parking spaces would not satisfy the minimum size requirements of § 2115.1.

17. The Applicant then submitted this application for variance relief from the minimum parking dimensions of 11 DCMR § 2115.1 to complete the conversion as it was approved in Building Permit No. B1404813.

CONCLUSIONS OF LAW

The Applicant requests a variance from the minimum parking space dimension requirements of § 2115.1 to allow the conversion of an existing flat into a four-unit apartment house in the R-5-B zone at 1636 Argonne Place, N.W. (Square 2589, Lot 460). The Board is authorized to grant variances from the strict application of the Zoning Regulations where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property . . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,'' the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property.. ." (D.C. Official Code 6-641.07(g)(3) (2008 Supp.); 11 DCMR § 3103.2.)

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship" must be made for a use variance. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Applicant in this case is requesting area variances and therefore had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. The Applicant also had to show 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." (11 DCMR § 3103.2.)

The "exceptional situation or condition" of a property can arise out of "events extraneous to the land," including the zoning history of the property. See, *e.g. De Azcarate v. District of Columbia*

Bd. of Zoning Adjustment, 388 A.2d 1233, 1237 (D.C. 1978), and see *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097, and 1098 (D.C. 1979). See also *BZA Order No. 17264* (2005). The "exceptional situation or condition" can also arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974).

In order to prove "practical difficulties," an applicant must demonstrate first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *See Gilmartin* v. *District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 164, 170 (D.C. 1990).

Based on the above findings of fact, and having given great weight to the recommendation of the Office of Planning, the Board concludes that the Applicant has satisfied the burden of proof and that the application should be granted. The Board notes that the requested variance relief is relatively minor, as the parking area will be wider than necessary to satisfy zoning requirements and only three feet short of the minimum required depth. The depth of the two parking spaces proposed by the Applicant will be the same as the size permitted by the Zoning Regulations for compact parking spaces.[2] *See Gilmartin*, 579 A.2d at 1171 (Board may conclude that a correspondingly lesser burden of proof rests on the applicant when the variance sought is *de minimis* in nature).

The subject property faces an exceptional situation or condition arising from its recent zoning history, specifically that the building permits issued for the conversion of the property to an apartment house incorporated the parking plan proposed by the Applicant at less than the generally required minimum size, and the Applicant relied on the actions of DCRA officials in approving the Project, including the proposed parking pad. As noted by the Office of Planning, "Construction began and was nearly completed pursuant to the approved permits, with the assumption that the parking spaces at the rear of the site were satisfactory." The Applicant provided evidence to DCRA permitting officials showing the existence of a parking pad with the dimensions of 16' x 20'. Subsequent enforcement action by DCRA addressed only an issue related to the floor area ratio of the Project, and did not raise concerns about the size of the parking area. The actions of DCRA in approving the building permit, and the actions of the Applicant in relying on that approval, constitute an exceptional zoning history which caused a practical difficulty to the Applicant in strictly complying with the Zoning Regulations.[3]

[2] See 11 DCMR § 2115.3, which allows a compact car parking space at a minimum of eight feet in width and 16 feet in length, exclusive of access drives, aisles, ramps, columns, and office and work areas.

[3] The party in opposition made an unsubstantiated allegation that the mistakenly approved permit was the result of a misrepresentation by the Applicant in the building permit application. The Applicant denied making any misrepresentations and cited *Saah v. District of Columbia Bd. of Zoning Adjustment*, 433 A.2d 1114, 1117 (D.C. 1981) ("…it can at most only be argued that the petitioner, or his architect, should have known that the project…exceeded the maximum lot occupancy. However, the same can be said for the official who approved the plans, and we will not go so far as to decide that any of them were negligent in failing to discover the problem at that time. In hindsight, there is no question [but that the planned construction would exceed maximum permitted lot

The Board concurs with the Applicant and the Office of Planning that strict compliance with the Zoning Regulations would cause practical difficulty to the Applicant by reason of the exceptional situation, especially considering that construction undertaken pursuant to the approved building permit has been substantially completed, and the parking issue was not raised on appeal to the Board until eight months after the permit was issued and construction was significantly underway. After receiving an initial approval from DCRA zoning division staff, followed by issuance of the building permit, the Applicant incurred significant expenses associated with the Project, including payments to an architect to design the proposed building and addition, prepare plans for a building permit application, and pursue that application, and to a contractor, in part for some custom-made materials which may be difficult to return or redeem.

Because construction has been substantially completed, the only way to increase the depth of the parking area now would be to remove a portion of the building. However, as OP noted, the rear wall of the Applicant's building is in line with the adjacent structures, while the cellar wall is set back into the building and a retaining wall is in line with the rear building wall above and forms the northern edge of the parking pad. The Board concurs with OP's conclusion that "Forcing a change in the design at this point, after many months of construction, would constitute a practical difficulty for the applicant."

The Board concludes that the requested variance can be granted without substantial detriment to the public good. As noted by the Office of Planning, "Parking spaces with dimensions of 16' x 9' are common throughout the city, as that is the standard size of 'compact' parking space per the Zoning Regulations." The Board was not persuaded by the party in opposition that the alley abutting the subject property was unusually narrow or congested. Many, perhaps most, of the nearby properties use the alley to provide access to parking spaces, and the subject property previously provided at least one space in a lower level garage. Use of the rear of the subject property to provide parking for two vehicles will not likely have a noticeable impact on traffic in the alley. The Board notes the concern raised by the party in opposition related to the grade of the Applicant's parking area, but concludes that the concern is adequately addressed by the Applicant's commitment to install a fence or other barrier at the edges of the subject property to enhance safety where the grade changes at the abutting properties.

The Board also concludes that the requested variance can be granted without substantially impairing the intent, purpose, and integrity of the zone plan. As previously mentioned, the Applicant is proposing to provide parking spaces in the size permitted by the Zoning Regulations as compact parking spaces, which as OP notes "are common throughout the city" and are "able to accommodate many types of automobiles…." The Board concurs with the conclusion of OP that approval of the requested variance will not substantially impair the intent, purpose, and integrity of the zone plan because "the Zoning Regulations generally support the provision of

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occupancy]. Nevertheless, we do not consider petitioner's reliance upon approval of the permit applications to have been unjustified."). Similarly, the Board makes no finding with respect to whether the Applicant acted in good faith reliance on DCRA, but neither does the Board make any finding of misrepresentation or other lack of good faith by the Applicant.

parking for any use" as well as "the provision of adequately sized spaces" – in this case "consistent with a parking depth permitted for compact parking spaces," while "the circumstances leading to this request appear to be rare."

The Board is required to give great weight to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) For the reasons discussed above, the Board concurs with the recommendation of the Office of Planning to approve the application.

The Board is also required to give great weight to issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d).) In this case, ANC 1C did not submit a report stating any issues or concerns, and did not participate in the public hearing. The Board is therefore unable to give great weight to any issues or concerns raised by the affected ANC.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof for a variance from the minimum parking space dimension requirements under § 2115.1 to allow conversion of an existing flat to a four-unit apartment house in the R-5-B district at 1636 Argonne Place N.W. (Square 2589, Lot 460). It is hereby **ORDERED** that the application is **GRANTED**.

VOTE: **3-0-2** (Frederick L. Hill, Jeffrey L. Hinkle, and Peter G. May to APPROVE; Marnique Y. Heath not participating; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: July 13, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR

GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. 19263 of Michael and Kimberly Baker, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403.2, the rear yard requirements under § 404, and the minimum required open court requirements under § 406, to construct a rear deck addition to an existing one-family dwelling in the R-4 District at premises 2629 Woodley Place, N.W. (Square 2205, Lot 40).

HEARING DATE: July 6, 2016[1]
DECISION DATE: July 6, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated August 13, 2015, from the Zoning Administrator certifying the required relief. (Exhibit 4.).

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled and properly noticed meeting on May 16, 2016, at which a quorum was in attendance, ANC 3C approved the application by a voice vote. (Exhibits 28 and 29 (duplicate).)

The Office of Planning ("OP") submitted a timely report (Exhibit 31) and testified at the hearing in support of the application. The District Department of Transportation ("DDOT") submitted a report of no objection to the approval of 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 § 3104.1, for a special exception under §§ 223, 403.2, 404, and 406. No parties appeared at the public meeting in opposition to this application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 223, 403.2, 404, and 406, 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

[1] This case was postponed from June 21, 2016 to the hearing of Wednesday, July 6, 2016.

further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7.**

VOTE: **4-0-1** (Anita Butani D'Souza, Frederick L. Hill, Jeffrey L. Hinkle, and Robert E. Miller to APPROVE; Marnique Y. Heath 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 order.

FINAL DATE OF ORDER: July 11, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-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. 19281 of Department of General Services of the District of Columbia, as amended,[1] pursuant to 11 DCMR §§ 3103.2, 3104.1, and 411.11, for a variance from the loading requirements under § 2201, and special exceptions from the rooftop-mounted mechanical equipment requirements under §§ 411.6, 411.7, and 411.18, and for a reduction in the number of parking spaces under § 2108, to permit the installation of new rooftop-mounted mechanical equipment to an existing public school in the R-5-B District at premises 1150 5th Street S.E. (Square 853N, Lot 809).

HEARING DATES: June 21 and July 6, 2016[2]
DECISION DATE: July 6, 2016

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated April 8, 2016, from the Zoning Administrator, certifying the required relief.[3] (Exhibit 8.)

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") 6D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6D, which is automatically a party to this application. The ANC submitted a report indicating that at a regularly scheduled, properly noticed public meeting on June 13, 2016, at which a quorum was present, the ANC voted unanimously (6-0-0) to support the application. (Exhibit 20.)

[1] The Applicant originally filed an application for a variance from the parking requirements under § 2100 based on a referral letter from the Zoning Administrator certifying the required relief. However, in its report, the Office of Planning ("OP") noted that that the appropriate parking relief would be a special exception pursuant to § 2108 to reduce the number of parking spaces provided to zero and to provide mitigation on the adjacent lot. (Exhibit 31.) At the public hearing on July 6, 2016, the Applicant indicated that it wanted to amend its application to request special exception relief from § 2108 and to add loading relief under § 2201, per OP's recommendation. (Exhibit 29.) The caption has been changed accordingly.

[2] This application was originally scheduled for the public hearing of June 21, 2016 and postponed to July 6, 2016 at the Applicant's request.

[3] The Board accepted the Applicant's amendment of its application based on the Office of Planning's recommendation without a revised Zoning Administrator's letter.

The Office of Planning ("OP") submitted a timely report recommending approval of the application and indicating that the parking variance requested by the Applicant is the incorrect relief for its proposal. Instead, OP indicated that the appropriate relief would be a special exception pursuant to § 2108 to reduce the number of parking spaces provided to zero and provide mitigation on the adjacent lot. (Exhibit 31.) OP also testified in support of the application at the public hearing.

The District Department of Transportation ("DDOT") submitted a timely report raising concerns about granting the request for parking relief without the Applicant conducting a parking occupancy study. (Exhibit 21.) The Applicant testified that it has been working with DDOT to resolve any issues and that providing a parking occupancy study as requested by DDOT would be difficult, because a study completed during this time would not be able to measure parking occupancy during the school's operation.

Variance

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 loading requirements under § 2201, to permit the installation of new rooftop-mounted mechanical equipment to an existing public school in the R-5-B 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 § 2201, the Applicant has met the burden of proof under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exceptions

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exceptions from the rooftop-mounted mechanical equipment requirements under §§ 411.6, 411.7, and 411.18, and for a reduction in the number of parking spaces under § 2108, to permit the installation of new rooftop-mounted mechanical equipment to an existing public school in the R-5-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 adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11

DCMR §§ 3104.1 411.6, 411.7, 411.18, and 2108 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 EXHIBITS 6 AND 28.**

VOTE: **3-0-2** **(**Frederick L. Hill, Robert E. Miller, and Jeffrey L. Hinkle, to APPROVE. Marnique Y. Heath and Anita Butani D'Souza 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: July 13, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 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. 19306 of Massage Envy, pursuant to 11 DCMR § 3104.1, for a special exception from the massage establishment requirements under § 731, to operate a massage establishment in the C-2-A District at premises 4926 Wisconsin Avenue, N.W. (Square 1671, Lot 805).

HEARING DATE: July 6, 2016
DECISION DATE: July 6, 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") 3E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, 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 June 9, 2016, at which a quorum was present, the ANC voted unanimously (4-0-0) to approve the application. (Exhibit 31.)

The Office of Planning ("OP") submitted a timely report (Exhibit 32) and testified in support of the application. The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application. (Exhibit 33.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under § 731. 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 and 731, 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: **4-0-1** (Anita Butani D'Souza, Robert E. Miller, Frederick L. Hill, and Jeffrey L. Hinkle to APPROVE; Marnique Y. Heath 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 order.

FINAL DATE OF ORDER: July 8, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 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
Public Employee Relations Board

In the Matter of:	
District of Columbia Public Schools,	PERB Case No. 15-A-08
Petitioner,	Opinion No. 1576
and	
American Federation of State, County and Municipal Employees, District Council 20, Local 2921	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On March 4, 2015, the District of Columbia Public Schools ("DCPS") filed an Arbitration Review Request ("Request"), seeking review of an arbitration award ("Award") by Arbitrator Paul Greenberg ("Arbitrator"). The Arbitrator found two grievances that challenged two different reduction-in-force ("RIF") substantively arbitrable under the parties' collective bargaining agreement ("CBA"). DCPS challenges the Award on the basis that it is contrary to law and public policy, and because the Arbitrator exceeded his jurisdiction.

III. Discussion

When a party files an arbitration review request, the Board's scope of review is extremely narrow. Specifically, the CMPA authorizes the Board to modify or set aside an arbitration award in only 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."[1]

The Arbitrator issued an Award, finding that reduction-in-force issues were substantively arbitrable under the parties' collective bargaining agreement. DCPS requests that the Board reverse the Award, because (1) the Award is contrary to law and public policy, and (2) the Arbitrator has exceeded his jurisdiction.[2]

DCPS argues that the Award is contrary to D.C. Official Code § 16-4406(b), because the courts are solely empowered to decide substantive arbitrability.[3] DCPS asserts that "the Court of Appeals of the District of Columbia has confirmed that questions of substantive arbitrability are for the Courts to decide."[4]

The Revised Uniform Arbitration Act ("RUAA"), at D.C. Official Code § 16-4406(b), states, "The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate."[5] However, the Board's power to consider appeals from arbitration derives from the Comprehensive Merit Personnel Act ("CMPA"), and not the RUAA.[6] The Court of Appeals has considered the intersection of these two laws in the context of labor relations arbitration. In *Washington Teachers Union, Local No. 6 v. D.C. Pub. Sch.* ("*WTU*"), the Court of Appeals considered whether the D.C. Superior Court could stay an arbitration proceeding by determining whether the subject was substantively arbitrable under the parties' collective bargaining agreement.[7] The Court of Appeals found that the Superior Court may rule on substantive arbitrability:

> [T]he question at issue in a motion to stay arbitration—whether an agreement to arbitrate exists and encompasses the dispute at hand—is a matter of contract interpretation that courts are well-equipped to handle, rather than a matter of labor relations that would benefit from the unique expertise of an arbitrator and PERB.[8]

Notwithstanding, the Court of Appeals found concurrent jurisdiction over pre-arbitration substantive arbitrability issues:

> Because the CMPA neither expresses an intent to preclude a motion to stay arbitration under D.C. Code § 16–4407 nor provides a comparable remedy, we conclude that this portion of the Arbitration Act is not

[1] D.C. Official Code § 1-605.02(6) (2001 ed.).
[2] Request at 3.
[3] Request at 4.
[4] Request at 4 (citing *Washington Teachers Union, Local #6 v. D.C. Public Schools*, 77. A.3d 441 (D.C. 2013); and *District of Columbia v. AFSCME, District Council 20 and Local 2921*, 81 A.3d 299 (D.C. 2013)).
[5] (2014 Supp.).
[6] D.C. Official Code § 1-605.02(6).
[7] *Washington Teachers' Union, Local No. 6, Am. Fed'n of Teachers, AFL-CIO v. D.C. Pub. Sc*h., 77 A.3d 441, 453 (D.C. 2013).
[8] *Id.*

> preempted by the CMPA and the Superior Court had jurisdiction to grant the relief sought by the District of Columbia. It bears repeating that we are only called upon to determine the default position where the parties' CBA is silent as to who should decide issues of arbitrability. Like other contracting parties, District of Columbia employees and management are free to provide that issues of arbitrability are to be decided by the arbitrator in the first instance, but they must express such intent clearly and unmistakably in their collective bargaining agreement.[9]

The Union opposes the Agency's request, because the Union asserts that the parties agreed to submit the issue to the arbitrator.[10]

Under the Board Rules, after considering an arbitration review request, the Board may reject the request for lack of jurisdiction or sustain, set aside or remand the award in whole or in part.[11]

Earlier this year, the D.C. Court of Appeals ruled that reduction-in-force cases are not arbitrable.[12] The D.C. Court of Appeals stated, in reference to the Abolishment Act that governs reduction-in-force cases, "[T]he Act unambiguously vests the OEA with the exclusive jurisdiction to determine whether the District government acted properly in conducting a RIF."[13] Even though DCPS has not asserted that the Award is contrary to law and public policy based on this holding, the court's decision may require that the Award be overturned.

III. Conclusion

Because, neither party nor the arbitrator could have considered the impact of the holding in the above case, PERB makes no determination here on whether the award in this case is contrary to law and public policy or if the arbitrator exceeded his jurisdiction. We therefore, remand this case to the arbitrator for a determination of his jurisdiction based on the case law mentioned above.

[9] *Id*. (citations omitted).
[10] Opposition at 5-6.
[11] PERB Rule 538.4.
[12] *UDC v. AFSCME, District Council, Local 2087*, 130 A.3d 355 (D.C. 2016).
[13] *UDC* at 362.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Board remands the award to the arbitrator for a determination of his jurisdiction based on *UDC v. AFSCME, District Council, Local 2087*, 130 A.3d 355 (D.C. 2016).

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, Member Barbara Somson, and Member Douglas Warshof.

Washington, D.C.

April 21, 2016

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
American Federation of Government Employees, Local 383,	)	PERB Case No. 13-U-06
Complainant,	)	
	)	Opinion No. 1577
v.	)	
District of Columbia Department of Youth Rehabilitation Services,	)	
Respondent.	)	

DECISION AND ORDER

Complainant American Federation of Government Employees, Local 383 ("AFGE Local 383") filed an unfair labor practice complaint against the District of Columbia Department of Youth Rehabilitation Services ("DYRS") alleging that DYRS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by engaging in direct dealing; by implementing an employee conduct policy ("Policy") without first engaging in substantive bargaining; and by failing to negotiate in good faith over the impact or effects of, and procedures concerning the implementation of the Policy ("I&E bargaining").[1]

On January 24, 2014, PERB issued a Decision and Order[2] ("Slip Op. No. 1449") that sustained some of AFGE Local 383's allegations, dismissed other allegations, and referred the remaining allegations to be analyzed by a hearing examiner. The Hearing Examiner's Report and Recommendation ("Report"), now complete, is before the Board for consideration.

For the reasons stated more fully below, the Board affirms the Hearing Examiner's dismissal of AFGE Local 383's direct dealing allegation, as well as his finding that DYRS committed an unfair labor practice by failing to negotiate in good faith during I&E bargaining. However, the Board rejects the Hearing Examiner's findings that, under the facts of this case, the dress code portion of the Policy was a mandatory subject of bargaining; and that DYRS'

[1] *See Am. Fed'n of Gov't Emp., Local 631, et al. v. D.C. Gov't, et al.*, 62 D.C. Reg. 14666, Slip Op. No. 1541, PERB Case No. 09-U-31 (2015).
[2] *Am. Fed'n of Gov't Emp., Local 383 v. D.C. Dep't of Youth Rehab. Serv.*, 61 D.C. Reg. 1561, Slip Op. No. 1449, PERB Case No. 13-U-06 (2014).

unilateral adoption of the dress code therefore violated D.C. Official Code §§ 1-617.04(a)(1) and (5). Further, the Board rejects the Hearing Examiner's findings that the Policy's prohibition against having outside contact with youth who were under DYRS' care, or their families, for three years exceeded the scope of the DCMR, and that DYRS' unilateral adoption of that provision therefore violated §§ 1-617.04(a)(1) and (5).

I. Slip Op. No. 1449

AFGE Local 383's Complaint raised ten distinct allegations: 1) that DYRS engaged in direct dealing; 2) that DYRS unilaterally implemented and failed to bargain substantively over the Policy's (a) prohibition against employees using harsh, coarse, or threatening language; (b) regulations of outside speeches and writings; (c) prohibition of posting in workplaces without preapproval; (d) dress code; (e) requirement that employees self-report serious violations of the law; (f) prohibition against outside personal or social media contact with youth under DYRS care, or their families, for three years after the youth leaves DYRS custody; and (g) prohibition against borrowing or lending money between co-workers; 3) that the Policy is overly broad, vague, etc.; and 4) that DYRS failed to engage in good faith I&E bargaining.

In Slip Op. No. 1449, the Board rejected and dismissed AFGE Local 383's allegations that DYRS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by unilaterally implementing and failing to bargain substantively over the Policy's prohibition against employees using harsh, coarse, or threatening language; its regulations of outside speeches and writings; and its requirement that employees self-report serious violations of the law.[3] The Board noted that under D.C. Official Code § 1-617.08(a)(1), "management maintains the sole right to 'direct employees of the agencies,' 'in accordance with applicable laws, rules, and regulations."[4] The Board held that an agency does not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing to engage in substantive bargaining with an exclusive representative over a management rights decision that is in harmony with the DCMR (or other similar applicable law) because the decision is protected under the "applicable laws and rules and regulations" clause of D.C. Official Code § 1-617.08(a)(1).[5] Thus, since the Policy's prohibition against harsh, coarse, or threatening language, as well as its provision regulating public speech and writings, and its requirement to self-report serious violations of law all corresponded to similar provisions and requirements in the DCMR,[6] the Board found that those portions of the Policy were protected as management rights under D.C. Official Code § 1-617.08(a)(1). Accordingly, the Board held that

[3] *Id*. at 6-7, 9-10.
[4] *Id*.
[5] *Id.* (citing *Washington Teachers Union, Local 6 v, D,C, Pub. Sch.*, 46 D.C. Reg. 8090, Slip Op. No. 450 at p. 9, PERB Case No. 95-N-01 (1995); and *Douglas, et al. v. Dixon, et al.*, 39 D.C. Reg. 9621, Slip Op. No. 315 at p. 2, PERB Case No. 92-U-03 (1992)).
[6] The prohibition against abusive language corresponded to the then versions of 6-B DCMR § 1603.3(g) (now repealed) and § 1619.1 (now § 1607(a)(16)). The provisions governing public speech and writings corresponded to the then version of 6-B DCMR §§ 1804 *et seq*. (now §§ 1807 *et seq.*). The requirement to self-report serious violations of the law corresponded to the then versions of 6-B DCMR § 423.3 and §§ 418.1(c)(1) – (9) (now partially § 416.4 and §§ 416.2(c)(1) – (9), respectively).

DYRS did not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) when it refused to substantively bargain over those portions of the Policy with AFGE Local 383, and dismissed the allegations.[7] The Board noted, however, that DYRS was still obligated to engage in good faith I&E bargaining over those portions of the Policy pending a timely request by AFGE Local 383.[8]

With regard to AFGE Local 383's allegations that DYRS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by unilaterally implementing and failing to bargain substantively over the Policy's prohibitions of posting in workplaces without preapproval and against borrowing or lending money between co-workers, the Board found that those portions of the Policy went beyond the scope of the DCMR.[9] Thus, the Board found that they were not "in accordance with applicable laws, rules, and regulations" and were therefore not protected as management rights under D.C. Official Code § 1-617.08(a)(1). Accordingly, the Board found that DYRS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it unilaterally implemented those portions of the Policy without first engaging in substantive bargaining with AFGE Local 383, and ordered the parties to return to positions of *status quo ante* until such time as the parties engage in substantive bargaining over those issues.[10] Further, the Board ordered DYRS to cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5), and to post a notice explaining its violations.[11]

Addressing AFGE Local 383's allegation that the Policy was "overly broad, vague, ambitious, [and] not narrowly tailored to meet the Agency's legitimate and necessary objectives," the Board noted that AFGE Local 383 did not provide—nor could the Board find—any legal authority to support that assertion. Accordingly, the Board dismissed the allegation.[12]

Finally, the Board noted that AFGE Local 383's allegations concerning direct dealing, the Policy's dress code and no-contact provisions, and DYRS' alleged failure to engage in good faith I&E bargaining each raised questions of fact.[13] Therefore, the Board ordered each of those allegations to be addressed by an unfair labor practice hearing.

II. The Hearing Examiner's Report and Recommendation

The hearing in this matter was held on June 17, 2014.[14] In his Report, the Hearing Examiner made the following findings of facts and conclusions.

[7] Slip Op. No. 1449 at 6-7.
[8] *Id.* at 6-7, 10 (citing *D.C. Nurses Ass'n v. D.C. Dep't of Mental Health*, 59 D.C. Reg. 9763, Slip Op. No. 1259, PERB Case No. 12-U-14 (2012)).
[9] *Id.* at 7-8, 11.
[10] *Id.* at 8. 11.
[11] *Id.* at 13-14.
[12] *Id.* at 9.
[13] *Id.* at 5-6, 8-9, 11-12.
[14] HE Report at 5.

A. Direct Dealing

The Hearing Examiner found that "[t]he Union did not present any evidence in support of its allegation of direct dealing...." Accordingly, he "accepted the Union's withdrawal of that allegation" at the close of the hearing.[15]

B. Failure to Engage in Good Faith I&E Bargaining

On September 5, 2012, DYRS notified its employees by email that it was implementing a new Employee Conduct Policy, effective September 4, 2012.[16] That same day, AFGE Local 383 sent an email to DYRS management and to the Office of Labor Relations and Collective Bargaining ("OLRCB") demanding "decisional [i.e. substantive] bargaining" over the Policy.[17]

The parties first met on September 25, 2012. AFGE Local 383 was represented at the meeting by its President, Timothy Traylor, and its attorney, Brenda Zwack. DYRS was represented by two OLRCB attorneys, Dean Aqui and Nina McIntosh. No management officials from DYRS were present.[18] AFGE Local 383's representatives stated that they were going to leave and reschedule until a time when a DYRS management official could attend, but OLRCB's attorneys encouraged them to stay to at least voice their concerns about the Policy. Mr. Traylor testified that he agreed, but that he made it clear to OLRCB that AFGE Local 383 was merely voicing its concerns, and was not engaging in I&E or substantive bargaining.[19] Mr. Aqui testified that DYRS considered the meeting to be an I&E bargaining session.[20] The Hearing Examiner credited Mr. Traylor's testimony over Mr. Aqui's regarding the purpose of the meeting based on his analysis of Mr. Traylor's and Mr. Aqui's deliveries and demeanors, as well as an email exchange between the Director of DYRS and Mr. Traylor discussing what the purpose of the September 25th meeting would be. [21]

On November 16, 2012, a second meeting was held.[22] Mr. Traylor and Ms. Zwack represented AFGE Local 383 along with two shop stewards. Mr. Aqui and Kathryn Naylor from OLRCB and four members of DYRS' management represented DYRS.[23] At the meeting, AFGE Local 383 submitted several proposals. However, DYRS' representatives asserted that they were not authorized to make any final decisions and that they would have to take all of

[15] *Id*. at 7.
[16] *Id*. at 5.
[17] *Id*. The Board notes that in Slip Op. No. 1449, it was stated that "the parties dispute whether a timely request to bargain was made…." In actuality, the timeliness of AFGE Local 383's September 5, 2012 demand to bargain was not in question. *See* Complaint at ¶ 10; *and* Answer at ¶ 10. This is evidenced by the fact that the parties willingly met on September 25 and November 16, 2012, to bargain over the Policy. Rather, the dispute was over whether the parties had met to engage in substantive bargaining over the Policy, or whether they had met to engage in I&E bargaining over the Policy. Answer at ¶ 10.
[18] HE Report at 5.
[19] *Id*. at 5-6.
[20] *Id*. at 6.
[21] *Id*.
[22] *Id*.
[23] *Id*.

AFGE Local 383's proposals back to DYRS for more careful consideration.[24] Additionally, DYRS' representatives did not ask to caucus even once to consider any of AFGE Local 383's proposals, nor did they make any counter-offers.[25] Mr. Traylor testified that he felt DYRS had given AFGE Local 383 the "runaround."[26] He further testified that when he asked DYRS' representatives if any of them had the authority to finalize any agreements that day, DYRS' representatives either did not respond or could not decide if any of them had the authority to bind DYRS.[27] AFGE Local 383 then abruptly left the meeting. Mr. Aqui's final note from the meeting states, "Union walked out because we would not say that we could/would change the policy right here and now."[28]

Based on his analysis of the record, the Hearing Examiner concluded that "DYRS violated the requirements of good faith bargaining on September 25 and November 16 by sending to the bargaining table representatives with insufficient authority to engage in meaningful negotiations."[29] The Hearing Examiner found that "Mr. Traylor's collective bargaining experience taught him to expect to meet members of agency management at the bargaining table who had sufficient authority to bind their agency to a contract." By not having any agency personnel at the September 25th meeting, and by not having anyone at the November 16th meeting who could commit DYRS to an agreement right then and there, the Hearing Examiner found that DYRS "frustrated the Union's efforts to engage in meaningful bargaining regarding the provisions of [the Policy], and their impact and effect on Local 383's bargaining unit, and thereby violated D.C. [Official] Code §§ 1-617.04(a)(1) and (5)."[30]

C. Dress Code

The Hearing Examiner noted that 4 DCMR §§ 513.1-2 permit District agencies to "prescribe standards of appearance or dress for personnel which serve a reasonable business purpose; for example, to identify its employees to the public by means of a distinctive uniform, or to maintain a neat and clean appearance, [or] in order to prevent a danger to the health, welfare, or safety of employees or customers." The Hearing Examiner further noted that D.C. Official Code § 1-617.08 "grants DYRS the sole right to direct its employees in accordance with applicable law."[31]

Based on testimony from DYRS' witness, Quiyana Hall, the Hearing Examiner found that "DYRS adopted the new policy in 2012 because of safety or security incidents."[32] Additionally, the Hearing Examiner noted the distinctions between the content and applicability of DYRS' 2004 dress code, DYRS' 2010 case management manual, and the 2012 dress code

[24] *Id*. at 7.
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] *Id*.
[29] *Id*. at 12.
[30] *Id*.
[31] *Id*. at 8.
[32] *Id*. at 9.

DYRS adopted as part of its new Employee Conduct Policy.[33] The Hearing Examiner found that the 2012 dress code, "for the first time, sets forth specific clothing restrictions in detail, and extends beyond attire to body adornments such as tattoos, rings, and earrings and to fingernails."[34] He further found that the 2012 version applied to all "DYRS staff" wherever they work, whereas the 2004 version applied to "all Youth Services Administration Employees, volunteers, and staff assigned to secure facilities or group or shelter homes by other units, agencies or departments."[35] Moreover, the Hearing Examiner noted that the 2004 dress code stated that employees who violated the policy would be sent home on annual leave until they returned in suitable attire, but made no mention that violations might result in discipline. He noted that the 2010 case management manual did not have any provisions about being sent home or being disciplined. The 2012 dress code, however, stated that violators of the Policy would be sent home on annual leave and that subsequent violations could result in discipline.[36]

Finally, the Hearing Examiner noted that Mr. Aqui, on behalf of DYRS, refused to bargain substantively over the dress code, but stated that DYRS would "[o]f course … entertain a demand for impact and effects bargaining on the new provisions."[37]

Based on his factual findings, and relying on NLRB case law, the Hearing Examiner concluded that "the 2012 dress code differed materially, substantially and significantly from the 2004 dress code and the 2010 [case management manual's] requirements and therefore was a mandatory subject of bargaining."[38] The Hearing Examiner further concluded that "DYRS' refusal to bargain with Local 383, and its unilateral implementation of the 2012 dress code also violated D.C. [Official] Code §§ 1-617.04(a)(1) and (5)."[39]

D. Prohibition of Outside Contact With Youth After Release from DYRS Custody

The Hearing Examiner noted that in 2012, the then version of 6-B DCMR § 1800.1 (now partially § 1800.2) required District employees to "at all times maintain a high level of ethical conduct in connection with the performance of official duties," and to "refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government."[40] He further noted that the then version of § 1800.2 stated that "[t]he maintenance of unusually high standards of honesty, integrity,

[33] *Id*. at 8-9.
[34] *Id*.
[35] *Id*. The Board notes that it appears the Hearing Examiner interpreted the quoted language from the 2004 dress code to mean that its restrictions only applied to those people who worked in DYRS' secure facilities. However, the Board reads the language to mean that it was applicable first to "all" DYRS staff regardless of where they worked in DYRS, then to any volunteers regardless of where they worked in DYRS, and then to any staff from other agencies who were assigned to DYRS' secure facilities or group or shelter homes. Nevertheless, since the exact meaning 2004 language is not relevant in light of the Board's ultimate holding in this Decision and Order regarding the 2012 dress code, the Board finds that it is not necessary to definitively determine which interpretation of the 2004 language is correct. (see Transcript at 87-96).
[36] HE Report at 8-9.
[37] *Id*.
[38] *Id*. (citing *Salem Hosp. Corp.*, 360 NLRB 95 (April 30, 2014)).
[39] *Id*.
[40] *Id*. at 10.

impartiality, and conduct by employees is essential to assure proper performance of government business and the maintenance of confidence by citizens in their government," and that the "avoidance of misconduct and conflicts of interest on the part of the employees is indispensable to the maintenance of these standards." Lastly, the Hearing Examiner noted that the then version of § 1803.1(a)(6) (now partially § 1800.3(n)) required employees to "avoid action, whether or not specifically prohibited by this chapter, which might result in or create the appearance of affecting adversely the confidence of the public in the integrity of the government."[41]

Applying those regulations to the Policy's provision prohibiting DYRS employees from having outside personal or social media contact with youth who had been under DYRS care, or their families, for three years after the youth leaves DYRS custody, the Hearing Examiner found that "[t]here is nothing [in the District's regulations] which touches directly on the matter of personal contacts between DC Government employees and the people they serve or have served in their official capacity."[42] He further noted that when asked about the provision, Mr. Aqui stated that it was "purely a management policy call."[43]

The Hearing Examiner concluded that the provision therefore "far exceeds the area of proper management concerns expressed in the [DCMR]."[44] He held that DYRS thus "had an obligation to engage in collective bargaining with the Union before burdening the bargaining unit employees represented by Local 383 with the [provision's'] sweeping prohibitions…," and that DYRS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it failed to do so.[45]

III. Analysis

The Board will affirm a hearing examiner's findings and recommendations if the findings are reasonable, supported by the record, and consistent with PERB precedent.[46]

A. Direct Dealing

As the Hearing Examiner noted, AFGE Local 383 withdrew its direct dealing allegation at the close of the hearing.[47] Accordingly, that allegation is dismissed with prejudice.

B. Failure to Engage in Good Faith I&E Bargaining

When an agency implements a management rights decision that is protected by D.C. Official Code §§ 1-617.08(a) *et seq*., the agency is not obligated to bargain substantively over the

[41] *Id*.
[42] *Id*.
[43] *Id*. at 10-11.
[44] *Id* at 11-12.
[45] *Id*. at 12.
[46] *Am. Fed'n of Gov't Emp., Local 872 v. D.C. Water and Sewer Auth.*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).
[47] HE Report at 7.

decision, but it still has a duty to, upon a timely request from the union, bargain over the impact and effects of, and procedures concerning the implementation of the decision.[48] That duty does not require the parties to bargain in perpetuity or to reach an ultimate agreement, but the agency must still engage in the negotiations in good faith.[49] The Board has set forth what constitutes "good faith" in the context of I&E bargaining:

> Under Board case law, when I&E bargaining has been requested by the exclusive representative, the agency fulfills its duty to bargain in good faith by going beyond "simply discussing" its proposal with the union, and by doing more than merely requesting the union's input. Furthermore, the agency's participation cannot constitute mere "surface bargaining", and the agency cannot engage in conduct at or away from the table that intentionally frustrates or avoids mutual agreement. Rather, there must be a give and take, with the negotiations entailing full and unabridged opportunities by both parties to advance, exchange, and reject specific proposals.[50]

In this case, the record supports the Hearing Examiner's finding that DYRS' response to AFGE Local 383's request for I&E bargaining over the portions of the Policy protected as management rights "violated the requirements of good faith."[51] For instance, before any bargaining meetings even took place, DYRS' Director, Neil Stanley, made it clear to AFGE Local 383 that although DYRS was "happy" to meet with AFGE Local 383, it was not willing "to do anything other than listen" unless AFGE Local 383 sent its concerns in writing ahead of time.[52] When the parties did meet for the first time to discuss the Policy on September 25, 2012, not a single DYRS management official attended the meeting. Instead, DYRS only sent its attorneys from OLRCB.[53]

Moreover, at the November 16, 2012 meeting, despite the presence of two OLRCB attorneys (who professed to have full authority by themselves to bargain for DYRS),[54] and four DYRS management officials (including its chief operations officer, its chief labor relations liaison, and its in-house legal counsel), DYRS still refused to say whether it had the authority to make any decisions or reach any agreements while at the table.[55] Indeed, Mr. Aqui's own personal notes from the meeting conceded that the "Union walked out because we would not say

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[48] *See AFGE, Local 631, et al. v. D.C. Gov't, et al.*, 62 D.C. Reg. 14666, Slip Op. No. 1541 at p. 5, PERB Case No. 09-U-31; *see also Am Fed'n of State, Cnty., and Mun. Emp., Dist. Council 20, Local 2401, AFL-CIO v. D.C. Child and Family Serv. Agency*, 61 D.C. Reg. 12586, Slip Op. No. 1497 at p. 3, PERB Case No. 10-I-06 (2014); *and Am. Fed'n of Gov't Emp., Local 631 v. D.C. Pub. Emp. Relations Bd.*, Case No. 2013 CA 005870 P(MPA) (D.C. Super. Ct. Jul. 30, 2015).
[49] *AFSCME, Local 2401, v. D.C. CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497 at p. 3, PERB Case No. 10-I-06.
[50] *Id.* (internal citations omitted).
[51] HE Report at 12.
[52] Transcript at 30-31; *see also* DYRS Exceptions at 3.
[53] HE Report at 5-6; *see also* Transcript at 31-39; *and* DYRS Exceptions at 3.
[54] Answer at 8, 15; DYRS Exceptions at 13-15.
[55] HE Report at 7; *see also* Transcript at 43, 141-42.

that we could/would change the policy right here and now."[56] Additionally, it is undisputed that DYRS did not ask to caucus even once to discuss AFGE Local 383's proposals.[57] It is further undisputed that DYRS did not submit a single counteroffer or make any alternative suggestions.[58] True to Mr. Stanley's word, DYRS did literally nothing at the meeting but listen.[59] Accordingly, the record supports the Hearing Examiner's crediting of Mr. Traylor's testimony that DYRS effectively gave AFGE Local 383 the "runaround," which is simply another way of saying that DYRS' conduct constituted bad faith "surface bargaining" as defined in PERB case law.[60]

Therefore, the Board finds that the Hearing Examiner's conclusions that "DYRS' conduct frustrated the Union's efforts to engage in meaningful bargaining regarding the provisions of [the Policy], and their impact and effect on Local 383's bargaining unit, and thereby violated D.C. [Official] Code §§ 1-617.04(a)(1) and (5)" were reasonable, supported by the record, and consistent with PERB precedent.[61]

In its Exceptions, DYRS asserted that the Hearing Examiner erred when he failed to consider its affirmative defense that Mayor's Order 2001-168 conferred unrestricted authority upon OLRCB to bargain collectively on behalf of the Mayor (and thus DYRS) when he found that "DYRS violated the requirements of good faith bargaining on September 25 and November 16 by sending to the bargaining table representatives with *insufficient authority* to engage in meaningful negotiations."[62] The Board rejects the Exception.

The Board notes that the key phrase in the Hearing Examiner's finding was "meaningful negotiations," not "insufficient authority."[63] AFGE Local 383's Complaint alleged that "[b]y unilaterally implementing a policy concerning, in part, subjects within the ambit of managerial rights, *without engaging in good faith impact and effects bargaining* with the Union upon its demand, the Agency has violated D.C. [Official] Code §§ 1-617.04(a)(1)(5)."[64] Accordingly, the question before the Hearing Examiner was not whether OLRCB had the authority to bargain on behalf of DYRS, but whether DYRS satisfied its duty to fully engage in I&E bargaining in good faith.[65] Therefore, DYRS' affirmative defense was irrelevant and the Hearing Examiner did not err when he failed to address it. Indeed, even if OLRCB did have the authority to fully bind DYRS to an agreement at the September 25th meeting, Mr. Aqui testified that OLRCB still

[56] HE Report at 7; *see also* Transcript at 141-42.
[57] HE Report at 7; *see also* Transcript at 41-45.
[58] *Id.*
[59] *See* Transcript at 30-31.
[60] HE Report at 7; *see also* Transcript at 43; *and AFSCME, Local 2401, v. D.C. CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497 at p. 3, PERB Case No. 10-I-06.
[61] HE Report at 12; *see also AFGE., Local 872 v. D.C. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.
[62] DYRS Exceptions at 13 (quoting HE Report at 11) (emphasis added by DYRS).
[63] HE Report at 11.
[64] Complaint at 8 (emphasis added).
[65] *See* Slip Op. No. 1449 at 12 (holding that "[a]s issues of fact exist concerning whether DYRS violated the CMPA *by failing to bargain in good faith* with the Union over portions of the employee conduct policy implicating management rights, the matter is best determined after the establishment of a factual record through an unfair labor practice hearing.").

would not have agreed to anything without first consulting with DYRS to make sure that the proposals made sense in terms of DYRS' mission, operations, and needs.[66] If DYRS had simply sent someone with that knowledge to the meeting, it is possible that the negotiations would have been much more effective and efficient, and thus "meaningful."[67] Furthermore, even though there were four DYRS management officials present at the November 17th meeting, DYRS still failed to discuss or deliberate privately over any of AFGE Local 383's proposals.[68] Accordingly, even if OLRCB and DYRS' management officials did have "sufficient authority" to reach an agreement at the meetings (and for the sake of argument, the Board assumes that they did), they still did not do anything to actually exercise that authority in any meaningful way other than to simply show up.[69] Since the Board has determined that DYRS' conduct constituted mere surface bargaining, the Board finds that the Hearing Examiner did not err when he found that "DYRS violated the requirements of good faith bargaining on September 25 and November 16 by sending to the bargaining table representatives with insufficient authority to engage in *meaningful* negotiations," or when he concluded that DYRS therefore "frustrated the Union's efforts to engage in *meaningful* bargaining regarding the provisions of [the Policy]" in violation of D.C. Official Code §§ 1-617.04(a)(1) and (5).[70]

As a remedy, the Board orders DYRS to: 1) cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by merely engaging in surface bargaining, and thus failing and refusing to engage in good faith I&E bargaining over the portions of the Policy protected as management rights under §§ 1-617.08(a) *et seq.*; 2) engage in good faith I&E bargaining with AFGE Local 383, upon a timely request, over the portions of the Policy protected as management rights under §§ 1-617.08(a) *et seq.*; and 3) post a notice for 30 consecutive days where notices to employees are normally posted detailing DYRS' violation of D.C. Official Code §§ 1-617.04(a)(1) and (5), and asserting that it shall immediately cease and desist from any further related violations.[71]

With regard to AFGE Local 383's request for attorneys' fees, the Board already held in Slip Op. No. 1449 that, in accordance with the constraints of D.C. Official Code § 1-617.13, "no attorneys' fees will be awarded in this case."[72] With respect to AFGE Local 383's request for costs, the Board noted in Slip Op. No. 1449 that, under PERB case law, "any award of costs necessarily assumes that the party to whom the payments is to be made was successful in at least

[66] Transcript at 134-37, 150-53.
[67] *Id*. at 33-35, 38-39.
[68] *Id*. at 41-45.
[69] It is important to note that the Board is not saying that DYRS was obligated to reach an agreement with AFGE Local 383 right then and there at the table, or even at all. DYRS was obligated, however, to take AFGE Local 383's request for I&E bargaining seriously, and to demonstrate a good faith effort by fully engaging in the process (i.e. discussing and deliberating AFGE Local 383's proposals, offering counter-proposals, and/or reaching tentative agreements if appropriate). *See AFSCME, Local 2401, v. D.C. CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497 at p. 3, PERB Case No. 10-I-06. In this case, there is simply no evidence that DYRS did any of that.
[70] HE Report at 11-12 (emphases added); *see also AFSCME, Local 2401, v. D.C. CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497 at p. 3, PERB Case No. 10-I-06.
[71] HE Report at 13.
[72] Slip Op. No. 1449 at p. 13.

a significant part of the case…."[73] In this matter, the Board has sustained only three of AFGE Local 383's ten allegations as unfair labor practices. Therefore, since AFGE Local 383 has not prevailed in "a significant part" of its case, no costs will be awarded.[74]

C. Dress Code

The Board rejects the Hearing Examiner's legal conclusion that DYRS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it unilaterally implemented its 2012 dress code without first substantively bargaining with AFGE Local 383.[75] The Hearing Examiner's analysis is contrary to the CMPA and PERB precedent, and his conclusion was not supported by the record.[76]

Under the CMPA, D.C. Official Code § 1-617.08(a)(1) empowers management with the "sole right, in accordance with applicable laws and rules and regulations … [t]o direct employees of the agencies." Further, § 1-617.08(a)(5)(D) empowers management with the sole right "[t]o determine … [t]he agency's internal security practices…."[77] Under the District's regulations, 4 DCMR §§ 513.1-2[78] permit agencies to "prescribe standards of appearance or dress for personnel which serve a reasonable business purpose; for example, …to maintain a neat and clean appearance… [or] to prevent a danger to the health, welfare, or safety of employees or customers…."

In Slip Op. No. 1449, the Board held that an agency does not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing to engage in substantive bargaining with a union over management rights decisions that are in harmony with the DCMR (or other applicable law) because those decisions are protected under the "applicable laws and rules and regulations" clause of D.C. Official Code § 1-617.08(a).[79] However, the Board also held that if the management decision in question goes beyond the scope of the DCMR or other applicable law, then the decision is not "in accordance with applicable laws and rules and regulations" and cannot be imposed without bargaining.[80] Thus, the Board referred AFGE Local 383's allegations regarding DYRS' 2012 dress code to the Hearing Examiner to develop a factual

[73] *Id.* (quoting *Am Fed'n of State, Cnty., and Mun. Emp., Dist. Council 20, Local 2776 v. D.C. Dep't of Fin. and Revenue*, 73 D.C. Reg. 5658, Slip Op. No. 245 at p. 4-5, PERB Case No. 98-U-02 (2000)).
[74] *See AFSCME, Local 2776 v. D.C. DFR,* 73 D.C. Reg. 5658, Slip Op. No. 245 at p. 4-5, PERB Case No. 98-U-02.
[75] HE Report at 11-12.
[76] *See AFGE Local 872 v. D.C. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.
[77] *See AFGE, Local 631 v. D.C. PERB*, Case No. 2013 CA 005870 P(MPA) (holding that D.C. agencies have the sole non-negotiable right under D.C. Official Code § 1-617.08(a)(5)(D) to determine their internal security practices); *see also Drivers, Chauffeurs & Helpers Local Union No. 639 v. Dist. of Columbia, et. al.*, 631 A.2d 1205, 1215 (D.C. 1993) (holding that D.C. agencies have the right to set their own security policies).
[78] 4 DCMR §§ 513.1-2 falls under Title 4, Chapter 5 of the DCMR, which governs, respectively, "Human Rights and Relations" and "Employment Guidelines." In Slip Op. No. 1449, the Board found that the DCMR was applicable to DYRS under the then version of 6-B DCMR § 1600.1 (now § 1600.2). *See* p. 6.
[79] Slip Op. No. 1449 at 7, 10 (citing *Washington Teachers Union, Local 6 v, D,C, Pub. Sch.*, 46 D.C. Reg. 8090, Slip Op. No. 450 at p. 9, PERB Case No. 95-N-01 (1995); and *Douglas, et al. v. Dixon, et al.*, 39 D.C. Reg. 9621, Slip Op. No. 315 at p. 2, PERB Case No. 92-U-03 (1992)).
[80] Slip Op. No. 1449 at 8-9, 11.

record and determine whether or not its provisions extended beyond the scope of 4 DCMR §§ 513.1-2.[81]

In his Report, the Hearing Examiner made a brief reference to 4 DCMR §§ 513.1-2, but failed to analyze whether or not DYRS' 2012 dress code was within their scope as the Board had instructed.[82] Instead, the Hearing Examiner noted that, under NLRB case law, an employer unlawfully refuses to bargain if it changes the established terms and conditions of employment without first giving notice to and conferring with the statutory bargaining representative of its employees.[83] The Hearing Examiner further noted that under the NLRB's decision in *Salem Hosp. Corp.*, an employer violates the National Labor Relations Act[84] ("NLRA") if it unilaterally adopts a new dress code that "differ[s] materially, substantially, and significantly" from a previous version, such as adding the possibility of discipline.[85] In this case the Hearing Examiner found that because DYRS' 2012 dress code had more specific restrictions and requirements than DYRS' previous dress codes, and because the 2012 dress code was made applicable to all "DYRS staff" regardless of where they worked,[86] and because the 2012 dress code added a new provision that subsequent violations could result in discipline,[87] the Hearing Examiner found that the 2012 dress code differed "materially, substantially, and significantly" from DYRS' previous versions.[88] The Hearing Examiner concluded that DYRS therefore violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it unilaterally implemented the 2012 changes without first engaging in substantive bargaining with AFGE Local 383.[89]

The Hearing Examiner's analysis was in error. The Board has long held that although it "may often cite NLRB case law, the PERB is not bound by NLRB precedent."[90] This is partly because PERB and the NLRB operate under different statutes. PERB operates under the CMPA, while the NLRB operates under the NLRA. The two statutes are similar in many respects, but differ in one key aspect that is directly relevant to this case; the CMPA has a management rights statute (encapsulated in D.C. Official Code § 1-617.08, *et seq.*), whereas the NLRA does not.[91]

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[81] *Id.* at 8-9.
[82] HE Report at 8-9; *see also Washington Teachers' Union, Local 6, AFL-CIO v. D.C. Pub. Sch.*, 42 D.C. Reg. 3426, Slip Op. No. 329 at p. 3, PERB Case No. 90-U-28 (1992) (holding that the issues in an unfair labor practice proceeding are not determined by the hearing examiner, but by the allegations in the complaint, and, if applicable, by the narrowly-focused issues that the Board has framed in any pre-hearing decisions and orders in the case).
[83] HE Report at 11 (citing *NLRB v. Benne, Katz, etc. d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736, 743, 747 (1962); and *Bedford Farmers Cooperative*, 259 NLRB 1226, 1236 (1982)).
[84] 29 U.S.C. § 151-169.
[85] 360 NLRB 95.
[86] Although, *see* n. 35 herein.
[87] The Board notes that
[88] HE Report at 11-12.
[89] *Id.*
[90] *Bennett, et al v. Int'l Ass'n. of Firefighters, Local 36 and Fire and Emergency Serv. Dep't.*, 47 D.C. Reg. 10092, Slip Op. No. 445 at p. 2, PERB Case No. 95-RD-01 (1995); *see also Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't*, Slip Op. No. 1526 at p. 8, PERB Case Nos. 06-U-23, et al. (June 26, 2015) (holding that while the Board does "sometimes look to NLRB precedent for guidance when relevant, it mostly does so when PERB's case law is silent on a particular issue").
[91] *See Am. Fed'n of Gov't Emp., Local 1000 v. D.C. Dep't of Emp. Serv.*, 60 D.C. Reg. 16455, Slip Op. No. 1434 at p. 4, PERB Case No. 13-U-07 (2013).

Indeed, the Board expressly stated in *AFGE, Local 1000 v. D.C. DOES*, 60 D.C. Reg. 16455, Slip Op. No. 1434 at p. 4, PERB Case No. 13-U-07 that it is not appropriate to consider NLRB precedent in PERB cases that involve an agency's imposition of a dress code "because the National Labor Relations Act has no parallel to the CMPA's statutory grant of management rights."[92] Accordingly, the Hearing Examiner's reliance on only NLRB case law in his analysis of DYRS' 2012 dress code, and the conclusions he made based on that analysis, were in direct contradiction to the Board's express instructions,[93] and were contrary to the CMPA and PERB precedent.[94]

Furthermore, the record shows that AFGE Local 383 failed to prove, by a preponderance of the evidence, that some or all of the provisions in DYRS' 2012 dress code exceeded the scope of 4 DCMR §§ 513.1-2.[95]

Under PERB Rule 520.11, "[t]he party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence."

In its post-hearing brief, AFGE Local 383 conceded that 4 DCMR §§ 513.1-2 permit agencies to implement dress codes within certain parameters.[96] AFGE Local 383 stated:

> The regulations the Board has referenced [in Slip Op. No. 1449] appear in the chapter [of the DCMR] implementing the District's Human Rights Act ("DCHRA"), D.C. [Official] Code §§ 2-1404.01 *et seq.*, which applies to all employers in the District of Columbia, not just the government. The DCHRA prohibits many forms of employment discrimination including discrimination based on personal appearance. D.C. [Official] Code § 2-1404.11(a). But the regulations contain an exception whereby an employer may impose a non-discriminatory dress code. Thus, the Union agrees that the imposition of a dress code is not a *per se* violation of the DCHRA if its meets the regulatory definition of being nondiscriminatory and for a legitimate work purpose.[97]

The Board agrees with AFGE Local 383 assertion that two possible ways a complainant can prove that an agency's dress code exceeds the scope of the DCMR are to: (1) show that the dress code was unjustifiably discriminatory toward the bargaining unit on one or more of the bases described in the DCHRA;[98] and/or (2) show that the dress code did not serve any of the reasonable business purposes contemplated in 4 DCMR §§ 513.1-2.

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[92] *Id.*
[93] *See WTU, Local 6 v. DCPS*, 42 D.C. Reg. 3426, Slip Op. No. 329 at p. 3, PERB Case No. 90-U-28.
[94] *See AFGE Local 872 v. D.C. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.
[95] *See WTU, Local 6 v. DCPS*, 42 D.C. Reg. 3426, Slip Op. No. 329 at p. 3, PERB Case No. 90-U-28.
[96] AFGE Local 383 Post-Hearing Brief at 13.
[97] *Id*.
[98] *See* D.C. Official Code § 2-1401.01.

In this case, the record shows that AFGE Local 383 did not assert in its Complaint, at the hearing, or in its post-hearing brief, that the 2012 dress code was in any way discriminatory. If AFGE Local 383 had shown, by testimonial or documentary evidence, that any of the provisions of DYRS' dress code discriminated against a certain class of bargaining unit members in one or more of the manners described in the DCHRA, then under D.C. Official Code § 2-1401.03(a) and 4 DCMR § 513.3, the burden would have shifted to DYRS to prove that the alleged discriminatory provisions served a business necessity.[99] However, AFGE Local 383 did not assert or make any showing that the 2012 dress code was discriminatory in any way toward the bargaining unit. Therefore, in accordance with PERB Rule 520.11, the burden to prove that the dress code exceeded the scope of the DCMR in other ways remained with AFGE Local 383.

The record shows that AFGE Local 383 also did not provide any testimonial or documentary evidence at the hearing or in its post-hearing brief to prove that DYRS' 2012 dress code, in whole or in part, exceeded the scope of the reasonable business purposes contemplated in 4 DCMR §§ 513.1-2.

In its post-hearing brief, AFGE Local 383 argued that just because the regulations permit the District's agencies to implement a dress code, that did not make it a management right.[100] However, AFGE Local 383 did not provide any case law or other applicable evidence in its brief to support that assertion. Even if it had, the Board already determined in Slip Op. No. 1449 that the implementation of a dress code will be protected as a management right under the CMPA if its provisions are within the scope of the DCMR.[101]

AFGE Local 383 further argued in its post-hearing brief that "there was no detailed dress code in place at DYRS that applied to all members of the bargaining unit prior to the issuance of the 2012 employee conduct policy," and that under NLRB case law "the imposition of a new or materially changed dress code is a mandatory subject of bargaining."[102] As already discussed, *supra*, the Board has determined that it is not appropriate to consider precedent from the NLRB

[99] The Board notes that when an asserting party demonstrates that a dress code is discriminatory under the DCHRA, 4 DCMR § 513.3 states that the agency must merely "show" that the alleged discriminatory provision serves a "reasonable business purpose" in order to survive scrutiny. However, D.C. Official Code § 2-1401.03(a) goes further and states that the respondent must "prove" that the discriminatory provision is justified by "business necessity." In other words, the respondent must prove, under the specific facts of that individual case, that its business cannot be conducted without the discriminatory provision. The statute further provides that "a 'business necessity' exception cannot be justified by the facts of increased costs to business, business efficiency, the comparative characteristics of one group as opposed to another, the stereotyped characterization of one group as opposed to another, and the preferences of co-workers, employers, customers or any other person." Since statutes control over regulations, it is the statutory language that governs what respondents must prove if the burden shifts to them upon a showing by the complainant that a dress code is discriminatory. In this case, however, AFGE Local 383 did not assert or show that DYRS' 2012 dress code was in any way discriminatory, so the burden of proof did not shift to DYRS.
[100] AFGE Local 383 Post-Hearing Brief at 13.
[101] Slip Op. No. 1449 at 8-9.
[102] AFGE Local 383 Post-Hearing Brief at 14.

in PERB cases involving an agency's imposition of a dress code "because the National Labor Relations Act has no parallel to the CMPA's statutory grant of management rights."[103]

AFGE Local 383 also argued that the Federal Labor Relations Authority ("FLRA") "has found in some instances that imposition of a dress code is a mandatory subject of bargaining."[104] Although the Federal Service Labor-Management Relations Statute ("Federal Service Statute")[105] has a management rights provision similar to that of the CMPA,[106] and even though the FLRA has found that dress codes under that statute generally constitute a mandatory subject of bargaining,[107] the Board finds that it is not necessary to look to those sources for guidance in this case because PERB already has an established precedent on whether dress codes constitute a mandatory subject of bargaining under the CMPA.[108] As discussed, *supra*, in Slip Op. No. 1449, the Board determined that since 4 DCMR §§ 513.1-2 expressly permit the District's agencies to implement a dress code, then the adoption of a dress code is a protected management right under the CMPA as long as the dress code's provisions do not exceed the scope of the DCMR.[109] The vital distinction between the Federal Service Statute and the CMPA is that the federal government does not have a universally applicable regulation comparable to 4 DCMR §§ 513.1-2 that permits its agencies to implement a dress code. Rather, that decision is left to each federal agency to determine for itself. Accordingly, although dress codes may constitute a mandatory subject of bargaining in cases before the FLRA, they do not constitute a mandatory subject of bargaining in cases before PERB unless it is first shown that the dress code exceeds the scope of the DCMR.[110]

Next, AFGE Local 383 contended in its post-hearing brief that since Mr. Traylor testified at the hearing that only "eight to ten" of the bargaining unit's approximately 60 members worked in secure facilities," then "there is no justification whatsoever for imposing a safety related dress code on the 50 or so other members of the bargaining unit."[111] Notwithstanding Mr. Traylor's testimony,[112] even if most of the bargaining unit members did not work in the secure facilities full time, there is nothing in the record to show that they never had to go into the secure facilities in the regular course of their duties. If they did, then the universal application of the dress code may have been justified. Accordingly, without any additional evidence, the Board cannot conclude that there was "no justification" for DYRS to impose a safety related dress code on the entire bargaining unit, as AFGE Local 383 contended.

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[103] *See AFGE, Local 1000 v. D.C. DOES*, 60 D.C. Reg. 16455, Slip Op. No. 1434 at p. 4, PERB Case No. 13-U-07.
[104] AFGE Local 383 Post-Hearing Brief at 15-16 (internal citations omitted).
[105] 5 U.S.C. §§ 7101-7135.
[106] *Id.* at § 7106.
[107] *See, e.g., Dep't of Homeland Security and Nat'l Treasury Emp. Union*, 62 FLRA 236 (2007) (holding that generally, employee attire is a condition of employment and, therefore, negotiable as to substance).
[108] *See Am. Fed'n of Gov't Emp., Local 2741 v. D.C. Dep't of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697 at p. 8, PERB Case No. 00-U-22 (2002) (holding that PERB looks to other the decisions of other labor relations authorities only when its own precedent is silent on the issue in question).
[109] Slip Op. No. 1449 at 8-9.
[110] *See* Slip Op. No. 1449 at 8-9.
[111] AFGE Local 383 Post-Hearing Brief at 16.
[112] *See* Transcript at 25-26, 160.

Lastly, AFGE Local 383 argued in its post-hearing brief that "to the extent [DYRS' dress code] aims to make employees appear 'professional' and prohibits the wearing of athletic attire, DYRS failed to articulate how these restrictions somehow promote safety."[113] As already discussed, *supra*, since AFGE Local 383 made no showing that some or all of DYRS' 2012 dress code was in any way discriminatory, DYRS did not have the burden of proof in this case. Rather, the burden was on AFGE Local 383, as the party asserting that DYRS committed an unfair labor practice by failing to bargain substantively over the dress code prior to implementing it, to prove that the 2012 dress code exceeded the DCMR and was therefore a mandatory subject of bargaining.[114] The record shows, however, that AFGE Local 383 did not provide any documentary or testimonial evidence to meet that burden. Indeed, Ms. Hall gave unrebutted testimony at the hearing that whenever she went into a secure area, she had to first change certain items of her attire such as her shoes and earrings "for safety reasons."[115] Furthermore, the Hearing Examiner found in his Report, based on Ms. Hall's testimony, that "DYRS adopted the [2012 dress code] because of safety or security incidents."[116] Specifically, Ms. Hall testified that:

> The creation of the 2012 [dress code] was built upon the current policy that the Agency had in place. They did make some changes to the policy and they added some additional items, which we referenced in… the piece in regard to piercings and things of that nature. And a lot of that was done based on incidents that had happened on the facility, which promoted them to add some additional coverages in there.[117]

The Board concedes that Ms. Hall's uses of the phrases "some" and "a lot" do seem to cast some doubt on whether safety and security were the only reasons DYRS made the changes.[118] However, AFGE Local 383 did not elicit any additional testimony, either from Ms. Hall or its own witnesses, to flesh out which, if any, of the 2012 changes were based on security reasons and which ones were not. Additionally, AFGE Local 383 did not follow up on Ms. Hall's statement about the "incidents that had happened on the facility" to determine what exactly happened in those incidents; or to establish whether the 2012 changes were or were not reasonably related to them.

Indeed, if safety and security were DYRS' only purposes for making the 2012 changes, then its 2012 dress code would likely have fallen within the expressly stated scope of 4 DCMR § 513.2, which permits agencies to "prescribe standards of dress for personnel in order to prevent a danger to the health, welfare, or safety of employees or customers," and D.C. Official Code § 1-617.08(a)(5)(D), which empowers management with the sole right "[t]o determine … [t]he

[113] AFGE Local 383 Post-Hearing Brief at 16.
[114] *See* PERB Rule 520.11; s*ee also WTU, Local 6 v. DCPS*, 42 D.C. Reg. 3426, Slip Op. No. 329 at p. 3, PERB Case No. 90-U-28.
[115] Transcript at 77, 98-99.
[116] HE Report at 9.
[117] Transcript at 87.
[118] *See also, e.g., id.* at 99.

agency's internal security practices…."[119] It is also possible that even if the changes were not solely based on safety and security reasons, then they still would have fallen within the scope of 4 DCMR § 513.1 if they served the "reasonable business purposes" of identifying DYRS' employees to the public "by means of a distinctive uniform, or to maintain a neat and clean appearance." If AFGE Local 383 had called any witnesses or provided any documentary evidence to show that the 2012 changes did not serve any of those purposes, and/or to show that the dress code's provisions were not tailored to accomplish those purposes, then the Board may have been able to find that the 2012 changes were outside the scope of the DCMR, and that DYRS committed an unfair labor practice when it implemented the changes without first substantively bargaining with AFGE Local 383. But as the record sits, there is not enough evidence for the Board to reasonably make any of those conclusions.

Accordingly, the Board finds that the record does not support the Hearing Examiner's conclusion that "DYRS' refusal to bargain with Local 383, and its unilateral implementation of the 2012 dress code … violated D.C. [Official] Code §§ 1-617.04(a)(1) and (5)."[120] Additionally, the Board finds that AFGE Local 383 did not meet its burden, under PERB Rule 520.11, to prove by a preponderance of the evidence that DYRS had a duty to bargain substantively over the dress code portion of the Policy, or that DYRS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it failed to engage in substantive bargaining with AFGE Local 383 prior to the dress code's implementation.[121] Accordingly, AFGE Local 383's allegation is dismissed with prejudice.

D. Prohibition of Outside Contact With Youth After Release from DYRS Custody

The Board rejects the Hearing Examiner's finding that the Policy's provision prohibiting DYRS employees from having outside personal or social media contact with youth who had been in DYRS custody, or their families, for three years after the youth leaves DYRS custody "far exceeds the area of proper management concerns" expressed in the then versions of 6-B DCMR §§ 1800.1-2, and § 1803.1(a)(6) (now partially § 1800.2 and § 1800.3(n), respectively).[122] The Board further rejects the Hearing Examiner's conclusion that DYRS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it unilaterally implemented the provision without first

[119] *See AFGE, Local 631 v. D.C. PERB*, Case No. 2013 CA 005870 P(MPA).
[120] HE Report at 12.
[121] The Board notes that this decision should not be interpreted to mean that DYRS' 2012 dress code was within the scope of the DCMR, or that it was protected as a management right. Indeed, there are certain parts of DYRS' dress code that give the Board great concern. However, AFGE Local 383 did not raise any specific allegations or concerns about any of the dress code's particular requirements other than to question its prohibition against athletic attire, and even then AFGE Local 383 failed to provide any documentary or testimonial evidence to establish that that provision exceeded the scope of the DCMR. Accordingly, the Board was bound to make its decision based on the record that was before it, not the record it wished it had. *See* PERB Rule 520.14. Had additional arguments been made, or had additional facts been established by either party, then it is possible, and perhaps even likely, that the outcome in this matter would have been different.
[122] HE Report at 10-12.

substantively bargaining with AFGE Local 383.[123] The Hearing Examiner's findings are not supported by the record.[124]

PERB Rule 520.11 states that "[t]he party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." Additionally, when an alleging party has failed to introduce documentary evidence, establish testimony, or make arguments supporting an allegation at a hearing other than to briefly mention the assertion in its opening statement and/or in its post-hearing brief, the allegation may be deemed "abandoned and waived."[125]

In this case, the Board's review of the transcript confirms DYRS' contention in its Exceptions that AFGE Local 383's only reference to its allegation regarding DYRS' no-contact provision at the hearing was in its opening statement.[126] Further, the only arguments AFGE Local 383 made in its post-hearing brief were that the then versions of 6-B DCMR §§ 1800.1-2, and § 1803.1(a)(6) were later amended and no longer contained the operative language that DYRS relied upon in its Answer, and that the prohibition was "a restriction on employees' lives and conduct."[127] The Hearing Examiner correctly ignored AFGE Local 383's irrelevant argument about the DCMR sections being subsequently amended in 2014 because the question before him was whether the Policy's no-contact provision was within the scope of the DCMR at the time the Policy was implemented in 2012.[128] Furthermore, even though DYRS' no-contact provision undoubtedly imposed a restriction on its employees' lives and conduct (as all regulations and policies do), AFGE Local 383 offered absolutely no testimony or other evidence to prove, by a preponderance of the evidence, that those restrictions were unreasonable or outside of the scope of the DCMR.

In its Opposition to DYRS' Exceptions, AFGE Local 383 asserted that "the policy itself is the evidence that supports the Hearing Examiner's conclusion that it is broader than the language set forth in [6-B DCMR §§ 1800.1-2, and § 1803.1(a)(6)]."[129] AFGE Local 383 noted that the text of DYRS' no-contact provision was entered into evidence as Joint Exhibit 1, and that the DCMR sections in question are "part of the public domain and are therefore not required to be submitted as an exhibit."[130] AFGE Local 383 argued that "[t]hese two sources of policy are the only relevant facts to determine the relative scope," and that "[a]ny witness testimony would have been in the nature of a legal opinion about the meaning of the policies and would, therefore, have been inappropriate."[131] AFGE Local 383 contended that the Hearing Examiner

[123] *Id*. at 12.
[124] *See* PERB Rule 520.14; *see also AFGE Local 872 v. D.C. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.
[125] *Am Fed'n of State, Cnty., and Mun. Emp., Dist. Council 20, Local 2401, AFL-CIO v. D.C. Child and Family Serv. Agency*, 61 D.C. Reg. 5608, Slip Op. No. 1463 at p. 7, 14, PERB Case No. 10-U-37 (2014).
[126] *See* Transcript at 10.
[127] AFGE Local 383 Post-Hearing Brief at 17-18.
[128] Slip Op. No. 1449 at 11.
[129] AFGE Local 383 Opposition to Exceptions at 5.
[130] *Id*.
[131] *Id*.

did "what he had been tasked to do" when he "reviewed the provisions in the regulations and of the DYRS policy at issue and concluded that the DYRS policy is broader than the ethics regulations."[132] AFGE Local 383 argued that, therefore, "DYRS simply disagrees with the Hearing Examiner's legal conclusion as to the meaning and scope of [the regulations]."[133]

The Board rejects AFGE Local 383's arguments. In Slip Op. No. 1449, the Board noted that it already had before it the texts of DYRS' no-contact provision and the regulations, but determined that those two sources alone did not prove AFGE Local 383's allegations by a preponderance of the evidence. Indeed, the Board merely stated that the Policy's no-contact provision "*may* extend beyond the scope of the DCMR," but concluded that additional facts were needed to know for sure.[134] Thus, the Board found that the "question [would be] best determined by a hearing examiner" who would "develop a full and factual record upon which the Board may make a decision."[135]

It then behooved AFGE Local 383, as the party asserting the violation, to call witnesses at the hearing and/or to present additional documentary evidence before the Hearing Examiner to prove by a preponderance of the evidence that the Policy's no-contact provision went beyond the scope of the then DCMR's requirements.[136] Indeed, AFGE Local 383 could have called witnesses who were integral in the drafting of the provision to testify why it was added to the Policy, what purpose it was meant to achieve, and how that purpose related to the DCMR's employee conduct requirements. It could have called witnesses from the bargaining unit to establish and support its claim that the provision was overly restrictive. However, AFGE Local 383 did none of that. Accordingly, the Board finds that AFGE Local 383 effectively waived and abandoned its allegation.[137]

Thus, the Board finds that there is not enough evidence in the record to support the Hearing Examiner's conclusion that DYRS' no-contact provision "far exceeds" the scope of 6-B DCMR §§ 1800.1-2, and § 1803.1(a)(6).[138] Furthermore, the Board finds that there is not enough evidence support the Hearing Examiner's conclusion that DYRS violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it unilaterally implemented the provision without first substantively bargaining with AFGE Local 383.[139]

Therefore, AFGE Local 383's allegation regarding DYRS' no-contact provision is dismissed with prejudice.

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[132] *Id*.
[133] *Id*.
[134] Slip Op. No. 1449 at 11 (emphasis added).
[135] *Id*.; PERB Rule 520.11.
[136] PERB Rule 520.11; *see also* 2012 versions of 6-B DCMR §§ 1800.1-2, and § 1803.1(a)(6).
[137] *See AFCSME, Dist. Council 20, Local 2401, v. D.C. CFSA*, 61 D.C. Reg. 5608, Slip Op. No. 1463 at p. 7, 14, PERB Case No. 10-U-37.
[138] *See* PERB Rule 520.14; *see also AFGE Local 872 v. D.C. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.
[139] *See* Slip Op. No. 1449 at 7, 10.

IV. Conclusion

Based on the foregoing, the Board finds that DYRS failed to engage in good faith I&E bargaining over the portions of the Policy protected as management rights under D.C. Official Code §§ 1-617.08(a) *et seq*., and therefore violated D.C. Official Code §§ 1-617.04(a)(1) and (5). Accordingly, the Board will order DYRS to: 1) cease violating the CMPA as alleged; 2) engage in good faith I&E bargaining with AFGE Local 383, over portions of the Policy protected as management rights; and 3) post a notice detailing its violations of the CMPA. Furthermore, AFGE Local 383's direct dealing allegation, as well as its allegations related to the dress code and no-contact portions of the Policy, are dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. DYRS, its agents, and representatives shall cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by failing and refusing to bargain in good faith with AFGE Local 383 over the impact or effects of, and procedures concerning the implementation of the portions of the Policy protected as management rights under §§ 1-617.08(a) *et seq.*;

2. DYRS shall engage in good faith bargaining with AFGE Local 383, upon a timely request, over the impact or effects of, and procedures concerning the implementation of the portions of the Policy protected as management rights under §§ 1-617.08(a) *et seq.*;

3. DYRS shall post conspicuously, within ten (10) days from the service of this Decision and Order, the attached Notice where notices to bargaining-unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days;

4. AFGE Local 383's requests for attorneys' fees and costs are denied;

5. AFGE Local 383's direct dealing allegation, as well as its allegations related to the dress code and no-contact provisions of the Policy, are dismissed with prejudice; and

6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, Barbara Somson, and Douglas Warshof.

April 21, 2016
Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-06, Op. No. 1577 was sent by File and ServeXpress to the following parties on this the 9th day of June, 2016.

Brenda C. Zwack
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/s/ Sheryl Harrington
PERB

PERB Public Employee Relations Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA

1100 4th Street S.W.
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Washington, D.C. 20024
Business: (202) 727-1822
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1577, PERB CASE NO. 13-U-06, (JUNE 9, 2016).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law in the manners alleged in PERB Case No. 13-U-06, and has ordered DYRS to post this Notice.

WE WILL cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) in the manners stated in Slip Opinion No. 1577, PERB Case No. 13-U-06.

WE WILL cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing or failing to bargain in good faith with AFGE Local 383, upon request, over the impact or effects of, and procedures concerning the implementation of management decisions made pursuant to D.C. Official Code §§ 1-617.08(a) *et seq*.

Department of Youth Rehabilitation Services

Date:_____ By:_____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or MPD's compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4th Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

June 9, 2016

Washington, D.C.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
American Federation of Government Employees, Local 1000,	)	PERB Case No. 13-U-07
Complainant,	)	
	)	Opinion No. 1578
v.	)	
District of Columbia Department of Employment Services,	)	
Respondent.	)	

DECISION AND ORDER

Complainant American Federation of Government Employees, Local 1000 ("AFGE Local 1000") filed an unfair labor practice complaint against the District of Columbia Department of Employment Services ("DOES") alleging that DOES violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by unilaterally implementing a dress code policy ("2012 Dress Code") without first engaging in substantive bargaining, and by failing to engage in good faith bargaining over the impact and effects of, and procedures concerning the implementation of the 2012 Dress Code ("I&E bargaining").[1]

On October 31, 2013, PERB issued a Decision and Order[2] ("Slip Op. No. 1434") wherein the Board found that the parties' pleadings presented issues of fact as to whether DOES had previously implemented a dress code in 1999 and whether the 2012 Dress Code was simply a revision of that 1999 dress code. Accordingly, the Board referred AFGE Local 1000's Complaint to be analyzed by a hearing examiner. The Hearing Examiner's Report and Recommendation ("Report"), now complete, is before the Board for consideration.

For the reasons stated more fully below, the Board rejects the Hearing Examiner's conclusion that DOES' implementation of the 2012 Dress Code without first engaging in substantive bargaining with AFGE Local 1000 violated D.C. Official Code §§ 1-617.04(a)(1)

[1] *See Am. Fed'n of Gov't Emp., Local 631, et al. v. D.C. Gov't, et al.*, 62 D.C. Reg. 14666, Slip Op. No. 1541, PERB Case No. 09-U-31 (2015).
[2] *Am. Fed'n of Gov't Emp., Local 1000 v. D.C. Dep't of Emp. Serv.*, 60 D.C. Reg. 16455, Slip Op. No. 1434, PERB Case No. 13-U-07 (2013).

and (5). Further, the Board rejects the Hearing Examiner's holding that DOES did not meet its statutory duty to engage in I&E bargaining over the 2012 Dress Code. Accordingly, AFGE Local 1000's Complaint is dismissed with prejudice.

I. Slip Op. No. 1434

In its Answer, DOES denied the Complaint's allegations and asserted that the 2012 Dress Code was not a new policy, but rather a revised policy that replaced a previous dress code that was implemented in 1999.[3]

AFGE Local 1000 thereafter filed a Motion for a Decision on the Pleadings, asserting that DOES had never implemented a dress code prior to the 2012 Dress Code.[4] AFGE Local 1000 argued that although PERB had not yet, at that time, ruled on whether the implementation of a dress code is a mandatory subject of bargaining under the CMPA, other labor relations authorities—i.e. the National Labor Relations Board ("NLRB"), and the Federal Labor Relations Authority ("FLRA")—had determined that it is, and that that legal question superseded the parties' factual disputes.[5] The Board disagreed.

In Slip Op. No. 1434, the Board found that it was inappropriate in management rights cases to consider precedent from the NLRB "because the National Labor Relations Act has no parallel to the CMPA's statutory grant of management rights."[6] Further, the Board noted that in one of the FLRA cases that AFGE Local 1000 cited, the FLRA held that changes to past practices must be bargained over, but it did not conclusively find that dress codes are themselves a mandatory subject of bargaining.[7] Similarly, the Board noted that in another FLRA case cited by AFGE Local 1000, the FLRA determined that a union's proposal to make certain changes to an existing dress code was negotiable, but "[fell] short of providing definitive support that dress codes are mandatory subjects of bargaining."[8]

Therefore, in light of the factual disputes between the parties as to whether DOES had a dress code prior to the 2012 policy, and whether the parties ever engaged in impact and effects ("I&E") bargaining over the 2012 Dress Code, the Board referred the matter to be "processed through an unfair labor practice hearing to determine whether a past practice existed in which employees were not held to any particular dress code, and were not disciplined for their attire or appearance."[9]

[3] Answer at 3.
[4] *Id.*
[5] *Id.* at 3-4.
[6] *Id.* at 4.
[7] *Id.* (citing *Veterans' Admin. West Los Angeles Med. Ctr.*, 23 FLRA 278 (1986)).
[8] *Id.* at 5 (citing *U.S. Army, Aberdeen Proving Ground, Aberdeen Md.*, 32 FLRA 200 (1988)).
[9] *Id.* at 6.

II. The Hearing Examiner's Report and Recommendation

The hearing in this matter was held on May 28, 2014, before Hearing Examiner Margaret Cox.[10] However, Ms. Cox was unable to complete the Report and Recommendation. With the consent of the parties, PERB assigned Leonard Wagman to issue a Report and Recommendation based upon the hearing transcript and the documents in the existing record.[11] In his Report, Hearing Examiner Wagman made the following findings of facts and conclusions.

A. 1999 Dress Code

The Hearing Examiner found that DOES did not have a dress code prior to 2012.[12] Based on witness testimony and other documents in the record, the Hearing Examiner noted that although DOES issued a memorandum on July 26, 1999, to announce a new dress standards policy, it withdrew that policy in or about September 1999 after AFGE Local 1000 objected to its content and implementation.[13] The Hearing Examiner found that no employees were ever disciplined under the 1999 dress code.[14]

B. 2012 Dress Code and Request to Bargain

On October 12, 2012, DOES issued Administrative Issuance No. 701, which contained the 2012 Dress Code.[15]

In his report, the Hearing Examiner found that the 2012 Dress Code set forth standards of professional business attire, regulated the wearing of clothing with DOES' logo, and established standards of appropriate attire for the "identification and safety of employees whose work exposes them to potential safety hazards."[16] He found that the dress code prohibited the wearing of certain clothing and footwear while on duty, such as "athletic, casual, or beach wear."[17] He found that the 2012 Dress Code listed numerous exceptions to those prohibitions, such as "casual Fridays," medical accommodations, attire worn to and from work and on lunch breaks, and other exceptions that were "in the interest of health, welfare, or safety of employees or customers, or in furtherance of the agency's business interest."[18] The Hearing Examiner noted that additional exceptions could be granted with "prior supervisory approval," or "by DOES' Director, or his or her designee."[19] The Hearing Examiner found that the 2012 Dress Code had a provision for enforcement, which warned that violations could result in "corrective or adverse action."[20] The Hearing Examiner also noted, however, that the 2012 Dress Code required management to

[10] HE Report at 4.
[11] *Id.*
[12] *Id.* at 12.
[13] *Id.* at 4-6.
[14] *Id.* at 6-7.
[15] *Id.* at 8.
[16] *Id.* at 9.
[17] *Id.*
[18] *Id.* at 9-10.
[19] *Id.*
[20] *Id.* at 10.

enforce and apply its provisions with consistency and uniformity.[21] Finally, the Hearing Examiner found that the 2012 Dress Code gave DOES' Director the sole discretion to "continue, revise, or revoke" its provisions.[22]

On October 15, 2012, AFGE Local 1000 sent an email to DOES demanding bargaining over the policy.[23] The Hearing Examiner found, based on union witness Dawn Crawford's testimony, that AFGE Local 1000 intended to "engage in decisional bargaining" at the meeting.[24] However, based on the testimony of DOES' representative, Dean Aqui, the Hearing Examiner found that DOES only meant to engage in I&E bargaining,[25]

The Hearing Examiner further found, based on the testimony of Mr. Aqui and Ms. Crawford, that AFGE Local 1000 was not prepared to discuss the 2012 Dress Code at the October 24th meeting, and so DOES requested another meeting to do so.[26] The Hearing Examiner did not credit the testimony of DOES witness Rahsaan Coefield, who testified that the parties did engage in I&E bargaining over the 2012 Dress Code at the October 24th meeting. The Hearing Examiner found that Mr. Coefield's testimony was contradictory.[27]

Based on his factual findings, and citing to three NLRB cases and Slip Op. No. 1434,[28] the Hearing Examiner concluded that DOES had a regular and longstanding past practice "to refrain from enforcing a dress code on the bargaining unit of non-professional employees," and that accordingly, the absence of a dress code had become a term and condition of the bargaining unit's members' employment.[29] Thus, the Hearing Examiner held that DOES violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it unilaterally implemented the 2012 Dress Code without first substantively bargaining with AFGE Local 1000.[30]

Further, the Hearing Examiner found that DOES' "insistence that its bargaining obligation regarding the impact and effects of its unilateral decision to implement its Employee Dress Standards is limited to a discussion is insufficient to satisfy its statutory obligation to bargain with the Union in good faith."[31]

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[21] *Id.*
[22] *Id.*
[23] *Id.* at 10.
[24] *Id.*
[25] *Id.*
[26] *Id.* at 11.
[27] *Id.*
[28] *NLRB v. Benne Katz, etc. d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736, 743, 747 (1962); *Mercy Hospital of Buffalo*, 311 NLRB 869 (1993); and *Sunoco, Inc.*, 349 NLRB 240, 244 (2007).
[29] HE Report at 14.
[30] *Id.* at 13-15.
[31] *Id.* at 15.

III. Analysis

The Board will affirm a hearing examiner's findings and recommendations if the findings are reasonable, supported by the record, and consistent with PERB precedent.[32]

A. Dress Code

The Board rejects the Hearing Examiner's finding that DOES violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it unilaterally implemented its 2012 Dress Code without first substantively bargaining with AFGE Local 1000 because that finding is contrary to the CMPA and PERB precedent, and is not supported by the record.[33]

When the Board issued Slip Op. No. 1434 in October 2013, it noted that it had not yet ruled on whether the implementation of a dress code constituted a mandatory subject of bargaining under the CMPA.[34] However, three months later in January 2014, the Board issued *Am. Fed'n of Gov't Emp., Local 383 v. D.C. Dep't of Youth Rehab. Serv.*, 61 D.C. Reg. 1561, Slip Op. No. 1449, PERB Case No. 13-U-06 (2014) ("Slip Op. No. 1449"), wherein it noted that under D.C. Official Code § 1-617.08(a)(1), "management maintains the sole right to 'direct employees of the agencies,' 'in accordance with applicable laws, rules, and regulations."[35] Accordingly, the Board held that an agency does not violate D.C. Official Code §§ 1-617.04(a)(1) and (5) by refusing to engage in substantive bargaining with an exclusive representative over management decisions that are in harmony with the D.C. Municipal Regulations ("DCMR") (or other similar applicable law) because those decisions are protected as management rights under the "applicable laws and rules and regulations" clause of D.C. Official Code § 1-617.08(a)(1).[36] However, the Board also held that if the management decisions in question go beyond the scope of the DCMR or other applicable legal authority, then the decisions are not protected as management rights under the "in accordance with applicable laws and rules and regulations" clause of the statute, and cannot not be imposed without first engaging in substantive bargaining with the exclusive representative.[37]

With regard to the specific question of whether the implementation of a dress code constitutes a mandatory subject of bargaining, the Board noted that 4 DCMR §§ 513.1-2[38] permit agencies to "prescribe standards of appearance or dress for personnel which serve a reasonable business purpose; for example, to identify its employees to the public by means of a distinctive

[32] *Am. Fed'n of Gov't Emp., Local 872 v. D.C. Water and Sewer Auth.*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).
[33] *Id.*
[34] *See* Slip Op. No. 1434 at 3-4.
[35] Slip Op. No. 1449 at 6-7, 9-10.
[36] *Id.* (citing *Washington Teachers Union, Local 6 v, D,C, Pub. Sch.*, 46 D.C. Reg. 8090, Slip Op. No. 450 at p. 9, PERB Case No. 95-N-01 (1995); and *Douglas, et al. v. Dixon, et al.*, 39 D.C. Reg. 9621, Slip Op. No. 315 at p. 2, PERB Case No. 92-U-03 (1992)).
[37] *Id.* at 8-9, 11.
[38] 4 DCMR §§ 513.1-2 falls under Title 4, Chapter 5 of the DCMR, which governs, respectively, "Human Rights and Relations" and "Employment Guidelines."

uniform, or to maintain a neat and clean appearance…, [or] to prevent a danger to the health, welfare, or safety of employees or customers…."[39] Accordingly, the Board held that the implementation of a dress code will be protected as a management right under D.C. Official Code § 1-617.08(a)(1)—and thus will not be a mandatory subject of bargaining—as long as the dress code's provisions are consistent with the language and scope of the DCMR.[40] However, in cases where an agency's dress code goes beyond the language and scope of the DCMR, then the Board held that the dress code "cannot be imposed without bargaining."[41]

In this case, although the Hearing Examiner cited to the Board's opinion in Slip Op. No. 1449, his analysis suggests that he read it to mean that even though the DCMR permits the District's agencies to adopt a dress code, they cannot do so unless they first substantively bargain over its provisions with the exclusive representative regardless of whether or not the dress code's provisions are within the scope of the regulations.[42] That interpretation was in error. The operative language in Slip Op. No. 1449 states:

> 4 DCMR §§ 513.1 and 513.2 clearly permit agencies to maintain a dress code for their employees. However, the detailed provisions in [an agency's] dress code policy *may* extend beyond the language of the DCMR and thus cannot be imposed without bargaining.[43]

The word "may" in the quoted language, especially when read in conjunction with the Board's other holdings in Slip Op. No. 1449, makes it clear that the Board actually held that agencies are only obligated to bargain substantively with the exclusive representative over a dress code *if* the dress code's requirements go beyond the scope of 4 DCMR §§ 513.1-2.[44] However, if the dress code stays within the scope of the regulations, then the agency only has an obligation, upon a timely request by the union, to engage in good faith I&E bargaining over the dress code.[45] Accordingly, it was irrelevant whether or not DOES had a dress code prior to 2012 because 4 DCMR §§ 513.1-2 permitted it to create one whether it already had one in place or not. Accordingly, the only question the Hearing Examiner needed to answer in this matter was whether DOES' 2012 Dress Code, new or not, exceeded the scope of 4 DCMR §§ 513.1-2.[46] The record shows that the Hearing Examiner did not answer that question.

Instead, the Hearing Examiner erroneously applied a past practice analysis in which he relied almost exclusively on NLRB case law to support his conclusions.[47] Additionally, the Hearing Examiner erroneously found that DOES' duty to substantively bargain with AFGE Local 1000 over the 2012 Dress Code is "defined in Section 8(d) of the National Labor Relations

[39] Slip Op. No. 1449 at 8-9.
[40] *Id.* at 6-10.
[41] *Id.* at 8-9.
[42] *See* HE Report at 14-15.
[43] Slip Op. No. 1449 at 8-9 (emphasis added).
[44] *Id.*
[45] *Id.* at 7, 10; *see also* PERB Rule 520.11.
[46] Slip Op. No. 1449 at 8-9.
[47] *See* HE Report at 13-14.

Act" ("NLRA").[48] The Board has long held that although it "may often cite NLRB case law, the PERB is not bound by NLRB precedent."[49] This is partly because PERB and the NLRB operate under different statutes. PERB operates under the CMPA, while the NLRB operates under the NLRA. The two statutes are similar in many respects, but differ in one key aspect that is directly relevant to this case; the CMPA has a management rights statute (encapsulated in D.C. Official Code § 1-617.08, *et seq.*), whereas the NLRA does not.[50] Indeed, the Board expressly stated in Slip Op. No. 1434 that it is not appropriate in this case to consider precedent from the NLRB "because the National Labor Relations Act has no parallel to the CMPA's statutory grant of management rights."[51] Accordingly, the Hearing Examiner's almost exclusive reliance on NLRB case law in his analysis of DOES' 2012 Dress Code, and the conclusions he made based on that analysis, were contrary to the CMPA and PERB precedent.[52]

Furthermore, the record shows that AFGE Local 1000 failed to prove, by a preponderance of the evidence, that some or all of the provisions in DOES' 2012 Dress Code exceeded the scope of 4 DCMR §§ 513.1-2.

Under PERB Rule 520.11, "[t]he party asserting a violation of the CMPA shall have the burden of proving the allegations of the complaint by a preponderance of the evidence."

Two possible ways that a complainant can prove that an agency's dress code exceeds the scope of the DCMR are to: (1) show that the dress code was unjustifiably discriminatory toward the bargaining unit on one or more of the bases described in the District's Human Rights Act ("DCHRA"),[53] and/or (2) show that the dress code did not serve any of the reasonable business purposes contemplated in 4 DCMR §§ 513.1-2.[54]

In this case, the record shows that AFGE Local 1000 did not assert in its Complaint, at the hearing, or in its post-hearing brief, that the 2012 Dress Code was in any way discriminatory. If AFGE Local 1000 had shown, by testimonial or documentary evidence, that any of the provisions of DOES' dress code discriminated against a certain class of bargaining unit members in one or more of the manners described in the DCHRA, then under D.C. Official Code § 2-1401.03(a) and 4 DCMR § 513.3, the burden would have shifted to DOES to prove that the alleged discriminatory provisions served a business necessity.[55] However, AFGE Local 1000 did

[48] *Id.* at 13 (citing to 29 U.S.C. § 158(d)).
[49] *Bennett, et al v. Int'l Ass'n. of Firefighters, Local 36 and Fire and Emergency Serv. Dep't.*, 47 D.C. Reg. 10092, Slip Op. No. 445 at p. 2, PERB Case No. 95-RD-01 (1995); *see also Fraternal Order of Police/Metropolitan Police Dep't Labor Comm. v. D.C. Metropolitan Police Dep't,* Slip Op. No. 1526 at p. 8, PERB Case Nos. 06-U-23, et al. (June 26, 2015) (holding that while the Board does "sometimes look to NLRB precedent for guidance when relevant, it mostly does so when PERB's case law is silent on a particular issue").
[50] *See* Slip Op. No. 1434 at p. 4.
[51] *Id.*
[52] *See AFGE Local 872 v. D.C. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.
[53] D.C. Official Code §§ 2-1404.01 *et seq.*
[54] *Am. Fed'n of Gov't Emp., Local 383 v. D.C. Dep't of Youth Rehab. Serv.*, Slip Op. No. 1577 at p. 13, PERB Case No. 13-U-06 (June 9, 2016).
[55] The Board notes that when an asserting party demonstrates that a dress code is discriminatory under the DCHRA, 4 DCMR § 513.3 states that the agency must merely "show" that the alleged discriminatory provision serves a

not assert or make any showing that the 2012 dress code was discriminatory in any way toward the bargaining unit. Therefore, under PERB Rule 520.11, the burden to prove that the dress code exceeded the scope of the DCMR in other ways remained with AFGE Local 1000.

The record shows that AFGE Local 1000 also did not provide any testimonial or documentary evidence at the hearing or in its post-hearing brief to prove that the 2012 Dress Code, in whole or in part, exceeded the scope of the reasonable business purposes contemplated in 4 DCMR §§ 513.1-2.

Rather, in its post-hearing brief, AFGE Local 1000 argued that DOES' implementation of the 2012 Dress Code violated its established past practice of not having or enforcing a dress code.[56] To support that assertion, AFGE Local 1000 cited to various NLRB and FLRA cases.[57] As already discussed, *supra*, the Board has determined that it is not appropriate in this case to consider precedent from the NLRB "because the National Labor Relations Act has no parallel to the CMPA's statutory grant of management rights."[58] Furthermore, although the Federal Service Labor-Management Relations Statute ("Federal Service Statute")[59] has a management rights provision similar to that of the CMPA,[60] and even though the FLRA has found that dress codes under that statute generally constitute a mandatory subject of bargaining,[61] the Board finds that it was not necessary to look to those sources for guidance in this case because PERB already had an established precedent on whether dress codes constitute a mandatory subject of bargaining under the CMPA.[62] As discussed, *supra*, when the Board issued Slip Op. No. 1434 in October 2013, it stated that it had not yet ruled on whether or not a dress code constitutes a mandatory subject of bargaining under the CMPA. However, the Board's subsequent Decision in Slip Op. No. 1449, issued in January 2014, found that dress codes are not a mandatory subject of bargaining under the CMPA as long as the dress code's provisions do not extend beyond the scope and language of 4 DCMR §§ 513.1-2. Accordingly, Slip Op. No. 1449 supplanted Slip

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"reasonable business purpose" in order to survive scrutiny. However, D.C. Official Code § 2-1401.03(a) goes further and states that the respondent must "prove" that the discriminatory provision is justified by "business necessity." In other words, the respondent must prove, under the specific facts of that individual case, that its business cannot be conducted without the discriminatory provision. The statute further provides that "a 'business necessity' exception cannot be justified by the facts of increased costs to business, business efficiency, the comparative characteristics of one group as opposed to another, the stereotyped characterization of one group as opposed to another, and the preferences of co-workers, employers, customers or any other person." Since statutes control over regulations, it is the statutory language that governs what respondents must prove if the burden shifts to them upon a showing by the complainant that a dress code is discriminatory. In this case, however, AFGE Local 1000 did not assert or show that the 2012 Dress Code was in any way discriminatory, so the burden of proof did not shift to DOES.

[56] AFGE Local 1000 Post-Hearing Brief at 8.

[57] *Id.* at 8-11 (internal citations omitted).

[58] *See* Slip Op. No. 1434 at p. 4.

[59] 5 U.S.C. §§ 7101-7135.

[60] *Id.* at § 7106.

[61] *See, e.g., Dep't of Homeland Security and Nat'l Treasury Emp. Union*, 62 FLRA 236 (2007) (holding that generally, employee attire is a condition of employment and, therefore, negotiable as to substance).

[62] *See Am. Fed'n of Gov't Emp., Local 2741 v. D.C. Dep't of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697 at p. 8, PERB Case No. 00-U-22 (2002) (holding that PERB looks to other the decisions of other labor relations authorities only when its own precedent is silent on the issue in question).

Op. No. 1434 and became the Board's ruling precedent on this issue under the CMPA. The vital distinction between the Federal Service Statute and the CMPA is that the federal government does not have a universally applicable regulation comparable to 4 DCMR §§ 513.1-2 that permits its agencies to implement a dress code. Rather, that decision is left to each federal agency to determine for itself. Accordingly, although it may be appropriate to engage in a past practice analysis in a dress code case before the FLRA, it is not appropriate to do so in a dress code case before PERB unless it is first shown that the dress code exceeds the scope of the DCMR.[63]

AFGE Local 1000 further argued in its post-hearing brief that:

> [T]he Agency has never presented any concrete reason for the sudden imposition of a dress code after at least 20 years without one. DOES has never maintained that employees were not dressing appropriately; nor has it ever suggested that employees' dress or appearance is integral to the mission of DOES. There is no evidence on the record to suggest that regulating employee dress is necessary or crucial to promote the efficiency of the Agency. Indeed, the policy allows for "Casual Friday". Joint Ex. 3. The Agency has offered no explanation as to why its operational needs are any different on Fridays than any other work day. But this exception for one day of the week does suggest that employee attire is not an integral part of fulfilling the Agency's mission.[64]

As already discussed, *supra*, since AFGE Local 1000 made no showing that some or all of the 2012 Dress Code's provisions were in any way discriminatory, DOES did not have the burden of proof in this case. Rather, the burden was on AFGE Local 1000, as the party asserting that DOES committed an unfair labor practice by failing to bargain substantively over its dress code prior to implementing it, to prove that the 2012 Dress Code exceeded the DCMR and was therefore a mandatory subject of bargaining.[65] Accordingly, DOES did not have any obligation in this matter to show why its 2012 Dress Code was necessary, or why it had a "Casual Friday" exception.

Furthermore, DOES had no obligation to show that the dress code served a business necessity.[66] Instead, the burden was on AFGE Local 1000 to prove that the dress code did not serve any of the reasonable business purposes contemplated in 4 DCMR §§ 513.1-2, such as identifying DOES' employees to the public by means of a distinctive uniform, maintaining a neat and clean appearance, or preventing a danger to the health, welfare, or safety of DOES' employees or customers. If AFGE Local 1000 had called any witnesses or provided any

[63] *See* Slip Op. No. 1449 at 8-9.
[64] AFGE Local 1000 Post-Hearing Brief at 12.
[65] *See* PERB Rule 520.11.
[66] *See* D.C. Official Code § 2-1401.03(a); *and* 4 DCMR § 513.3.

documentary evidence to show that the 2012 Dress Code did not serve any of those purposes, and/or to show that the dress code was not tailored to accomplish those purposes, then the Board may have been able to find that the 2012 Dress Code was outside the scope of the DCMR, and that DOES committed an unfair labor practice when it implemented the changes without first substantively bargaining with AFGE Local 383. But as the record sits, there is not enough evidence for the Board to reasonably make any of those conclusions.

Accordingly, the Board rejects the Hearing Examiner's conclusion that DOES violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it unilaterally implemented the 2012 Dress Code without first substantively bargaining with AFGE Local 1000.[67] Additionally, the Board finds that AFGE Local 1000 did not meet its burden, under PERB Rule 520.11, to prove by a preponderance of the evidence that DOES had a duty to bargain substantively over its 2012 Dress Code, or that DOES violated D.C. Official Code §§ 1-617.04(a)(1) and (5) when it failed to engage in substantive bargaining with AFGE Local 1000 prior to the dress code's implementation.[68] Accordingly, AFGE Local 1000's allegation is dismissed with prejudice.

B. I&E Bargaining

The Board rejects the Hearing Examiner's finding that DOES' "insistence that its bargaining obligation regarding the impact and effects of its unilateral decision to implement its Employee Dress Standards [was] limited to a discussion [was] insufficient to satisfy its statutory obligation to bargain with the Union in good faith."[69] The Hearing Examiner's finding is not supported by the record, and is contrary to PERB precedent.[70]

In his Report, the Hearing Examiner found that after AFGE Local 1000 demanded bargaining over DOES' 2012 Dress Code, it was DOES' attorney, Mr. Aqui, who set up the October 24, 2012 bargaining meeting with AFGE Local 1000.[71] The Hearing Examiner further noted, based on testimony both agency and union witnesses, that AFGE Local 1000 "was not ready to discuss the Dress Standards Policy on October 24 and sought another meeting to do so."[72] However, no meeting was ever scheduled.[73] The Hearing Examiner found that it was "clear… that DOES has had no intention of bargaining with the Union about the decision to impose the Employee Dress Code on the unit of employees covered by the CBA," and that

[67] HE Report at 13-15.
[68] The Board notes that this decision should not be interpreted to mean that DOES' 2012 Dress Code was within the scope of the DCMR, or that it was protected as a management right. Rather, the Board is merely saying AFGE Local 1000 simply did not raise any specific allegations or concerns about any of the dress code's particular requirements other than to question its "Casual Friday" exception, and even then AFGE Local 1000 failed to provide any documentary or testimonial evidence to establish that that provision exceeded the scope of the DCMR. Accordingly, the Board was bound to make its decision based on the record that was before it. *See* PERB Rule 520.14. Had additional arguments been made, or had additional facts been established by either party, then it is possible, and perhaps even likely, that the outcome in this matter would have been different.
[69] HE Report at 15.
[70] *See AFGE Local 872 v. D.C. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.
[71] HE Report at 10.
[72] *Id.* at 11.
[73] *Id.* at 12.

DOES "holds the view that impact and effects bargaining 'can be discussed and an agreement reached with the unions' but that such discussion would not lead to any change in that policy."[74] Thus, the Hearing Examiner concluded that DOES failed to meet its statutory duty to bargain in good faith with AFGE Local 1000 over the 2012 Dress Code.[75]

When an agency implements a management rights decision that is protected by D.C. Official Code §§ 1-617.08(a) *et seq*., the agency is not obligated to bargain substantively over the decision, but it still has a duty to, upon a timely request from the union, bargain over the impact and effects of, and procedures concerning the implementation of the decision.[76] That duty does not require the parties to bargain in perpetuity or to reach an ultimate agreement, but the agency must still engage in the negotiations in good faith.[77] The Board has set forth what constitutes "good faith" in the context of I&E bargaining:

> Under Board case law, when I&E bargaining has been requested by the exclusive representative, the agency fulfills its duty to bargain in good faith by going beyond "simply discussing" its proposal with the union, and by doing more than merely requesting the union's input. Furthermore, the agency's participation cannot constitute mere "surface bargaining", and the agency cannot engage in conduct at or away from the table that intentionally frustrates or avoids mutual agreement. Rather, there must be a give and take, with the negotiations entailing full and unabridged opportunities by both parties to advance, exchange, and reject specific proposals.[78]

In this case, the record shows that DOES made every reasonable effort to engage in good faith I&E bargaining with AFGE Local 1000 over its 2012 Dress Code. Indeed, when AFGE Local 1000 requested bargaining, it was DOES that scheduled the meeting.[79] DOES' witness, Mr. Aqui, whose testimony the Hearing Examiner credited,[80] testified that DOES arrived at the meeting fully prepared to engage in I&E bargaining, but that the meeting was cut short because AFGE Local 1000's representatives stated that they had not yet received feedback from their members and were therefore not prepared to discuss the dress code.[81] Mr. Aqui testified that he told AFGE Local 1000's representatives that DOES would wait for AFGE Local 1000's

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[74] *Id.* at 11.
[75] *Id.* at 15.
[76] *See AFGE, Local 631, et al. v. D.C. Gov't, et al.*, 62 D.C. Reg. 14666, Slip Op. No. 1541 at p. 5, PERB Case No. 09-U-31; *see also Am Fed'n of State, Cnty., and Mun. Emp., Dist. Council 20, Local 2401, AFL-CIO v. D.C. Child and Family Serv. Agency*, 61 D.C. Reg. 12586, Slip Op. No. 1497 at p. 3, PERB Case No. 10-I-06 (2014); *and Am. Fed'n of Gov't Emp., Local 631 v. D.C. Pub. Emp. Relations Bd.*, Case No. 2013 CA 005870 P(MPA) (D.C. Super. Ct. Jul. 30, 2015).
[77] *AFSCME, Dist. Council 20, Local 2401, AFL-CIO v. DC CFSA*, 61 D.C. Reg. 12586, Slip Op. No. 1497 at p. 3, PERB Case No. 10-I-06.
[78] *Id.* (internal citations omitted).
[79] HE Report at 10.
[80] *Id.* at 11.
[81] *Id.*; *see also* Transcript at 103-104.

"additional comments and demands for I&E on those issues," but that AFGE Local 1000 never made any additional demands and never requested another meeting.[82] Instead, AFGE Local 1000 filed the instant unfair labor practice complaint.

Based on these facts, the Board finds that the Hearing Examiner's assertion that DOES' efforts were "insufficient to satisfy its statutory obligation to bargain with the Union in good faith" is not supported by the record, and is not consistent with PERB precedent.[83] Furthermore, the Board finds that the Hearing Examiner's conclusion that DOES violated D.C. Official Code §§ 1-617.04(a)(1) and (5) by failing and refusing to bargain with AFGE Local 1000 over its 2012 Dress Code is likewise not supported by the record, or consistent with PERB precedent. Accordingly, the Board rejects the Hearing Examiner's conclusions and dismisses AFGE Local 1000's allegations.[84]

IV. Conclusion

Based on the foregoing, the Board rejects the Hearing Examiner's conclusion that DOES' implementation of the 2012 Dress Code without first engaging in substantive bargaining with AFGE Local 1000 violated D.C. Official Code §§ 1-617.04(a)(1) and (5). Further, the Board rejects the Hearing Examiner's finding that DOES failed to meet its statutory duty to engage in good faith I&E bargaining with AFGE Local 1000 over the 2012 Dress Code. Accordingly, AFGE Local 1000's Complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFGE Local 1000's Complaint is dismissed with prejudice; and

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Yvonne Dixon, Ann Hoffman, Barbara Somson, and Douglas Warshof.

April 21, 2016
Washington, D.C.

[82] Transcript at 104; *see also* HE Report at 12.
[83] HE Report at 15; *see also AFGE Local 872 v. D.C. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.
[84] *See AFGE Local 872 v. D.C. WASA*, 52 D.C. Reg. 2474, Slip Op. No. 702, PERB Case No. 00-U-12.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-07, Op. No. 1578 was sent by File and ServeXpress to the following parties on this the 9th day of June, 2016.

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